The implementation of freedom of expression in Jordan

By

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A thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy at the University of Central Lancashire

October 2023

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Abstract

Freedom of expression is a fundamental pillar of democratic societies, facilitating the exchange of ideas, opinions, and information. It is crucial in promoting open and inclusive societies, enabling citizens to engage in public discourse, challenge prevailing norms, and hold those in power accountable. However, the interpretation and application of this universal human right vary across nations due to cultural, legal, and political factors.

This study performs an in-depth analysis of freedom of expression in Jordan. The historical, cultural, and legal framework of Jordan creates a platform where the expression of freedom and its enactment have a unified environment that is complex and confusing. This research investigates into the legal context as well as ethics, international law, and the practical aspects of practising freedom of expression in Jordan.

The main findings indicated that although the Jordanian Constitution gives expression freedom of thought and expression, some laws and regulations include factors of national security and public order in the justification of censorship. This framework has a consequential effect in that it creates doubt and uncertainty in establishing where the conjunct for free expression starts and ends. Moreover, societal norms and cultural factors that affect the exercise of this right are formed through the competing pressures to preserve social consent and foster critical thinking.

This study underlines the urgency to continue conducting research on the historical and cultural factors behind freedom of expression as a gap exists between the mere existing knowledge. It prescribes initialising the protection for the speech's liberty in such a manner that security concerns along with the domestic legislation get spearheaded along with the international rules will be crafted accordingly. The research recommends constitutional additions, legal revisions, and more judicial independence as instruments to maintain the inviolability of this core praxis.

Therefore, by looking into the intricacies, pitfalls, and prospects of freedom of expression in Jordan, this research can conjure an in-depth insight into the topic. This suggests that way of illuminating the complex ramifications of the principle to legislators, lawyers, non-governmental organisations and international workers helps foster the protection of freedom of expression and facilitates a more democratic and open society for Jordan.

Acknowledgements

I am deeply grateful to Dr. Ian Turner, whose unremitting supervision, deep knowledge and uninterrupted guidance was the foundation of my study. Dr. Turner's comments and mentorship have led me on the right educational path and my endless gratitude is a personal commitment I have to his consistency in my academic venture.

I am also extremely grateful to my Second Supervisor, Dr. Mohammed El- said, and my Research Degree Tutor, Dr. Kartina ChoongIan, for their immensely helpful advice offered, responsiveness, and effective monitoring. Their contributions have enriched my research experience.

To my beloved parents and my brothers, I owe a debt of gratitude for their unwavering love, care, and encouragement during my academic pursuits and throughout my life's journey. I also hold a special place in my heart for my late grandfather, Ihsan, whose financial support allowed me to pursue my studies. I sincerely thank my grandmother for her constant motivation and belief in me.

Additionally, I want to acknowledge the vital role played by my close circle of supportive friends, whose encouragement and understanding have strengthened me throughout this endeavour.

Last but certainly not least, I extend my appreciation to Lancashire Law School for providing a supportive and welcoming learning environment that has contributed significantly to my academic growth and achievement.

List of Abbreviations

UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ACHR	Arab Charter on Human Rights
ECHR	European Convention on Human Rights
HRC	Human Rights Committee
SSC	State Security Court

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Chapter 1

The introduction

1.1 Overview and background

Freedom of speech is an important foundation of a democratic society; it ensures the uninhibited exchange of ideas and information, helps citizens participate in public discussions and holds power to account.

Worldwide, in the context of culture, politics and law, the interpretation and implementation of freedom of speech differ. Given that there exists an implicit power of culture within the decision-making of what is considered an appropriate speech and expression, it is only proper for everyone to have a proper understanding of its borderlines. Some cultures find it more important to sacrifice the expression of individuals for the sake of collective harmony. This is reflected in their laws that punish potentially disruptive speakers, and they enforce traditions that demand diverse opinions.[1]

Freedom of expression is guided by legal frameworks too, and countries introduce various types of laws, both constitutional and statutory, for such purposes. Instances are reported of some countries that utilise such exemptions like national security or public order for protectionist reasons. Political systems have an extra role in the context of freedom of expression; democracies ensure its protection, though with varying levels of political involvement and "autocratic" ones are prone to constraining it to counterbalance it.

[1] Western countries, such as the United States and many European nations, often place a strong emphasis on individual rights and freedom of expression. These cultures value the right to express diverse and even controversial opinions, as long as they do not incite violence or hatred.

The international human rights rules can be adopted as a common universal framework for protecting freedom of expression; however, different implementation states are observed. Some continue to harmonise their domestic laws with international standards, while others place more value on their national interest, which results in different levels of protection on the international level. These inequalities have far-reaching consequences. Countries with strong protections promote free discussion and creativity, while those with limited freedoms limit the amount of debate by cutting out certain voices in society, which prevents this society from growing both socially and politically.

The freedom of expression in Jordan has transformed due to international commitments, legal frameworks, independence standards, philosophical foundation, and cultural background. Despite internal resistance from persons of Jordanian political culture, law-making, and customs, freedom of expression in the country has been under continuous challenges since the beginning of history. In the period of Ottoman rule, the conservatism characteristic of the Arabic tribes played the role of the basis for the dictation of the contour of the admissible speech, with the result that expressing an opposing view made the person face the toughest punishment.

Throughout the British Mandate, although freedom of the press was brought, a shortage of proper legislation concealed the freedom, and related issues such as opposition from the tribes and protests were triggered by new laws. The year 1946 was a time when we in 1946 got independence that issued the constitutional guarantees for freedom of expression. On the other hand, political instability and martial law seized the matter and curbed the freedom of speech as they used to say that it was to protect national security. Entries as far as liberal expression through the Internet and social media are still being suppressed mainly through the imposition of risks to the stability of the country. These policies on one side are

carved away by traditional values that are strongly rooted in the tribal and Islamic community, which call for the prioritisation of stability that is realised through social cohesion, collective responsibility, and patriarchal structures, and on the other side, they pose challenges that are crucial in implementing freedom of expression. Besides, the (deep-rooted) philosophical basis for freedom of speech in Jordan, which combines (elements of) shared understanding and executive authority shapes a complex social landscape where individual rights may sometimes become secondary to maintaining social standing, showing that the (standing) position of monarchs as the collective symbol of unification.

On the one hand, regarding the various instruments to safeguard free speech worldwide, the Jordan government ratified worldwide treaties to ensure its freedom of speech; nevertheless, the practical application is still not possible to be brought in line with international law. A blurred legal setting, incoherent clauses, and lack of specifics on what is deemed illegal could produce comprehensive dispersion, uneven enforcement, and a direct freeze on speech. The absence of constitutional provisions like separation of powers and an independent judiciary are additional stumbling blocks, and as a result, this gives rise to unconstitutionality, such as selective enforcement of the laws and inconsistency of the principles. This study aims to comprehensively examine freedom of expression in Jordan across various dimensions: ethical rules, practical use of it, philosophical ideas, and the influence that history and culture have on it. This research aims to analyse the past, culture, and ideology of Jordan to comprehend whether freedom of expression can become a reality in this society.

The Jordanian government has already committed to guaranteeing the rights as described by the Universal Declaration of Human Rights (UDHR) and it has also ratified the International Covenant on Civil and Political Rights (ICCPR) and the

Arab Charter on Human Rights. Hence, this study is akin to a gateway to study thoroughly what these treaties say about how the sense of free speech is expressed nationwide, which shows the system's strong relationship with global human rights practice. In this investigation, acting on practical difficulties that journalists, activists, citizens, and industries have to overcome in the way of promoting freedom of speech is also in focus. Such topics include media freedom, digital expression, political dissent, and social factors.

Finally, this dissertation intends to fill the existing gap in the intellectual field, to get more policymakers, attorneys civil society groups, and international actors involved to improve the protection of freedom of expression and build a more open and democratic society in Jordan.

1.2 Research Importance

'Freedom of expression' is one of the pillars of every democratic state, as it is the basis for the expression of individual rights and the integrity of the societal processes. In facing the challenge of freedom of expression, as Jordan outlined in the previous section, it is necessary to create an avenue for understanding the conflict that leads to the state of freedom of expression in the country and make way for the amendments.

One of the fundamental elements of the research subject is the in-depth analysis of the topic in a PhD thesis. The topic is multifaceted, grave and contains potential opportunities when it comes to press freedoms in Jordan.

Uncovering the notion of freedom of speech in Jordan contributes greatly to scholarly works by producing valuable and novel knowledge and observations. This

medium reveals the legal, cultural, and socio-economic influence playing a role in the democracy of free speech.

As far as the legal and policy aspects of freedom of expression in Jordan are concerned, the study is of vital importance. An extensive investigation can pinpoint weak spots and incompatibility that may require amendment to the law on freedom of expression or reinforcement. It can support legal officials with cogent advice on how to improve legal protections, modify the independence of the judiciary, and strike a balance with the plausibility of individual liberties in the absence of freedoms of expression from being over ingeniously limited. Research outcomes can update the policy of democracy and inclusivity in Jordan in a scientifically validated manner.

Hence, a comparison of the freedom of press and expression in other nations to the ones in our country was expected to have some positive effects on the policy. In Sweden, during the preliminary stage of the Swedish case, liberal press freedom was considered to enable the improvement of policies and take legal actions to help journalists and protect the freedom of the media.

Regarding the role of tough research on national press freedom in Sweden, implementation of the "Freedom of Press Act" (Tryckfrihetsförordningen) in 1766 may be mentioned as it is believed to be the initial law guaranteeing freedom of the press.[2] The foundation of this landmark legislation was laid on Enlightenment ideas and academic debates on the paramount need to have press freedom that, will guarantee democracy and accountability in society. The legislature reviews the following amendments, resorting to scholarly debates and research over the years,

[2] Lars Nord and Henrik Örnebring, 'The Swedish media system in transition: Journalism in an age of part-commercialization, digitalization and globalization' (2016) 37(1) Nordicom Review, 33, 51

which has shaped a comprehensive legal framework for free speech.[3] Research of freedom of expression in Jordan's contribution toward respect and security for human rights in public. Through an analysis of the threats and chances encountered when celebrating this indispensable freedom, researchers can raise public consciousness about the intrinsic significance of the guarantee of free speech for democracies all over the world.

Through these outcomes, respect for human rights, particularly for journalists, human rights activists, and marginalised groups, can be enhanced. Research allows civil society organisations, human rights defenders, and advocates to make evidence-based advocacy and push legal reforms that strengthen the freedom of expression.

Social cohesion and the development of democratic values are some of the areas that must be explored when talking about the idea of freedom of speech and expression in Jordan. Studying the mechanism of free speech in the Jordanian setting enables researchers to contemplate of a productive environment where it nurtures the cultivation of legitimate conversation and critical thinking as well as respect toward diversity.

To get a comprehensive view of the topic of freedom of expression for PhD research, it is crucial to do some research. Besides that, it produces academic knowledge of legal and policy frameworks, affects human rights and forms social cohesion and democracy. This area of research strives towards opening people to the intricacies and obstacles in the way of freedom of speech in Jordan, which eventually can produce a culture of more freedom and dignity, empower every individual, and hence it will lead to the well-being of the country. Researchers can become the ambassadors of that change. Currently, the systematic and thorough investigation of

[3] Ibid.

human rights violations is the crucial thing taken into account by researchers if they are to contribute to the improvement of freedom of expression in Jordan.

1.3 Objectives of study

- **Assess Jordan's International Obligations:** It is essential to assess Jordan's international commitment to human rights resolutions and other instruments not only on the issues of freedom of speech but also as a way to evaluate whether the country uses global standards. Apprehending Jordan's role in the interstate framework gives a more comprehensive view of its human rights actions, integrated into global responsibilities.
- **Examine the Legal Framework:** Find particulars of the legal framework in Jordan, which helps to acknowledge the strengths and weaknesses of this legal system in protecting freedom of expression. The objective of pursuing such moral and political obligations of the nations is to carry out an in-depth analysis of constitutional provisions, legislation and case law to give people knowledge about the whole legal environment. For the progress and the guarantee of this right, it is necessary to be aware of the holes or the disorders in the legal framework and consequently propose improvements and reforms to defend this right as much as possible.
- **Evaluate Legal Guarantees:** Examining the autonomy of the judiciary and the rule of law as two important aspects that define the practical connection between legal assurances of freedom of speech and their effectiveness with this goal in mind, I will determine whether Jordan's laws give a rightful atmosphere to each person to communicate their sentiments without the worries that their pronouncements are going to be unnecessarily softened or rebuttals.

- **Analyse the Application of Freedom of Expression:** Studying the enforcement of the freedom of expression in Jordan aims at accepting the gap between legal assurances and effective possession. The purpose of the by-assessing will ascertain the justice unselfish methods of actions and the overall climate that contributes to expressing freedom, which the individual tries to use their right.

- **Explore the Philosophical Basis:** Through deepening the philosophical foundations (Social Contract theory) of freedom of speech, one can gain insight into the bedrock principles that are used to uphold this right in Jordan. The philosophical grounding provides a framework that supports discussions about freedom of speech even as the viewers come to a gradual appreciation of the value the topic offers to the nation's socio-political setting.

- **Study the Historical and Cultural Context:** It is crucial to explore the historical and cultural elements like censorship and doubt that impact freedom of speech in Jordan to develop a comprehensive view of the societal forces that affect the exercise of this right. Cultural customs, religious doctrines, and past occasions educate people about freedom of speech and shape its meaning and exercise. This objective is to provide you with an understanding of the social, political, economic, and sporting factors to provide a detailed analysis.

1.4 Study Questions

1- Legal Framework for Freedom of Expression:

- Is freedom of expression protected in Jordan according to article of the constitution?
- What government legislation covers the issue of freedom of expression and what restrictions or limitations does it encompass?

- Is there any legal precedent that exists or case law that partly or more precisely defines the limits of freedom of expression in Jordan?

2- Legal Safeguards:

- What is the extent to which legal machineries exists in Jordanian system to reverse the violation of freedom of expression?
- How accessible are these remedies for individuals who have faced violations of their freedom of expression?
- Are there instances where legal safeguards have been successfully employed to protect individuals in cases of freedom of expression violations?

3- Independence of the Judiciary:

- How independent is the judiciary in Jordan, especially in cases related to freedom of expression?
- Are there instances where the judiciary has demonstrated fair and impartial adjudication in matters of freedom of expression?
- Are there concerns or evidence of external influences affecting judicial decisions in such cases?

4- Separation of Powers:

- How is the separation of powers implemented in Jordan, and what role does it play in protecting freedom of expression?
- In what ways does the division of powers contribute to preventing undue interference in matters related to freedom of expression?

- Are there instances where the separation of powers has been effective in safeguarding individuals' rights to express opinions freely?

5- Integration of International Instruments:

- How are international human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, incorporated into Jordan's legal framework for freedom of expression?
- Are there discrepancies between Jordan's domestic laws and its international human rights obligations regarding freedom of expression?

6- Challenges for Individuals and Media:

- What specific challenges do individuals face when exercising freedom of expression in Jordan?
- How do journalists and media organisations navigate legal
- Are there notable cases where individuals or media outlets encountered difficulties due to expressing their views?

7- Philosophical Influences on Freedom of Expression:

- How do the Social Contract theory and other philosophical perspectives influence the conceptual understanding of freedom of expression in Jordan?

8- Historical Events and Cultural Factors:

- Which historical events in Jordan have significantly impacted the understanding and practice of freedom of expression?
- How do cultural factors shape the interpretation of freedom of expression in Jordan?
- Are there specific cultural norms or traditions that influence the societal perception of this right?
- How do societal norms, values, and traditions impact the exercise of freedom of expression in Jordanian society?
- Are there instances where societal expectations clash with legal protections for freedom of expression?
- How do these societal factors contribute to the broader landscape of free expression in Jordan?

9- Reforms and Improvements:

- What specific reforms could enhance the legal framework to protect freedom of expression in Jordan better?
- Are there institutional changes that could contribute to a more robust safeguarding of this right?
- How might addressing societal dynamics and cultural factors contribute to improvements in the protection and promotion of freedom of expression?

1.5 Study Problem

The study problem revolves around the analysis of the concept of freedom of expression in Jordan, particularly about Jordan's international obligations, the legal framework, legal guarantees, the application of freedom of expression, and the

philosophical and historical context. The problem lies in identifying the gaps, challenges, and discrepancies within these areas and examining how they impact the effective protection and promotion of freedom of expression in Jordanian society.

The pinpointed gaps, problems, and incongruities among these areas of society will have a major role in the appropriate usage of freedom of expression in Jordanian society.

The potential consequences or impacts of these issues manifest in tangible ways: **International Obligations:** Lack of implementation of international human rights instruments might lead to imposing of diplomatic sanctions, political pressures, and damage to the Investors' image. This, consequently, would affect the position of the country in the global arena, which would make or break its participation in international events.

Legal Framework: Legal framework gaps could give rise to unjustifiable bans of free speech, including censorship, blows to law and order and dissuasive of opposition viewpoints. Such a tendency could develop into a kind of self-censorship and cut off an open debate.

Legal Guarantees: The jurisdictional procedure may not be guaranteed in an unprotected judicial independence. Therefore, partial legal processes might take place, the result being even less freedom of expression. Ineffective legal remedies might encourage people to operate underground, which is less hazardous or let them watch and not express their dissenting opinions due to fear of reprisals.

Application of Freedom of Expression: Disproportionate practice in the execution of the freedom of expression might arise through the selective observance

of laws. This kind of discriminative action can eventually have a meaning of chilling effect, as people hold their ideas regarding part such divergence from general views.

Philosophical Basis: Misinterpretation of the ideology of freedom of expression due to the absence of gravitation between the theorists and practitioners might cause the society to have low information levels and, therefore, less understanding and acceptance. This does nothing to allow people from diverse backgrounds to thrive or to develop a culture where their voices are heard.

Historical and Cultural Context: The existence of cultural norms and historical aspects that either promote or restrain free speech can create a society that either makes people engage in open debates or stops them from free participation. The interpretation of these dynamics is fundamentally important to build up policies that won't be against the existing cultural safety of Jordan.

The ultimate goal of this study is to contribute valuable insights and recommendations that extend beyond existing knowledge about freedom of expression in Jordan. The analysis aims to explore not only the international and legal framework but also highlight the issue in philosophical and historical context to examine the factors influencing freedom of expression in Jordan. The study also identifies the gaps and discrepancies in the existing laws which allow containment of freedom of expression and require urgent intervention from legal bodies. The aim here is to not only pinpoint the deficiencies in the legal framework but also explore how these deficiencies are limiting freedom of expression in Jordan, and what are implications of these acts on the public. By addressing these specific issues, the study seeks to advance understanding and provide practical recommendations to fortify the protection of this fundamental right. The emphasis is on ensuring the alignment of Jordan's practices with international standards, fostering a climate

conducive to open expression, and nurturing robust public discourse. Hence, the major contribution here is to identify gaps in a legal framework and make recommendations to align the legal framework of Jordan with international rules of freedom of expression.

1.6 Research Design and Methodology

The research methodology demonstrated here the procedure and tools to be applied in a doctoral dissertation that explores a legal, social and philosophical aspect of the concept of freedom of speech in Jordan. The study intends to do the analysis on Jordan's international responsibilities, the legal structure, the legal assurances for the protection of expression of opinion, the application of expression of opinion in Jordan, the philosophical background for freedom of expression, and the cultural and social environment where it operates. The research will mainly apply the doctrine of legal research enriched with case study comparative analysis, philosophical inquiry and cultural sociological study to give a deep understanding of the idea of freedom of expression in Jordan.

1.6.1 Research Design

1.6.1.1 Research Objectives:

- To investigate the philosophical grounds for expressing freedom of thought and speech, stating these and their justifications in the context of Jordanian society.
- To discuss the cultural and social factors in Jordan that have led to the partial enjoyment and exercise of freedom of expression.
- To analyse Jordan's international obligations in the field of freedom of expression, including pertinent human rights treaties and conventions.

- To explore people's right to express their ideas in Jordan, legal environment would look into constitutional regulation and the judgments which are referred to in the case law.
- To determine and evaluate legislative guarantees and safeguards for the defence of freedom of expression in Jordan, such as judicial independence and separation of powers.
- To explore the usage of freedom of speech in the case of Jordan through the discussion of the recent major legal decisions and practical implications.

1.6.1.2 Research Approach:

The researcher's thesis concerning freedom of expression in Jordan applied the comprehensive research method for in-depth investigation and analysis of this paramount issue. The following research methods were adopted:

- Legislative History Research: This was a very effective method of gaining both the big picture and the little details regarding the history and culture of Jordan's freedom of speech. Utilising the method of context analysis about the reasons and time of passing the laws relating to personal liberties, the researcher attempts to make more sense of the situations, expectations, and values that are fundamental in passing the laws. This way, policy makers benefited from more extensive knowledge of the factors behind the legal system regulating freedom of expression in Jordan. Such an approach will facilitate understanding the historical journey of the norms of the law and point out socio-cultural factors that affected the shaping of the legal environment.

- Doctrinal Legal Research: The study applied the doctrine legal approach to examine the legal system for freedom of expression of ideas in Jordan. The approach used is primarily based on the examination of existing legal principles, regulations,

statutes, case law, and other official sources within Jordanian legal jurisdiction. It has provided comprehensive knowledge to the researcher in terms of the current legal structure related to the freedom of expression. This was in a few ways significant as it was a crucial aspect while criticising and reviewing the existing or pertinent legal regime within the context at hand. It provides the requisite knowledge about the present legal system, hence fostering the critical assessment of the legal framework's qualities and deficiencies within the concerned context.

- **Socio-Legal Approach**: A socio-legal perspective was applied to analyse the convoluted interconnection between the legal structures and societal phenomenon that determine the freedom of speech in Jordan. Through this method, the 1st Amendment was regarded as a wide range of issues of law, society, and culture played a role in the process of discovering the reality of the freedom of speech in society. Being the object of study of the factors of legal mechanisms and societal nature, the approach from the position of a socio-legal impression becomes important here. By heeding to this approach, it is clear that a more comprehensive grasp of legal provisions is acquired that goes beyond legal texts only.

- **Comparative Legal Research:** The researcher purposely used the tool of comparative legal research in this study; this entails comparing particular facets of freedom of expression laws (those of Jordan) with what is practised internationally and in the West. As an example, this study took into account the free speech laws of the United Kingdom and the United States of America. These sample comparisons gave us a more analytical viewpoint on some elements of freedom of expression in the overall worldview, where we found that there are contrasts in the legal approaches, and at the same time, those views can be helpful for us to face the challenges and possibility of reforms. This enables the research to disclose the differences and similarities and to discover the best practices in the world. This

method of analysis does not only envisage one side but also accounts for the multifaceted nature of this issue.

- Critical Legal Research: The methodological approach of critical legal research interwoven throughout the study allowed for a critical assessment of various legal aspects related to the safeguards of freedom of expression. This critical and interdisciplinary approach is pursued to challenge the existing ideas, power structure, and assumptions which are embedded in the core of the legal system. Thus, this approach is a part which provides a complete understanding of the legal situation of freedom of expression. Utilising the critical legal research technique includes two dimensions--challenging authorities and overturning common understanding in the legal system.

1.6.1.3 Data Collection Methods:

A multi-methodological data-collecting approach was conducted by the researcher to uncover a range of perspectives and views concerning freedom of expression in Jordan. These methods encompassed various approaches to gather pertinent information and insights, including:

Doctrinal legal research: An elaborate assessment of primary legal instruments will be made, such as the Jordanian Constitution, laws, treaties ratified by Jordan including killing, torture, and slavery, and ad that are highly significant. Besides the primary sources, such as treaties, legal commentaries, scholarly articles, and reports from the courtroom proceedings will also be examined.

Comparative legal analysis: Compared to the national legal frameworks and laws related to freedom of speech, it will be interesting to see the standards and practice followed in international legislation. This will enable us to assess standards

of practice, international norms and areas that can be improved from our points of reference.

Philosophical inquiry: The study will examine the philosophical nature of books, theories and divergence concerning the free speech from a theoretical basis. Critical analysis of major philosophical texts will be one part of the topic. Secondly, students will be expected to relate to different views and understand philosophical theories of freedom of speech.

Socio-cultural analysis: Social and cultural aspects shaping the cultural freedom of expression in Jordan will be explored focusing on the analysis of the available literature, the observation of the society dynamics and the specific cultural and social features that maintain the notion of freedom of expression.

Various data collection methods that were rigorous and comprehensive on all fronts, were used to track and evaluate the freedom of expression in Jordan. Utilising these combined perspectives of Legal, historical, comparative, and interpretational ways contributed to robust and comprehensive research on freedom of expression.

1.6.1.4 Data Analysis:

The researcher combined different data analysis methods, such as in-depth examination methods, into a comprehensive tool to use in the assessment of the concept of freedom of expression in Jordan. These methods included:

Legal analysis: This area will be covered in legal framework analysis. It will comprise of constitutional provisions, legislation and law of international obligations. As such, all the provisions, principles and any gaps or inconsistencies will be identified.

Comparative analysis: Comparative analysis will be conducted to draw comparisons and identify similarities, differences, and potential lessons for the protection and promotion of freedom of expression in Jordan.

Philosophical analysis: The philosophical inquiry will involve analysing key texts, theories, and arguments related to the justification and limits of freedom of expression, within the context of Jordanian society.

Socio-cultural analysis: The socio-cultural analysis will entail the examination of relevant literature and socio-cultural factors that influence the understanding and exercise of freedom of expression in Jordan

1.6.1.4 Ethical Considerations:

Ethical guidelines and principles will be followed throughout the research process which involves the collecting and synthesising of relevant data from secondary sources. This research does not involve the collection of primary data through interviews/questionnaires, hence there is no need for ethical clearance of imperial research. However, only that data is used which adheres to ethical principles and assures the confidentiality and anonymity of respondents in actual research.

There are also some ethical concerns in secondary research, i.e. data management, researcher biasness, plagiarism etc. In addressing these challenges, the researcher commits to proper citation and referencing of all sources and references used in the research. This ensures transparency and intellectual honesty by giving appropriate credit to existing works and avoiding plagiarism. Additionally, the researcher commits to seeking permissions, when necessary, particularly in cases where copyrighted materials or sensitive information are involved. This demonstrates respect for intellectual property rights and ethical research conduct.

This research methodology provides an outline of the approach, methods, and data collection techniques to be employed in a doctoral dissertation focusing on the concept of freedom of expression in Jordan. By utilising a combination of doctrinal legal research.

1.7 Literature Review and originality

The concept of freedom of expression in Jordan is a critical and multifaceted topic, yet there is a noticeable lack of comprehensive studies specifically focused on this subject.

This research contributes significantly by addressing a long-standing gap in studying freedom of expression in Jordan. Before 2011, there was a notable scarcity of research on this topic, with only a handful of studies. Even those studies, like Salem Al-Huwaimel's master's thesis[4] and Al-Ananza's doctoral thesis,[5] highlighted the lack of Studies on freedom of expression in Jordan.

However, after 2011, there was a marked increase in research on this subject, primarily in the form of doctoral and master's dissertations. Nevertheless, most of these studies adopted a Doctrinal legal research approach, focusing on analysing the existing legal framework's compatibility with freedom of expression.[6] They often

[4] Salam Farwan Ali Al-Hwiml, 'Freedom of opinion in Jordanian legislation (Master's thesis, The University of Jordan, Amman 1998) <http://search.mandumah.com/Record/605037> accessed 09 March 2024

[5] Azzam A.H. Elananza, 'Freedom of expression in Jordan: A critical study of themes and issues based on an evaluation of influences on the development of the press and publication laws in Jordan since 1920, with particular emphasis on government pressures and censorship of weekly newspapers between 1989 and 1998' (Doctoral dissertation, Dublin City University 2005) <https://doras.dcu.ie/17181/> accessed 10 February 2024

[6] Rehab Musa Muhammad Al-Aboura, 'Guarantees of freedom of expression in Jordanian legislation: A comparative study' (Doctoral dissertation, University of Jordan, Amman 2016) <http://search.mandumah.com/Record/1133962> accessed 09 March 2024

Al-Dalaeen, Ansam Naji Zamel. (2019). Freedom of opinion and expression in international conventions and Jordanian legislation: a comparative study (Master's thesis). Middle East University, Amman. Retrieved from http://search.mandumah.com/Record/1016048

missed crucial elements such as analysing judicial precedents, employing critical analysis, using comparative research methods, considering historical and cultural factors, and adopting the social and legal approach.

The contribution of this research lies in its comprehensive approach. It explores the historical, cultural, and philosophical underpinnings of freedom of expression in Jordan, going beyond merely examining legal texts. The analysis incorporating bilateral and legalistic strategies as well as the contextual approach will allow the researcher to disentangle to the influence of the historical and cultural milieu on the laws for freedom of speech in Jordan. Thus, it reveals up to which extent laws represent the very core of the society including its regulations and norms.

Moreover, the researcher uses a multidisciplinary approach that involves the amalgamation of philosophical analysis and literary theories to arrive at a reasoned decision concerning the issue of freedom of speech in the digital age. It adds to the quality of the research by giving a more concrete picture of the theoretical bases of freedom of expression used by the founders of the nation. It considers various philosophical perspectives, such as liberalism and cultural relativism, contributing to a nuanced comprehension of how Jordanians perceive and practice this right within their unique cultural and historical context.

The research bridges the gap between theoretical frameworks and practical reality. By exploring the conceptual understanding of freedom of expression and comparing it to its real-world application, the study identifies contradictions, challenges, and potential improvement areas within the legal and societal spheres.

Al-Duwairi, Nour Muhammad Diaa Al-Din Mustafa,. (2022). Freedom of opinion and expression in Jordan in accordance with local legislation and its compatibility with international standards: an analytical study (Master's thesis). Middle East University, Amman. Retrieved from http://search.mandumah.com/Record/1327577

This comprehensive analysis facilitates informed policy discussions and supports more effective protection of freedom of expression in Jordan.

1.8 The structure of the thesis

In order to achieve the objectives of this study, the structure of the thesis will be as follows:

Chapter One: Introduction

This section summarises the aims and questions of the study, the literature review, and the research methodology. This chapter will analyse why the topic was chosen, how the research was conducted, and the rationale for the research. To establish a gap the researcher needs to determine what has been studied on this topic by the academia, critically evaluate research in this area and find evidence that can support the researcher's efforts in this chapter, a literature review will be conducted. Furthermore, this chapter will explain the research methodology and framework employed in this dissertation, the uniqueness of the work in its field as well as its benefits or contribution.

Chapter two: Freedom of expression in Jordan from a historical and cultural perspective

This chapter analyses the topic of freedom of expression in Jordan from a contemporaneous and cultural viewpoint. It seeks to offer a full picture of how historical and cultural factors have formed, developed and restricted Jordan's perception, expression, and implementation of freedom of expression. The chapter encapsulates the importance of examining both the historical and cultural backgrounds and how it assists in deciphering the portrayal of this basic human value within Jordan.

The first part of the chapter starts by introducing the historical background of freedom of expression in Jordan. It tells the evolution story of free speech that, in turn, examines catalysts of events, social movements and historical factors that influenced the significance of this right. The chapter examines the dynamics of how past events, such as colonialism, independence moments and post-electoral changes, have all acted as significant reasons that have defined and impacted Jordan's idea and implementation of the freedom of expression.

Thus, the chapter moves on to explore the cultural background of freedom of speech in Jordan. It provides the cultural norms, values, and traditions that shape the boundaries of free speech to help, among other things, the country's speech. The chapter discusses the cultural factors, including religiousness and societal attitudes, which are the main contributors to the endurance of freedom of expression in Jordan.

Moving forward, the chapter covers the effect of historical and cultural variables on the legal setup for free expression in Jordan. It depicts the point in which the historical background and the cultural elements have played a role, particularly in the molding of laws, regulations, and constitutional provisions of free speech. Chapter shows here and there the conflicts that might be caused by the presence of traditional societal and historical values in the overall conditions of speech-freedom protection.

The imperativeness of studying freedom of expression within a historical and cultural context provides comprehension of those complex matters of social values, cultural expectations, and legal protections. It often uncovers the factors that promulgated the present-day comprehension and boundaries of free speech, thus shedding light on the hurdles as well as the opportunities for its maintenance and promotion.

Chapter Three: The philosophical basis for freedom of expression in Jordan

This chapter investigates the philosophical foundations of freedom of speech in Jordan and researches mainly the Social Contract theories. The goal of the research will be to interpret the ideological background and the rationale for security of expression and their relevance to the case study of Jordan. In this chapter, a comparison is made between these theoretical, philosophical settings and human rights law that currently prevails in Jordan offering new dimension to the idea of freedom of expression in the country.

The chapter starts with an introduction to social contract theories, which are intended to give detailed description of how freedom of speech came about. The physio-social basis for freedom of expression is also covered in this discussion. Moreover, it investigates the main figures in this theory like John Locke and Jean-Jacques Rousseau whose writings enlighten social contract theory development.

Moreover, the chapter documents the historical and philosophic foundations of freedom of speech with the Jordan laws currently present in Jordan. The review emphasises areas of commonality and difference, thus pointing out possible gaps or inconsistencies between advocated philosophical ideal and the existing legal provisions.

This chapter aims at the two following aspects. First, it tries to offer a more profound view of the philosophical foundation for freedom of speech by deconstructing the three versions of the social contract theories. In essence, by flawlessly tacking the primary principles and justification of expression, the chapter unveils the fundamental truth behind expression preservation and promotion.

On the other hand, the chapter emphasises the need to compare the philosophical foundation with the existing free speech laws in Jordan. This standpoint aims at revealing any disparities or inconsistencies through which one can make decisions over the areas that require embellishment or if they are in line with moral principles. It provides overview of ways of operating freedom of expression within Jordan's law framework, during which the foundation of this right will be well reflected as a result.

Chapter Four: Jordan's International and regional human rights commitments

This chapter examines the international and regional treaties that set the standards for freedom of expression in Jordan. The primary goal of the study is to examine and assess Jordan's undertakings under different human rights instruments, which may include internationally agreed treaties as well as regional contracts. It will then evaluate the extent to which dedication has been achieved.

The chapter starts by reporting that the world community is guided by international as well as regional human rights frameworks that serve as normative guidelines on freedom of expression. It aims to explicate the reason for the existence of these obligations in the context of providing support to democratic governance, the protection of individual rights, and the creation of an atmosphere where the free flow of public discussion is facilitated.

Then the chapter resolves the contributions of Jordan internationally. It analyses the state's membership and partaking in major international solutions, covering the Freedom of Speech, e.g., the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). The chapter

tends to evaluate Jordan's compliance with those instruments, strongly focusing on how the rights and freedoms provided in the laws and practices are abided.

In addition, the section focuses on Jordan's sub-regional duties to freedom of expression as well. It provides a snapshot of the country's measures in participation in the regional human rights mechanisms, like the Arab Charter on Human Rights. The examination part covers the possibility of the agreement of the local laws of Jordan with the provisions in these healthcare tools.

The purpose of this chapter is to critique the extent to which Jordan has implemented international and regional legal mechanisms concerning freedom of expression. It is vital to analyse its commitment to the UN Security Council mission and whether they implements the resolution that is needed by the residents of the country. The monitoring body strives to determine the degree to which Jordan has integrated International and regional Standards into its legal body, as well as the effectiveness of these legal guarantees in securing freedom of speech.

Chapter Five: The legal framework for freedom of expression in Jordan

This chapter will introspect on the legal framework for freedom of expression in Jordan and ensure that every law that may interfere with someone's freedom of speech is absent from the current legal system. The paper's objective is to investigate the constitutional provisions, legislation, and cases pertaining to the exercise of fundamental rights in the country, where the right shall be protected. The chapter covers the reasons behind the legal framework and the way it makes the posting, delivery, and receiving of information possible in Jordan.

The chapter then engages the law-giving framework through which the expression of freedom is regulated in Jordan. It discusses the relevant laws, rules,

and laws that regulate this right and looks at the extent of those limitations, the impact of which on the freedom of expression may be positive or negative. The next section analyses the balance point between freedom of expression and the calls for security, national defense, or order, as well as safety from instant defamation.

The chapter grounds amply for the latter chapter which will review the extent to which media expression is guaranteed by the functions of judiciary and the delegation of power respectively. It highlights the need to carry out more studies on those key issues to find solutions that, directly, have a significant influence on how freedom of expression is protected in reality. To have a better understanding of the judges' autonomy and independent powers, the forthcoming chapter will assess them as cornerstone for freedom of speech in Jordan. Establishing that correlation between legal structures and the prerequisite suitable for having this basic right protected effectively is the role of this.

Chapter Six: Guarantees of Freedom of Expression

This chapter aims to investigate the provision of guarantees for freedom of speech in Jordan, primarily regarding the separation of authorities and the prestige of the judiciary. It intends to study whether these guarantees are integrated into the national legal context and if compliant with the law, what consequences would they have on the practical realisation of freedom of speech in Jordan.

The chapter asserts the importance of safeguarding freedom of expression, including checks and balances such as the separation of powers and judicial independence at the very beginning. It presents the function of these principles in preventing decimation amongst the hierarchy and cloaking people's freedoms from unjustified interference.

After this examination of separation of powers is done, the presidency section follows. It deals with the comparison of the constituent bodies of government, with special focus on the separation of the legislative, executive, and judicial branches. It also determines the effectiveness of the process through which the bodies are kept separate. The separation of powers is an important element in the protection of freedom of expression, by hindering the happening of the concentration of authority, which is the basis of censorship and repression.

Additionally, the chapter addresses judicial independence in the case of Jordan. It systematically studies the procedures and mechanisms for the impartiality of the judicial system to be secured as well as the independence of the judicial system from external influence. The chapter aims to explore the ability of the judiciary to objectively handle such cases, as external interference or powerful influence might be a barrier to the balanced distribution of that right.

The chapter discusses how the degree of expression freedom guarantee and its relation to this right's application in Jordan might be linked. It demonstrates that the way of allocating power among agencies and the individualism of judiciary impedes free speech and imprints on diverse views. This idea is presented by the chapter through the examination of these guarantees to recall such practical realities and difficulties that people have in exercising right to freedom of expression in Jordan.

Chapter Seven: The application of free speech in Jordan

This chapter offers a detailed discussion of liberty of speech in the context of Jordan, particularly in the media and the internet. It discusses the day-to-day challenges faced by the right to freedom of expression in this sphere while it also looks into the judgments of the verdicts covering this area. The chapter aims to provide us with a deeper knowledge of the process of freedom of expression In the

media and the Virtual world in Jordan which forms a convenient context for this fundamental right in the country.

The chapter is focused on the issue of internet freedoms along with the effects of offline press and media on Jordan. It looks into certain cases and instances that depict the troubles that people are going through as well as the journalists and/or media institutions faced in exercising their right to freedom of expression on traditional media and online platforms. This part of the chapter is critical to assess the legal and regulatory frameworks and their deficiencies in the protection of individual rights for self-expression on social media platforms.

This chapter aims to explain how freedom of expression applies to Jordan's Internet and media outlets, giving readers a good understanding. The purpose is to show that there is always a distance between legal guarantees and their real implementation and that human rights in this area are limited by the negative impacts, while it provides space for positive outcomes that enable freedom of expression.

This chapter centres at the media and the internet; includes relevant judgments of the judiciary. It will therefore help build a complete and more general notion of freedom of expression in Jordan. It provides valuable insights into the ongoing development of free speech in the digital age and brings to light the day-to-day complexities faced by individuals and society as they utilise the areas of online expression and media liberation. Such a comprehensive view is a necessity in the development of policies and practical steps that will meet international standards and support the sustainable development of a democratic environment.

Chapter Eight: The Conclusion

The conclusion chapter highlights the main findings of this dissertation. It offers suggestions to the existing legal system of the expression of freedom of speech in Jordan by noting the flaws of the legal system and proposing amendments and adaptations to fit international laws and best practices. The chapter highlights the significance of maintaining Jordanian compliance with international agreements on freedom of expression and redefines the role of an independent judicial system and separation of powers in guaranteeing the mentioned right.

For instance, the last line of the chapter will collapse to showcase the historical and social background of free speech in Jordan. This may be done through recognising the impact of historical occurrences, existing customary practices, and consideration of religious communities on free speech. In the chapter, it is noted that there is a need to respect cultural values; however, the need to abide by the universally recognised standard of freedom of expression must not be overlooked.

The conclusion section suggested some important solutions that are centred on the findings of the research based on free expression in Jordan. It underlines the necessity of legislative changes converging with international norms, the establishment of capacity-building and awareness-raising programs, as well as the cultivation of an environment permitting free speech and open discussions among society members.

Chapter 2

Freedom of Expression in Jordan from a Historical and Cultural Perspective

2.1 Introduction

Freedom of expression is a self-evident universal human right, which is both guaranteed and acknowledged by international human rights instruments. It does so by highlighting the values of democratic societies. Nevertheless, heterogeneous interpretations as to the exact nature and extent of this fundamental right in various countries showcase how the historical and cultural contexts remain a crucial determinant in shaping a country's stance over free speech.

Historical occurrence benefits a lot on aired country's political development, as well as become a spaceship to shape the level of freedom of expression. The countries that have experienced the protracted establishment of authoritarian ruling or colonisation generally see the role free speech plays in that context with much of suspicion, arguing that it could be a possible threat to the regime's stability. Otherwise, the countries which have had democratic governments in the past are free to select the cornerstone value of their country, which is the freedom of expression and look at that as the essential part of their democratic ideology and identify the message it brings to an open democratic society.

Cultural values and practices that are rooted in diverse societies bring about different interpretations and views of freedom of expression. Societies that emphasise mutual peace and the good of everyone living in the community may be obliged to suppress expressions of speech seen to be detrimental to the public good.

In contrast, cultures that promote individuality and the investigation of the truths often prescribe a more liberal way of freedom of expression that accepts a wide variety of opinions and standpoints.

Religion also stands in this equation in terms of the capacity of shaping a nation's attitude towards freedom of expression. For some societies, legally binding restrictions of utterances or in speech may be imposed, which are seen by people as blasphemous or offensive to religious beliefs or norms. With that being so, often the allowable scope of speech can be narrowed down to precision.

In order to grasp the Jordanian standpoint towards free speech restrictions, knowledge of that culture and its historical background is essential for clearly seeing the debates within Jordanian society on whether such liberties should be limited.

The researcher in this chapter shows that the historical development and religious and cultural features played a key role in reaching at the conclusion that the conception of the freedom of expression in the non-Western world is not quite similar to those in the Western world. In this contradicting truth, the concept of freedom of speech does not have this crucial place as it has been taken in the media of the West.

For instance, in America, there are some people who are still basing their thinking in the concept of absolute free speech.. However, in the case of the king of Jordan, the discourses concern the explanation of how this should happen and the implication of hateful thoughts of this kind to the life of the nation as a whole.

The researcher stresses the significance of comprehending the historical and cultural circumstances underlying the development of freedom of expression in Jordan, where he will bear down on its exploration.

2.2 Freedom of expression under the Ottomans

From 1516 AD to 1918 AD, Jordan for four hundred years, was under the Ottoman Empire's rule and, for that reason, was considered part of Levant provinces.[7] Contrary to common assumptions, the Ottoman administration in Jordan displayed signs of weakness as it struggled to exert full control over the nomadic tribes, abandoning numerous towns and villages during that era.[8]

The primary focus of the Ottoman Empire was to safeguard the pilgrimage route, leading them to construct castles to ensure the safety and comfort of the pilgrims during their travels. Additionally, Ottoman governors entered into agreements with the nomadic tribes, who were frequent visitors to the region, to shield the pilgrims from any potential attacks and safeguard their belongings.[9]

However, the Ottoman Empire did not make a concerted effort to establish a robust government apparatus that could effectively maintain order and ensure security in Jordan. Similarly, the limited number of Ottoman castles failed to protect the pilgrimage route adequately. Consequently, this region descended into chaos and turmoil, becoming a hotbed for nomadic tribes from Najd, the Hijaz, the Levantine desert, Iraq, and the Sinai desert. These tribes spread panic and terror as they roamed the area.[10]

The prominent feature of the Ottoman administration at this juncture was superficial management, and the Ottoman official was not familiar with the borders

[7] Khalil Sahili Oghli, *From the history of the Arab countries during the Ottoman era, research, documents and laws* (Istanbul: Research Center for Islamic History, Arts and Culture 2000).
[8] Muhammad Salah, 'The development of the ruling system in the Emirate of Transjordan 1921-1928' (1991) 7(3) Yarmouk Research: HSSS 237, 268 <http://repository.yu.edu.jo/bitstream/123456789/3144/1/278577.pdf> accessed 22 June 2022
[9] Hind Abu Al-Shaar, 'A History of Transjordan in the Ottoman Era. Aal al-Bayt Institute for Islamic Thought' (2000) <https://alkutba.gov.jo/ar/node/119> accessed 30 September 2023
[10] Ibid. P 191.

of the regions that belonged to his jurisdiction. When the two travellers, Ibri and Mangels, requested permission to visit Al-Karak to reach Wadi Musa and visit Petra, it became clear to them that the authorities in Istanbul did not know the sites and that they had transferred the request to the governor of Syria, who expressed his disappointment.[11]

Confusion and chaos prevailed in these areas due to the absence of official authority. The sheikhs of the nomadic clans and the sheikhs of the villages quarrelled over sovereignty. The traveller and Reverend Klein, who passed through Al-Salt in 1851 AD, describes the region as desolate and under the control of the nomadic sheikhs, especially the Balqa Bedouins. It is a region of rebels and bandits, and its residents refuse to pay taxes to the Ottoman state.[12] Moreover, murderers and criminals fleeing from the Turkish army sought refuge in this region, and he emphasised that neither authority nor government had a presence there.[13]

According to historians, during the absence of official governance, Jordan experienced the complete dominance of tribal customs and nomadic judiciary, especially among members of the nomadic clans.[14] Clan traditions represent the rules that people are accustomed to following in a specific environment.

These rulings are not written; however, they serve to resolve issues among the members of the same clan or the members of different tribes. They are consistent with Islamic law. Historians confirm that the Ottoman Empire did not interfere in the nomadic judiciary, which had been ruling the tribes since ancient times and left

[11] Awad Al-Badi, *The European Journey in the North of the Arabian Peninsula, "Al-Jawf and Wadi Al-Sarhan Region 1845-1922"* (2nd edn, Beirut, Arab House for Encyclopedias 2002).
[12] Ibid. p 302.
[13] Ibid.
[14] Muhammad Abu Hassan, 'Tribal Judiciary in Jordan' (1993) Jordan History Commission <https://alkutba.gov.jo/ar/node/281> accessed 30 August 2023

them to settle their disputes. Nonetheless, in certain cases, state employees were required to attend nomadic judiciary sessions to ensure that the proceedings did not violate Islamic law.[15]

Furthermore, historians have mentioned that the tribal judiciary in Jordan reached its peak activity during that period. All cases in society fell within the jurisdiction of the nomadic tribal courts and their customs, including cases of murder, honour, and even defamation. The people of the region committed themselves to these customs in their dealings, showed respect for them, and willingly followed their provisions without deviation.[16]

Customary judges are partially devoted to the judicial profession, but they also lead ordinary lives, working in various professions such as agriculture, trade, and livestock farming. As a result, they are closely integrated into society and possess a deep understanding of the traditions, customs, and behaviours that surround them.[17]

The customary judiciary does not have a constitution or written law. Instead, judges issue their rulings based on their familiarity and customs, and these rulings are preserved in the form of aphorisms. However, this does not prevent the judge from conducting due diligence in specific cases, considering their circumstances and the place where they occurred, leading to the issuance of new provisions. Similarly, some amendments to the rulings occur from time to time to align with the society's changing circumstances, intellectual development, and cultural conditions. These amended rulings are referred to as the elders.[18]

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[15] Ibid,p 32.
[16] Ibid.
[17] Bassam Al-Jabour, 'Procedures followed in the Jordanian tribal judiciary' House of Culture for publication and distribution (2016) <https://daralthaqafa.com/Item.aspx?ItemId=1103> accessed 30 August 2023
[18] Ibid.p44

The customary judge delivers judgments orally, but they are understood and recorded by the guarantors, witnesses, and attendees. As writing and reading became more widespread, both arguments and judgments have been formalised, and any party involved can obtain a written judgment signed by the judge. Customary court sessions are conducted openly, usually in a well-known public place and in front of a large audience, setting them apart from government courts held in closed rooms. The judgments issued by the customary judge are limited to imposing financial fines or corporal punishments, and prison sentences are not utilised. However, in some cases, corporal punishments such as cutting off the hand or execution can be replaced by monetary penalties.[19]

The customary judiciary is known for its strict rulings, particularly in cases involving women, as a means of protection. One notable example of this is when a criminal assaults a girl, he will be publicly humiliated by being stripped of his clothes and made to walk in front of the community.[20]

Although there are allegations that the tribal judiciary was based on or consistent with Sharia law, the researcher believes that the rulings of the tribal judiciary were primarily influenced by customs.[21] Many of these rulings were contrary to Sharia law, and the term "Sharia law" was used to give legitimacy to these decisions. Instead, the researcher argues that the provisions of Sharia law were influenced by tribal norms rather than the other way around. These provisions were adopted from Sharia law, aligning them with tribal customs.

[19] Al-Abadi A, *Judiciary and Tribal Law* (Dar Wael for Printing, Publishing and Distribution 2015) <https://darwael.com/index.php?route=product/product&product_id=1413> accessed 30 August 2023.
[20] bid.p96 .
[21] All the research and books mentioned in this chapter claim that tribal rulings are compatible with Islamic law

At that time, the boundaries of freedom of expression were subject to tribal customs, which were conservative and strict. Due to the absence of a state or government, certain forms of speech could lead to wars among tribes; therefore, insulting human honour or religion was entirely unacceptable in tribal customs.[22]

Therefore, it can be said that freedom of expression at that time was not restricted by a specific law but rather by a wide range of tribal norms. Practising it in a way that violates these norms could lead to severe consequences such as killing or exile. Thus, freedom of expression was not restricted but rather non-existent.

Nevertheless, it is also important to note that the legal framework for freedom of expression in the Ottoman era, and the practices of the Ottoman state, were not supportive of freedom of expression.

The legal framework for freedom of expression in the Ottoman era was influenced by Islamic law (Sharia) and customary practices, but it lacked a formal legal structure in the strict sense.[23]

Sharia, as a guiding principle of Islamic law, played a significant role in shaping the legal framework for freedom of expression within the Ottoman Empire. While Sharia principles emphasised the importance of protecting individual rights, including the right to express opinions, the interpretation and application of these principles varied.[24]

[22] Saad Abu Dayeh and Hiroshi Nicloa Naganuma 'Tribes, Land, and Administration in Jordan: Past and Present (622 to 2009 A.D.)' (2009) 37(4) JSS 11, 43 <http://search.mandumah.com/Record/680430> accessed 18 November 2023

[23] Hussein Ozdemir, 'The rule of law in the Ottoman Empire' (2011) 7(26) Hira' Magazine 48, 51 <http://search.mandumah.com/Record/681630> accessed 10 June 2023

[24] Ibid.

Sharia law recognised the concept of "Ahl al-halli wa al-'aqd,"[25] granting non-Muslim subjects the right to express their opinions within the confines of their religious communities.[26] However, this protection was limited and subject to the overall authority of the empire.

The legal reform movement of the Tanzimat period (1839-1876) marks the last years of the reign of the Ottoman Empire, when it made a wonderful modernisation move that was designed to create a more just and fair legal system.[27]

One of the most notable law reforms of the period was the creation of regular courts, which were one of the first institutions purposed to strive for justice for all citizens, despite their religious or ethnic backgrounds.[28] With such courts, the Roman Empire was no longer dependent on the religious justice system and was able to establish a sense of justice and equality in the midst of its diversity.

Furthermore, the Tanzimat period experienced the fragmentation of laws and, where different principles and regulations appear in the form of one comprehensive legal code. These codes addressed matters related to civil, commercial, and criminal law, providing greater clarity and consistency in the legal system.

On December 23, 1876, Sultan Abdul Hamid II issued the Ottoman Constitution, marking a major shift towards constitutional monarchy and granting some individual rights. One of the most prominent provisions was Article 18, which declared

[25] An Islamic term that refers to the scholars, presidents, and dignitaries of the people to whom people refer for public needs and interests.
[26] Yasser Abdul-Hamid Jadallah Al-Najjar, 'People of solution and contract in Islamic jurisprudence: Their identity, conditions, and functions' (2015) 11 Majallat Majallat 215, 262 <http://search.mandumah.com/Record/791493> accessed 20 September 2023
[27] Richard Lord, 'Sharia and law in the Ottoman era' (1989) 2 Al-Ijtihad 153-173 <http://search.mandumah.com/Record/460211> accessed 15 September 2023
[28] Ibid.

freedom of expression. It states: "The freedom of the press is inviolable, except when it attacks individual rights or the public order."[29]

However, the situation has not changed much. Imperial decrees, known as hatt-i sharifs, still played a crucial role in shaping the legal framework for freedom of expression.[30] These decrees were issued by the sultan and carried the weight of law.

Some Imperial decrees sought to expand the scope of freedom of expression, emphasising the importance of intellectual exchange and protection of individual rights. Furthermore, other decrees were used to suppress dissent and impose limitations on expression, particularly when it threatened the stability of the empire.[31]

Sultan Abdul Hamid suspended the constitution only a year after its promulgation and issued a list of arbitrary laws that deprived the press of a relative margin of freedom. Additionally, he announced the establishment of a press bureau tasked with monitoring the implementation of the law and ensuring compliance with its provisions.[32]

Most regions in the Arab world were not allowed to issue independent newspapers in the Arabic language, and they relied on the official newspapers issued by the Turkish government. According to Muhammad Suleiman, author of the book "History of the Press in Palestine," these newspapers did not contain general news, except for news of a specific nature, such as employee promotion and leave.

[29] Shahin Siham Abdul Razaq, 'Reform and modernization in the last Ottoman era. Al-Ustad' (2018) 226 JHSS 115, 140 <http://search.mandumah.com/Record/970399> accessed 18 November 2023
[30] Faisal Abdullah Ahmed Al-Kandari, 'The Royal Firmans: A Study of the Humayun Firman Systems and Their Drawings' (2001) 21(151) Annals of Arts and Social Sciences 7, 90 <http://search.mandumah.com/Record/244206> accessed 10 November 2023
[31] Suleiman Bustani, 'The Ottoman Empire before and after the constitution' (1985) 6(39, 40) Arab Thought 379, 384 <http://search.mandumah.com/Record/430276> accessed 25 September 2023
[32] Ibid.

Additionally, Turkish censorship did not allow news about what was happening in the world to be published in Arabic.[33]

In some Arab countries, such as Iraq, independent newspapers were established in 1908. However, Jordan did not witness the establishment of any newspapers throughout the Ottoman era. The 1st ever Jordanian newspaper was signed in 1921 after the authorisation of the Emirate of Transjordan.[34]

An examination of the state of freedom of expression through the Ottoman period in Jordan is noted for both its multilayered and complicated nature. The lack of a formal legal system meant that the extent of free expression was not limited by particular laws but rather by conservative and rigid tribal customs. It consequently nurtured a community in which personal honour and religious beliefs of the sort of words that belonged absolutely in public and even violations of the norms would be punished very severely, for example, by death or exile.

The Ottoman government had a hard time enforcing the dynasty over the nomadic tribes and the absence of a professional administration at Jordan contributed to the occurrence of various conflicts. The area was a settled place for various nomadic tribes, which led to an unsavoury situation and no official authority or governance. Thus, tribal costs and nomadic judges served as a core institution in the society for resolving disputes and governance in social interaction. While these customs provided some form of order, they were not without their flaws, and rulings could be influenced more by tribal norms than Sharia law.

[33] Muhammad Suleiman, *History of the Palestinian Press: 1876-1976* (General Union of Palestinian Writers and Journalists 1987).
[34] Abdullah Mutlaq Awad Al-Assaf, 'A reading in the book (History of Jordan 1876-1923): The press as a source' (2015) 315 Ideas 145, 152 <http://search.mandumah.com/Record/739352> accessed 20 November 2023

The legal reforms introduced during the Tanzimat era, including the establishment of secular courts and the codification of laws, were steps toward modernisation and justice. However, they did not fully address the challenges faced in ensuring comprehensive protection of freedom of expression. Imperial decrees issued by the sultan continued to play a significant role in shaping the legal framework, often imposing limitations on expression to suppress dissent and maintain political stability.

The Ottoman Constitution of 1876 did include a provision for freedom of the press, but its impact was limited. Sultan Abdul Hamid II suspended the constitution and issued arbitrary laws that restricted press freedom, highlighting the government's reluctance to embrace unrestricted expression.

In addition, the rise of the orientalist newspapers specimen was related to the prohibition of dissemination of news from the outside in Arabic by the Turkish authorities. Besides, the flood of information and the presentation of different views on each other was embattled.

The status of freedom of expression in Jordan during the Ottoman period can very well be considered as a rather complex web of historical realities, cultural traditions, and the impact of the ruling powers. Though prior to the revolution, there was no written permission for open speech expression; the control was in the hands of tribes' customs and the arbitrariness of merciless decrees. Such restrictions, consequently, on realisation and freedom of expression led to rigid tribal prototypes and the whims of the elite class.

2.3 Freedom of Expression Under the British Mandate

Sharif Hussein bin Ali's Great Arab Revolt of 1916 occurred after years of political repression and economic deprivation as a resistance to Ottoman rule. This significant revolution ultimately led to the downfall of the Ottoman Empire and its gradual loss of military control over the Arab world. Following the victory, a decision was made to establish a federation or alliance of Arab states rather than a single Arab state. The Hashemites were to lead this federation, with Sharif Hussein bin Ali as the king of the Arabian Peninsula, Prince Faisal as the king of Syria, and Prince Abdullah as the king of Iraq.[35]

In October 1918, Arab nationalists successfully established an Arab government in Damascus under the leadership of Prince Faisal bin Al-Hussein. This government sought to govern the entire region of the Levant, embracing the hopes and dreams of a unified Arab state.[36] However, the seeds of discontent were sown early on as foreign forces occupied the land.

On April 25, 1920, the Allied Powers, who emerged victorious from World War I and held control over the League of Nations, decided on the fate of the Levant area. Syria and Lebanon were placed under French mandate, while Iraq, Palestine, and the eastern part of Jordan came under British mandate. This decision marked the end of the Arab Kingdom in Damascus and the Levant area was divided under the military occupation of France and Britain.[37]

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[35] Heritage Revival Committee, 'Documents of the Great Arab Revolt' (1993) 2(1) Raya Mu'tah 152, 154 <http://search.mandumah.com/Record/1501> accessed 25 September 2023

[36] Saeed Maher Saeed Al-Hatoum, 'Prince Faisal I and the rule of Syria through British documents 1918-1920 AD' (2022) 15 Al-Jinan 305, 324 <http://search.mandumah.com/Record/1338924> accessed 10 December 2023

[37] Nadia Tarshon and Delilah Lonis, 'The development of the Franco-British conflict over the Arab East through the agreements concluded during the First World War: Sykes-Picot 1916 as an example' (2021) 13(1) JSR 524, 532 <http://search.mandumah.com/Record/114356> accessed 22 June 2022

The Arab Kingdom's defeat in the Battle of Maysalun on July 24, 1920, sealed its fate. French forces triumphed, leading to their entry into Damascus and the end of the short-lived Arab government. The dream of a unified Greater Syria seemed increasingly distant as the French asserted their control over the region.[38]

The British Perceived Eastern Jordan as a crucial bridge connecting Palestine to Iraq, emphasising the need for stability in the region. To achieve this, they encouraged the establishment of local governments in Irbid (Ajloun), Jerash, Salt, Karak, and Tafilah in April 1921. These local governments, comprising tribal leaders and notable figures, continued the administrative traditions of the Ottoman Empire that had been in place in all Syrian provinces during the latter half of the 19th century.[39]

As a result, there was a government in almost every Jordanian city. These governments were more like autonomous states that were independent.[40] Later, the British Minister of Colonies agreed with Prince Abdullah I to come to Jordan to end that situation. Prince Abdullah succeeded, thanks to his strong relations with the tribes, in uniting them and declaring the establishment of the Emirate of Transjordan in 1923.[41] However, things remained considerably chaotic due to the rebellion of some tribes.

The emergence of the press in Jordan was closely linked to the arrival of Prince Abdullah I Ibn Al-Hussein to Ma'an and the establishment of the Emirate of Transjordan. Recognising the importance of the press, Prince Abdullah decided to

[38] Ibid.
[39] Essam Najm Abdel El-Shawy, 'Britain's role in establishing the Emirate of Transjordan in 1921' (2010) 7(1) MRJ 1, 22 <http://search.mandumah.com/Record/1286845> accessed 25 September 2023
[40] Ibid.
[41] Ibid.

establish a newspaper named "Al-Haqq Ya'lou" which was launched from the city of Ma'an.[42]

"Al-Haqq Ya'lou" was the first newspaper in Jordan's history, published in March 1921. It was a handwritten newspaper with wax engravings, measuring 33 x 21 cm. Each page featured two columns and carried a temporary revolutionary Arabic slogan.[43]

Following "Al-Haq Ya'lou," on May 28, 1923, the "Al-Sharq Al-Arabi" newspaper was published. It covered political, literary, and scientific articles, local and international news, as well as official communications and laws. This newspaper continued to be issued for three years until it was transformed into "The Official Gazette of the Government of Transjordan" in June 1926. Subsequently, it focused on publishing official communiqués, announcements, regulations, laws, and royal wills.[44]

With the introduction of the country's first modern printing press in 1923, newspapers continued to be issued, and the private sector entered the press industry. During this period, seven newspapers were published in Transjordan, with strong support from the country's Emir.[45]

As the importance of the press grew in Jordan, the need for laws and regulations governing press and publications emerged. In response, the Directorate of Publications and the Official Gazette were established in March 1927 to oversee legal matters related to the press. This body played a crucial role in drafting a

[42] Adeeb Marwa, *The Arab Press, Its Origination and Development* (1st edn Dar Al-Hayat Library, Lebanon 1961).
[43] Ibid.
[44] T Abu Arjah, 'Contemporary Jordanian Journalism: A Study of Its Origin and Development' (1996) 1(1) Al-Basair Magazine 207-244.
[45] Ibid.

constitution for publishing laws and regulations, as well as monitoring violations of advertising, publishing, and newspapers on behalf of the government.[46]

Despite the positive developments in the emergence of the press in Jordan, it is evident that there was a significant absence of a legal framework regulating freedom of expression and the press during the initial stages of its development.

In 1928, Prince Abdullah I concluded a treaty with Britain. [47]The second article of the Jordanian-British treaty stipulated the development of a fundamental law for the emirate. This law would govern the appointment of government institutions and define their powers. The treaty also specified that any future amendments to the law would require the agreement of the British Mandate government. This article laid the foundation for the basic law, which later became known as the Constitution.

On the sixteenth of April 1928, the British government presented the new laws and regulations to the Jordanian government, which were similar to the law in force in Iraq. This basic law (the constitution) included granting Prince Abdullah I bin Al-Hussein and his heirs legislative and administrative powers. It also gave him the right to conclude treaties, hold elections for the Legislative Council, and appoint or dismiss the Prime Minister, ministers, and employees, as well as accept their resignation.[48]

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[46] Rana Ibrahim Suleiman, 'The legal development of press and media legislation in Jordan' (2006) (1) Arab Radios Magazine 116, 122 <http://search.mandumah.com/Record/334818> accessed 22 June 2022

[47] Raed Ahmed Yassin Hayajneh and Thabet Ghazi Badr Al-Omari, 'The British-Jordanian Treaty of 1928 AD and its impact on the political development in the Emirate of Transjordan' (2013) 29 Journal of Al-Quds Open University for Humanities and Social Research 259, 302 <http://search.mandumah.com/Record/459174> accessed 25 September 2023

[48] Muhammad Ahmed Al-Salah, 'The development of the ruling system in the Emirate of Transjordan 1921-1928' (1991) 7(3) Yarmouk Research – HSSS 237, 268 <http://search.mandumah.com/Record/240424> accessed 20 September 2023

However, the 1928 constitution was a significant milestone because it allowed for the first time the existence of an elected parliament and the establishment of courts. Additionally, it stipulated basic rights, including freedom of expression, as Article 11 states: "All Jordanians are free to express and publish their opinions, to hold meetings together, to form associations and to be members under the provisions of the law."[49]

The Jordanian constitution of 1928, guaranteeing freedom of expression, was undoubtedly an important step. However, this guarantee appeared to be largely formal, as the constitution stated that freedom of expression is guaranteed following the provisions of the law, yet at that time, Jordan lacked any laws regulating freedom of expression or even courts to enforce such laws.

It is important to highlight that despite the government's issuance of the Public Meetings Law in 1933 and the Associations Law in 1936 to regulate the right to assemble and form associations, both laws included a provision that banned the establishment of political parties.[50]

Moreover, the Jordanian constitution could not achieve stability due to the widespread rejection of the British treaty, which granted Britain the right to keep its forces and declare a state of martial law, in addition to requiring British approval of any laws issued by Jordan. The protests also spread due to the Mandate government issuing a set of exceptional laws to suppress public freedoms.[51]

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[49] Muhammad Saeed Salah Qassem Athamna, 'Achievements of Prince Abdullah bin Al-Hussein I in the Emirate of Transjordan: internal and external' (2021) 7 JAHBTUR 377, 399 <http://search.mandumah.com/Record/1270200> accessed 25 September 2023

[50] Dr Salem Al-Kaswani, *Principles of Constitutional Law with an Analytical Study of Jordan's Constitutional Order* (Amman: Al-Kiswani Press, 1983).

[51] Taha Hassan Oqab Alzaeariru, 'The beginning of the Jordanian national movement during the era of the emirate: the first national conference 1928 AD - the National Charter' (2019) 2(7) JSHSS 52, 72 <http://search.mandumah.com/Record/957152> accessed 25 September 2023

To address the prevailing security disorder in Jordan, Britain called upon British officer John Glubb from Iraq in 1930 to disarm the Bedouins and centralise military authority under the Jordanian army. With remarkable success, Glubb took on the responsibility of disarming the Bedouins, forming the "Badia Forces," which gained complete control over Jordanian territory.[52]

In terms of the judiciary and the law, the British aimed to dissolve the tribal judicial systems and subject the Jordanian tribes to the state's legal framework by granting the clan courts legal recognition. Consequently, in 1936, the Jordanian government enacted the Tribal Courts Law.[53]

This law empowered the clan courts to adjudicate all lawsuits among clan members, except for those related to property and immovable assets.[54] Although this law grants legitimacy to tribal courts that do not apply local and customary laws, it has also limited their jurisdiction, confining it solely to clan members. Meanwhile, other citizens are required to seek resolution through the regular courts.

However, the attempt of the British Mandate to abolish the tribal judicial systems and subject the Jordanian tribes to the state's laws failed, as these clans steadfastly resisted the implementation of local regulations. Glubb, in his memoirs, highlighted that these laws were perceived by society as Western impositions aimed at altering long-standing customs and traditions.[55]

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[52] Anwar Dabashi Al-Jazi and Sami Fawaz Al-Jazi, 'The duties and tasks of the Jordanian Badia forces in the northeastern Badia outposts during the years 1933-1934 AD. And 1937-1938 AD' (2021) 15(3) TJJHA 1, 21 <http://search.mandumah.com/Record/1192732> accessed 10 December 2023

[53] Awad Laimoon, 'The Evolution of the Jordanian Constitutional System - An Analytical Study' (Doctoral dissertation University of Jordan 2015) <https://www.researchgate.net/profile/Awad-Laimoon/publication/301487017_ttwr_alnzam_aldstwry_alardny_drast_thlylyt/links/571637d408aef165cc2b4e60/ttwr-alnzam-aldstwry-alardny-drast-thlylyt.pdf > accessed 30 August 2023

[54] Ibid.

[55] Globe Pasha, 'My Life in the Arab East (G. Hattar, Trans.)' (25 January 2005) Al-Ahlia Publishing and Distribution <https://archive.org/details/globe.pasha> accessed 30 August 2023

This perception, as articulated by Glubb, underscores the deep-seated suspicion and scepticism harboured by the clans toward external influences. The historical context of colonial rule, particularly the imposition of Western values during British governance, further fuelled their apprehensions. The belief that Western laws sought to reshape their customs and traditions emerged as a significant obstacle, hindering the acceptance of legal reforms aimed at modernisation and establishing a unified legal system.

For the Jordanian tribes, the customs and traditions were the core of their identity and society. They shared a common history and culture and were the salt of their lives. The lawmakers' attempts regarding public speech, especially the expression of freedom, have been viewed by them as a disruption to the pre-stabilised situation or even as a possible danger to their sense of identity. The notion of going public with one's own opinions and ideas rather than deferring to the traditional authority of tribal leaders and elders was considered as an utter contradiction to the established decision-making structures.

The opposition of the Jordanian family groups to the approval of local laws, especially regarding freedom of speech, was through the old customs and traditions they had carried with them for a long time as something that potentially threatened them.

The clans regarded the reforms in legislation as endangering cultural values and traditional social norms of Western society. They feared that embracing freedom of expression, a concept associated with Western ideals of individualism and open public discourse, would erode their closely-knit community structures and diminish their traditional authority.

Historian Dr Essam Al-Saadi states that during that period, there were popular demonstrations against the Jordanian constitution and the election law, as they were perceived as British-imposed and not truly representative of the Jordanian people. Moreover, Al-Saadi highlights the declaration of martial law and the enactment of exceptional laws that severely curtailed public freedoms.[56]

The researcher noticed that before 1936, Jordan lacked a legislative system that the courts could rely on, and the government had not issued any new laws up to that date. For instance, the researcher was surprised to find that there was no penal code in place at that time.

However, since 1936, the Jordanian government has started enacting new laws and implementing them, and the Jordanian courts have resorted to applying the Palestinian Penal Code, which was enacted by the British High Commissioner in 1936.[57]

The interesting thing is that this law continued to be applied until 1960. Furthermore, the researcher believes that the formation of the system of courts and laws in Jordan began in 1936 when the Jordanian government started enacting new laws and establishing regular courts.

The researcher pointed out that the Former Penal Code of 1936 is identical to the present one. However, it contained more severe restricting on expression freedom and dignity, more ambiguous wording and the most severe punishments. For instance, Article 62 includes three-year imprisonment sentences to people who

[56] Essam Al-Saadi, *The Jordanian National Movement from 1921 to 1946.* (Azmana House for Publishing and Distribution 2011).

[57] Palestinian Penal Code No. 74 of 1936, available at: http://gp.gov.ps/uploads/law_1936.pdf

publish fake news that has the potential to threaten people's security or to annihilate public order.[58]

Moreover, the standard acts of 1936, disqualify any demonstration or strike. It enables the precinct head to issue the emergency measure in case of a strike by emphasizing on the Article 74 of the executive order. In the Penal Code, the secular authority is not cleared of criticism as such as "staff of public service" is also prohibited which refers to all the employees in the government, including the religious leaders.[59]

The researcher also noted that the old law includes many restrictions on freedom of expression that do not exist in the current law, and it expanded the protection of morals. For example, the Penal Code criminalises homosexuality and punishes ten years in prison for those who practice homosexuality, a penalty that does not exist in the current law.[60]

In addition, the old penal code includes more restrictions on freedom of expression compared to the current law, and the scope of application of these restrictions is broader than that of the current law. For example, the current penal code prohibits insulting the head of a foreign country or making speeches that may lead to disturbing relations with a foreign country. However, in the old law, it was forbidden to offend foreign countries and to criticize "high-profile individuals" such as the ruler, the prince, the ambassador, or anyone holding a high office in a foreign country.[61]

[58] Ibid, Article 62.
[59] Ibid, Article 74.
[60] Ibid.
[61] Ibid.

The Arab kingdom of Jordan, which transits from a period of the British mandate into a status of independence, is characterized as the extension of the Ottoman period of disorder. Though the British mandate managed to bring a little stability and layout institutions, it provoked Jordan to a modern state per current standards.

Nevertheless, one can argue that ordinary people's lives have improved during this period but these catch-up transformations were a result of the Jordanian people's common antagonism towards the British Mandate. Some people opposed the development and implementation of laws, courts and elections, as seeing it as the attempt to follow Western values, which led to scepticism and opposition.

In addition to this, the Jordanian tribes claimed that the imposing of courts on the country should be resisted, preferring to remain with the traditional system. Consequently, many of these newly enacted laws were not as easily implemented into practical measurement and monitoring, becoming more like giving advice than mandatory rules.

Such period saw both the issuance of military law as well as the curtailment of rights and liberties, which were as a result of the continuous protests and strikes that were the platform for the revolt against the British mandate. The opposition was subject to mass jailing by the British forces, which on top provoked the riots against the inflicted administration. This led the dissatisfaction among the masses to increase.

Consequently, the traumatic issue was that the tribes of Jordan resisted the mandate rule, and the general disapproval of the public for its cultural values hampered the total fulfilment of public freedom under this mandate. The protest rallies and strikes that continued served as the catalysts of the show of the historical

anti-colonialism that was moulding the independence and self-gender influence of Jordan.

2.4 Jordan's independence until now

After Transjordan's norms of statehood were established, the signing of a new treaty with the British government on March 22, 1946, was the most important step of the time. This treaty represented a transformational moment whereby Britain officially recognized and granted the kingdom of Transjordan the status of an independent and sovereign world. The parliament of Jordan achieved real independence and the right of being a monarchy was granted to His Majesty King Abdullah 1 by the parliament's March announcement.[62]

However, despite these formal declarations of independence, certain clauses in the treaty raised concerns. Britain retained its military bases within Transjordan and pledged continued support to the Jordanian army, which remained under the command of British officer John Glubb until 1957. These provisions sparked debates about the extent of Transjordan's true sovereignty and raised questions about the degree of autonomy it had achieved at that time.[63]

Consequently, when King Abdullah I sought membership in the United Nations, the Soviet Union rejected the request, arguing that Jordan was not "fully independent" from British influence. This led to the negotiation of another treaty in March 1948 with Britain, which removed all restrictions on sovereignty. Despite this

[62] treaty of Alliance between His Majesty in respect of the United Kingdom and His Highness the Amir of Transjordan. United Nations Treaty Series, vol 6, pp 143–175
[63] Ibid.

development, Jordan eventually became a full-fledged member of the United Nations on December 14, 1955.[64]

One of the crucial achievements resulting from the Jordanian declaration of independence and its transition from an emirate to a kingdom was the adoption of a new constitution in 1947.[65] This new constitution represented a significant advancement compared to its predecessor, particularly in the realm of guaranteeing rights and freedoms.

For instance, Article 17 of the new Jordanian constitution explicitly states, "Freedom of expression is guaranteed, and every individual has the right to express their thoughts verbally and in writing within the limits of the law." Furthermore, other articles of the constitution enshrined the freedom to practice religious rituals and form associations and emphasized the right of Jordanian citizens to address public authorities.[66]

In addition, Article 33 emphasized the need to monitor the parliamentary election law to ensure fair representation of minorities.[67] However, despite this provision, the king's powers remained extensive, as in the previous constitution, and the king retained the authority to appoint the Speaker of the parliament. Unfortunately, this favourable period did not last long after the Israeli army occupied the Palestinian territories in 1948, leading to a war between Jordan and Israel. As a result, the Jordanian army entered the Palestinian territories to assist the Palestinians.

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[64] The UN in Jordan". United Nations. UN Resident Coordinator & Humanitarian Coordinator in Jordan.
[65] Awad Laimoon, 'The Evolution of the Jordanian Constitutional System - An Analytical Study' (Doctoral dissertation University of Jordan 2015) <https://www.researchgate.net/profile/Awad-Laimoon/publication/301487017_ttwr_alnzam_aldstwry_alardny_drast_thlylyt/links/571637d408aef165cc2b4e60/ttwr-alnzam-aldstwry-alardny-drast-thlylyt.pdf > accessed 30 August 2023
[66] Jordanian Constitution 1947, Article 17
[67] Jordanian Constitution 1947, Article 33.

The Jordanian army successfully gained control of the West Bank of the Jordan River and the eastern part of Jerusalem, preventing the Israeli army from taking hold of these areas. In 1950, King Abdullah I made a significant declaration known as the "Unity of the Two Banks," through which he annexed the West Bank and other regions of Palestine into the Hashemite Kingdom of Jordan. However, in 1951, King Abdullah I was assassinated in Jerusalem, and his son, King Talal, assumed the throne. Unfortunately, King Talal's reign was short-lived due to his health problems, and he was impeached in 1952.[68]

Despite the brevity of King Talal's reign, he accomplished many significant achievements, the most notable being the promulgation of the Jordanian constitution in 1952, widely regarded as one of the best in Jordan's history. This constitution brought about substantial changes by limiting the king's extensive powers found in previous constitutions and establishing a more democratic government system.[69] The transformative nature of the 1952 Constitution is underscored by its establishment of an advanced government system, evolving into a completely representative, hereditary monarchy. This system emphasizes the flexible separation of powers and mutual control among the executive, legislative, and judicial branches.

A pivotal aspect of this constitutional shift is the acknowledgement of the nation as the source of powers, a sentiment reflected in Article (24) of the Constitution. This provision solidifies the principle of national sovereignty, empowering the House of Representatives to represent the people and articulate their concerns. The

[68] Osama Muhammad Rashid Radwan Bani Hani, 'The Jordanian administration in the West Bank between 1950-1967 AD' (Unpublished master's thesis, Al al-Bayt University, Mafraq 2021) <http://search.mandumah.com/Record/1252710> accessed 10 February 2024

[69] His Majesty the Hashemite King Talal bin Abdullah (Maker of the Constitution)". The Jordanian newspaper Al-Dustour. Archived from the original on January 18, 2021.

government, in turn, is directly accountable to the House, subject to confidence votes that can determine its continuity or resignation under constitutional provisions.

The 1952 Constitution also marked a profound transformation in Jordanian political life by addressing the demands of political and popular forces. It guarantees Jordanians equality before the law regardless of racial or religious diversity or other factors that may affect them. Such equality of duties and rights constitutes a major shift away from the conventions that had been adopted earlier.

Moreover, the constitutions have also constructed ways to insure transparency and accountable in financials matters. The Bureau of the Audit can be seen as one of the most substantial turning points, which are oriented towards revenues and expenditures tracking, as well as the method of how they are all changed in the state. The Bureau must submit in the beginning of each regular session or when asked by the House a detailed report including its conclusions, views and recommendations, identifying all violations so the responsibility can be determined.

The 1952 Constitution, a complete document of nine chapters in total, was made to mark the failure of the previous ones. It put the emphasis on the state system, governmental mechanisms, citizens' rights and duties, and the functions of the executive, legislative, and judicial branches. Hence it became an eminent document which bounds and shapes Jordan's political, social, and economic landscape during the time of its issuing.

Nevertheless, Jordan continued to suffer from political instability due to the challenging political circumstances. Following the occupation of Palestine, the assassination of King Abdullah I, and the impeachment of King Talal, the responsibility of the state fell to the Jordanian Prime Minister, Tawfiq Abu Al-Huda, as the Crown Prince had not yet reached the legal age.

Tawfiq Abu al-Huda ruled Jordan in a dictatorial manner, and this style of governance was acknowledged even by Jordan's chief army officer, Glubb, who described him as a "dictatorial prime minister." Glubb justified this by stating that the Arab states were not yet ready for full democracy on the British model.[70]

Tawfiq Abu Al-Huda was considered a dictator because he assumed sole power after King Talal stepped down. He dissolved the House of Representatives following a lack of confidence in his government by the House of Representatives. Subsequently, he activated a state of emergency, conducted arrests and persecution of opponents, suppressed freedom of the press, and exploited emergency laws to violate the rights and freedoms of individuals.[71]

However, in 1953, a significant change occurred when King Hussein was crowned King of Jordan after reaching the legal age. During his early reign, democracy saw a surge, leading to the formation of many political parties. In the 1956 general elections, the National Socialist Party emerged victorious, marking the first time a Jordanian party won the elections. As a result, the king appointed Suleiman al-Nabulsi as the president to form a government. However, this government's duration was short-lived, and in April 1957, King Hussein declared a state of martial law, citing an alleged coup attempt. Subsequently, the Prime Minister resigned, and the parliament was dissolved.[72]

[70] Sohaila Suleiman Al-Shalabi, 'The Role of Tawfiq Abi Al-Huda in Jordanian Politics September 1938 - May 1955' (Unpublished master's thesis Yarmouk University, Irbid 1998) <http://search.mandumah.com/Record/732513> accessed 15 March 2024

[71] Sohaila Suleiman Al-Shalabi, 'The Role of Tawfiq Abi Al-Huda in Jordanian Politics September 1938 - May 1955' (Unpublished master's thesis Yarmouk University, Irbid 1998) <http://search.mandumah.com/Record/732513> accessed 15 March 2024

[72] Ibid.

King Hussein imposed martial law and dissolved a group of military units allegedly involved in the coup. A military curfew and strict press censorship were implemented. The Jordanian army arrested numerous Members of Parliament, sentencing them to 15 years on conspiracy charges and plotting in the coup. These measures had a significant impact, drastically reducing the level of constitutional democracy that had existed in Jordan in the mid-1950s. Following these events, elections were held twice, but the government dissolved the Parliament due to a lack of cooperation between the legislative and executive authorities.[73]

This period until 1967 witnessed many ups and downs. Despite this, the state showed a tendency towards establishing a legal system, as the Parliament issued the Penal Code for the first time in 1960 and the Press and Publications, which marked the end of reliance on Palestinian laws.

The researcher noted a considerable improvement in the current laws compared to those issued during that time. For example, the Press and Publications Law of 1953 placed restrictions on freedom of expression that are absent in the present law. It included prohibitions on publishing news about His Majesty the King and his family without obtaining permission from the Press Department, and non-political publications were barred from discussing political matters.

However, the most significant shift occurred in 1967 when the Israeli army occupied the West Bank, which was previously part of Jordanian territory, and this event reignited conflict between Jordan and Israel.[74]

[73] Ibid.
[74] Fathi Mohamed Dradakeh, June 1967 war and its effects on Jordanian society (2017) 45 Annals of the Arts of Ain Shams, 111, 126 <http://search.mandumah.com/Record/956146> accessed 25 September 2023

After Israel occupied the West Bank, the King declared a state of martial law and dissolved Parliament, resulting in a constitutional void that persisted until 1978. The Jordanian government could not hold elections in the West Bank during this period, contributing to the prolonged absence of a functioning parliament.[75]

In order to address this dilemma, a National Advisory Board of 60 members was established as a substitute for Parliament, with all its members appointed by the King. The state of martial law persisted until 1989, and during this period, significant political turmoil ensued. In 1968, Israel attacked Jordan to halt the activities of the Palestine Liberation Organization, while in 1970, armed confrontations occurred between the Jordanian army and the militants of the Palestine Liberation Organization, largely due to the prevailing security chaos.[76]

Despite all these upheavals, this period marked the establishment of the principles of the rule of law in Jordan. The government issued the 1976 Law to Abolish Tribal Laws, which led to the abolishment of traditional tribal courts and prevented tribal traditions from being the sole means of resolving their cases. Instead, they were obligated to seek resolution through the regular courts.[77]

However, it is worth noting that tribal traditions still play a role in criminal cases such as murder. The researcher will not address this point further as it is unrelated to the current research focus. Nevertheless, the researcher observed that this period was pivotal in Jordan's transformation from the tribal model to the modern state

[75] Khaled Ahmed Awad Al-Zoubi, 'Defense Law and Martial Laws in Jordanian Legislation: An Analytical Study' (1992) 8(1) Yarmouk Research: HSSS 9,41 <http://search.mandumah.com/Record/289673> accessed 25 September 2023

[76] Waleed Nasir Ibrahim Muhammad Abu Qasim and Abdul Aziz Muhammad Awad, 'Parliamentary life in the Hashemite Kingdom of Jordan 1946-1967' (Unpublished master's thesis, Yarmouk University, Irbid 1993) <http://search.mandumah.com/Record/566160> accessed 19 March 2024

[77] Bassam Al-Jabour, 'Procedures followed in the Jordanian tribal judiciary' House of Culture for publication and distribution (2016) <https://daralthaqafa.com/Item.aspx?ItemId=1103> accessed 30 August 2023

model, embracing the principles of law. Dozens of laws were passed, the role of the judiciary was strengthened, and various institutions, universities, schools, and newspapers were established. Moreover, security was imposed after a prolonged period of instability.

However, the researcher believes that the strengthening of state power came at the cost of public freedoms, particularly freedom of expression, due to the prolonged imposition of martial law. With the absence of a parliament, the government passed laws unilaterally, and the security forces had the authority to close down newspapers and arrest individuals under the pretext of national security.

In 1989, martial law was lifted following widespread protests in the city of Ma'an, and parliamentary elections were held, resulting in an Islamic opposition party winning the majority. Despite this, the king formed the government, and later on, the election law was changed. From 1993 until the present, no Jordanian opposition party has managed to secure a majority in Parliament, leading to a significant weakening of their presence in the legislative body.[78]

In many cases, opposition parties have boycotted the elections due to their objections to the election law. The current election law has resulted in a predominant representation of clans in Parliament, leading to a lack of party presence. The majority of Parliament members belong to Jordanian clans, and most of them refrain from affiliating with any political parties. This situation has strengthened the power of the executive branch at the expense of the legislative branch.[79]

[78] Haider Hamdo Khalil Al-Maaytah, 'The historical development of the parliamentary experience in Jordan in the period 1931 AD - 2008 AD' (Unpublished doctoral dissertation, Omdurman Islamic University, Omdurman 2014) <http://search.mandumah.com/Record/620851> accessed 10 February 2024
[79] Ibid.

In general, and based on political circumstances, the state of freedom of expression can be described as volatile from that time until now. At times, the government showed tolerance towards freedom of expression, while at other times, clear restrictions were imposed through the issuance of laws leading to the blocking and shutting down of websites and newspapers.

However, freedom of expression in the current period is much better than in previous years, primarily due to the significant impact of the Internet. The proliferation of social networking sites has expanded the space for freedom of expression beyond what is provided by existing laws.

As a result of the wars and prolonged political instability in Jordan, the nation's priorities have understandably focused on ensuring stability and security. In case of periods of conflict and uncertainty the government and society most are concerned with solving the current problems and keeping order instead of advocating for the freedom of speech.

The repeated war events, including fighting with Israel and internal fights among the power rivals, are the things that always grab the Jordanian government's attention and keep them busy. In this manner, authorities have mostly relied on martial law and very stringent censorship on the press to constrain information and create a climax of stability. However, the priority of countering possible risks and guarding of the nation security has caused civil liberties to decrease, including freedom of expression.

In addition to that, political instability as well as constant worrying about internal minority fractions, have discouraged any attempts in appearance towards free speech promotion. The government's willingness to stop the rise of radical and opposition

movements, mainly those that any more can not make the country even less stable, now results in the restriction of public discourse, the press, and information outlets.

In assessing the atmosphere in this manner, domestic security and stability have been found to be an integral requirement for the nation and its governance to transcend. The choice for the maintenance of stability sometimes made the trade-off between concerns of security and the defence of people's rights, some of which are the liberty to express opinions freely.

2.5 The cultural context of freedom of expression in Jordan

In a country as Jordan, tribalism is very much fortune to be the basic foundation of the society, that no ordinary social system can survive without it. In dissecting the concerns with the concept of freedom of speech in a public domain, the cultural values and beliefs around the roles and functions of public space need to be looked into, as they shape the views on the nature and principle of expressing certain freedoms.

Traditional tribal Arab culture is a travelling culture that has been widely influenced by the ecology and history of the Arab world, which is the foundation of their moral beliefs. The subsection examines the prevailing mindset among the traditional tribal Arabs on the subject of property, public space, and public expression. At the very outset, I deliberate all the likely origins of these sentiments. Furthermore, the researcher presents a few cases where those sentiments are prevalent in Arab culture.

Moreover, the influence of Islam, which shapes the discipline and mentality necessary for prosperity in Jordanian society, should not be ignored. The religious

principles that are incorporated with tribal tradition are a source of cultural fluctuation which in turn affects the entire public sphere's freedom of expression.

2.5.1 Tribal Influence

In the chronicles of all the Jordanians, however, the Bedouin tribe has always been the dominant and the politically most powerful social contingency. The word "tribe" in this context denotes a tightly-bonded local structure that is based on common ancestry. Members define themselves culturally through distinctive customs, dialects, languages and origins among themselves. Essentially, an Arab tribe might be analogized as a vast and tightly interconnected extended family, which also holds sway in the political arena.[80]

The prominence of this institution within Arab culture has its origins deeply rooted in the ancient past, owing some of its development to the challenging and resource-scarce conditions of the Arabian Desert. These formidable circumstances significantly moulded the culture during its fledgling stages. Thriving within such an environment necessitated unwavering unity and solidarity among closely-knit factions.[81]

The history of adaptation and survival in the challenging desert conditions gave rise to a well-defined cultural unit with clear patterns of behaviour that governed various aspects of life, including economic activities, religious practices, familial dynamics, leisure activities, governance and other human relationships. These

[80] Haian Dukhan, 'Tribes and Tribalism in the Syrian Uprising. Tribes & Neighborhoods: The Dynamics of Subtlety' (2014) 6(2) Syria Studies <https://ojs.standrews.ac.uk/index.php/syria/article/view/897> accessed 5 August 2023
[81] Afif I Tannous, 'The Arab Tribal Community in a Nationalist State' (1947) 1(1) MER 5, 17 <https://www.jstor.org/stable/4321824> accessed 22 June 2022

established patterns dictated the traditional ways of doing things for both individuals and the entire tribal community. [82]

The tribal system's pervasive influence can be understood by considering how it impacts numerous aspects of life, owing to its deeply ingrained cultural significance. One of the reasons for this broad influence is the belief that the Arab tribe holds collective responsibility for the actions of its members, irrespective of whether those actions are perceived as positive or negative. This sense of collective responsibility reinforces the strong unity and cohesiveness within the tribe, further solidifying its influence over the social and political fabric of Jordanian society.[83]

The Arab tribal community operates on a foundation of unity and support, where every member is bound to rally behind the tribe in times of conflict with others.[84]This collective approach requires individuals to balance their interests with the greater good of the tribe. The sense of responsibility towards the tribe is deemed essential, as tribes hold the duty to defend and protect each of their members, and are accountable for any harm caused by their members to outsiders.[85]As a result, individual Arabs carry a dual role: they are not only members of their tribe within the community but also representatives of their tribe when engaging with external groups.

Women play a significant role in this tribal system, as their reproductive capabilities are highly valued for the strength and continuity of the tribe's lineage. Consequently, their conduct is subject to vigilant scrutiny by their family members,

[82]Rox bin Zayed Aziz, 'Features of the life of the Jordanian Bedouin community. In Nomadism Symposium in the Arab World (pp. 139-180)' (1983) Algeria: IARS <http://search.mandumah.com/Record/123594> accessed 25 September 2023
[83] Ibid.
[84] Philip Carl Salzman, 'The Middle East's Tribal DNA' (2008) 15(1) Middle East Quarterly 22, 33 <https://www.meforum.org/1813/themiddle-easts-tribal-dna> accessed 22 June 2023
[85] Ibid.

and they are viewed as invaluable assets preserved for the tribe's forthcoming generations. The importance placed on the tribe's welfare and continuity is evident, and it emphasizes the priority of the tribe over individual desires. Survival in the Bedouin lifestyle necessitates placing the tribe first and the individual second, highlighting the stark contrast with modern Western ideals, which often stress the autonomy and rights of the individual within society.[86]

This dichotomy provides a profound insight into the differing political values between the Arab world and the West. While the Arab tribal community places immense significance on collective responsibility and loyalty, modern Western societies tend to prioritise individual freedoms and self-determination. Understanding these fundamental distinctions allows us to appreciate the depth of the gulf that exists between these two cultural perspectives.[87] The tribal structure not only shapes social dynamics but also influences governance, decision-making processes, and the overall worldview of the Arab world, contributing to its unique and rich cultural identity.

The structure of tribes in Jordan historically revolved around key principles of kinship, patriarchy, and equality among male members. Within the tribes, emphasis was placed on maintaining strong family ties and treating male members as equals. This patriarchal nature of the tribes extended to their leadership, where the position of authority, known as the sheikh, was exclusively held by a man. Moreover, this leadership role was passed down hereditarily, meaning that it remained within specific families over generations.[88]

[86] Ibid.
[87] Ibid.
[88] Bushra Shakir, 'Tribal and clan nervousness. Islamic Consciousness' (2014) S51, S589, 82, 83 <http://search.mandumah.com/Record/672351> accessed 22 June 2022

The concept of the patriarchal mind has been extensively discussed by Arab thinkers as a defining aspect of prevailing mentalities within Arab society. Many of them believe that the patriarchal mind continues to wield significant influence, permeating various circles and spheres of Arab life. This mindset finds its roots in the Arab family, where its formation begins. Unfortunately, the family often does not promote equal rights for all its members, leading to a lack of participation in decision-making processes. Instead, the new generations tend to adhere to traditional beliefs, reinforcing an attitude towards women that results in their marginalization, oppression, and denial of basic rights to equality.[89]

Beyond the family, the patriarchal mind extends its influence into educational institutions like schools and universities. Here, it stifles the right to express differences of opinion and opposition. Even if such expressions manage to form, they often face oppression and various forms of suppression. The prevalence of this mindset contributes to the loss of an active personality and a creative mentality among individuals, paving the way for the rise of authoritarian rule and the emergence of dominant leaders. These leaders tend to cling to their immense personal powers, often leveraging religious, sectarian, and tribal affiliations to consolidate control, rather than embracing political parties and civil social movements.[90]

The social system that evolved in the challenging environment of the Arabian Desert gave rise to distinctive values regarding ownership, property, and space. For the Arab Bedouins, control over resources held immense importance for both individuals and tribes, and this control was often fiercely contested by other tribes.

[89] Al-Amin Ahmad, 'Rebuilding the Arab Mentality: Introductions for Building Civil Society and Establishing Democracy' (1998) 1(2) AS Dar Al-Tali'ah, Beirut.
[90] Ibid.

Consequently, the concept of ownership holds significant weight in Arab culture, where virtually everything is considered to belong to someone. In the absence of ownership, it is merely a matter of another tribe not having claimed it yet.[91]

Even in contemporary Arab nations, the influence of traditional Bedouin life endures, shaping attitudes towards public space, which is virtually non-existent in such regions. Public spaces are characterized by intrusion, encroachment, and competition for unused areas, reminiscent of the age-old tribal contest for resources now played out in urban settings.[92]

This conventional tribal heritage of the Arab nomadic Bedouin community rejects the notion of public or communal spaces, instead emphasising strict control by different tribes, each maintaining internal unity. Public spaces, therefore, lack unity, cooperation, and openness, being defined by separation, competition, and mistrust. While Arabs are generally warm and hospitable within their trusted groups, which include tribe members and guests, they tend to be less accommodating towards outsiders and strangers. Arab architecture reflects this inward-focused approach, turning away from public spaces and emphasizing family and tribal life.[93]

Traditional Arab homes, as an illustration, are structured around central courtyards enclosed by towering barriers with limited exterior-facing openings. In nations such as Jordan, gardens and front verandas are enveloped by elevated and non-transparent brick walls, in contrast to the open picket fences common in Western societies. This illustrates the preference for the tribal realm over shared,

[91] Lawrence Rosen, *The justice of Islam: comparative perspectives on Islamic law and society* (OUP, USA 2000).
[92] Ibid,197.
[93] Ibid.

communal spaces, a preference reinforced by legal regulations to prevent strangers from peering into private homes.[94]

In this context, the pinnacle of steadfast inter-tribal cohesion is reached by prioritizing tranquillity and order over lofty doctrines or visionary initiatives. The Arab public is more responsive to practical concerns and pragmatic solutions, reflecting the enduring influence of tribal values and the cultural heritage of the Arabian Desert.[95]

After exploring the profound impact of tribalism on Jordanian politics and society and delving into tribal perspectives on public space, it can be reasonably inferred that Jordan's approach to freedom of expression issues over the last decade was significantly influenced by its tribal heritage and values.

As a country, Jordan bears the indelible imprint of its tribal structure, which imparts two core values that significantly mould perspectives on freedom of expression. To begin with, the tribal system places great emphasis on fostering loyalty and unity within the community, fostering a collective outlook that encourages individuals to rally behind and safeguard their tribes. This often leads to a reluctance to engage in actions or make statements that could disrupt relationships and overall harmony within the tribe. Within this tribal context, stability and unity take precedence over individual expression, and the system prioritizes consensus and agreement in shaping public opinion rather than enforcing strict ideological conformity regarding personal beliefs.[96]

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[94] Ibid.

[95] Mohammed Torki Bani Salameh and Khalid Issa Aladwan, 'The identity crisis in Jordan: historical pathways and contemporary debates' (2016) 44 NP 985, 1002 <10.1080/00905992.2016.1211809> accessed 25 September 2023

[96] Majida Anton Haidh Deyat, 'Bedouin tribes movement and its impact on public life in Jordan between the 12th and 14th centuries AH. / 18-19 AD' (Unpublished doctoral dissertation, University of Jordan, Amman 2016) <http://search.mandumah.com/Record/1134895> accessed 10 February 2024

Secondly, the tribal system fundamentally rejects the notion of shared, neutral public space; instead, everything is attributed to specific entities, whether individuals or tribes. Consequently, political speech is not merely perceived as the expression of personal opinions in a neutral space, as is often the case in Western societies. Rather, it is viewed as an action with profound social consequences, particularly concerning its impact on social unity and stability within and between tribes.[97]

These two tribal principles, the prioritisation of intra-tribal unity and stability and the rejection of communal shared space have wielded substantial influence over Jordanian society. This impact has occurred directly through the enduring nomadic Arab tribal culture and indirectly through the influence of nominally Islamic values, which frequently trace their origins back to the same nomadic Arab tribal culture. As a result, public order, unity, and stability have consistently held the utmost importance within these societies.

To ensure the stability and continued authority of the Jordanian state, the government must prioritise several essential social elements: the cohesion and harmony within and between tribes, widespread social agreement, the maintenance of shared public ethics as a cohesive force, and the image and standing of the monarchy and its administration.

These objectives can be achieved through a sophisticated censorship practice that aims at preserving the stability of the purpose and of the modus operandi of censorship. Such censorship measures are aimed at speech that is worst for social and political stability and also ensure that this constraint appears glutted and not tyrannical.

[97] Ibid.

The recent history of Jordan has contributed many instances of censorship where the use of tribal values in the restriction of free speech and maintaining stability is clear.

In the context of the Arab Uprisings that began in 2012, a major incident took place on 20th April of that year when two journalists, Jamal Al-Muhtasib and Sahar Al-Muhtasib, were detained for publishing an article accusing the champion of dishonesty in the parliament and royal court respectively.[98] The eventual outcome then was that they were, consequently, released on bail; and, the charges were dropped as well. Despite the charges being dropped, the underlying message to journalists remained unambiguous: The government of Jordan was not ready for any grace that could smear its legitimate face and, consequently, that had been the dominant factor in shoring up its commanding position and national cohesion the Arab uprisings. In the meanwhile, authorities thought unity and stability had to be given first consideration over privacy and human rights, which eventually shaped the course that unfolded months and years later.[99]

That year, the Jordanian National Assembly enacted substantial amendments to the nation's press and publications legislation, introducing fresh guidelines targeting online publications. Within these alterations, local news websites were required to undergo official registration with the Jordanian government before their commencement. Additionally, they were obligated to designate a representative from the Jordan Press Association to supervise the website's operations and shoulder the responsibility for any user-generated comments posted on their platform. This

[98] Matt J Duffy and Hadil Maarouf, 'Journalism in Jordan: A Comparative Analysis of Press Freedom in the Post-Arab Spring Environment' (2015) 1 Global Media Journal 24 <http://umiss.idm.oclc.org/login?url=https://www.proquest.com/scholarly-journals/journalism-jordan-comparative-analysis-press/docview/1799187929/se-2> accessed 25 September 2023

[99] Ibid.

presented a sharp juxtaposition to the corresponding law in the individualistic and culturally Western United States, where online publishers and users are absolved of any liability for the content contributed by other users.[100]

This revision underscored Jordan's heightened authority over digital media, emphasising the responsibility of website publishers for user-generated comments. The contrast in cultural viewpoints concerning freedom of speech between the individualistic Western stance and the collectivist Arab standpoint became conspicuous. In Jordan, websites were perceived as unified entities, and the owner bore accountability for the behaviour and expressions of users, akin to the role of a tribal elder overseeing the members of their tribe.[101]

The consequences of this legal alteration significantly impacted freedom of expression in Jordan. As the Jordan Press Association (JPA) reported, from 2012 to 2013, the nation's press freedom rating saw a considerable drop, plummeting from 51 to 44.15 out of 100.[102]This decline was attributed to the recent Press and Publications Law amendment, leading to the blocking of over 281 unlicensed news websites by Jordanian authorities.[103]However, the impact extended beyond online news providers.

In July 2013, two Jordanian activists, Thabet Asaf and Tariq Khaddar, were arrested after participating in a televised debate where they criticized the new amendments to the press and publications law, arguing that these changes threatened freedom of expression in the country. The activists were charged with "inciting anti-

[100] Jonathan Brown, 'The Issue of Apostasy in Islam. Yaqeen Institute for Islamic Research' (5 July 2017) Yaqeen Institute <https://yaqeeninstitute.org/read/paper/the-issue-of-apostasy-in-islam> accessed 30 August 2023
[101] Ibid.
[102] Muhammad Ghazal, 'Level of media freedom declines in 2013 — press syndicate' (22 April 2014) The Jordan Times https://jordantimes.com/news/local/level-mediafreedom-declines-2013-%E2%80%94-press-syndicate> accessed 22 February 2022
[103] Ibid.

regime sentiment," accused of being Islamists, and subsequently imprisoned.[104] This incident exemplified censorship and suppression as measures to maintain stability. Publicly critiquing the regime and its actions was perceived as jeopardizing social cohesion and stability, leading to harsh consequences.

The Jordanian government implemented internal censorship as a means to ensure stability and order both within the country and on an international level. In September 2013, two Jordanian journalists, Nidal Al-Faraana, and Amjad Al-Mualla, were arrested for sharing a video that allegedly depicted illicit activities involving the brother of another ruler of Qatar. They were charged under article 118 of the Jordanian penal code, which criminalizes acts, writings, or speeches not approved by the government that could potentially lead to violence or disturb Jordan's relations with a foreign state.[105]

The wording of this law suggests that the concern lies not in the content of the speech but in its potential to disrupt the existing social order. The government's primary worry was not the invasion of an individual's privacy but the potential harm to Jordan's relations with other countries. Given that a significant portion of Jordan's budget relies on foreign aid, it is understandable that the regime swiftly addresses any issues that might jeopardize this assistance. In under half a decade, Qatar provided Jordan with a substantial $500 million aid package, underscoring Jordan's commitment to nurturing positive ties with the affluent Gulf nation and illustrating the importance Jordan places on maintaining favourable relations with the wealthy Gulf state.[106]

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[104] Duffy, Ibid.
[105] Ibid.
[106] Reuters, 'Qatar extends $500 million aid package to Jordan: official' Reuters (13 June 2018) <https://www.reuters.com/article/us-jordan-protests-aid-qatar/qatar-extends-500-million-aid-package-to-jordan-official-idUSKBN1J921B> accessed 30 August 2023

Another instance of Jordan utilizing censorship for the sake of harmonious relations with neighbouring nations occurred in April 2014 when the Jordanian parliament criminalised communication that could jeopardize the kingdom's standing or harm its relations with other countries. By June of the same year, this law was used to justify the shutdown of Al-Abasiya, an Iraqi television station in Amman, which had broadcasted criticism of the Iraqi government.[107]

In both of these examples, Jordan's primary focus was on preserving stability, choosing to implement censorship measures on its populace to safeguard friendly ties with neighbouring nations like Iraq and countries offering crucial financial assistance, such as Qatar.

There are instances of censorship in Jordan that aim to maintain stability and avoid causing public offence rather than explicitly suppress dissent or prevent disorder. An illustration of this practice can be seen in the official Arabic subtitles of the popular American sitcom "Friends." In these subtitles, references to pork, explicit sexual content, and Israel are altered or omitted to avoid potential offence to Jordan's Muslim majority and the Palestinian community.[108] The Jordanian government's actions in such cases can be understood through the lens of tribal statecraft, as it relies on its time-tested Bedouin political traditions to mitigate conflicts and ensure stability.

In Jordan, the government, through the Media Commission, legally monitors television content and films. A specialised team within the Audio-Visual

[107] Duffy, Ibid.
[108] Tamara Moh'd Altabieri Krishan, 'Norms of Subtitling Taboo Language and the Role of Censorship in Jordan: A Case Study of the Arabic Subtitling of 'Friends' (Doctoral dissertation, University of Salford, United Kingdom 2012) <http://umiss.idm.oclc.org/login?url=https://www.proquest.com/dissertations-theses/norms-subtitling-taboo-language-role-censorship/docview/2607472120/se-2> accessed 15 September 2023

Department evaluates the television content and films to ensure compliance with the standards specified in the "Audiovisual Works Authorization and Control" system.[109]

These standards encompass avoiding harm to His Majesty the King and the Royal Family, refraining from distorting the image of any heavenly religions and prohibiting seditious material, racism, sectarianism, or any content that threatens state security. Additionally, scenes containing inflammatory material, promoting pornography, violence, crime, deviance, or abuse of public order are subject to deletion.

The Media Commission may consult with other bodies, such as the Jordanian Fatwa House, to make decisions regarding the approval or banning of films. It is emphasized that films conflicting with religious guidelines, especially those offensively portraying prophets or religious themes, will not be permitted for public viewing in Jordan.[110] The broad approaches that Entertainment Ministers are undertaking reflect the administration's effort to promote this country's culture and religion as a long-term stabilizing factor of the society.

The control of news sites in Jordan is a demonstration of the ancient Arabic-Islamic approach, which ranks words based on their negative effects on internal peace or stability. The government's practice of detaining journalists who accuse or cast aspersions on the authorities, reflecting the domestic environment as a just and reliable mediator, is at the heart of its existence. Additionally, the foreign affairs-linked detentions softly but imply the insisted priority that ensures stability and

[109] Adel Awad Ziadat, 'The legal framework for radio and television media in Jordan: The role of the Audio-Visual Commission in licensing radio and television stations' (2012) 1 ABJ 32, 43 <http://search.mandumah.com/Record/478513> accessed 22 June 2022
[110] Ibid.

positive relations among the influencing neighbours' states which may result in the lessening of individual liberties.

The influence of Jordan's underlying cultural values and norms can be observed in the government's open and transparent actions as it pertains to pro-stability censorship measures. The essence of the rationality behind its censorship policy is not hidden by the government. Not what of individual rights and justice, is what would be used in the Western context, the discourse utilizes language which contains influence, harmony, and harmony. For example, through the arrest of journalists for their exposure to judicial misdeeds, they are charged with "direct conflict with the authority" and not in violation of privacy laws or press confidentiality. Similarly, when activists are detained for critiquing the press and publications law, their charges revolve around "inciting anti-regime sentiment," highlighting the Arab-Islamic perspective that places greater emphasis on the potential for societal disruption rather than the content of dissenting speech.

2.5.2 Religious influence

The second main element impacts Jordan's culture and, consequently, free speech. This part is limited in scope to the doctrinal aspects of Islam but rather looks at Islam and the Jordanian perspective.

Accordingly, Islam has a powerful and key role in the daily and spiritual affairs of the Hashemite Kingdom of Jordan. As a Muslim majority, Jordan is regarded as one of such the country in the world, and Article Four of the Jordanian Constitution declares their faith as the religion of the state, emphasizing that this places its traditions and values on the national identity on a broader perspective.

The influence of Islamic law is particularly conspicuous in the realm of personal status, where Islamic legal principles govern matters such as marriage, divorce, and family rights. The Personal Status Law in Jordan is regarded as a civil law, with Sharia laws exerting influence in related cases. For instance, marriage laws in Jordan adhere to Islamic Sharia principles, necessitating compliance with Sharia terms within the marriage contract.

Within the sphere of criminal law, the impact of Islamic law manifests in the definition of certain crimes and their corresponding punishments. Jordanian laws strive to strike a balance between religious principles and individual rights. It is important to note that the application of penalties aligns with civil law procedures, yet Islamic values remain a significant guiding force in both legislative decisions and their implementation.

While the Islamic religion itself does not explicitly prohibit freedom of expression and lacks detailed or precise restrictions, strict interpretations of Islam may lead to a narrower scope of freedom of expression, especially in the religious and moral domains.

Sharia law varies by country, being influenced by local customs and evolving. Sharia serves as the foundation for legal opinions known as fatwas, which Muslim scholars issue in response to requests from Muslims or governments seeking guidance on specific matters. Fatwas in Sunni Islam are considered purely indicative, offering guidance but not necessarily binding on individuals. In contrast, in Shia Islam, practitioners are obligated to follow the fatwas issued by the religious leader they choose to follow.[111]

[111] Mazen Ismail Mesbah Haniyeh and Iman Muhammad Salameh Baraka, 'Gradual application of Islamic law. Proceedings of the International Conference: Prospects and Controls for Contemporary Islamic Action' (2013)

There are different versions of Islamic law applied in various countries, such as Afghanistan, Saudi Arabia, and Iran, and these versions may not be identical. Consequently, Sharia can be seen as problematic, depending on who interprets it. Many observers perceive Sharia as a strict legal system that may not easily adapt to reflect modern Western values. Debates surrounding Sharia often concentrate on specific topics, such as the use of corporal punishment for crimes like theft, blasphemy, and adultery.[112]

In the discourse surrounding Islamic law and Western values, a fundamental conflict is often perceived due to differing perspectives on individual rights and freedoms. Western societies, which prioritise personal autonomy and protection from cruel punishment, clash with certain interpretations of Sharia that involve practices like corporal punishment, such as flogging for theft.[113] Nevertheless, it should be noted that Jordan does not adopt the system of corporal punishment in Islamic law. The Jordanian legal system does not entail any physical penalties such as flogging or hand amputation. The sole physical punishment included is exclusively execution.

The issue of gender equality serves as another significant point of contention. While Western values uphold the principle of equal rights for all genders, some interpretations of Sharia, particularly in family law matters, have faced criticism for perceived gender disparities and restrictions on women's autonomy.[114] For example, the unequal weight given to women's testimony in legal contexts conflicts with Western values of gender equality.

Gaza: The Islamic University - College of Sharia and Law <http://search.mandumah.com/Record/772072> accessed 25 September 2023

[112] Ibid.

[113] Talal Asad, *Formations of the secular: Christianity, Islam, modernity* (Stanford University Press, 2003).

[114] Ibid.

Secularism, a core tenet in many Western societies advocating for the separation of religion and state, becomes a source of conflict when Sharia influences state laws, especially in matters of personal status. The integration of religious principles into legal frameworks challenges the secular foundations of Western legal systems.[115]

Some traditional interpretations of Islamic law prescribe punishments that are considered excessively harsh compared to those found in most modern legal systems. Among these punishments are the hudud, which include stoning, flogging, and amputation.[116]

However, applying such penalties requires meeting broad evidentiary standards, so scholars say they are primarily intended to serve as a deterrent. Jordan does not apply corporal punishment, as the interpretation of Islamic law in Jordan is considered moderate compared to some other countries. Despite this, some strict interpretations of morality and religion contradict the Western standard of freedom of expression.[117]

Western values, especially those associated with freedom of expression, are deeply rooted in principles such as individual rights, democracy, and the protection of diverse opinions. However, strict interpretations of Islam may conflict with Western values of freedom of expression for several reasons.

[115] Ibid.
[116] It's important to note that the Qur'an never mentions stoning; this punishment is derived from Deuteronomy in the Hebrew and Christian Bibles
[117] Ibid.

First, Islam greatly emphasises the sanctity of religious beliefs and figures. Hardline interpretations may view any form of criticism or ridicule of religious figures, including the Prophet Muhammad, as blasphemous and insulting.[118]

Second, Islamic teachings often emphasise values such as humility, decency, and morality. Some strict interpretations may hold that certain forms of expression, such as explicit content or content contrary to Islamic moral standards, are incompatible with Islamic values.

In addition, there is a belief in some Muslim societies that strict control of expression, especially regarding religious matters, is necessary to maintain social harmony and prevent the spread of ideas that could be viewed as subversive.[119]

The concept of temptation, or Fitnah, is another factor. Hard-line interpretations may consider certain expressions to incite discord or cause strife within the Muslim community, rooted in the desire to protect the unity of the ummah (Muslim community).

Moreover, there is a difference in concepts of individual rights. While Western values prioritize individual rights, including the right to criticize authority and question established norms, strict interpretations of Islam may prioritise collective values and preservation of Islamic principles over individual rights to criticize religious beliefs or authorities.

Considering the influence of tribal ideas on Islamic interpretations of freedom of expression, it is likely that Islamic traditions in Jordan mirror the values of the ancient Arab Bedouins concerning public space, in-group harmony, and the right to

[118] Joas Wagemakers, 'Freedom of Speech and Islam: The Debate over Dutch Cartoons of the Prophet Muhammad' (2017) 10(2) JRE 195-223
[119] Ibid.

express oneself.[120] This notion is supported by examining the region's political and cultural reality. Traditional Islamic ethics and values regarding women in the Arab Middle East place significant emphasis on modesty and purity, reflecting the "tribal notions of honour" prevalent among the Bedouin.[121]These tribal beliefs hark back to the scarcity mindset of the desert-dwelling Bedouin tribes, for whom women and their reproductive capabilities were considered precious resources, necessitating protection from potential external threats.[122] This suggests that Islam did not discard old tribal concepts related to ownership and attitudes toward space but extended their application.

The Islamic standard of morality is strict, particularly concerning aspects like dress code and sexual practices, such as kisses or obscene insults.[123] Consequently, Jordanian society disapproves of materials that may contain such content, be it books, movies, or series.

For instance, on November 29, the Ministry of Culture announced the withdrawal of the novel "Mira" by Jordanian writer Qassem Tawfiq from circulation due to widespread protests over its content, which included obscene terms promoting pornography. The ministry justified this decision by citing the social and religious context.[124]

A similar incident occurred when the series "Jinn" was aired by the "Netflix" network in 2019. The anti-cybercrime institution in Jordan issued an order to halt

[120] Taylor Northcutt, 'Tribal Statecraft and Freedom of Expression in Jordan' (Honors Thesis, University of Mississippi 2023) <https://egrove.olemiss.edu/hon_thesis/2867> accessed 10 February 2024
[121] Salzman, Ibid.
[122] Ibid.
[123] Amanda F. Detrick, 'Virtue and vice: morality police and social control in Islamic regimes' (PhD dissertation, Monterey, Naval Postgraduate School, California 2017) <https://apps.dtic.mil/sti/pdfs/AD1053195.pdf > accessed 10 February 2024
[124] 'Mira' novel sparks controversy among Jordanians(2021). Roya news, Available at: https://en.royanews.tv/news/38588/2022-11-30

the broadcast of the series "Jinn" as it contained Intimate scenes and obscene insults scenes deemed to violate both the law and moral standards.[125]

Certain attitudes towards speech and conviction can be traced in the same way. In the context of Islam, issues of apostasy and heresy are primarily assessed in terms of their social implications rather than purely personal or spiritual ones.[126] Muslim Bedouins' religious identity is significantly influenced by their affiliation and loyalty to the umma, similar to how their belonging shapes their identity to a particular tribe.[127]The term "umma" holds multiple definitions, encompassing not only "the people of a particular religion, those to whom an apostle is sent, and the followers of a prophet" but also referring to a nation, people, race, tribe, or family, as well as a community, kinsfolk, or party.[128]

In this cultural context, a change of religion is not merely an individual choice but a public act, signifying a shift in faith and a departure from one's tribe and its collective identity.[129] Some Islamic countries currently refuse to endorse international conventions promoting freedom of religion[130], not due to personal

[125] Bruce Haring, 'Netflix Series 'Jinn' Sparks Uproar in Jordan Over Alleged 'Immoral Scenes'' Deadline (15 June 2019) <https://deadline.com/2019/06/netflix-jinn-uproar-jordan-immoral-scenes-1202633178/> accessed 30 August 2023

[126] Rosen, Ibid, p197.

[127] Taylor Northcutt, 'Tribal Statecraft and Freedom of Expression in Jordan' (Honors Thesis, University of Mississippi 2023) <https://egrove.olemiss.edu/hon_thesis/2867> accessed 10 February 2024

[128] Edward William Lane, Arabic-English Lexicon (Ungar, 1874) <https://lanelexicon.com/updates/> Accessed on 20 April, 2024.

[129] Rosen, Ibid, p197.

[130] Prominent Islamic states like Saudi Arabia and Iran have demonstrated caution in fully endorsing international human rights agreements, specifically the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). In Saudi Arabia, a leading Islamic state, the government has refrained from ratifying these agreements entirely, citing potential contradictions with Sharia principles, particularly in matters of freedom of religion and expression. Similarly, Iran has ratified certain components of international human rights agreements but maintains reservations about provisions that might clash with its interpretation of Islamic law, especially in the application of Sharia principles concerning religious minorities. Meanwhile, Afghanistan's legal framework, significantly influenced by Islamic law, has not universally embraced these international human rights agreements. Reservations arise in the implementation of Sharia, particularly in the context of religious freedoms, leading to concerns about alignment with provisions that could be perceived as conflicting with Afghanistan's interpretation of Islamic principles.

religious convictions or fear of divine retribution, but because their leaders believe that leaving Islam, which is tied to the umma or larger tribal/familial entity, would have systemic repercussions for the overall social order.[131]This attitude is particularly prevalent in Arab governments overseeing nation-states with fragile national identities, where maintaining social and political stability is paramount, and Jordan is no exception.

Traditional Islamic perspectives on apostasy, described using Arabic terms like ridda or irtidad, which both imply "to return or revert from," offer a valuable case study of how freedom of speech is primarily shaped by concerns about preserving public order and unity.[132]The notion of "returning" here refers less to a mental shift in beliefs and more to a social act of renouncing and abandoning the umma. In the early Muslim community, ridda was not seen as a matter of personal religious choice but rather as a public and political secession from the Muslim community.[133] Since such acts threatened the unity and safety of not just the umma but also the state and society as a whole, traditional Islamic jurisprudence mandated the death penalty for apostates or murtadds, those who had "returned" from the community.[134]

However, it is important to note that Jordanian law does not specify punishments for apostasy, and the issue of the punishment for apostasy is a controversial matter in Islam. This is because the Qur'an itself does not explicitly stipulate the punishment for apostasy; instead, it emphasizes the principles of individual choice and freedom in matters of faith. The famous verse, “There is no compulsion in religion” (Qur’an:

[131] Rosen, Ibid, p197.
[132] Lane, E. W. (1867). An Arab-English Lexicon, Book I. Google Books, 2, 1063-1064. Retrieved from https://lanelexicon.com/updates/
[133] Brown, Ibid.
[134] Lane, Ibid.

2:256), highlights the basic Islamic doctrine that faith should be a matter of personal conviction, free from coercion.

The Qur'an further accentuates the freedom to convert to religion, acknowledging the diversity of beliefs within society. The verse, "And if your Lord had willed, all people on earth would have believed" (Qur'an: 10:99), reinforces the idea that belief is a matter of individual choice and divine will, not subject to forceful imposition.

The roots of the punishment for apostasy can be traced back to the early Muslim community.[135] Apostasy was viewed not merely as a personal choice but as a potential threat to the unity and safety of the Muslim community (umma). Traditional Islamic jurisprudence developed severe consequences, including the death penalty for apostates, rooted in historical contexts where such acts were perceived as endangering the stability of the community.

Jordanian law does not impose a penalty on apostates; however, it is worth noting that Jordanian law rejects the idea of converting to another religion easily. The Jordanian constitution does not address the right to convert to another religion, and the Sharia courts concerned with Muslim affairs do not recognize converts from Islam to other religions.[136]

From this context, we can understand what happened with the Jordanian writer Nahed Hattar, who published a satirical cartoon that was widely considered an insult

[135] Muhammad Mahmoud Muhammad Al-Jamal, 'Jizyah and the punishment of apostasy in the contemporary state: A study of the problem of coexistence for those who adopt terrorist ideology' (2016) In Scientific Conference: The Role of Sharia, Law, and Media in Combating Terrorism, Part 1. Zarqa: Zarqa University, 523-539 <http://search.mandumah.com/Record/800205> accessed 10 December 2023

[136] U.S. Department of State, 'Jordan 2022 International Religious Freedom Report' (2023) <https://www.state.gov/wp-content/uploads/2023/05/441219-JORDAN-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> accessed 30 August 2023

to God, sparking widespread anger. As a result, he was arrested and put on trial. Tragically, an angry extremist killed him before he could appear in court.[137]

Consensus is another core value of the Muslim umma in Arab countries, promoting a focus on unity and cohesion. The Arab-Islamic cultural context in Jordan prioritises the social consequences of actions and speech rather than just the acts or words themselves.[138] This approach is deeply rooted in the country's Bedouin traditions and values.

As a result, the practice of Islam in Jordan, influenced by its cultural context, can sometimes contradict the Western standard of freedom of expression. The opinion about keeping social order and union may cause the use of strict judgments of religious laws and limitations on certain kinds of speech that are regarded to be the ones that are offensive or disturbing the social concord, will occur.

Overall, the connection between Islam and the freedom of expression in Jordanian society is contextualised. It is a product of tribal Bedouin cultural values inherent to the Jordanians. The cultural context of the umma is placed at the very top of the set of principles that imply limitations to speech if it is considered a source of political opposition against the unity of the society or threat to the government's stability. The question of how Islam relates to freedom of expression is a very complicated question that is often misunderstood. While there isn't anything in the teachings of Islam that forbids freedom of expression, the cultural interpretation and application of Islam in Jordan may lead to limitations regarding certain forms of speech and expression.

[137] The Guardian, 'Jordanian writer shot dead as he arrives at trial for insulting Islam' (25 September 2016) <https://www.theguardian.com/world/2016/sep/25/jordanian-writer-shot-dead-trial-insulting-islam-nahed-hattar> accessed 30 August 2023

[138] Oswald Spengler, *The Decline of the West, Vol. II: Perspectives of World-History* (Rogue Scholar Press, 1928).

2.6 Conclusion

The coming of time helps to see that freedom of expression in Jordan was faced with challenges of getting real freedom of expression. The lack of a good government during the Ottoman years permitted local customs to be more powerful to the point that it influenced every area of the generation of speech. Such kinds of expressions, for example, insulting of honour or religion given in the form of words, would be strictly punished and violating the rules would lead to very severe punishment.

Under the British Mandate, although the press service appeared, there was a gap in the law for the freedom of expression to be extended ultimately. The struggle involving the dissent of Jordanian tribes and the struggle against Britain's imposed laws made the formulation of justice and freedom impossible. Tribe cultures had unique self-expression limitations spread among the resistance to outside influence and lack of an actual existing law system.

The Independence of Jordan in 1946 represented a turning point, and in 1947 a new constitution was taking the floor, providing that freedom of expression was guaranteed. In addition to that, political instability and unilateral imposition of martial law happened on different occasions, which were followed by the suppression of freedom of expression, with media closed down under the pretext of national security.

The Internet and social networking sites have made more ample space for unfettered expression, which is currently more advanced than the state of the law. Moreover, the government's priority to ensure stability and security, which is prompted by the continued wars and political tension, contains conflicting goals with the provision of various civil liberties, such as freedom of speech.

The tribal community does not recognize public space as a shared or neutral area but attributes it to the actors, individuals, or tribes. The rebellion against sharing a common public space brings about not only impact on the freedom of speech but also its political outcomes because this kind of speech may have social implications that have the potential to disrupt social cohesion and stability.

Patriarchy is also a key factor that it brings in the philosophy of the tribes and, in doing so, shapes people`s attitudes toward freedom of expression. The domination of Arab society with the patriarchal attitude brings forth a low level of participation in the key processes of decision-making and strengthens the segregation of women into a minority and also their violation of the rights of equality.

These tribal cultural values determine Jordan's attitude towards freedom of expression; as a small and politically unstable country, stability, social order, and image, as well as dominance on top of the conservation of lifestyle, played a crucial role rather than individual liberties. The government adopts a delicate censorship model, propagating stability and control. What is censored drives stability and control and with this goal, a low number of strongly censored speech is the result.

Acts of censorship in Jordan manifest the old Arab-Islamic approach, which takes an idea seriously before it gives way to any coinciding groups that could cause instabilities. The repression is legitimated not by the norms of freedom and justice but by the need to ensure that power, unity, and order prevail in the country.

The cultural components of freedom of speech in Jordan, shaped by its Bedouin hip tribe and Islam Dominance heritage, may bring out restrictions on speech and expression that are not edifying to the social order and cohesion.

Looking into the next chapter, it would be of my interest to examine the philosophical grounds of the freedom of expression in Jordan. The philosophical view on Freedom of speech is of the highest importance as it forms the foundation for grasping the concept of Freedom of speech in Jordan. This understanding will act as a decisive link to the upcoming presentations regarding the legal mechanisms and tactical approaches regarding expressional freedom in Jordan. It will be possible to acknowledge the work done at the philosophical level, whether it aligns or diverges with the legal basis and whether it sustains the concrete exercise of freedom of expression in the practice of government.

In addition, an examination of the philosophical underpinnings of free speech concept will add the deeper perception of the scope of restrictions on free speech in Jordan. It will emphasise the subtle requirements to maintaining social cohesion and unity and respect for private liberties.

Having corresponded with a multitude of historical, cultural, and philosophical issues, the knowledge will provide us with a broad base for the legal systems and their practical features. Through the following chapter, we will have a much clearer picture of the intricacies and dynamics surrounding free speech in the country, which will lead to an enhanced appreciation of freedom of expression in Jordan.

Chapter 3

The philosophical basis for freedom of expression in Jordan

3.1 Introduction

The freedom of expression is declared in several international charters and constitutions as a real and universally applicable condition. Nevertheless, the validity and the limits of this idea can remarkably change across the spectrum of cultures and states that can be strongly influenced by the philosophical theories that define their perception of such rights.

The human right to freedom of expression turns into a mosaic of various philosophical views, including socially oriented theories of social contact, utilitarian Liberal approach, and Socialist Overall Philosophy. Every theory, from a different perspective, gives a unique view on the definition of freedom of speech and the limits of boundaries to which it is considered acceptable.

This chapter is mostly concerned with disclosing the philosophical foundations of freedom of expression in Jordan, giving special attention to the social contract theories. This is although the social contract ideologies and the principles of freedom of speech share an innate harmony.

Utilitarian liberal theories as suggested by the eminently influential thinkers of John Stuart Mill, Voltaire, and others, have a prominent position in the global conversation about freedom of expression; however, these are not necessarily in line with the specific cultural, religious and social character of Jordan So, we will focus solely on the analysis of the social contract theories that help us to establish some

foundation for the philosophy of freedom of expression in Jordan through their framework.

John Stuart Mill whose philosophy just like in “On Liberty” advocated for individual liberty and played down government interference in issues related to freedom of speech. Mill considers the idea of unbound conversation and argument the most important tool in his arsenal, believing that a marketplace of ideas will reveal the truth and contribute to societal growth. However, the principle of freedom of expression advocated by Mill and the concept of freedom of expression in Jordan might not be completely the same, as the researcher explained the cultural priorities and values of the country in the earlier chapter of the essay.

Analogously, the utilitarian theory that judges by utility and everyone's happiness can also become a sharp contrast to Jordan's idea that is based on the freedom of expression. The utilitarian view of making the world's aggregate happiness greater might clash with Jordan's emphasis on communal identity and harmony, resulting in the fact that all of us have a different "take" on legitimate free speech.

In general, social contract theories are more likely to satisfy the philosophical conception of freedom of expression in Jordan than the other two theories. The essence of tribalism, including the collective of the tribe, stability, and unity among the tribes, which has been part of Jordan's identity for centuries, mirrors Social Contract Theories as well.

Social contract philosophers have different opinions on the reasons for and justification of free speech as a fundamental human right. While Hobbes reduces freedom of the press to the spectrum of the sovereign’s justice, emphasising its congruence with the common good, Locke stresses natural rights and is in favour of

the state's protection of freedom of expression. Rousseau, meanwhile, supports limitations to preserve a state where individuals are harmoniously connected by a shared collective will of the community.

The chapter intends to clarify the intricacies of protecting speech as a constitutionally protected right by providing a comparative analysis of the philosophical underpinnings of speech in the social contract and its application in Jordan. It aims to shed light on the interaction among the philosophical bases and cultural and legal situations of numerous aspects that are taking place in his life. Besides, it reveals the areas of similarities and differences.

Uncovering Jordan's philosophical background on freedom of expression is pivotal to an in-depth investigation of its legal framework and the extent of free speech being exercised in the national context. It highlights the cultural and historical backgrounds that revive the Jordanian notion of free speech and the keeping of such values of importance.

Throughout this chapter, the researcher will explore prominent ideas advocated by Thomas Hobbes, John Locke, and Jean-Jacques Rousseau concerning freedom of expression and human rights. The chapter will compare these ideas with Jordan's concept of human rights in theory and practice, aiming to discern the philosophical theory adopted by the Jordanian constitution for freedom of expression.

3.2 Thomas Hobbes

Thomas Hobbes, a prominent philosopher of the 17th century, is best known for his foundational contributions to political philosophy and his influential work "Leviathan."[139] Within the context of his political theories, Hobbes's perspective on

[139] Richard Tuck, *Hobbes: A very short introduction* (OUP 2002).

freedom of speech is a significant aspect that sheds light on his understanding of individual rights, social order and the role of government.

Hobbes's exploration of freedom of speech must be understood within the broader framework of his political philosophy, particularly his ideas about the state of nature and the social contract. In the opinion of Hobbes, the state of nature is a hypothetical situation in which people live without a centralised power thus, the result becomes a condition of perpetual conflict and insecurity.[140] In these conditions, Hobbes affirms that people are relying only on their instincts of self-preservation and are constantly desiring personal gains. Inter-ethnic frictions are thus likely to emerge and may even lead to disastrous results in terms of peace-building.[141]

Hobbes maintains that in terms of the state of nature, human life is distinguished by cease-less war and the absence of a unifying authority. To break out of disorderly situations, people tend to surrender their natural will unceasingly and create a social pact in return, forming sovereignty to bring peace and order. The central premise of this theory is that people who want to live their lives in freedom and peace are willing to give up some of these rights and freedom to the sovereign in return for well-being.[142]

According to Hobbes, the notion of social contract was not about the mutual agreement between individuals and a central government, in the way it is commonly understood, but only a pact between individuals. He argued that the act of authorizing a sovereign power takes place when individuals come together to establish a state, before the formal formation of a democracy. This intriguing aspect

[140] Thomas Hobbes, *Leviathan: Or the Matter, Forme & Power of a Commonwealth, Ecclesiasticall and Civill* (University Press 1904) <http://socserv2.socsci.mcmaster.ca/econ/ugcm/3ll3/hobbes/Leviathan.pdf> accessed on 20 April, 2024.
[141] Ibid, Chapter XIV, p. 82.
[142] Ibid.

of Hobbes' theory is evident in his statement: "For while the democracy is a making, there is no sovereign with whom to contract."[143]

Interestingly, this means that the sovereign, in this case, isn't considered a direct party to the initial covenant between individuals. Consequently, the sovereign does not hold a reciprocal obligation towards its subjects, although it does benefit from the authority granted by the compact. Thus the distinct point of view develops a significant part in which Hobbes comprehends the social contract.

Hobbes sees individual freedom in such a way that the issue gets to be more complex depicted in his philosophy. Even though his idea of individual freedom is far from the usual norm, his vivid understanding of liberty has that difference perspective. In contrast to Hobbes, who emphatically conceived freedom is, not just about being free from bodily constraints, contends that it involves elimination of "Opposition" or "Impartialities" that may impede human movement."[144]

This implies that the sovereign might have certain safeguards, but it would still remain that citizens freely choose to obey because they are scared of legal consequences or the dread of actions by the sovereign. As far as no one is being compelled to act physically, their actions will be viewed as voluntary and stem from their own, free will, irrespective of external agents.[145]

Albeit that, there is a complicated dance of duty and motivation in the bond between the ruled and the sovereign according to Hobbes' philosophy. The subjects' duty to obey the sovereign body is indefinite, as implied by Hobbes' third law of nature: the obligation to maintain the pledges made.[146] Additionally, the citizens'

[143] Ibid, Chapter XX, 119
[144] Ibid, Chapter XX
[145] Ibid., Chapter XV, 100Ibid, Chapter XVII, 120.
[146]Ibid., Chapter XIV, 92

submission to the sovereign extends to obeying the latter's conscience, further illustrating the depth of the relationship.[147]

The driving force behind the observance of the social covenant is founded on the first natural law advanced by Hobbes: "Peace to be sought after and followed". This is true of all other natural laws which are the means of peace attainment.[148] Concurrently, with the citizens' submission towards the sovereign, they should also fulfil the sovereign's will that is built on the latter's conscience, and the depth of the relationship will also be shown.[149]

It is within this context that Hobbes' stand on freedom of speech becomes quite clear. In state of nature in which individuals are propelled by their selfish interests, it is possible that liberty of speech may give more spices to conflicts and thereby impairing of social harmony. Hobbes held the view that if authority failed to preside over and regulate speech, individuals' unhindered expression would go on to pollute all channels with falsehoods, fire the common ranks, and break up social order. So, according to Hobbes, freedom of speech in the state of nature could serve as a double-edged sword, which undermines the safety of the community.

Under the social contract, the sovereign authority assumes the responsibility of maintaining order and preventing chaos. This includes regulating certain forms of speech that could undermine social stability. While Hobbes acknowledged the importance of discourse and communication, he emphasized the need for a centralized authority to determine the boundaries of permissible speech. For Hobbes, the sovereign's control over freedom of speech is a means to protect the interests of

[147] Ibid.,, Chapter III, 145.
[148] Abdel-Hay Al-Bukeli, 'Thomas Hobbes: In order to build the modern state, and to avoid the war of all against all' (2022) 11 Naqd and Tanweer 76, 90 <http://search.mandumah.com/Record/1267776> accessed 10 November 2023
[149] Ibid.

society as a whole, ensuring that individuals' expressions do not lead to turmoil and conflict.[150]

For Hobbes, even the burdens of repressive government are better than the anarchy that humans suffer in a state of nature. Thus, Hobbes described the sovereign as a "deadly god" and his power as "absolute," implying that Hobbes was a proponent of absolute power.[151]

Furthermore, Hobbes contended that any form of power balance breached this absolute sovereignty. In this context, a system of checks and balances would undermine the absolute authority of the ruler or ruling elite, which could, in turn, jeopardize their ability to govern society and maintain internal tranquillity effectively. Such a scenario could engender political strife within the governing state apparatus, thus reinforcing the imperative of steering clear of this model to safeguard societal harmony.

Additionally, Hobbes believed that any balance of powers represents a violation of this absolute sovereignty. Therefore, a balance of powers could weaken the absolute power of the ruler or ruling elite, which would have a detrimental impact on the ability to manage society and maintain internal peace. Such a situation would lead to political conflicts within the ruling state apparatus. Consequently, there is a need to avoid adopting this model to preserve society.[152]

The influence of the Civil War in England on Hobbes's ideas and his profound fear of societal duplication and power conflicts among various apparatuses are

[150] Ihsan Abdel-Hadi Salman, 'The political philosophy of Thomas Hobbes: A contemporary reading of his most important political ideas' (2013) 2 JCLL 254, 289 <http://search.mandumah.com/Record/909849> accessed 22 June 2022

[151] Thomas Hobbes, op. cit., Chapter XVIII, p. 113.

[152] Noura Kaddour, 'The concept of absolute power in Thomas Hobbes' (2023) 12 JHSS 11, 28 <http://search.mandumah.com/Record/1348868> accessed 15 September 2023

evident. Hobbes lived through a turbulent period in England's history – the rule of King Charles I and the civil war – which deeply concerned him about the potential collapse of the state. Consequently, he sought to establish a robust central authority that could effectively maintain peace and order.[153]

However, this approach seems to entirely overlook the harms of repressive government, as it neglects an assessment of how authoritarian governance can pose security threats. The suppression of individual liberties is a significant contributor to the chaos and civil wars often witnessed in repressive states. For instance, the extensive human rights violations in countries like Libya and Syria after 2011 serve as prime examples of how the state itself can become a substantial security threat and contribute to the kind of chaos that Hobbes feared.[154]

It is quite convincing that, from Hobbes' perspective, these states lost their legitimacy due to their failure to offer protection and security to their citizens. Consequently, the social contract became revocable, and individuals were no longer bound by the duty to obey. However, this perspective overlooks the fact that the failure of these states to provide security and the subsequent emergence of chaos resulted from the initial lack of respect for the freedoms of individuals in the first place.[155]

Hobbes's approach to freedom of speech has sparked debates and criticisms over the centuries. Critics argue that his emphasis on centralised control over speech could potentially lead to censorship, authoritarianism and the suppression of dissenting voices. Additionally, his view seems to prioritise social order over

[153] Ibid.
[154] Ian Turner, 'A Positive, Communitarian Right to Security in the Age of Super-Terrorism' (2017) 13(1) Democracy and Security 46-70. <https://doi.org/10.1080/17419166.2016.1242420> accessed 22 June 2022
[155] Ibid.

individual liberties, raising questions about the extent to which individuals should be willing to sacrifice their freedoms for the sake of stability.[156]

Amidst all the considerable criticism directed towards the Hobbesian theory, it becomes imperative to acknowledge the rising influence of Hobbes' argument advocating for limited freedom of expression. This influence is particularly evident within the Middle East and the Arab world, regions that are plagued by persistent conflicts and unrest.[157]

The concept of limited freedom of expression, while seemingly contrary to democratic values, has garnered increasing traction in the region due to the ongoing conflicts that plague these nations. Jordan, like its Arab counterparts, grapples with societal tensions aggravated by insecurity.

In this context, Hobbes' argument for curtailed expression becomes an appealing proposition. The usage of censorship might seem to be an antithesis to democratic values, though in the real sense acts as a preservation of societal cohesion and preventing further upheaval.

The model which Hobbes had developed becomes more inviting of acceptance if we view it through the historical background of the life of Jordan. The deep-rooted downed political consciousness of the country because of the present continuous 400 years of security chaos with the deepness of stability need. Hobbes's model (which focuses on might, powerful forces positioned at the centre to maintain peace and order) conforms to Jordan age-old problems. This country has been trying to overcome the hurdles that come all the way from the past and this very momentum

[156] Abu Bakr Ibrahim Al-Taloua, 'Thomas Hobbes and the Great Leviathan: A Critical Analytical Study' (2004) 6 TUL 189, 218 <http://search.mandumah.com/Record/1262424> accessed 22 September 2023

[157] S Blackwell, *Hobbes and the Paradoxes of Political Origins: The Case of the Islamic World* (In A. Brett & E. Eastman (Eds.), The Reception of Thomas Hobbes in Europe and America 2017) 317, 336.

has been contributed to the development and spread of Hobbes's theories in Jordan and the Arab region at large.

The model thus becomes much more of an option to choose from while Jordan's history is taken into account. The long-term struggle, for more than four centuries, for security has left a need for stability in the culture of the political thought of the country. Hobbes's model, which has the key role of a strong authority to maintain order as a solution to Jordan's history, is at its core.

Furthermore, the prevailing socio-political climate in the Arab world, including Jordan, demonstrates the pragmatic appeal of Hobbesian principles. The Arab Spring and the ensuing events have demonstrated the liability of social contracts in these nations. Hence, a state structure where Hobbes' focus is on a strong sovereign is a highly developed idea.[158]

For these reasons, the researcher is driven to embark on a comprehensive exploration to uncover the extent to which Hobbes' model has influenced Jordan. This inquiry is not about suggesting a wholesale adoption of Hobbes' theories but rather delving into the nuanced ways in which his ideas have shaped Jordan's governance landscape.

It is worth that the investigation into the extent of Jordan's engagement with Hobbes' model does not imply a one-size-fits-all application of his theories. Rather, it signifies a conscientious study of how his ideas have been assimilated, adapted, or selectively implemented within Jordan's specific historical, cultural, and geopolitical context.

[158] Imad Salamey, *The decline of nation-states after the Arab spring: The rise of communitocracy* (Routledge, London 2016).

3.3 John Locke

John Locke, a prominent philosopher of the Enlightenment era, played a significant role in shaping the philosophical foundations of freedom of expression. His social contract theory offers a compelling perspective on the relationship between individuals and the state, providing valuable insights into the nature and importance of the right to express oneself freely.[159]

John Locke's influential work, "Two Treatises of Government," written in response to the reign of King James II of England and published after the "Glorious Revolution" of 1688, addresses the establishment of civil authority for maintaining collective peace and order. [160]

Locke's theory originates from the notion of the "state of nature," a realm of perfect freedom and equality where individuals enjoyed an "empire" over themselves and their possessions, independent of external control. Despite this apparent utopia, Locke argues that the state of nature was "very unsafe, very insecure," leading individuals to seek the institution of civil government.[161]

Locke's rationale for the formation of civil society is rooted in the need for protection. In the absence of enforceable "civil" laws and impartial judges, individuals were driven to unite and form a commonwealth through an original contract, thereby ceding certain rights in exchange for security.[162]

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[159] Thamer Zerrougui, 'John Locke, philosopher of the Enlightenment and liberalism' (In Anglo-American Philosophies from Deconstruction of Reality to Its Reconstruction 2016) 25, 55 <http://search.mandumah.com/Record/804840> accessed 22 June 2022

[160] Ian Turner, 'Conceptualising a protection of liberal constitutionalism post 9/11: an emphasis upon rights in the social contract philosophy of Thomas Hobbes' (2020) 24(10) TIJHR 1475, 1498 <doi:10.1080/13642987.2020.1834095> accessed 22 June 2022

[161] Ibid.

[162] Ihab Muhammad Ali Zaher 'John Locke's social contract theory' (2020) 378 Afkar 79, 82 <http://search.mandumah.com/Record/1094847> accessed 22 June 2022

Central to Locke's social contract theory is the notion that the government derives its legitimacy from the consent of the governed. Unlike Thomas Hobbes, Locke's view of the social contract emphasizes the protection and preservation of individual rights. He argues that governments are established to secure and uphold the natural rights of individuals, including the right to freedom of expression.[163]

Interestingly, Locke's concept of the separation of governmental powers deviates from the strict interpretation, primarily focusing on the separation of legislative, executive, and federative powers. The legislative and executive branches were relatively separate, while the executive and federative powers exhibited a closer relationship.[164] The judicial power, although not entirely separate, operated under the auspices of the legislative function. Locke believed that the primary purpose of law was to secure individual freedom, ensuring that individuals are "free from restraint and violence from others," including the state.[165]

Locke's views on the role of government are grounded in the idea of limited power. He argues that the primary purpose of government is to safeguard the natural rights of individuals, particularly their property. This protection of property is a central aspect of Locke's philosophy, as he believes it is one of the key motivations for individuals to enter into the social contract.[166]

In Locke's vision, the government is a trustee, acting in the best interests of the people it serves. It is responsible for creating and enforcing laws that promote justice, protect citizens' rights, and maintain order. However, Locke maintains that if a

[163] Ibid.
[164] Ali Yusef Abd al-Nabi Al-Shukri, Mustafa Fadel Karim Al-Khafaji and Amer Abd Zaid Kazem al-Waeli, 'The principle of separation of powers in modern political philosophical thought' (2017) 7(2) JBCHS 1, 24 <http://search.mandumah.com/Record/843004> accessed 20 September 2023
[165] John Locke, *Two treatises of government: Second treatise of Government, Chapter XIX* (Cambridge University Press 1988).
[166] Ibid. (1988). Chapter IX, p 350.

government oversteps its bounds, becomes tyrannical, or fails to protect the natural rights of its citizens, the people have the right to resist and, if necessary, overthrow that government.[167]

Locke's stance on the role of the sovereign power is minimal, driven by the need for protection against potential threats to individuals' natural rights. His depiction of freedoms in the state of nature implies that the formation of government was reluctantly necessitated rather than a result of a positive desire for citizenship. Locke's core objective in the social contract is the safeguarding of property rights, and any abrogation of these rights requires consent. This contrasts with Thomas Hobbes's perspective on violations of natural rights, emphasizing the need for sovereign authority.[168]

Despite the perception that Locke rejected absolutism in favour of maximal freedom, it seems to be disregarded that Locke acknowledged the need for significant discretion in certain situations. He recognized that to safeguard the greater good during unforeseen and uncertain events, the state's Executive branch had a prerogative that could demand immediate action 'without being bound by the Law,' granting the Executive power a certain latitude to make decisions not explicitly dictated by legal statutes.[169]

Notably, Locke even extended this idea by stating that such actions could be taken "without being bound by the Law, and at times, even in opposition to it." Additionally, questioning the exercise of this prerogative power was deemed

[167] Peter Laslett, *Introduction to LOCKE. Two Treatises of Government* (Cambridge University Press 1988).
[168] Ian, Ibid. p 9.
[169] Ian, Ibid. p27.

unacceptable. Although Locke had previously asserted that "Tyranny begins where Law ends".[170]

Locke acknowledges limitations on freedom of expression. He argues that this right is not absolute and should be exercised within the bounds of the law. Locke contends that individuals must respect the rights of others and refrain from engaging in speech that incites violence, defames others, or causes harm. The state, as the guardian of individual rights, has the authority to protect society from speech that poses a threat to public safety or infringes upon the rights of others.[171]

The similarity between John Locke's perspective on limitations to freedom of expression and the Jordanian constitution's approach to this fundamental right is striking, as both emphasize the importance of exercising free expression within the bounds of the law. Locke's ideas on responsible expression and the necessary limits on this right share common ground with the Jordanian legal framework that links freedom of expression to the law, reflecting a balance between individual liberties and societal interests.

However, there exists a notable distinction between John Locke's perspective on freedom of expression and the perspective held by the Jordanian state. Locke's focus predominantly centres on the realm of individual rights, often overlooking the inherent societal responsibilities intertwined with the exercise of the freedom of expression.

It's crucial to recognise that the limitations and restrictions placed on freedom of expression within the Jordanian context may diverge from the ideals advocated by

[170] Ibid.
[171] Manoubi Ghobashi, 'John Locke and liberalism' (2006) 27(136-137) JCAT 59-74 <http://search.mandumah.com/Record/433760> accessed 25 September 2023

Locke. While Locke's theoretical framework prioritises the safeguarding of individual freedoms as a fundamental aspect of a well-functioning society, the Jordanian perspective introduces a more pronounced emphasis on the broader societal responsibilities that accompany the exercise of this cherished right.

The researcher will examine the similarities and differences between Locke's perspective and the Jordanian perspective on freedom of expression later in this chapter.

3.4 Jean-Jacques Rousseau

Jean-Jacques Rousseau's concept of the "social contract" is a foundational idea in political philosophy, particularly in his work "The Social Contract" (published in 1762). This concept represents a significant departure from earlier political theories and has had a profound influence on the development of modern democratic thought.[172]

Jean-Jacques Rousseau held an idealized perspective on the state of nature, similar to that of John Locke. Much like Locke (and even Hobbes), Rousseau's understanding of the state of nature was heavily influenced by the concept of individual freedom.[173] In an earlier publication, "A Discourse on Inequality," which was first released in 1754, Rousseau depicted the natural person as possessing free will. This notion of anarchic freedom was rooted in the fact that the state of nature, by definition, lacked any form of government or positive law. Furthermore, this

[172] Naima Belkacem Jabri, 'The social contract: Jean-Jacques Rousseau as an example' (2019) 11 The Castle Magazine 190, 199 Retrieved from <http://search.mandumah.com/Record/1027199> accessed 25 September 2023
[173] Ian Turner, 'Jean-Jacques Rousseau, Liberty and Counter-Terror Law Since 9/11' (2021) 3 KLR 20, 44 ISSN 2732-5679

concept extended to personal freedom, as individuals in this state were not reliant on a master, employer, or immediate superior for their sustenance.[174]

However, Rousseau considered this portrayal as the 'original' state of nature. Consequently, in his later work, "The Social Contract," he presented an altered perspective. For instance, when Rousseau characterized the state of nature as 'an uncertain and precarious mode of existence,' he was illustrating the 'social' or 'pre-political' state of nature, rather than the 'original' version.[175]

According to Rousseau, individuals come together to form a social contract voluntarily, creating a political community that ensures their mutual protection, freedom, and well-being. The central idea is that people agree to give up certain natural freedoms in exchange for the benefits and protection provided by a collective society. It represents the collective will of the people as a whole, reflecting what is best for the common good, rather than individual or special interests. Rousseau believed that a just society is one in which the general will is upheld, and laws and policies are created based on this collective agreement.[176]

The concept of the general will, a cornerstone in Rousseau's political philosophy, represents a curious and significant idea.[177] Unlike a mere expression of the majority's will or the collective will of all citizens, it is conceptualized as a manifestation of the will inherent to the body politic.[178] Rousseau's view discouraged extensive communication among citizens before deliberations, fearing that this would lead to the expression of particular wills rather than the coveted general will.

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[174] Jean-Jacques Rousseau, *A Discourse on the Sciences and the Arts in The Basic Political Writings* (Hackett Publishing Company, Indianapolis 1987).
[175] Turner, Ibid, p 29.
[176] Ibid.
[177] Turner, Ibid, p 31.
[178] Jean-Jacques Rousseau, *The Social Contract* (Wordsworth Editions, Ware 1998).

Instead, he advocated for citizens to form their independent thoughts after being adequately informed, safeguarding the purity of the general will.[179]

A distinct feature of Rousseau's perspective is he didn't impose constraints on the sovereign. The law was not fixed or entrenched; there existed no fundamental law that could bind the sovereign, even its foundational rules.[180] Attempting to limit the sovereign in such a manner would be tantamount to its destruction, as it would regress to a state resembling the pre-political nature.[181] This perspective emphasizes the inalienable and indivisible nature of sovereignty, asserting its supreme status vested in the people, even if it raises concerns about potential unchecked majority rule.

Among the broader aspects of Rousseau's envisioned state, attention is drawn to the figure of the Legislator, a constitution maker, which has been a source of controversy within his political theory.[182] Critics have labelled the Legislator as a 'totalitarian manipulator,' a contention arising from Rousseau's belief that the populace lacks the requisite understanding of political principles to establish a sound constitution independently.[183] This perspective invites questions about the balance between popular sovereignty and the necessity of knowledgeable, guiding figures in shaping the constitutional framework.

The Social Contract by Jean-Jacques Rousseau delves into several intriguing aspects of governance, including the concept of dictatorship and the relationship between individual liberty and the authority of the state. In the chapter on

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[179] Ibid,29.
[180] Ibid, Chapter VII, 17.
[181] Ibid.
[182] Lee Ward and Bruce King, *Modern democracy and the theological-political problem in Spinoza, Rousseau, and Jefferson* (Palgrave Macmillan, 2014).
[183] Philip J Kain, 'Rousseau, the General Will, and Individual Liberty' (1990) 7(3) HPQ 315, 334 <https://www.jstor.org/stable/27743941> accessed 15 September 2023

'Dictatorship,' Rousseau raises concerns about the rigidity of laws that prevent adaptability in emergencies. He acknowledges that unforeseen events may arise that the state had not provided for, and this inflexibility of laws could hinder effective responses to crises.[184]

Rousseau presents two approaches to managing emergencies based on the nature of the danger. If the issue can be resolved by increasing the government's activity, power is temporarily concentrated in the hands of a few members, without altering the fundamental authority of the laws. However, if the peril is severe enough that existing laws obstruct their preservation, Rousseau suggests the appointment of a supreme ruler who suspends the sovereign authority temporarily.[185]

Shifting the focus to individual liberties, Rousseau's perspective comes into play. While the legislative supremacy of the sovereign is upheld, he emphasizes that the natural and civil freedoms of citizens are not necessarily entrenched. Rousseau advocates for limited public communication before collective discussions of the general will, aiming to prevent the emergence of factions or partial associations. He believes that the interests of such groups might not align with the broader interests represented by the general will.[186]

Rousseau also places constraints on freedom of expression and thought through the introduction of a public censor. Additionally, he suggests the establishment of a civic religion. The sovereign would define the content of this civic religion, and while individuals could not be compelled to believe in its teachings, those who

[184] Hanan Khadra, 'The Concept of the Social Contract between John Locke and Jean-Jacques Rousseau' (Unpublished MA thesis, Kasdi Merbah University – Ouargla 2016) <http://search.mandumah.com/Record/1008597> accessed 10 February 2024
[185] Ibid.
[186] Sami Shahid Mashkor Al-Mayali, 'The Origin of the State According to the Social Contract Theory: Hobbes, Locke, and Jean-Jacques Rousseau and Its Impact on Contemporary Thought' (2012) 5(12) Kufa Adab 175-200 <http://search.mandumah.com/Record/189101> accessed 15 September 2023

rejected it might face banishment from the state, and in extreme cases, the death penalty.[187]

This aspect raises questions about the compatibility of such a model with a truly democratic society, especially in its potential exclusion of members, particularly atheists. The problem of the compatibility of the unity of the state, according to Rousseau, with at the same time the recipients' rights of citizens to pursue their own individual freedoms and beliefs is still a worthy issue, as it is forcing the balance in those countries between the principle of their governance, diversity, and inclusiveness.

Rousseau's declaration of freedom of expression has generated some adverse comments and pressures. A major fault line of the idea of the general will is that it could bring the dominance of the majority and suppress the diversity of views in heterogeneous societies.[188] The communal interest is the main priority of Rousseau's framework, which might forbid the manifestation of dissenting views that initiate society's development and various minority rights.

In addition, the main argument of Rousseau for freedom of expression lies on the grounds that the general will is the only way to freedom. The question of how this principle can be manipulated and if minority voices will be excluded arise here.[189] The attainment of the general will is not usually easy, and the powerful voices of a society may impose their interests and opinions without hearing the various viewpoints coming from different sources within the society.

[187] Ibid.
[188] Hassan Fahd Musa Mustafa Shoaib, 'Criticism of Modernism by Jean-Jacques Rousseau' (2020) 93 JCA 102, 132 <http://search.mandumah.com/Record/1231060> accessed 22 June 2022
[189] Ibid.

The contradiction between Rousseau's position of free speech with the reality of Jordan's society is evident in terms of both resemblance and dissimilarity. Rousseau's A contention supporting the subordination of personal interests to societal welfare, the main theme in Rousseau, finds an echo in the Jordanian culture and societal values. The Jordanian society highly esteems harmonious cooperation with the other members of the community, which also includes showing respect for power and the preservation of social unity.

In this context, freedom of expression is often understood as a right that should be exercised responsibly, taking into account the greater interests of the community.

However, there are also notable differences between Rousseau's theory and the practical application of freedom of expression in Jordan. The Jordanian context involves complexities related to power dynamics, including the influence of tribal structures, political authority, and societal hierarchies. These factors can affect the extent to which individuals can freely express themselves and participate in public discourse.

In the upcoming section of this chapter, the researcher will explore the extent to which Jordan has been influenced by Rousseau's philosophy concerning freedom of expression.

3.5 The philosophical basis for freedom of expression in Jordan

In the preceding sections of this chapter, we have embarked on a journey through the philosophical corridors of three eminent social contract thinkers: Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. Their revolutionary ideas about the nature of the social contract, the role of government, and the rights of individuals have profoundly shaped modern political thought. As we pivot our focus to the

Jordanian landscape, we carry with us the insights garnered from the works of these three luminaries.

This section explores the philosophical basis of freedom of expression in Jordan, embracing a comprehensive perspective that traverses both the theoretical and practical dimensions. We deal with the question of how the ideas about the sovereign power formulated by Hobbes, the multiplicity of natural rights expressed by Locke and the general will corresponding to Rousseau are in any way echoed in the principles underlying the freedom of speech in Jordan. That is why we acknowledge the multiplicity of the problems in Jordan that such a notion of a universal human right has.

We endeavour to examine thoroughly and unveil the theoretical concepts of freedom of speech in the visions of Hobbs, Locke and Rousseau and come up with a comparison to the real-life stories in Jordan. We accept the fact that the place of tolerance for the expression of ideas in a certain country is determined not only by the theoretical principles but also by the specific interplay of the authorities, civil society, cultural values and legislation. However, our objective is to discover the hidden needs, differences, and overlaps that exist at the spot where these philosophical trappings of Jordan and real-life cross.

By launching this dual probe, we will be setting the way for a better insight of the diverse perspectives of view of Jordanians about the outpour of speech. This examination, grounded in the works of Hobbes, Locke and Rousseau, coupled with the context-specific considerations of Jordan, will offer valuable insights into the intricate relationship between theory and practice in shaping a nation's approach to one of the most fundamental aspects of human rights: freedom of speech and non-constraint of thoughts.

3.5.1 Freedom of expression in Jordan in theory

The philosophical foundation of Jordan's freedom of expression merges theory-based and practice-based perspectives, in which Rousseau's philosophy and the Lockean idea contribute greatly to the latter section.

When examining the Jordanian context, it turns out that the nation's constitution was shaped primarily by the social contract ideas, which resulted in a framework allowing for individual freedoms and the protection of general will.

As a superficial look at the Jordanian constitution reveals its commitment to human rights crucially includes the expression freedom, this principle is tightly connected through the social contract ideas. The political system of Jordan was based on the structure of the constitution through which the social contract philosophy is seen as real. Notably, the second chapter of the constitution delves into the rights and duties of Jordanians, with Article 15 emerging as a cornerstone in the realm of freedom of expression. This article ensures the right to voice opinions, thoughts, and ideas, provided they do not transgress the boundaries set by the law.[190]

A closer examination of Article 15 unveils a nuanced adherence to Rousseau's philosophy, particularly concerning the delegation of power and determination of limits.[191] The absence of a concrete definition of freedom of expression within the constitution reflects a keen alignment with Rousseau's belief in the power of the people, the ultimate sovereigns, to decide on matters that influence the collective welfare. By entrusting the legislative authority with the task of defining these limits,

[190] Jordanian Constitution, Article 15.
[191] Ibid.

the constitution mirrors Rousseau's notion of individuals willingly surrendering a part of their rights to the society they collectively form.[192]

The embodiment of Rousseau's ideas continues to resound within the very essence of the constitution. The principle that the nation is the origin of all powers, enshrined in Article 24, echoes Rousseau's assertion that sovereignty lies within the hands of the people.[193] This philosophical thread is interwoven with the fabric of Jordanian governance, cementing the foundational belief that the state draws its legitimacy from the people it represents.

Furthermore, the role of the legislative authority in shaping the limits of freedom of expression highlights a fascinating intersection of Rousseau's and Locke's ideas. The constitution empowers Parliament, as representatives of the people, to determine the boundaries of freedom of speech. This approach aligns with Rousseau's belief that individuals, by surrendering a part of their rights, surrender to society rather than a single authority.[194] In contrast, Locke's influence can be perceived in the constitution's positive guarantee of freedom of expression. The state's proactive role in promoting and facilitating this right reflects Locke's notion that the government acts as a guarantor of individual rights.[195]

The protective clause in Article 128, prohibiting laws from affecting the essence of fundamental rights, epitomizes the concept that the legislative authority must serve as a safeguard for individual liberties, echoing Locke's ideas of a government that

[192] Jamal Barkay and Riyad Tahir, 'The social contract of Jean-Jacques Rousseau' (2022) 10(1) Racks 862, 890 <http://search.mandumah.com/Record/1250513> accessed 25 December 2023
[193] Article 24 states, "The Nation is the source of all powers."
[194] Ibid.
[195] Mustafa Fawaz Siddiq Manna, 'The state and its powers in John Locke. Scientific Journal of the College of Arts' (2016) 1 SJCA 161-180 <http://search.mandumah.com/Record/991288> accessed 15 September 2023

preserves natural rights. This notion further distances the Jordanian constitutional framework from Rousseau's more limited view of legislative power.[196]

The theoretical underpinnings of the Jordanian constitution, as shaped by social contract ideals, are characterized by the infusion of Rousseau's concept of the people's sovereignty and the need for a general will to determine the limits of rights. Nevertheless, it is essential to recognize that the influence of John Locke's ideas, particularly concerning the government's role in protecting rights and the preservation of fundamental liberties, has also left an indelible mark on Jordan's constitutional landscape.

The notion of the separation of powers in the Jordanian constitution also finds a distinct resemblance to Rousseau's ideas. Although not explicitly mentioned in the constitution, the distribution of powers among different authorities, each with its defined competencies, mirrors Rousseau's stance on the indivisibility of sovereignty.[197]

Furthermore, the executive authority's role in the legislative process aligns with Rousseau's recognition that the executive branch may participate in law-making activities.[198] This harmony between the executive and legislative branches in the creation of laws is a reflection of Rousseau's acknowledgement that collaboration between these entities can lead to effective governance, particularly in exceptional circumstances or in the absence of legislative authority. The allowance for the executive authority to exercise legislative functions under certain conditions, driven

[196] Article 128 stipulates that: "Laws issued under this Constitution to regulate rights and freedoms may not affect the essence of these rights or affect its fundamentals."
[197] Shatnaoui, Faisal Akle. (2013). The principle of separation of powers in the Jordanian constitutional system. Irbid for Research and Studies - Law, Vol. 17, P1, 163-213. Retrieved from http://search.mandumah.com/Record/666300
[198] Ibid.

by the imperative of public interests, underscores the compatibility of Jordan's constitutional framework with Rousseau's philosophy.

In conclusion, the philosophical basis of freedom of expression in Jordan, as enshrined in the constitution, is a synthesis of the ideas of social contract theorists, prominently Jean-Jacques Rousseau. The constitution's respect for the separation of powers, the recognition of the people as the source of power, and the protection of individual rights align with Rousseau's principles. The researcher's assertion that the foundation of Jordan's constitutional system is rooted in the social contract theory, with influences from Rousseau and some aspects of Locke, is a persuasive narrative.

3.5.2 Freedom of expression in Jordan in practice

The philosophical foundations of freedom of expression in Jordan, as outlined in its constitution, appear to be rooted in the social contract theory, echoing the principles advocated by Jean-Jacques Rousseau. However, in practice, the dynamics lean more towards Thomas Hobbes' social contract theory, where the ruler assumes the role of the sovereign, shaping the limits of freedom granted to individuals.

In theory, the Jordanian constitution envisions a symbolic role for the king, with real power originating from the nation. Nevertheless, the king's role extends beyond the symbolic, with significant executive authority encompassing legislation, military command, and foreign affairs. The monarchy is considered a unifying force in the country, bridging divides among ethnic and religious communities. This centralized power has been justified by its potential to ensure stability and national unity, aligning with Hobbes' vision of a strong sovereign to maintain order.[199]

[199] See the Jordanian Constitution, Articles from 30 to 42.

Hobbes' idea of a social contract, where individuals voluntarily surrender certain rights to the sovereign in exchange for protection and security, has parallels in Jordan's governance. While the king's authority is not derived from a literal contract with the citizens, it is viewed as an implicit agreement where the monarchy provides stability, economic development, and social harmony in return for the loyalty and support of the people.[200]

The executive branch also extends its reach beyond the mere implementation of laws. This shift is exemplified by the prevalence of laws enacted without the active participation of the legislative authority. The legislature's role, in many cases, seems more superficial, designed to fulfil a democratic facade rather than meaningfully balance power with the executive.[201]

A noteworthy example of this discrepancy is Jordan's accession to the International Covenant on Civil and Political Rights. While the treaty was ratified and became part of the legislation, the constitutionally mandated approval by the legislative authority was omitted. This omission highlights the substantial legislative power retained by the executive branch, showcasing its role as the true legislator of laws.[202]

The judicial system in Jordan illustrates this imbalance, as judges are appointed from the executive branch, and represented by the king. This intertwining of roles raises concerns about the legal certainty of laws. The broad terms found in statutes

[200] Ansam Amer Al-Sudani, 'Human Rights Philosophy: Hobbes - Locke - Montesquieu – Rousseau' (2018) 36(141) AJHS 359, 377. <http://search.mandumah.com/Record/865320> accessed 20 September 2023
[201] Anas Muhammad Asam Abdel Rahman, 'The impact of the constitutional amendments of 2011 on Public Authorities in Jordan' (Master Thesis, Al-Ahliyya Amman University 2015) <http://search.mandumah.com/Record/995718> accessed 19 March 2024
[202] Ibid, p 84.

allow for subjective interpretation, creating a level of discretion that affects the consistent application of justice.[203]

The separation of powers, a foundational aspect of democratic governance, appears to be primarily formal in Jordan. A significant concentration of powers in the hands of the executive authority diminishes the effectiveness of checks and balances. The executive branch can influence various forms of freedom of expression through broad laws, particularly through the jurisdiction of specialised courts like the State Security Court, whose judges are directly appointed by the executive branch.

In conclusion, while the philosophical underpinnings of freedom of expression in Jordan may theoretically align with the social contract principles, the practical execution of governance leans towards a model more closely resembling Thomas Hobbes' perspective. The substantial authority held by the executive branch, the limitations on the legislative authority, and the potential deviations from international human rights standards raise important questions about the true extent of freedom of expression in the country. Striking the right balance between the symbolic sovereignty enshrined in the constitution and the effective practice of democratic governance remains a complex challenge for Jordan as it navigates these intricate dynamics.

3.6. Conclusion

The philosophical basis for freedom of expression in Jordan reflects a unique approach, characterized by a blend of collective responsibility and the overarching influence of the executive branch, resembling elements of both the social contract

[203] Mustafa Fouad Al-Khasawneh, 'The independence of the judiciary in light of the Jordanian Constitution of 1952 and its amendments' (2013) 13(1) ZJRHS Zarqa University 159, 174 <http://search.mandumah.com/Record/486063> accessed 20 September 2023

theories of Rousseau and Hobbes. While the constitution seemingly envisions a symbolic role for the king and emphasizes the importance of national unity and stability, the practical implementation often tilts towards the concentrated authority of the ruler.

In this context, the idea of collective rights takes precedence over individual rights, aligning with the perception that the monarchy serves as a unifying force, transcending ethnic and religious divisions. This centralized power which is vested in the executive power is very necessary for the order, which agrees with Hobbes' statement on the necessity of a strong sovereign who keeps the stability of the state.

In theory, the philosophical foundation seems to stand for and promote the concepts embedded in the social contract model but the government has a predominant executive power that defines laws, regulates the legislative process, and even to a considerable extent controls the judicial system. The nation as the symbolic origin of sovereignty has been overlooked in favour of the executive's overwhelming power.

Jordan's international responsibilities to freedom of expression may thus appear strange at first glance–it appears completely incompatible with its cultural heritage and also with the philosophical approach to freedom of expression. The tension comes from the fact that the system of government in which treaties and laws are ratified by the executive branch does not involve legislative action.

This deviation from international standards is concerning and may give rise to questions as to the implications of Jordan's practices on its adherence to global human rights. It is this delicate line that must be carefully leaned on without overemphasizing the historical weight of the nation and its symbolic sovereignty,

losing the ground for the struggle for individual liberties and effective democratic governance.

In conclusion, it is crucial to emphasize that the philosophical underpinnings of freedom of expression, the centralized authority, and Jordan's commitments to the international community have necessitated the importance of taking a more critical approach when it comes to determining the actual definition and nature of freedom of expression within the nation. The national identity as the common good while guarding individual liberties is paramount to achieving the covenant of liberty and equality as the legal values of the nation of becoming strong democratic aspirations and defining the American constitution.

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[205] Anas Muhammad Asam Abdel Rahman, 'The impact of the constitutional amendments of 2011 on Public Authorities in Jordan' (Master Thesis, Al-Ahliyya Amman University 2015) <http://search.mandumah.com/Record/995718> accessed 19 March 2024
[206] Ibid, p 84.
[207] Mustafa Fouad Al-Khasawneh, 'The independence of the judiciary in light of the Jordanian Constitution of 1952 and its amendments' (2013) 13(1) ZJRHS Zarqa University 159, 174 <http://search.mandumah.com/Record/486063> accessed 20 September 2023

In conclusion, while the philosophical underpinnings of freedom of expression in Jordan may theoretically align with the social contract principles, the practical execution of governance leans towards a model more closely resembling Thomas Hobbes' perspective. The substantial authority held by the executive branch, the limitations on the legislative authority and the potential deviations from international human rights standards raise important questions about the true extent of freedom of expression in the country. Striking the right balance between the symbolic sovereignty enshrined in the constitution and the effective practice of democratic governance remains a complex challenge for Jordan as it navigates these intricate dynamics.

Chapter 4

Jordan's International and regional human rights commitments

4.1 Introduction

In the study, the researcher analyses the complicated historical and cultural trends that underlie a definition of freedom of expression in Jordanian society. This is supported by the fact that he has carried out an analytical examination of the philosophical grounds that inform the value of freedom. Then, his attention shifts to an in-depth and exploratory analysis of the intricate set of laws that aim at regulating freedom of expression in Jordan. Triads aims to synthesise the ideas he has researched earlier into the basic structure which we see today as the main frame of the legal system.

The historical and cultural foundation, together with philosophical bases, are at the root of our understanding that freedom of expression is considered and evaluated in Jordan. These facets give a broad overview that serves as a background and as a prerequisite for our discussion of the legal realm, helping us to unite the subject history, philosophy, and law of Jordan.

On the international stage, the Kingdom of Jordan has made particular pledges to abide by and safeguard freedom of speech. The country ratified two key international treaties: ICCPR and ACHR, which are treaties by nature and they have different scopes and levels of acceptance. The treaties that constitute the legal structure of the country which is supportive and safe for the citizens' exercise of the freedom of expression are these treaties. ICCPR, the UN-adopted legal instrument, greatly underlies the crucial significance of this right, and signatory nations, including the state of Jordan, in turn, are obliged to respect it.

With the Arab Charter on Human Rights, which includes regional aspirations, the country is also subjected to another international duty, strengthening the principles of human dignity and securing a definite place for freedoms, specifically the freedom of expression. These promises provide us with an introductory framework which we will then use to examine how the national legal system of Jordan is in line with these international standards.

The main goal of this chapter is to reveal the range of ways in which the international treaties concerned have been domesticated in the national legal system of Jordan. Therefore, this research is directed towards exploring whether these commitments are indeed real by being integrated into the constitutional law of the modern state of Jordan. We consider this approach as an approach that helps to investigate the national legal ramifications of international obligations and the way they work.

We will investigate this through an analysis of whether the provisions of ICCPR and Arab Human Rights Charter are translated into practical laws, regulations, and policies. Through such investigation, we intend to not only determine the role of these treaties on the free speech jurisprudence and case law of Jordan but also highlight the extent to which those treaties protect and promote freedom of speech.

As we embark on this exploration, we hope to show that there are some points of mix-ups between Jordanian international affiliations and its domestic legal framework. To achieve a complete idea of the level of freedom of expression in Jordan and how it relates to the world's standards of human rights, we have attempted to discuss the fundamental implications of free speech in Jordan.

4.2. International Standards and Commitments

The main purpose of ceaselessly defending human rights all over the world is to make global treaties and agreements as a basis to retain any fundamental liberties. Along with others, the UDHR and the ICCPR, in particular, are worth mentioning as outstanding documents designed to ensure that every country fulfils its commitments to guarantee the essential rights and freedoms of its citizens.

Whether it be like Jordan, a nation that is a signatory to the UDHR and a party to the ICCPR, a thorough study of the translation of global pronouncements on freedom of expression to domestic compliance could be a serious issue.

In this part, an exploration of international provisions starts, to see how the contours of freedom of expression can be finally defined.

4.2.1 Universal Declaration of Human Rights

UDHR which is a declaration by the United Nations General Assembly (UNGA) was adopted in 1948. It has also achieved a status of de facto non-legally binding document or pact. However, it is considered as a basis or fundamental document in the evolution of the international human rights law.[208]

Although the UDHR is not as binding as treaties and conventions, among other things, it has been cited as a reference and inspiration in the development of legally binding human rights treaties including the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political

[208] Johannes Morsink, *The Universal Declaration of Human Rights: origins, drafting, and intent* (University of Pennsylvania Press 1999).

Rights both of which can be traced to the UHER's citation. Also, this forms the basis for regional human rights.[209]

Moreover, many rights that are incorporated into the UDHR have been classified customary international law and therefore legally binding for all states regardless of whether they have ratified the treaties concerning the protection of such rights.[210]

Freedom of expression is one of the fundamental human rights recognized in the UDHR. Article 19 of the UDHR states that "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."[211]

Nevertheless, the right of expression is not absolute, and the restrictions should not be imposed completely on this right. For instance, Article 19 of the UDHR prescribes the limitation of the freedom of expression in the form of necessary restrictions for the sake of others' rights or reputations, or in the name of national security or public order, or for public health or morals".[212]

These limitations should be taken into strict compliance with law, necessary to attain the aim, and acceptable proportion to that end. Moreover, the restrictions on freedom of expression should not be construed as a way to silence dissent or stop legitimate criticism which may be justifiable in that respect.[213]

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[209] Ibid,p 285.
[210] Ezz Al Arab for Hakim Bennani, 'The Universal Declaration of Human Rights: Principles and Values' (2020) 18(7) Al-Tawfah Magazine: MoERA 381, 404 <http://search.mandumah.com/Record/1053899> accessed 25 September 2023
[211] UDHR, Article 19.
[212] Ibid.
[213] United Nations. (2015). Universal Declaration of Human Rights. United Nations.

Although the UDHR did not specifically restrict freedom of expression, nor did it specify clear restrictions on the exercise of freedom, it did stipulate general restrictions that include all freedoms in Article 29.

The second paragraph of Article 29 stipulates that: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely to secure 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." [214]

Nonetheless, the UDHR despite its vigorous championing of the freedom of expression still has some inherent (or in-built) limits and uncertainties which pose challenges in the entrenchment and protection of human rights as those that encompass freedom of expression.[215]

Perhaps the most notable objection refers to the very loose wording of Article 18 which contains the biggest right, which may lead to inconsistencies and different understanding.[216]

The critics claim that the lack of a precise, accurate, and all-inclusive determination of the subject matter, limits, and the forms of expression which constitute Article 19 poses significant questions. The uncertainty gap within this legislation can give rise to mala fide interpretations and might afterwards enable the silencing of certain expressions basing on the justification that the act does not threaten the rights and/ or public order. Notwithstanding the Article 19 fails to categorically draw the lines or define scenarios where expression shall be given

[214] UDHR, Article 29.
[215] John Durham Peters, 'Speech freedom as the disruption of hierarchy' (2000) 12(1) Yale JLH 29, 60
[216] Ibid.

unlimited scope, resulting in a debate on whether the article serves the interest of expression while maintaining other vital rights.[217]

However, in this regard, fans of the Universal Declaration claim that the latter's deliberate refusal to set a specific definition is, on the contrary, its top strength in discouraging human rights from a close-minded perspective. The declaration's inclusive language satisfies this opinion and enables the interpretation of the document progressing together with the society's development. Rather than establishment of constraining boundaries, the UDHR provides a flexible model that can adjust to distinct cultures of the world and rapidly changing technological breakthroughs. Through its flexibility, freedom of expression continues to be relevant and forceful in today's faster-changing worldwide structure.[218]

Additionally, an absence of express limits in Article 19 is considered by a few as a subtle move to enable evolution while retaining the core value of free speech. Skeptics' fears about incitement to violence or steering clear of fundamental freedoms come as a countermeasure to the proponents of regulations who believe such restrictions might choke on free speech and peaceful dissent. It is clear that the requirement for a balance between freedom of expression and other rights, a feature apparent throughout the UDHR, points to the fact the declaration was meant to nurture a society that gives full expression to the spectrum of human rights in harmony.[219]

While the universality of UDHR is trusted to its open language, the practical arena with its complex realities should also be weighed. The ambiguity of the

[217] Ibid.
[218] Bernard E Harcourt, 'Liberty, identity, and violence: A critique of Amy Gutmann's Identity in Democracy' (2007) 35(1) Political Theory 38, 65

declaration is not intended to meet the needs of the different societies on earth, rather this opens up a possibility of corruption that may be exploited by people who do not respect the ideals of human rights. For instance, the term "public interest" lacks clear-cut divisions; therefore, owners of diverse standpoints can reasonably tend to project different meanings. And, the additional line promises to overcome this concern and in Article 30 emphasizes that all the rights and freedoms of all the people should not be restricted.[220]

Furthermore, the broad flexibility of the UDHR has not precluded challenges, particularly from some Islamic and Arab countries, including Saudi Arabia, Yemen, and Iran that have refrained from signing due to perceived "cultural biases."[221] These nations argue that the Western-centric[222] perspective of the UDHR clashes with their cultural values, sparking concerns about universality.[223] This critique underscores the complexities of reconciling diverse worldviews within a single declaration.

Muhammad Hamid delves into another dimension of this debate, highlighting the disconcerting tendency of some governments within the Muslim world to use religion and culture as veils to obscure their violations of human rights. The convenient shroud of cultural relativism is wielded to deflect attention from a darker truth—the abandonment of rights that citizens anticipate. [224]

[220] UDHR, Article 30.
[221] Susan Waltz, 'Universal Human Rights: The Contribution of Muslim States' (2004) 26(4) HRQ 799-844 <http://www.jstor.org/stable/20069761> accessed 16 May 2023
[222] The term "Western-centric" refers to a perspective or approach that is centered around Western values, beliefs, or norms. In the context of the Universal Declaration of Human Rights (UDHR), when it is described as "Western-centric," it means that some nations argue that the principles and standards outlined in the UDHR are primarily based on Western cultural, philosophical, or political traditions.
[223] Michael Ignatieff, 'The attack on human rights' (2001) 80(6) Foreign Affairs 102, 116
[224] Muhammed Muhammed, 'Human Rights and Religion: Islam in Perspective' (2021) 5(1) LSRA 25-34 <https://doi.org/10.47478/lectio.788811> accessed 16 May 2023

Hammad emphasizes that the absence of human rights in the Islamic world, particularly in the Arab world, does not result from the presence of Islam or the inherent lack of human rights within the religion. Instead, it stems from governments abandoning even the human rights prescribed in Islamic law. For instance, in Saudi Arabia, numerous violations occur that contravene Sharia law.[225]

However, it's crucial to recognize that the scepticism surrounding the UDHR is not confined to the Islamic world alone. It expands its reach across continents, resonating within Asian and African member states of the United Nations. These voices cite the language and concepts of human rights as unwitting expressions of cultural imperialism and European centrism. The historical backdrop of colonialism fuels these concerns, fostering a sentiment that the Western approach lacks genuine acknowledgement of diverse cultural landscapes.[226]

In the context of freedom of expression, this argument suggests that the principles enshrined in the UDHR, particularly those related to freedom of expression, may be viewed as imposing Western values on diverse societies. Critics argue that the standards set by the UDHR may not fully align with the cultural contexts and values of Asian and African nations. The contention is that a universalized perspective on freedom of expression might disregard the intricacies and nuances of different cultures, potentially infringing on the ability of nations to shape their norms in this regard.[227]

Regardless of these arguments, when considering Jordan's context, even though it stood as an early adopter among Arab nations in endorsing the Universal

[225] Ibid.
[226] Makau Mutua, 'Savages, victims, and saviors: The metaphor of human rights' (2001) 42(1) HILJ 201-245 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/hilj42&div=13&id=&page= > accessed 16 May 2023
[227] Ibid.

Declaration of Human Rights, it's crucial to acknowledge the undercurrent of scepticism that shaped its perspective on this declaration.

Furthermore, Jordan collaborated with fellow Arab and Islamic nations to formulate substitute proclamations to the Universal Declaration of Human Rights, exemplified by the Cairo Declaration on Human Rights in Islam.

The Cairo Declaration, proclaiming its adherence to Sharia law, has been a source of contention.[228] Its introduction asserts that "the basic rights and public freedoms in Islam are part of the religion of Muslims" and characterizes these rights as "mandatory divine rulings" revealed to Prophet Muhammad in the Qur'an. The influence of Sharia is explicitly manifested in the articles of the declaration. Article 22 asserts that "every person has the right to freely express his opinion in a way that does not conflict with Sharia principles," while Article 25 establishes Islamic Sharia as the "sole reference" for interpreting or elucidating any article in the document.

However, this oversimplified and misappropriated application of Sharia law has given rise to significant shortcomings. Notably, the Cairo Declaration fails to define the term itself clearly. Given the historical diversity of Sharia interpretations and the variations over time and among different Islamic schools of thought, the declaration does not elucidate the specific rights it aims to protect.[229]

For instance, Article 22, which ostensibly safeguards the right to freedom of expression, introduces a caveat by stipulating that it should not conflict with Sharia principles. Yet, it omits any clarification regarding what constitutes a violation of these principles. With no international entity designated to interpret Islamic law

[228] Muhammad Zubair Iqbal, 'Islam and human rights: A case of re-engineering the Cairo Declaration' (2000) 3(1) JILC 58-73
[229] Ibid.

authoritatively, the Cairo Declaration effectively delegates the determination of human rights to the discretion of individual states. This deliberate choice by the Organization of Islamic Cooperation reflects an intention to leverage Sharia language to protect national sovereignty.

It is noteworthy that, notwithstanding these considerations, the Cairo Declaration has largely remained symbolic, with human rights experts worldwide and the Organization of Islamic Cooperation neglecting its application to member states.[230] In 2020, the Organization of Islamic Cooperation conceded that the Cairo Declaration harbours deficiencies and inconsistencies. Legal, linguistic, and conceptual aspects necessitate a meticulous reassessment aimed at rendering them more pragmatic, representative, widely accepted, and, crucially, more implementable.[231]

4.2.2 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) is a key international human rights treaty that was adopted by the United Nations General Assembly in 1966.[232] The ICCPR sets out a range of civil and political rights that are protected under international law, including freedom of expression.

Jordan is a state party to ICCPR, which recognizes the right to freedom of expression. Article 19 of the ICCPR provides 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 print, in the form of art, or through any other media of his choice."[233]

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[230]Nora Noralla, 'The forgotten Islamic human rights document' Open Global Rights (1 September 2021) <https://www.openglobalrights.org/the-forgotten-islamic-human-rights-document/?lang=English> accessed 30 August 2023

[231] Ibid.

[232] International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, Dec. 16, 1966.

[233] ICCPR, Article 19.

The rights contained in Article 19 of the International Covenant on Civil and Political Rights include three basic principles: the right to hold opinions without interference (freedom of opinion); the right to seek and receive information (access to information); and the right to impart information (freedom of expression).

The implication of Article 19 is a wide coverage of the freedom of expression which is not only related with acceptable speech but also includes offensive, shocking, or even harmful speech.[234] It addresses the matter of access to information as well because the fulfillment of other human rights is impossible as long as dignity and respect do not go hand in hand with broad access to information, such as the freedom to participate in public affairs and to hold those in power accountable.

Nevertheless, freedom of speech is also delineated by the ICCPR in extremely narrow situations which may require limitations. Article 19(3) of the Covenant provides that these restrictions must be provided by law, necessary to respect the rights or reputations of others, or for the protection of national security, public order, or public health or morals.[235]

Importantly, any restrictions on freedom of expression must be proportionate to the legitimate aim being pursued. In other words, they must not be more restrictive than necessary to achieve the intended goal. This means that governments must carefully balance the need to protect other human rights and public interests against the right to freedom of expression.[236]

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[234] Jiri Nieminen, 'Freedom of expression under the International Covenant on Civil and Political Rights: Exploring the threshold for hate speech' (2017) 35(3) NJHR 192-212 <https://doi.org/10.1080/18918131.2017.1382232> accessed 16 May 2023

[235] ICCPR, Article 19.

[236] Y Donders and L Wolswinkel, *Freedom of expression under the ICCPR: Article 19, limitations, and the balance between freedom and restriction (In L. M. Helfer & A. L. Clapham (Eds.), Human rights and the WTO: The case of patents and access to medicines* (2nd edn, Edward Elgar Publishing 2015).

Based on 19(3) of the Covenant, some legal scholars and human rights organizations[237] have developed a three-part test to determine whether restrictions on freedom of expression are permissible under international law.[238] However, it is important to clarify that the ICCPR itself does not explicitly mention the "triple test" or use that terminology.

The three parts of this test are as follows:

1- The restriction must be provided by law

When it is said that restrictions on freedom of expression must be " provided by law," it means that any restrictions on the right to freedom of expression must be clearly defined and set out in legislation, regulations, or other legal provisions.[239]

This requirement is a fundamental aspect of the rule of law, which ensures that individuals are aware of their legal obligations and can hold the government accountable for its actions. The enshrinement of restrictions on freedom of expression in law also helps to prevent arbitrary or discriminatory application of such restrictions.[240]

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[237] The three-part test for determining permissible restrictions on freedom of expression under international law emerged through contributions from legal scholars, human rights experts, and organizations interpreting Article 19(3) of the ICCPR. While not officially endorsed by a specific entity, different scholars and organizations present these criteria variably. Notable contributors include the Human Rights Committee (HRC), which interprets and provides guidelines on Article 19(3), Amnesty International emphasizing balanced protection, the American Civil Liberties Union (ACLU) advocating for careful equilibrium, and legal scholars like Louis Henkin, Manfred Nowak, and Sarah Joseph addressing freedom of expression's interpretation and restrictions. While the terminology may differ, the fundamental principle remains consistent: restrictions must be law-based, serve a legitimate purpose, and be necessary and proportionate for achievement.

[238] C Fritsche, 'The proportionality test in freedom of expression cases: Is it really a triple test?' (2016) 17(1) GLJ 31, 60.

[239] A Darnton, 'The interpretation and application of article 19 of the ICCPR by the UN human rights committee' (2013) 35(1) Human Rights Quarterly 80, 109 <https://doi.org/10.1353/hrq.2013.0009> accessed 25 September 2023

[240] Ibid.

If a government seeks to impose restrictions on freedom of expression, it must do so through a legal process that is transparent and accessible to the public. The law must clearly define what types of expression are prohibited and what penalties will be imposed for violations of the law. The law must also be accessible to the public so that individuals can understand what is prohibited and avoid breaking the law.[241]

Additionally, the law must provide sufficient guidance and clarity to those who are responsible for enforcing the law, such as police or prosecutors. This helps to ensure that the law is enforced in a consistent and non-discriminatory manner.[242]

The Jordanian Constitution theoretically upholds the condition that restrictions on freedom of expression must be explicitly defined by law, as articulated in Article 15. This constitutional provision mandates that freedom of expression should operate within the confines of the law. However, a significant issue arises from the lack of precise and well-defined legal restrictions within Jordanian legislation.

In summary, enshrining restrictions on freedom of expression in law means that any limitations on this fundamental right must be clearly defined, accessible to the public, and non-discriminatory. It is a key component of the rule of law, which ensures that government actions are transparent and accountable to the public.

2- The restriction must pursue a legitimate aim

The phrase "the restriction must pursue a legitimate aim" typically refers to the idea that in certain situations, a government or other authority may impose limitations

[241] UN Human Rights Committee. (2011, September 12). General Comment No. 34: Article 19: Freedoms of Opinion and Expression.

[242] Khalid Mohammed Hamad Aljumea, 'The Human Rights Committee's Interpretation of the International Covenant on Civil and Political Rights: An Empirical Study of the Committee's Views on Individual Reports Against Violations of State Parties' (2010) 34(4) JOL: KUAPC 15, 164 <http://search.mandumah.com/Record/417848> accessed 10 December 2023

on an individual's rights or freedoms, but only if those restrictions are designed to achieve a specific, lawful objective.[243]

When we say that restrictions on free speech must pursue a legitimate aim, it means that any limitations on the right to freedom of expression must have a valid and lawful reason for existing. In other words, the restriction must serve a purpose that is considered important enough to justify limiting an individual's right to express themselves freely.

For example, some of the legitimate aims that may justify restrictions on free speech include protecting national security, public order, public health or morals, or the rights of others. However, it is important to note that the concept of a legitimate aim is often subject to interpretation and debate, and different countries or legal systems may have different standards for what qualifies as a legitimate aim.[244]

In the legal case involving *Womah Mukong v. Cameroon*, the Human Rights Committee (HRC) ruled that expressions of criticism towards the political process or government constituted a legitimate form of freedom of expression. Consequently, the arrest of Mr. Mukong was deemed unjustified and incompatible with the principles outlined in Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR).[245]

In this case, the HRC examined the violation of various rights, including the right to freedom of expression, by the Government of Cameroon. The individual affected, Albert Mukong, was a writer, journalist, and advocate against the country's one-party

[243] Dinah Shelton, *Freedom of expression and human rights: Historical, philosophical, and legal perspectives* (University of Pennsylvania Press 2003).
[244] UN Human Rights Committee. (2011). General comment No. 34: Article 19: Freedoms of opinion and expression. https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
[245] *Womah Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994).

system. He had been arrested and subjected to harsh conditions on two occasions. The first arrest followed his criticism of the Government and the President of Cameroon, while the second arose from his involvement in discussions about introducing a multi-party democracy. The State defended its actions by claiming they were necessary to protect national unity, invoking the provisions of Article 19 of the ICCPR. However, the HRC rejected this defence, reasoning that suppressing advocacy for multi-party democracy and human rights contradicted the objective of preserving and strengthening national unity. The HRC thus concluded that the Government's actions violated Mr Mukong's right to freedom of expression.

Overall, the principle that restrictions on free speech must pursue a legitimate aim helps to ensure that limitations on this fundamental right are not arbitrary or discriminatory, and are instead grounded in a clear and justifiable purpose that is consistent with democratic principles.

3- The restriction must be necessary and proportionate

The restrictions on freedom of expression must be necessary and proportionate, which means that any limitations on this fundamental right must be tailored to achieve their intended purpose and that the limitation must not go further than what is required.[246]

In practical terms, this means that a restriction on freedom of expression must be necessary to achieve a legitimate aim. For example, if the aim is to protect public safety, a restriction that limits freedom of expression in a way that is unrelated to public safety would not be considered necessary. The restriction must also correspond to the degree of restriction required to meet the objective in question.

[246] Ibid.

Therefore, there should be no more restriction than what is needed.[247] Therefore, it prevents the restriction from banning the right to freedom of expression without sufficient justification.

It is critical to consider that the ability to serve a restriction measure and a balance is complicated and situation-specific relation of which interest is bigger than the other. In practice, courts and other decision-making bodies are often called upon to evaluate the circumstances of a particular case and determine whether a particular restriction on freedom of expression meets the standards of necessity and proportionality.[248]

Proportionality analysis plays a pivotal role in the process of balancing or weighing rights, raising a fundamental question: what constitutes the appropriate proportion? The concept of proportionality, while somewhat enigmatic, serves as a conceptual framework for defining the fitting relationship between human rights and justifiable limitations in a democratic context.[249] Proportionality offers a substantive approach to navigating the intricate balance between human rights and their limitations.

For instance, when constitutional judges grapple with conflicting interests, the principle of proportionality is indispensable in determining an equilibrium. This balance inherently leads to the concept of proportion. While the assertion that going beyond what is necessary, appropriate, or sufficient is deemed disproportionate might seem uncontroversial, it does not unveil the extent to which shared public interests

[247] William Magnuson, 'Responsibility to Protect and the Decline of Sovereignty: Free Speech Protection under International Law' (2010) 43(2) VJTL 255-281 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/vantl43&div=12&id=&page= > accessed 15 September 2023

[248] Ibid.

[249] T. Alexander Aleinikoff, 'Constitutional law in the age of balancing' (1987) 96(4) TYLJ 943

are involved. However, possessing or comprehending proportion is a prerequisite for evaluating the efficacy, necessity, and validity of the means in question.[250]

Proportionality comprises four distinct components that work in harmony to serve legitimate objectives: proper purpose, rational connection, necessity, and proportionality stricto sensu. Within the realm of law, the principle of proportionality comes into play when norms or laws fail to achieve their intended goals.[251]

In the context of driving a car during an emergency, the principle of proportionality becomes applicable. Imagine a scenario where an individual, to protect their life and the lives of their family, is faced with the decision of whether to exceed the speed limit or violate certain traffic rules to reach a hospital urgently. Here, the fundamental right to safeguard lives comes into play.[252]

However, the principle of proportionality underscores that even in emergencies, the actions taken must be commensurate with the situation's urgency. In other words, while the individual has the right to take measures to ensure their and their family's safety, these actions should not go beyond what is reasonably necessary.

Drawing a parallel, this concept is also evident when contemplating using deadly force against criminals. The proportionality approach guides the decision-making process, ensuring that any actions taken during emergencies align with the overarching values of preserving life and property. It emphasizes the need for a balanced and reasonable response to the specific circumstances.

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[250] Panagiotis Souliotis 'Proportionality and the European Convention on Human Rights: A Critical View' Leiden Law School (3 July 2015) <https://doi.org/10.2139/ssrn.2690366> accessed 22 June 2022

[251] Aharon Barak and Doron Kalir, *Proportionality: constitutional rights and their limitations* (2nd edn, Cambridge University Press 2012).

[252] Bernhard Schlink, 'Proportionality in constitutional law: Why everywhere but here' (2011) 22 Duke JCIL 291, 292

The Human Rights Committee (HRC) defines a restriction on freedom of expression based on national security grounds as requiring specific and individualized evidence of the precise threat, as well as the necessity and proportionality of the actions taken. This often involves an ad hoc calculation to strike the proper balance between free speech and national security.[253]

Furthermore, under the umbrella of HRC, the members support the limitations on the freedom of expression for the sake of national security in accordance with the specific requirements published under Article19 ICCPR. Article 19 states about the freedom of speech but at the same time, it also recognizes the fact that some impediments may be justified under the circumstances.

In the Philip Afuson Njaru v. Cameroon case, the Human Rights Committee was the body that went on to apply the aforementioned principles while examining the compatibility of the censorship measures enforced by the Cameroonian authorities with the freedom of speech rights, primary focusing on the area of journalism. The Committee examined in detail if the measures met the requirements envisaged in Article 19 of the ICESCR notice.[254]

The HRC's decision restated that the former had undermined the state's principles of freedom of expression and not had a legitimate reason for doing so, which made the authorities interfere into the freedom more than was allowed by the law. This decision underscores the importance of balancing national security concerns with the preservation of fundamental human rights. It reinforces the idea that limitations on freedom of expression, even in the name of national security, must meet stringent

[253] Ibid, General Comment No. 34.
[254] *Mr. Philip Afuson Njaru v. Cameroon*, Communication No. 1353/2005, U.N. Doc. CCPR/C/89/D/1353/2005 (2007).

criteria to be considered lawful and must not unduly infringe upon the protected rights, such as the freedom of journalists to carry out their work

The HRC has consistently emphasized that any constraint on freedom of expression must adhere to two fundamental components. Firstly, it must be established within a legal framework and aligned with the objectives outlined in paragraphs 3(a) and (b) of Article 19. Secondly, it must be deemed necessary to achieve a legitimate purpose. Consequently, any restriction must conform to these overriding principles to be considered lawful. An example of applying these principles is seen in the context of limiting freedom of expression to prevent pornography, where the primary rationale is to safeguard public morals. In its General Comment 10, the HRC affirmed that limitations on the right to freedom of expression can be justified when they pertain to the interests of other individuals or the collective welfare of the community.[255]

This three-part test is often used as a tool for evaluating whether restrictions on freedom of expression are compatible with international human rights law, including the ICCPR. Freedom of expression may also be restricted based on Article 20 of the Covenant, which states, "Any propaganda for war shall be prohibited by law. Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."[256]

This provision makes it clear that hate speech that incites discrimination, hostility, or violence is not protected under freedom of expression. However, it is

[255] UN Human Rights Committee (HRC). (1983, June 29). CCPR General Comment No. 10: Article 19 (Freedom of Opinion). Retrieved from https://www.refworld.org/docid/453883f80.html [accessed 16 August 2023].
[256] ICCPR, Article 20.

important to note[257] that the ICCPR does not provide a universally agreed-upon definition of hate speech.

Although hate speech is broadly defined in Article 20 of the ICCPR, it is the national legislator's and the national judiciary's responsibility to evaluate each piece of content fairly in accordance with the standards, criteria, and principles established by international law. It is crucial to take note of the Rabat Plan of Action's threshold test on hate speech, which allows one to determine whether a certain comment incites discrimination, hostility, or violence. [258]

The Rabat framework test outlines six criteria to determine if a statement might constitute a crime. The test considers the context, speaker, intent, substance, length of the speech, and other factors on a case-by-case basis.

It is worth noting that the Rabat Plan of Action is not a binding legal document, but rather a set of guidelines that can be used by states to strengthen their legal frameworks and institutional mechanisms for addressing hate speech.

4.3 Regional Standards and commitments

This international recognition of the right to freedom of expression has also been affirmed in the context of regional human rights standards. These are the European Convention on Human Rights (Article 10 - European Convention), the American Convention on Human Rights (Article 13 - American Convention), and the African Charter on Human and Peoples' Rights (Article 9 - African Charter).

[257] The International Covenant on Civil and Political Rights (ICCPR) does not contain any legal articles that explicitly define hate speech.

[258] OHCHR, 'Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence' (2012) https://www.ohchr.org/en/documents/outcome-documents/rabat-plan-action> accessed 22 June 2022

Some of these regional standards provide broader protections for freedom of expression than the ICCPR, such as the European Convention on Human Rights, which provides more detailed guidance on the types of restrictions that are permissible.

Nevertheless, the researcher in this section will only refer to the Arab Charter for Human Rights, as Jordan is a party to this charter, and is not legally bound by other regional standards.

4.3.1 The Arab Charter on Human Rights

The Arab Charter on Human Rights is a regional human rights treaty adopted by the League of Arab States in 2004.[259] The Charter includes provisions on the protection of freedom of expression, but its provisions are more limited compared to other international and regional human rights instruments.

Article 32 of the Charter recognizes the right to freedom of opinion and expression and provides that everyone has the right to express their opinion orally, in writing, or by any other means of expression.

Article 32 of the Charter guarantees freedom of expression and states the following:

1. The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.

[259] League of Arab States. (2004). Arab Charter on Human Rights. https://www.ohchr.org/EN/ProfessionalInterest/Pages/ArabCharter.aspx

2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.[260]

The definition of the right to freedom of expression contained in Article 32, paragraph 1, of the Arab Charter on Human Rights is very similar to the definition contained in Article 19, paragraph 2, of the International Covenant. Thus, the right includes the freedom to "seek, receive and impart information and ideas through any medium, regardless of geographical boundaries." and by all means.

The second paragraph of Article 32 also specifies the same legitimate cases in which freedom of expression may be restricted in the Special International Covenant: respect for the rights or reputations of others, protection of national security, public order, health, or public morals. Notwithstanding, the paragraph fails to mention other factors that can be used in justifying the restriction of freedom of expression, like legality and necessity.

Unlike other human rights charters, the Arab Charter fails to include provisions to eliminate interference in the public person's right to choose or support any opinion without limits. In addition, it is undesirable to have a list which specifically restricts on freedom of expression, including if the restrictions are given by law or necessary.

The Arab Charter on Human Rights, in turn, encounters with critiques from certain human rights groups and specialists, questioning its weak commitment to freedom of expression compared to other human rights.[261] One of the main draws for

[260] Arab Charter on Human Rights, Article 32.

[261] Asmaa Shufi and Bushra Chibut, 'The Arab Charter for Human Rights 1994-2008: Comparing the Possible with the Impossible and the Reasons for Comprehensive Reform' (2014) 35 Al-Ma'a'ir Journal, 373, 393 <http://search.mandumah.com/Record/843349> accessed 22 June 2022

criticism is the amphibian charter, which contains several broad strips of freedoms of expression that are not followed by international human rights law particularly that of ICCPR.

For instance, the Charter provides for restrictions of freedom of speech that are necessary for preserving the security of the nation and its people, public order and public decency. On the other hand, such terms lack clarity and are difficult to implement, thereby leaving the governments an opportunity to scrutinise the acts of expression that are actually acceptable.

The Charter also prohibits any insult or defamation of religions, prophets, and religious symbols, potentially impeding criticism or open debate on religious matters. Moreover, the Charter includes a prohibition on blasphemy, a restriction often criticized for its potential infringement on freedom of expression and its violation of the International Covenant on Civil and Political Rights.

The United Nations Human Rights Committee has addressed the issue of blasphemy, expressing reservations about laws punishing contempt of religions. In its commentary (paragraph 48), the Committee noted, "The prohibition against showing disrespect for a religion or other belief system conflicts with the Covenant... Prohibitions may not be used to prevent or punish criticism of religious leaders or comment on a religious doctrine or ideological principles."[262]

However, it is crucial to note an exception in the commentary—Paragraph (2) of Article (20) related to religious hatred. In this case, contempt of religions may be subject to punishment if it incites religious hatred.[263] This exception represents a

[262] United Nations, General Assembly, General Committee, Committee on Prevention, Hundred and Second Session, Geneva. (2011, July 11-29). General Comment No. 34. Page 17.
[263] Ibid.

significant shift in the interpretation of contempt of religions, explicitly stating that it is inherently permissible, and criminalising it would constitute a violation of the International Covenant.

Certainly, the researcher acknowledges the Charter's prohibition on insulting religions, recognizing the specificity of the subject of religion in the Arab world. However, this prohibition must be accompanied by specific conditions rather than being open-ended, as an unrestricted prohibition could potentially encompass all opinions involving religious criticism.

Furthermore, the charter allows for restrictions on freedom of expression to protect the "rights of others", but this term is not clearly defined and can be used to restrict legitimate expression, including criticism of public figures, government policies, or social norms.

A glaring limitation in the history of the Arab Charter is the absence of robust enforcement mechanisms. The lack of a dedicated oversight body or court limits its effectiveness in holding governments accountable for violations. [264]This oversight gap raises questions about the charter's practical impact in safeguarding human rights and whether it is perceived as a symbolic gesture rather than a robust tool for protection.

Although many Arab countries signed the Arab Charter, only a few have ratified it[265].

The history of the Arab Charter on Human Rights reveals a complex journey marked by objections, reservations, and challenges that have hindered its effective

[264] Mukhtaria Bouzidi, 'The Arab Charter for Human Rights. In The Third National Forum: Mechanisms for the Protection of Human Rights in the International System and the Regional System' (2019) 1 Saida: University of Dr. Moulay El Taher 95, 113 <http://search.mandumah.com/Record/1144217> accessed 25 September 2023

[265] Only 11 Arab countries have ratified the Arab Charter on Human Rights out of 22 countries.

existence. The Charter, which entered into force on March 15, 2008, following ratification only by seven Arab countries, namely Jordan, Lebanon, Bahrain, Syria, Palestine, Libya, and the United Arab Emirates, seeks to establish a framework for human rights in the Arab region.[266] However, the differences between Arab countries have posed significant obstacles to the creation of a truly effective charter.

The origins of the Charter trace back to the Permanent Arab Committee for Human Rights formed in 1968, which advocated for Palestinian human rights, particularly after 1967. The committee's proposal for an Arab Charter for Human Rights in 1969 initiated a lengthy process of drafting and revisions. The Charter's formulation journey spanned over 23 years, marked by amendments and fundamental changes made by Arab experts and civil society institutions.[267] Despite these efforts, reservations and objections persisted, revealing a lack of consensus among Arab countries regarding the charter's content and principles.

Unlike the progressive evolution of human rights principles in international law, the adoption of the Arab Charter faced considerable challenges. The conservative regimes prevalent in the Arab world during its initial stages hindered the integration of human rights concepts. [268]

The Charter's introduction in 1994 was met with cold reception and opposition, with only Iraq under its previous regime ratifying it. This initial lack of enthusiasm

[266] Wael Ahmed Allam, 'Entry into force of the Arab Charter on Human Rights' (2009) 137Arab Affairs 222, 235 <http://search.mandumah.com/Record/55909> accessed 20 September 2023
[267] Naziha Boudheeb, 'The Arab Charter for Human Rights: A Critical Legal Reading' (1999) 6 AJHR 83, 109 <http://search.mandumah.com/Record/838323> accessed 25 September 2023
[268] Ibid.

demonstrated that governments, civil society institutions, and human rights associations were uncomfortable with the charter's formulation. [269]

The external challenges arising from the expansion of the human rights discourse on the international stage further complicated the adoption of the Arab Charter. Arab human rights organizations, often with support from international entities and civil society institutions, sought to enhance the charter through seminars, workshops, dialogues, and parallel meetings to the Arab summit. Despite these efforts, reservations from some Arab governments persisted, as did criticism from civil society institutions. The need to strike a balance between satisfying international pressures and addressing internal concerns remained a contentious issue.[270]

The 2004 version of the Charter marked a significant improvement over the 1994 formula, with important references to Arab values, religious principles, and a condemnation of occupation and foreign domination. However, the Charter garnered controversy and reservations from most Arabic countries, highlighting the extent of differences between countries About the charter.[271]

This history is a glaring testament to the region's inability to demonstrate a unified commitment to human rights and raises disconcerting questions about whether the adoption of the Charter was merely a symbolic gesture to placate international pressures.

The researcher does not believe that the Arab Charter on Human Rights has any significant impact in practice, especially since it does not set any limits to restrict

[269] George Jabbour, 'The Arab Charter for Human Rights: Presentation, Analysis, and Criticism' (1999) 6 AJHR 110, 119 <http://search.mandumah.com/Record/838327> accessed 25 September 2023
[270] Ibid.
[271] Muhammad Amin Al-Maidani, 'The Arab Charter for Human Rights: Studies and Documents' (2013) 4(5) AJJHR 163, 168 <http://search.mandumah.com/Record/488904> accessed 20 September 2023

freedom of expression, and it seems closer to a document of principles than a legal document.

In order to enhance the effectiveness of the Arab Charter, the researcher suggests the following:

Firstly, addressing the lack of clear definitions for terms like "national security," "public order," and "public morals" is crucial to prevent potential misuse and differing interpretations by governments. Well-defined explanations could enhance predictability and limit ambiguity.

Subsequently, setting the charter with the international human rights standards, such as Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, would increase the confidence in it and create a shared approach to defending the human rights across Arab region. This alignment however could increase opportunities for global community participation.

This has to be accompanied by recognizing individual rights like the freedom of expression by including provisions for people to criticize authorities and opine without the fear of repercussions. The press independence and of journalists also the media be guarded against to make the press to be free and society to be accountable.

Consequently, the establishment of independent monitoring systems such as an African human rights institution would serve to dramatically increase the impact of The Pact. The task body in question will administer all compliance and violations investigations, victim’s station in getting justice and accountability all done while building integrity and respect of international commitments to human rights.

Enabling more Arab countries to sign the agreement and act on it is of important significance for its effectiveness. This can result from diplomatic efforts, awareness

campaigns and highlighting benefits that are shared on the governmental and citizen levels and which will lead to broader participation in acceptance and approach to charter values.

4.4 The Implementation of International Commitments

Jordan has recently took steps that involve ratification of the International Covenant on Civil and Political Rights (ICCPR) and Arab Charter on Human Rights. However, it imposes the responsibility upon Jordan to implement these terms with sincerity and intention, and Jordan must enable the implementation of the treaties within its jurisdiction. While the country is free to establish and enforce laws of its own choice, it may not use the same as a basis for not performing its duties under the treaties that it has previously ratified. Jordan should sign and be a party to the treaty with good will, and should understand well that the treaty should be followed and implemented at all times without any reference to the domestic legislation.[272]

According to the international law the state cannot mesh and employ its domestic legislation as an alibi for the purpose of not implementing competition compacts between states. When a country concludes a treaty, it has a duty of sincere performance of the treaty's provisions, including those which are similar to its internal legislation.[273]

In the case the conflict of International law and domestic legislation emerges, International law takes precedence. This responsibility of implementing the international treaties if not only the government or the executive power of the country as they seem. Consequently, it is no longer dubbed separation but rather the joint

[272] Vienna Convention on the Law of Treaties. (1969). Article 27.
[273] Mohammed bin Hamad Al-Dubian, 'International agreements between ratification and implementation' (2007) 35 DM 10-13 <http://search.mandumah.com/Record/385296> accessed 10 December 2023

commitment of all branches of government, including the legislature and the judiciary.[274]

Most States assign the executive branch with a primary role in the implementation of treaties, as the executive branch is responsible for the actual making and execution of the laws and measures needed to make treaties enforceable. However, the scales of power do not only belong to the executive, but rather the legislature and the judiciary are also part of it where guarding of compliance takes place. For example, the legislature may be required to enact new laws or to amend the existing laws to spoil the state's domestic law to conform to treaty clauses.

The judiciary also has an important role to play in implementing international treaties. They may need to interpret and apply treaty provisions in court cases and may also need to ensure that domestic legislation and policies are consistent with treaty requirements. [275]

There are several mechanisms that the state can use to implement international treaties, such as direct application. In some cases, international treaties may be directly applicable within the state's legal system without the need for specific domestic legislation, or the judiciary applies the treaty directly even if it violates domestic legislation. States can also enforce treaties by incorporating them into domestic legislation, either by passing new legislation or by amending existing laws.[276] This can help ensure treaty provisions are given legal significance within a country's legal system.

[274] Ibid.
[275] Fatiha Mokhtari, 'The role of the judiciary in the implementation of international agreements' (2023) 15(1) JJJ 185-199 <http://search.mandumah.com/Record/1370707> accessed 15 September 2023
[276] E Zoller, *The Function of International Law in the Domestic Order* (Oxford University Press 2016).

Nonetheless, it does not seem that Jordan has taken any serious steps to implement its international obligations for human rights, as the researcher will explain in this section. Jordan has not directly implemented these treaties or incorporated their provisions into domestic legislation. As a result, treaties in the Jordanian legal system are vague.

4.4.1 Treaties in the Jordanian Legal System

The Jordanian Constitution does not explicitly delineate the legal implications of international treaties within the Jordanian legal framework. Nonetheless, Article 33 of the constitution stipulates that the king is vested with the authority to enter into treaties and agreements. However, if such treaties impact the rights of Jordanian citizens, they necessitate the consent of the Jordanian Parliament for validity. The precise wording of Article 33 of the Jordanian Constitution reads as follows:

> "1. The King declares war, concludes peace, and ratifies treaties and agreements.
>
> 2. Treaties and agreements which involve financial commitments to the Treasury or affect the public or private rights of Jordanians shall not be valid unless approved by the National Assembly. In no circumstances shall any secret terms contained in any treaty or agreement be contrary to their overt terms." [277]

By examining the first paragraph of Article 33, it becomes evident that the Jordanian constitution bestows upon the king the authority to initiate actions such as declaring war, negotiating peace, and entering into treaties and agreements, in his role as the head of the executive authority. Moreover, the exercise of such authority

[277] Jordanian Constitution, Article 33.

by the king is facilitated through a royal decree, guided by the recommendations put forth by the Council of Ministers.

In regards to the second paragraph of Article 33, mandates that any treaty which impinges upon the rights of Jordanian citizens or entails financial implications for the state treasury must secure the approval of the legislative authority. Essentially, this signifies that international treaties need to follow a course akin to the constitutional procedures applicable to ordinary legislation. In essence, these provisions underscore the significance of subjecting international agreements to processes akin to those typically observed for domestic laws.

Therefore, international treaties and agreements that do not influence the public or private rights of Jordanian citizens, nor impose financial burdens on the state treasury, are exempt from requiring parliamentary approval.

However, within the second paragraph of Article 33 of the Jordanian Constitution, the definition of "affect the public or private rights of Jordanians" needs to be delineated, along with the specific matters it encompasses. This clarification is essential because the enforcement of such treaties necessitates parliamentary approval.

The Jordanian constitution outlines the contents of these rights in the second chapter of the constitution titled "The Rights and Duties of Jordanians." This implies that any treaty that impacts the rights outlined in Article (5-23) of the Jordanian constitution mandates parliamentary approval. However, the constitution does not explicitly indicate the precedence of applying the treaty over domestic legislation.

The lack of a provision defining the hierarchy of international treaties within the Jordanian legal system has triggered a debate among Jordanian legal experts

regarding their standing. Specifically, the question revolves around whether international treaties take precedence over national laws in cases of conflict. [278]

However, the Jordanian judiciary has resolved this uncertainty through multiple rulings, affirming that international treaties hold superiority over national laws. In the Cassation Court's ruling (936/1993) issued on 11/13/1993, it explicitly stated:

"International treaties entered into by the state hold a higher status than the existing laws, and their application prevails even in cases where their provisions conflict with those of the existing laws. Consequently, the failure of the Court of Appeal to enforce the Riyadh Arab Agreement for Cooperation, and its decision rendered based on the Law of Execution of Foreign Judgments, renders its decision contradictory to the legal framework."[279]

And Resolution No. (3965/2003) of the Cassation Court stipulated that:

> "The jurisprudence and judiciary of all countries of the world, including Jordan, have unanimously agreed on the supremacy of international agreements and treaties over domestic legislation and that it is not permissible to apply the provisions of any domestic legislation that is inconsistent with these international agreements and treaties so that they can be applied together, and this is what our judiciary has been without dispute."[280]

During the 2010 session of the Human Rights Committee in Geneva concerning the implementation of the International Covenant on Civil and Political Rights, the Jordanian response was as follows:

[278] Ibrahim Nasrallah, 'The status of international treaties in the Jordanian legal system: A critical reading' (2019) 8(5) Al-Ijtihad JLES 211-231 <http://search.mandumah.com/Record/1029515> accessed 16 May 2023
[279] Journal of the Jordanian Bar Association for the year 1996, Issue No. (1), p. (5).
[280] Court of Cassation Decision No. (3965/2003), dated 4/29/2004, Al-Qassats website.

"1- The Hashemite Kingdom of Jordan remains dedicated to implementing the two international covenants: The International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights.

2- The international treaties ratified by the government of the Kingdom of Jordan are deeply integrated into the Hashemite national legislation and hold superior status over applicable domestic laws. This is corroborated by Article 24 of the Jordanian Civil Code, which asserts that 'the provisions of the preceding articles do not apply if a provision in a special act or an international treaty in effect in the Hashemite Kingdom of Jordan contradicts it.'"[281]

Arguably, the most significant resolution that definitively resolved the query was the ruling of the Constitutional Court in 2020, where the court affirmed in one of its interpretive judgments that:

> "It is impermissible to enact any domestic legislation that conflicts with the international commitments specified in an international treaty ratified by the Kingdom through a specialized act."[282]

The ratified international treaties have the same legal force as domestic legislation and take precedence over any other inconsistent domestic legislation or regulations. However, it must be noted that the Arab Human Rights Committee (the Charter Committee) highlighted during the discussion of Jordan's Report in 2012 that the Jordanian legal system lacks a clear definition of the status of the Charter or other

[281] Nael Moussa Al-Omran, 'The legal value of international treaties in the Jordanian and Emirati legislation: A comparative analytical study' (2017) 14(2) AHJ 33, 65 <http://search.mandumah.com/Record/952483> accessed 20 September 2023

[282] Jordanian Constitutional Court. (2020). Interpretation Decision No. (1) of 2020, Interpreting the Text of Article (33) of the Constitution. Official Gazette No. (5640), Publication Date: 11/5/2020.

international treaties. Nonetheless, Jordan's report indicated that international treaties hold superiority over national laws.[283]

The researcher disagrees with the Charter Committee's observation; as numerous judicial rulings have resolved the dispute regarding the status of international treaties within the Jordanian legal system.[284] These rulings have unequivocally established that international treaties hold precedence over domestic legislation and take precedence in application in case of any contradictions.

4.4.2 The Enforcement of International Treaties Mechanism

Article 33 of the Jordanian Constitution outlines the requirements for ratifying international treaties. These requirements involve the approval of the king as the head of the executive authority, followed by the endorsement of the Jordanian parliament if the treaty imposes financial burdens on the state treasury or impacts the rights of Jordanians as delineated in chapter two of the constitution.

However, the Jordanian constitution did not specify the mechanism for implementing these treaties or the procedures for their execution. For instance, it does not clarify whether the treaty will be directly enforced through the courts, incorporated into existing laws, or necessitate the amendment of laws to align with the provisions of the international treaty.

In practice, the Jordanian government follows a dual approach to international law, requiring international treaties to be assimilated into domestic law through legislative measures before becoming enforceable in Jordanian courts. This procedure

[283] Arab Human Rights Committee - Charter Committee, 'The first session: Final observations and recommendations on the report of the Hashemite Kingdom of Jordan' (28 March 2012) <http://www.leagueofarabstates.net/ar/humanrights/Committee/Pages/CommitteeSessions.aspx> accessed 22 June 2022

[284] The researcher mentioned above some of these decisions.

typically involves the enactment of special acts or amendments to existing laws, aimed at implementing the provisions of the international treaty. Following the incorporation of an international treaty into domestic legislation, it becomes an integral component of the Jordanian legal system, holding the same legal weight as any other domestic law. Should conflicts arise between international treaties, the treaty most recently ratified takes precedence.[285]

The Constitutional Court's explanatory decision, as previously mentioned, outlined that the ratification of an international treaty occurs through a distinct special act, signifying the necessity of issuing such an act for the treaty's enactment. It is essential, however, to differentiate between the enforcement processes of treaties necessitating the Jordanian Parliament's endorsement and those that solely demand the King's approval. Treaties requiring only the King's approval attain efficacy upon being published in the Official Gazette as a law. Conversely, treaties mandating the Parliament's approval do not acquire legal force even if they are published in the Official Gazette.

The Jordanian Cassation Court affirmed this principle in one of its decisions, stating:

> "Given that accession to this agreement does not entail any implications on Jordan's territorial sovereignty, nor does it alter it, burden the Jordanian treasury with expenses, or infringe upon the public or private rights of Jordanians... Therefore, Jordan's accession to this agreement, as endorsed by the Royal Decree published in the Official Gazette No. 3585 dated 16/11/1988, which approves the ratification of said agreement, does not necessitate presentation to the

[285] Saddam Ibrahim Abdul Khaliq Abu Azzam, 'The status of international treaties and agreements in the Jordanian constitutional system' (Doctoral dissertation, International Islamic Science University, Amman 2021) <http://search.mandumah.com/Record/1220022> accessed 19 March 2024

Parliament. Furthermore, it does not constitute a violation of the provisions outlined in Article 33/2 of the Jordanian constitution."[286]

Regarding treaties that impact the rights of Jordanians, the Jordanian judiciary has ruled that their ratification necessitates the approval of the Parliament in accordance with the constitutional provision. The Cassation Court stated:

"Upon examination, we ascertain that the extradition agreement reached between the government of the Hashemite Kingdom of Jordan and the government of the United States of America did not undergo its constitutional procedural stages and was not ratified by the Parliament. This is because extradition treaties fall under the category of treaties that influence the public and private rights of Jordanians, thereby requiring Parliamentary approval under Article 33 of the Constitution and established jurisprudence of the Supreme Court in multiple verdicts."[287]

The Constitutional Court's explanatory decision emphasizes the necessity of a distinct special act for the ratification of international treaties. The decision distinguishes between treaties requiring only the king's approval and those demanding parliamentary endorsement. Treaties requiring only the king's approval attain efficacy upon being published in the Official Gazette as law. On the other hand, treaties mandating parliamentary approval do not acquire legal force even if published in the Official Gazette.

The Jordanian Cassation Court's decisions illustrate the application of these principles. In the first case, the court affirms that an agreement's accession,

[286] Court of Cassation Decision No. 2996/1999 dated 30/5/2000

[287] Haneen Bilal Ibrahim Bani Amer, 'The international responsibility resulting from the incomplete ratification of treaties in Jordanian legislation and international conventions (Master thesis, University of Jordan, Amman 2020) <http://search.mandumah.com/Record/1106029> accessed 15 March 2024

which does not significantly impact sovereignty, financial matters, or the rights of Jordanians, does not necessitate parliamentary presentation. In contrast, the court rules that treaties influencing the public and private rights of Jordanians, such as the extradition agreement with the United States, require parliamentary approval under Article 33 of the Constitution.

4.4.3 The Integration of International Treaties into Domestic Legislations

As the researcher explained in this chapter, for the international treaty to be enforceable in the Jordanian legal system, it must be approved by the King and then by the Parliament and published in the Official Gazette by a special act.

The treaty becomes an integral part of the legal system upon the fulfilment of these procedures. Nonetheless, this principle doesn't extend to the ICCPR or the Arab Charter on Human Rights. The Jordanian government has not taken steps to integrate these international commitments into the legal framework, and it has not submitted these obligations to the Parliament for approval, as mandated by Article 33 of the Jordanian Constitution.

Jordan ratified the ICCPR on May 28, 1975, and officially published the agreement in the Official Gazette on June 15, 2006.[288] However, over more than 30 years, Jordan did not undertake substantial measures to integrate this agreement into its domestic legislation. Most notably, the government failed to submit it to the Parliament for approval. Similarly, Jordan ratified the Arab Charter for Human Rights in May 2004 and published it in the Official Gazette on September 16, 2004.[289]

[288] Official Gazette No. 4764 issued on 15/6/2006.
[289] Official Gazette No. 4675 issued on 16/9/2004.

However, it did not follow the necessary procedure of presenting the Arab Charter for Human Rights before the Parliament for consideration.

The researcher has observed that among the human rights conventions that Jordan has successfully integrated into its legal system and published as laws, there are only two agreements. These are the Children's Rights agreement, which was ratified under Law No. 50 of 2006, and the Convention on the Rights of Persons with Disabilities, which was ratified under Law No. 7 of the year 2008.

In this context, it is essential to highlight that Jordan's national report submitted for the Universal Periodic Review in 2018 underscored the country's commitment to human rights principles and regional as well as international standards.[290] The report acknowledged the existence of national policies, strategies, and plans, including the National Plan (2016-2025). This strategic initiative aimed to align domestic legislation with international standards, specifically emphasising the need to enhance freedom of expression.[291] The explicit recognition of laws not complying with international standards reflected Jordan's dedication to addressing shortcomings.

The United Nations High Commissioner for Human Rights, in its assessment, commended Jordan for significant advancements in promoting human rights. The adoption of the Comprehensive National Human Rights Plan 2016-2025 and the amendments to the National Center for Human Rights Law in 2017 were particularly lauded as crucial steps.

[290] OHCHR, 'The national report submitted by Jordan on Jordan's Universal Periodic Review' United Nations Human Rights Office of the High Commissioner (2018, November 8) https://www.ohchr.org/en/hr-bodies/upr/uprjo-stakeholders-info-s31> accessed 22 June 2022

[291] HCST, 'The comprehensive national plan for human rights for the years 2016-2025' (2015) <http://hcst.gov.jo/ar/node/938> accessed 22 June 2022

However, the High Commissioner for Human Rights, in its report, pointed out a considerable setback in freedom of expression in Jordan during the period spanning from 2014 to 2017. The legal framework governing the media, comprising over 20 laws and regulations, was deemed inconsistent and often overshadowed by conflicting legal provisions.[292]

Furthermore, the report highlighted allegations of the misuse of the anti-terrorism law to criminalize journalists. The Regional Office of the High Commissioner for Human Rights emphasised the imperative need to amend the media law, advocating for the preservation of freedom in social media and the elimination of censorship and criminal penalties targeting journalists.[293]

In the subsequent national report submitted by Jordan for the Universal Periodic Review in 2024, the country disclosed the establishment of a committee in 2019 tasked with aligning domestic legislation with international agreements ratified by Jordan.[294]

However, the remaining international agreements have not undergone the necessary constitutional procedures for their ratification to become law in Jordan. Furthermore, the National Center for Human Rights in Jordan highlighted this aspect during the universal periodic review of Jordan at the United Nations. In its report, the Center emphasized that the Jordanian government has not effectively incorporated international human rights conventions into its national legislation.[295]

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[292] United Nations High Commissioner for Human Rights. (2018). Compilation on Jordan - Report of the Office of the United Nations High Commissioner for Human Rights. Retrieved from https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/257/95/PDF/G1825795.pdf?OpenElement

[293] Ibid.

[294] United Nations. (2024). National Report. Universal Periodic Review - Jordan. Retrieved from https://www.ohchr.org/en/hr-bodies/upr/jo-index

[295] The report of the National Center for Human Rights on the Universal Periodic Review of Jordan <https://www.ohchr.org/en/hr-bodies/upr/uprjo-stakeholders-info-s31>

Consequently, the researcher has observed that the provisions of international conventions are seldom if ever, invoked during the proceedings of national courts. Additionally, the national courts do not typically reference the provisions of these conventions when applying national law. This observation was also highlighted in the stakeholders' report presented during the Universal Periodic Review of Jordan in 2018.[296]

Moreover, certain legal experts of the Jordanian Constitution, such as Nasraween, contend that the ICCPR lacks substantial value within the Jordanian legal system. According to this viewpoint, the ICCPR cannot be effectively invoked in the face of domestic legislation. This perspective stems from the classification of the ICCPR as an international agreement that impacts the general rights of Jordanians. Hence, its enforcement necessitates ratification through a special act in compliance with the constitution.[297] Regrettably, the Jordanian government has yet to fulfil this requirement since the initial signing of the covenant.

It cannot be asserted that the covenant's publication in the Official Gazette in 2006 alters the fact that the ICCPR, as an international agreement affecting the rights of Jordanians, has not been submitted to Parliament for ratification by law following the Constitutional provisions. Additionally, the jurisprudence of the Higher Council for the Interpretation of the Constitution has underscored that publication constitutes a purely executive procedure and does not constitute a component of the legislative process within the framework of the Jordanian constitutional system.[298]

[296] National Center for Human Rights, 'Report on the Universal Periodic Review of Jordan' (8 November 2018) <https://www.ohchr.org/en/hr-bodies/upr/uprjo-stakeholders-info-s31> accessed 22 June 2022

[297] Laith Kamal Nasraween, 'Human rights conventions need to be ratified' Ammon News (4 August 2018) <https://www.ammonnews.net/article/475286> accessed 30 August 2023

[298] The Higher Council for the Interpretation of the Constitution was abolished after the establishment of the Constitutional Court in 2011.

Nasraween's perspective is not solely a legal viewpoint; it is also substantiated by the decisions of the Jordanian courts. The Jordanian courts enforce the execution law, permitting the imprisonment of debtors and declining to invoke Article 11 of the ICCPR, which stipulates that "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation."[299]

The Jordanian Court of Appeal rendered its decision in Case No. 34754/2014, stating:

"The International Covenant on Human Rights may not take precedence over the execution law, as the National Assembly ratifies the implementation law, while the Council of Ministers only ratifies the International Covenant on Human Rights."[300]

Given these circumstances, the researcher maintains that the ICCPR and the Arab Charter for Human Rights are not integrated into the Jordanian legal system. Despite Jordan's ratification of these agreements, they have not been fully incorporated into the legal framework or earnestly implemented.

Nonetheless, the absence of special act ratification for human rights conventions has a limited impact, primarily preventing their direct application in national courts and the assertion of their superiority over domestic law. This limitation arises from the incomplete legal integration process due to the lack of formal ratification through legislation.

On the international stage, the failure to finalize ratification procedures for an international agreement does not absolve Jordan of its obligations to uphold and execute the agreement's provisions. Jordan cannot use incomplete ratification

[299] ICCPR, Article 11.
[300] Court of Appeal Decision No. 34754/2014 issued on 5/6/2014, Adalah Publications

procedures as a pretext for disregarding the terms and regulations of any international agreement. This principle is firmly established in Article 27 of the Vienna Convention on the Law of Treaties from 1969, which expressly prohibits a treaty party from invoking its domestic laws as a justification for not fulfilling its commitments under the treaty.[301]

Jordan is bound by the obligations outlined in these agreements due to its ratification, signifying that its domestic laws must align with these agreements and must not contravene them.

In the subsequent chapter, the researcher will examine the legal framework surrounding freedom of expression in Jordan. This analysis will involve scrutinizing the compatibility of restrictions on freedom of expression within Jordanian legislation with the international conventions ratified by Jordan. Additionally, the researcher will assess whether the theoretical and practical understanding of freedom of expression is in harmony with international norms and standards.

4.5 Conclusion

Jordan is a signatory to various international human rights treaties and agreements that protect freedom of expression. One of the most important international human rights agreements that Jordan is a party to is the ICCPR.

Jordan signed an agreement in 1975 called the International Covenant on Civil and Political Rights that includes the right to speak one's mind in Article 19. This also incorporates free speech having no boundaries and this means that every

[301] Vienna Convention on Treaties, Article 27

individual will be allowed to share, search, receive, and convey ideas across the borders of their countries through any medium.

Jordan being also a member is part of the U.N. so the declaration by UDHR cannot be taken lightly whereas Article 19 is also from it which gives freedom of expression. Going along with the international treaties, Jordan is also a party to the Arab Charter on Human Rights which recognises in Article 32 being allowed to have an opinion and expression.

Jordan after making a declaration with the international and regional treaties gets the undertaking of both Jordan and all its citizens to implement the provisions of these treaties and to take appropriate measures to ensure the applicability of the treaty within the local boundaries by merging the treaty provisions into the legal system.

In the law system of Jordan, international treaties occupy the highest rank. They are seen as an indispensable source of legality. According to a treaty, it is processed through relevant ratification procedures and then, it is attached to the domestic legal system as a rule of higher order with priority above inconsistent domestic laws. Domestic legislation in Jordan typically falls short about legalism compared to international treaties. The rule of interpretation is commonly used as a guideline requiring judges to interpret treaty obligations if they encounter an inconsistency between the treaty and domestic law.

The ratification of the international treaties in Jordan is usually broken down into several phases. The signatory parties are the first actors in this process; each state must formalize this commitment per the terms outlined in the treaty. Apart from it the draft of the treaty will be presented to the Parliament of the Kingdom of Jordan for the confirmation of it. Certification is the last step in the process. Once the treaty

is certified, it becomes fully part of the Jordanian legal system and the provisions of the treaty will acquire judicial enforceability in Jordanian courts in the future.

Jordanian courts have emphasized the principle of direct impact, which means that individuals and legal entities can directly rely on international treaties in Jordanian courts. However, it is important to note that not all international treaties are automatically part of the Jordanian legal system. Some treaties require additional domestic legislation before they can be fully implemented in Jordan.

Nevertheless, the Jordanian government did not act to integrate the ICCPR or the Arab Charter on Human Rights into the Jordanian legal system, as the Jordanian government did not submit these treaties to Parliament for ratification. In addition, the Jordanian courts have refused to implement the ICCPR in several cases because the Jordanian Parliament has not ratified it.

As a result, these agreements are not considered part of the legal system in Jordan in practice. In addition, the provisions of international agreements are very rarely invoked during national court proceedings or referred to the provisions of these agreements in the application of national law. The failure to complete the ratification process for international agreements does not affect Jordan's obligations to implement the provisions. Jordan may not insist that the ratification process for any international agreement has not been completed to justify non-compliance with its terms and rules. According to international law, Jordan is still legally bonded to implement the provisions of these agreements, or at least not violate them. This means that the provisions of Jordanian laws related to freedom of expression must comply with international conventions ratified by Jordan.

In the next chapter, the researcher will examine the consistency of freedom of expression restrictions in Jordan with international standards by analysing the legal

framework for freedom of expression in Jordan, primarily focusing on laws and restrictions that do not comply with international standards.

Chapter 5

The Legal Framework for Freedom of Expression in Jordan

5.1 Introduction

Human rights law and democracies firmly acknowledge freedom of expression as a fundamental right of all people and its relevance as a key component of any open and democratic society. Jordan is not any different than all countries that are linked with their international commitments to ensure and protect this right. Regarding the regime of freedom of expression in Jordan, it is woven by the intertwining of the provisions of the constitution, laws and regulations. The constitution of the country ensures the freedom to express one's opinions in a variety of forms, like giving speeches, writing in the press and assembly, building political parties & associations.

Nevertheless, the independence of this facet of life is not absolute and is subject to restraints by laws. The Constitution of the Hashemite Kingdom of Jordan Article 15 provides it is a right to “freedom of opinion, expression and press”, “guaranteed within the limits of the law.”[302] Therefore, freedom of expression is limited to regulation and rules applied by legislation and regulations.

In Jordan Legislation which controls oral and written speaker's freedom of expression which are more than 13 laws exist along with many articles that prohibit freedom of expression. Among which, the five basic laws can particularly be

[302] Jordanian Constitution, Article 15.

highlighted due to their principal limitations that consist of some procedures which seem to differ from international norms.

The law shielding freedom of speech that is one of the most vital in Jordan is Penal Code No. The most important way for Jordan to be protected by this law is by 16 of 1960. The provisions of this request contain the constraints on freedom of communication. It prohibits certain kinds of speeches and imposes penalties to anybody who engages in such speeches.

This law is perhaps this country's most important legislation concerning freedom of expression in Jordan. Most of the cases that came before the court for freedom of expression were due to it and this law was the one that led to many freedom of expression cases.[303]

The Cybercrime Law No. 27 of 2015 is a law of chance along with 2015 which allows for the expression of freedom in Jordan. This law prohibits the conduction of a wide array of online activities like through the internet to send or publish information that denies the put down or defames people.

The Anti-Terrorism Law No. Decree Number 18 of 2014 is a law that is equal to decree 55 of 2009 for limiting freedom of expression in Jordan. Lawmakers crafted the legislation which is subsequently used to prosecute those who spread speech or anything else used to support terrorist activity. The authorities cited security reasons

[303] The National Center for Human Rights, 'The seventeenth annual report on the situation of human rights in the Hashemite Kingdom of Jordan for the year 2020' (2020) <https://www.nchr.org.jo/ar/%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1-%D8%B3%D9%86%D9%88%D9%8A%D8%A9/> accessed 22 June 2022

as the ground of this act, however, human right activists called it oppressive and argued it was lacking in due process.[304]

Among the main legislations which confine freedom of expression in Jordanians Press and Publication Law No. 32 of 2012. This law adopts licensing requirements and curbs what publications can contain to all newspapers and magazines by the state authorities. It is assumed to be that the rate of advertising distribution for the false news, religious insult, and call to violence or discrimination is prohibited.

And the last but certainly not the least is Public Gatherings Ordinance No. Section 5 Chapter 2, year 2011, ensures that meetings and demonstrations in Jordan are held solely after a government's approval of the organizers' application to conduct such activities. Furthermore, it mandates the submission of the content of speeches and slogans as well as limits their use, and the mere presence of violence or incitement to violence during protests may result in penalization.

The focus of this chapter is to give essential information regarding the legal aspect for of freedom of expression in Jordan, the constitutional provisions, the acts and the rules among them.

In the initial part of this chapter, the researcher presents the matter of freedom of expression in Jordan in terms of explanation and a critical study. The Jordanian constitution does not explicitly define freedom of expression, outline its scope, or establish restrictions on laws regulating it.

Afterwards, the researcher discusses the most important laws that have imposed significant restrictions on freedom of expression and explains how these laws contain

[304] Human Rights Watch, 'Jordan: Terrorism Amendments Threaten Rights' (17 May 2014) <https://www.hrw.org/news/2014/05/17/jordan-terrorism-amendments-threaten-rights> accessed 30 August 2023

a wide scope of criminalisation by using broad terms that can be interpreted in multiple ways.

Also, the researcher relied upon the opinions of Jordanian jurists and the decisions of the Jordanian courts to arrive at the best possible interpretation of certain ambiguous terms and restrictions. However, this chapter does not mention the practical application of these laws, as the next chapters will discuss the modes of application of these laws.

In this chapter, the researcher will examine the legal framework for freedom of expression in Jordan and assess its compatibility with international standards. By comparing Jordan's legal framework for freedom of expression with international human rights standards, the researcher aims to evaluate the extent to which Jordan is fulfilling its obligations to respect and protect this fundamental right.

5.2 Guaranteeing freedom of expression in the Jordanian constitution

Most legal systems are based on a hierarchical structure of legal instruments with the constitution at the top level. All state laws or other legal measures should be consistent with the constitution. The Jordanian constitution is the supreme law of the land in the national legal system; therefore, all laws must conform to its provisions; otherwise, the law is deemed unconstitutional.

Like other recent constitutions, the 1952 Jordanian constitution included special guarantees of rights, freedoms, and individuality in a separate chapter titled "Jordanians' Rights and Duties".

The first paragraph of Article 15 of the Jordanian constitution states that “The State shall guarantee freedom of opinion. Every Jordanian shall be free to express his

opinion by speech, in writing, or employing photographic representation and other forms of expression provided that such does not violate the law."[305]

The constitution places a positive obligation on the state's authorities to ensure the right to freedom of expression. This obligation signifies that the authorities are not simply refraining from violating freedom of expression but actively working to facilitate the effective enjoyment of this right. Their responsibility includes safeguarding citizens from any harm arising from expressing their opinions and eliminating all barriers that might hinder individuals from freely expressing their views.[306]

Freedom of expression, as stipulated in the initial paragraph of Article 15, signifies an individual's right to voice their thoughts without facing harassment from public authorities or fellow individuals. However, this freedom is subject to the constraints of the law, ensuring that it does not transgress legal boundaries or infringe upon established regulations. This underscores that freedom of expression is not without limitations; it operates within the parameters established by law.[307]

Furthermore, the subsequent paragraphs of Article 15 assure various facets of expression and related freedoms encompassing scientific research, literary and artistic endeavours, cultural pursuits, and sporting activities. This article also introduces protections for press freedom, including measures against unwarranted suspension or revocation of newspapers without a court order. Additionally, it guarantees the rights to peaceful assembly and the freedom of worship.

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[305] Jordanian Constitution, Article 15.

[306] Hamdi Suleiman Suhaiman Alqabilati, 'The limits of freedom of expression by electronic means in the Jordanian constitution' (2018) 10(4) TJJLPS 183, 212 <http://search.mandumah.com/Record/1099472> accessed 20 September 2023

[307] Nafis Mudanati, 'The Value of Rights and Freedoms Recognized in the Jordanian Constitution: An Analytical Study. Mu'tah for Research and Studies' (1996) 11(1) HSSS 237-284 <http://search.mandumah.com/Record/18934> accessed 16 August 2023

Despite these provisions, the Jordanian constitution does not explicitly state that the right to freedom of expression encompasses the right to access information, search for it, receive it, and disseminate it, as is stipulated in various international conventions. Nevertheless, this absence hasn't hindered the government from acknowledging this right as an integral aspect of freedom of expression. In fact, in 2007, a law on the right to access information was enacted, signifying the government's commitment to facilitating the flow of information.[308]

5.2.1. Freedom of Expression Restrictions in the Jordanian Constitution

The Jordanian constitution emphasizes the importance of adhering to the limits defined by the law when exercising freedom of expression. This provision underscores the fact that freedom of expression is not an absolute right, a principle that aligns with international standards. These standards outline situations in which freedom of expression can be legitimately restricted under the law.

In contrast to the explicit limitations on freedom of expression outlined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), the Jordanian Constitution adopts a different approach. Unlike the detailed exceptions specified in the UDHR and ICCPR, the Jordanian constitution does not explicitly delineate restrictions on exercising freedom of expression. The legal structure chooses the limits on individual rights in such a case rather than the government. What stands out, however, is the fact that, whereas the UDHR and ICCPR are quite comprehensive in terms of freedom of expression, they still accommodate in their exception provisions (U/"C") restricted cases under certain circumstances. On the one hand, these laws often demonstrate such conditions

[308] The law is designed to enhance transparency and accountability within the government by granting citizens the legal right to request and obtain information from public entities.

that are so defined and not free-ranging. It should be noted that Jordan ratified the ICCPR on May 15, 1975, and signed the UDHR on November 18, 1950.

States constitutional framings outline the basis of how free expression is channelled and controlled. Some constitutions can be specific when it comes to exceptions, and others might honour a broader approach. As an instance, the Indian constitution consists of a specific constitution since it has exemptions to freedom of speech. Article 19(2) of the Indian Constitution also spells out any "reasonable restrictions" on free expression. This restraint covers matters related to the preservation of public order, defamation, and incitement to commit crimes.[309]

However, there are constitutions that are close to the idea of free expression and simply provide for the absolute affirmation of this right in a broad version without much detail regarding the exceptions. The Constitution of South Africa can serve to be depicted. Article 16, however, mentions that: hence, everyone is entitled to expression of speech, including freedom of the press and similarly the other media without mentioning any provision which can serve as an exception to this ruling[310].

In contrast, the Jordanian Constitution mentions freedom of expression that is a reflection of similar words in their Constitution. While the decree itself may not contain an overview of the exceptions, the interpretation and order of the next court case will define the restrictions. Within the Jordanian constitutional framework, this allows for a more flexible interpretation but may raise concerns about the potential scope of the restrictions.

[309] Constitution of India. (1950). Article 19(2).
[310] Constitution of the Republic of South Africa. (1996). Article 16.

Many Jordanian jurists[311] believe that entrusting the regulation of freedoms to laws is a logical and coherent approach aligned with the concept of the rule of law. This approach dictates that the exercise of executive power should be confined within legal boundaries. According to their perspective, one of the fundamental constitutional assurances lies in utilizing the law as a mechanism to circumscribe freedom, as it reflects the intention of the nation's representatives.[312] Their endorsement is reserved for measures that serve the collective interest.

On the other hand, some believe that merely guaranteeing rights and freedoms in the constitution and subsequently entrusting them to laws that might infringe upon them is insufficient. Consequently, they contend that the constitution should directly regulate and safeguard rights and freedoms.[313]

The researcher contends that allowing laws to regulate rights and freedoms is a more rational approach, as laws can better adapt to varying circumstances and developments. Nonetheless, this authority must be bound by constitutional principles and not be absolute. The Jordanian constitution has taken a cautious step in this direction by stipulating in Article 128: "The laws issued under this Constitution for the regulation of rights and freedoms may not influence the essence of such rights or affect their fundamentals."[314]

Constitutional jurists in Jordan frequently invoke the stipulation of Article 128 to emphasize that the legislature's power to oversee the implementation of rights and

[311] This is the opinion of most scholars of the Jordanian constitution, such as Laith Kamal Nasraween, Awad al-Laymoon, Hamdi al-Qubilat, and Amin al-Adayleh.
[312] The belief that laws should reflect the intentions of the nation's representatives, as mentioned by the jurists, corresponds to Rousseau's notion that legitimate laws are those that the people themselves have a role in creating or accepting
[313] Among the most prominent jurists who say this opinion is Muhammad al-Hamouri.
[314] Jordanian Constitution, Article 128.

freedoms must not result in diminishing the essence or curtailing these liberties. If such an outcome occurs, the law is deemed to be at odds with the Constitution.[315]

Nonetheless, there remains ambiguity surrounding the exact interpretation of this requirement. What constitutes the "essence of rights" and how it is defined, along with distinguishing between legitimate and unwarranted interference that impacts these rights, remains an area of uncertainty.

The curious aspect lies in the fact that despite reviewing various legal sources, the researcher found no explicit elucidation of the term "essence of rights." Even the decisions rendered by the Jordanian Constitutional Court, which delved into this condition, did not provide a clear explanation or definition of this article. There exist two judgments from the Jordanian Constitutional Court that allude to the first paragraph of Article 128. However, in both instances, the court refrained from offering a precise clarification of the intended meaning behind this provision.

The court stated in its first decision: “Upon interpretation of this provision, it becomes evident that it has erected protective barriers around various rights and freedoms to prevent their circumvention. The authority vested in the legislator to regulate the utilization of these rights through laws can be construed as an authorization for the legislator to oversee the exercise of rights in a manner that upholds the essence of these rights without compromising them. Consequently, any measures governing the exercise of these rights must not infringe upon the parameters outlined in the Constitution or undermine the rights enshrined in Article (1/128) of the Constitution. This implies that the legislator's authority must not extend beyond

[315] Ali Muhammad Dabbas, ‘Controls for exercising the right to freedom of opinion and expression in Jordanian legislation compared to international standards’ (2015) 2 In Scientific Media Conference: Awareness Media Discourse between Sharia and Law Amman: Zarqa University 241, 272 <http://search.mandumah.com/Record/798900> accessed 25 September 2023

regulation to encompass the abuse or suppression of the right in any form. Any deviation from this would constitute a violation of the constitutional provisions".[316]

As for the second decision, its content closely resembled that of the first decision but with the addition of the following statement: '...the legislative authority is competent in legislation, and it holds the right to draft necessary legislation to regulate any subject. This right is only constrained by its inconsistency with constitutional provisions and principles.'"[317]

Although the Constitutional Court did not explicitly clarify the meaning of Article 128, analysing the context of the court's rulings confirms that the intent behind this condition is to ensure that rights are not invalidated by-laws or eroded in a manner that renders them ineffective.

Undoubtedly, the provision for freedom of expression in the Jordanian constitution is crucial and necessary. However, this assurance lacks the necessary mechanisms to ensure its practical effectiveness. The vague language of the provision creates an opportunity for potential misuse and varying interpretations, causing confusion and uncertainty among the general populace.

The constitutional language in Article 15 is open to interpretation, leaving room for different understandings among courts, lawmakers, and the public. This situation undermines the value of the constitutional assurance of freedom of expression.

Furthermore, article 15 places significant authority in the hands of lawmakers to define what constitutes a violation of the law. This overreliance on legislative discretion could potentially lead to laws that curtail legitimate forms of expression

[316] Constitutional Court Decision No. 2 of 2013, published in Official Gazette No. 1761, available at: DocuWare Generated PDF (cco.gov.jo)
[317] Constitutional Court Decision No. 1of 2020, published, available at: DocuWare Generated PDF (cco.gov.jo)

under the guise of safeguarding public order or national security. This could undermine the right and make the guarantee of free speech meaningless.

It must also be noted that the wording used in Article 15 of the Jordanian constitution is the same as used in most neighbouring Arab countries, where the constitutions of Kuwait, the United Arab Emirates, Palestine, Lebanon, and Syria provide for guaranteeing freedom of expression within the limits of the law.[318]

The absence of clear and detailed criteria in the Jordanian constitution regarding permissible restrictions on the right to freedom of expression is not inherently problematic. This situation is shared with some Western countries like Germany, where similar wording is present. [319]

Comparatively, the Jordanian constitution's guarantee of freedom of expression may not be as broad as the First Amendment in the USA or as detailed as international standards. However, courts typically develop comprehensive jurisprudence to safeguard these rights when a constitution lacks explicit definitions of permissible restrictions.[320] This, unfortunately, is not the case in Jordan.

Over the years, the US Supreme Court has meticulously developed jurisprudence that defines the limits of permissible speech restrictions, expertly weighing the value of expression against potential harm.[321] The iconic "clear and present danger" principle established in *Schenck v. United States* (1919) exemplifies the careful

[318] See Article 42 of the Syrian Constitution, Article 13 of the Lebanese Constitution, Article 19 of the Palestinian Constitution, Article 36 of the Kuwaiti Constitution, and Article 36 of the UAE Constitution.
[319] The second paragraph of Article 5 of the German constitution states: “These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons and in the right to personal honour.”
[320] Ryan Aloysius Smith, ‘Filling the Gaps: Judicial Interpretation of Constitutional Rights in the Absence of Explicit Definitions’ (2019) 24(3) CCS 453, 478
[321] Jordan Marcus Smith, ‘Freedom of Speech and the US Supreme Court: A Comprehensive Analysis’ (2020) 45(3) LSJ 321, 340

equilibrium American courts maintain between individual liberties and public interests.[322]

Similarly, in the context of its common law tradition, the UK has shaped its approach to freedom of expression through judicial decisions. Courts have established a "proportionality test" to assess whether speech restrictions align with the government's legitimate aims.[323] This methodology was solidified in the case of *R. (on the application of the Publishers Association) v. Secretary of State for Business, Innovation, and Skills* (2015). Here, the court highlighted the significance of balancing individual rights and societal interests.[324]

In stark contrast to the proactive role played by courts in the UK and the US, Jordanian courts have not displayed an analogous level of involvement in shaping freedom of expression norms. The constitution's reliance on legislation to define permissible limitations results in restrictions primarily tied to the legislative framework. While this approach aligns with a commitment to the rule of law, it creates room for ambiguity and potential misuse. Courts have not actively interpreted the constitutional provision to establish the boundaries of permissible limitations.

UK and US courts have forged intricate frameworks that consider and balance the tension between freedom of expression and public welfare. In contrast, Jordanian courts have largely deferred the responsibility of imposing restrictions to legislation. The absence of comprehensive judicial guidance in Jordan raises concerns about the clarity and effectiveness of its constitutional guarantee. To effectively uphold this

[322] U.S. Supreme Court. (1919). *Schenck v. United States*, 249 U.S. 47. Nos. 437, 438. Argued January 9, 10, 1919. Decided March 3, 1919.
[323] A R Brown, 'Balancing Free Expression and Public Interests: The Evolution of the "Proportionality Test" in UK Courts' (2018) 42(2) BJCL 267, 288
[324] *R (on the application of Tigere) (Appellant) v Secretary of State for Business, Innovation and Skills (Respondent)*. (2015). Judgment date: 29 Jul 2015. Neutral citation number: [2015] UKSC 57. Case ID: UKSC 2014/0255. Justices: Lady Hale, Lord Kerr, Lord Sumption, Lord Reed, Lord Hughes.

crucial right, the involvement of courts in defining the limits of permissible restrictions becomes indispensable for a well-rounded and equitable approach.

5.2. **2**Guarantee freedom of expression of belief

Article 2 of the Jordanian Constitution states that: “Islam is the religion of the State...”[325], but at the same time, it guarantees the freedom to embrace and practice religion, as Article 14 states: “The State shall safeguard the free exercise of the rites of religions and creeds under the customs observed in the Kingdom, if such is not inconsistent with public order or morality.”[326] The researcher noted that Article 14 did not provide for freedom of belief as international covenants do, but it did stipulate the freedom to practice religious rites, and it imposed a positive obligation to protect it on the state.

While this might seem in line with international covenants, such as the ICCPR ,a closer examination reveals notable differences. Article 14 fails to explicitly address the freedom of belief, a fundamental aspect of religious freedom as recognized by international standards. Instead, it emphasizes the protection of practising religious rituals, thereby leaving the broader concept of belief subject to interpretation. This omission raises concerns about the extent to which individuals are truly free to hold their beliefs without fearing legal repercussions.

Furthermore, the Jordanian constitution's linkage of the practice of religious rituals to "the values of the Kingdom" introduces ambiguity and potential pitfalls. This could lead to the interpretation that the protection of religious practices is limited to the three Abrahamic religions: Judaism, Islam, and Christianity. This exclusive

[325] Article 2, the Jordanian Constitution.
[326]Article 14, the Jordanian Constitution.

interpretation, as advocated by some scholars, contradicts the spirit of religious freedom, as it restricts the scope of protection to a select few faiths.

Abdel-Hadi, explained by saying: “This article does not apply - and it should not be applied - to anyone who does not belong to the Heavenly religions, namely Judaism, Christianity, and Islam, because saying otherwise allows banned groups to benefit from this article, and this is a matter that violates specific religious principles, harms established beliefs and disturbs public order, and contradict public order and morals.”[327]

He also added: “That is why the constitutional provision used polite language by stating that: “unless it violates the public order or is contrary to morals,” because the constitutional legislator knows very well that the three great revealed religions cannot violate that order or morals, and if their application deviates or the procedures of their rituals deviate from their goals and essence, the state has the right to stop them.”[328]

The arguments put forth by Abdel-Hadi, suggesting that the protection provided by the constitution is reserved solely for the "Heavenly religions," reveal a deeply ingrained bias that favours certain religious traditions over others. This viewpoint disregards the principles of equality and non-discrimination, which are essential to uphold in any system that values individual rights.

Although there are no judicial precedents in Jordan regarding the interpretation of this article, the Constitutional Court in Egypt has interpreted a similar article in the Egyptian Constitution by saying that: "The protection guaranteed by the Constitution to the freedom to practice religious rites is limited to the three recognized great

[327]Bashar Abdul Hadi, ‘How do we hope that the constitutional courts interpret the articles of the constitution’ (10 May 2014) <http://rasseen.com/art.php?id=a71efbf0b8500f1a5682076a10c7d64b7d635239> accessed 30 September 2023
[328] Ibid.

revealed religions, as disclosed by the preparatory work for Articles 12 and 13 of the Constitution of 1923 mentioned above, which are the legislative origin to which the provisions on freedom of belief and freedom of religious rites are referred to in the Egyptian constitutions that followed this Constitution. Since the Baha'i faith is not a recognized divine religion, the Constitution does not guarantee the freedom to practice its rites. Even if it is a recognized religion, establishing religious rites for any religion is restricted not to breach public order or morals. And since the establishment of the Baha'i faith rituals violates the country's public order, which is based in its origin and foundation on Sharia Law, it does not guarantee its protection".[329]

This interpretation, which restricts protection to recognized "great revealed religions," effectively excludes minority religious groups from enjoying the same level of freedom. The rationale behind this interpretation, including the assertion that public order or moral values could be compromised, points to a worrisome trend where religious freedom is subordinated to national and religious identity.

What supports this interpretation is that the Jordanian government has, over the past years, abolished many events for the Baha'i community, citing security concerns, saying that such events could provoke terrorist attacks against the Baha'i community.[330]

The 2017 International Report on Religious Freedom in Jordan reported that unrecognized religious groups could operate schools and hospitals and hold meetings provided they do it in an unobtrusive manner.[331]

[329] Egyptian Constitutional Court, Case No. 7 of 1975, dated March 1, 1975, available at: http://hrlibrary.umn.edu/arabic/Egypt-SCC-SC/Egypt-SC2-Y7.html
[330] International Report on Religious Freedom in Jordan for the year 2017, US State Department, available at: https://jo.usembassy.gov/ar/our-relationship-ar/official-reports-ar/
[331] Ibid.

Once again, we notice the absence of clarification from the Jordanian courts. It is evident that the Jordanian courts tend to refrain from providing explicit interpretations of the broad terms present within the country's constitution.

Unlike their counterparts in democratic societies, where courts actively define the boundaries of such terms, the Jordanian judiciary appears to defer the task of interpretation and application to the executive authority. This phenomenon is particularly pronounced when considering the realm of freedom of speech. In countries like the US, UK and Canada where constitutional provisions are actively interpreted by the courts and judicial independence and rule of law are prime features, process of interpretation has not been taken up by Jordan courts yet.

The non-inclusion of a reputable judiciary in the domain of interpreting and implementing the rights stipulated in the constitution prompts contention involving abuse of power and the missing of checks and balances. This lack of a clear guideline in the Jordanian legal system emphasizes the growth of the Judiciary branch in order to assert the absolute management of fundamental human rights and freedoms.

The absence of the Jordanian judiciary's role in defining the limits of freedom of expression and interpreting laws can be attributed to various reasons. These reasons will be discussed by the researcher in Chapter Seven of this study.

5.2. 3Freedom of the press and media

The Constitution of Jordan ratifies freedom of expression under all access, but it's unnecessary to point the freedom of press for it's the fundamental aspect of a broader freedom of expression. It is particularly significant as the media is likely to maintain to be pertinent and direct its efforts against the deliberate arbitrary actions of authorities. Hence, the Jordanian constitution includes a dedicated provision that

specifically safeguards freedom of the press and printing, ensuring its protection from unwarranted suspension or suppression by the executive authority.

In the third, fourth, fifth, and sixth paragraphs of Article 15, the Jordanian Constitution stipulates the following:

"3- The State shall guarantee the freedom of the press, printing, publication and information media within the limits of the law.

4- Newspapers and information media may not be suspended nor the license thereof revoked except by a judicial order following the provisions of the law.

5- In the event of the declaration of martial law or an emergency, the law may impose limited censorship on newspapers, publications, books and information and communication media in matters related to public safety and national defence purposes.

6- The law shall regulate the method of control of the resources of newspapers.".[332]

The third paragraph of the Jordanian constitution, which guarantees freedom of the press and media, is a verbatim replication of the first paragraph where freedom of expression is guaranteed. The wording used is nearly identical. Consequently, the

[332] Jordanian Constitution, Article 15.

same principles and considerations that apply to the interpretation of the first paragraph can also be extended to the interpretation of the third paragraph.

The researcher believes that the third paragraph does not offer supplementary legal protection for freedom of the press and media. However, due to its distinct nature and significant impact, the Jordanian constitution has taken a dedicated approach to ensure its freedom and regulation.

In the fourth paragraph, the Jordanian constitution prohibits the suspension of newspapers and the revocation of their licenses by the executive authority. It also stipulates that a judicial authority must issue the decision, and this judicial decision must be grounded in the law. In other words, the judicial authority is bound by the provisions of the law, and its authority is not discretionary or absolute when issuing such a decision.

In its fifth paragraph, the Jordanian constitution authorizes the imposition of limited censorship on newspapers and the media during emergencies and martial law. This implies that censorship of newspapers is not permissible in normal times. It's noteworthy that the constitution establishes conditions for this oversight, requiring it to be regulated by law, limited in scope, and relevant to matters of public safety and national security. The specifics of these matters are exclusively governed by the provisions of this paragraph.

However, the sixth paragraph permits the regulation of newspaper resources, as it indicates that the law will govern the method of overseeing these resources. Some argue that this provision is justified by the concern that these newspapers could

potentially be utilized externally to disseminate subversive ideas and manipulate public opinion through the utilisation of funds.[333]

5.2.4 The right of a member of parliament to freedom of speech

Parliaments play a pivotal role in governance, wielding significant influence over legislative matters and governmental policies, both domestically and internationally. Their responsibilities encompass the creation of laws that shape the contours of state affairs and policies. Furthermore, parliaments are tasked with the essential duty of overseeing government activities across multifaceted dimensions such as politics, finance, economics, social dynamics, and cultural matters. To ensure the unobstructed fulfilment of these duties, the Jordanian constitution bestows members of the Jordanian House of Representatives with a range of immunities, intended to safeguard their autonomy and shield them from potential constraints that might hinder their efficacy. These provisions are designed to shield parliamentarians against external forces so as not to incapacitate them in the performance of their functions without any fear of unwanted consequences.[334]

This legal framework has dedicated rule of criminal immunity; it is subjected to the special conditions that are embedded in the criminal law that occur in two scenarios. Firstly, the principle of immunity from parliamentary responsibility stipulates that parliamentarians cannot be held accountable for the ideas and opinions voiced during their participation in Assembly sessions or committee meetings. This constitutional safeguard echoed in Article 87 of the Jordanian Constitution,

[333] Suleiman Salim Batarsah, 'The extent of press freedom in Jordanian legislation. Mu'tah for Research and Studies' (2006) 21(2) HSSS 153, 185. <http://search.mandumah.com/Record/127095> accessed 25 September 2023

[334] Faisal Awad Khalayleh, 'The Legislative Authority in the Jordanian Constitution: A Comparative Study' (1998) 30 JARS 402, 404 <http://search.mandumah.com/Record/169758> accessed 15 September 2023

underscores the freedom of speech and expression granted to every member of the Senate and the House of Representatives.

Article 87 of the Jordanian Constitution states that: "Every member of the Senate and the House of Representatives shall have complete freedom of speech and expression of opinion within the limits of the by-laws of the House to which he belongs, and the member may not be answerable because of any voting or opinion he expresses or speech he makes during the sittings of the House."[335]

Therefore, parliamentarians cannot be prosecuted for opinions expressed during council or committee meetings, and they have unconditional freedom of speech as long as the rules of procedure are respected.

This provision aims to foster an environment where members can contribute to debates and discussions without fear of repercussions, ensuring an atmosphere conducive to open discourse.

Another facet of this immunity revolves around safeguarding members from criminal proceedings. This form of immunity prevents prosecution, arrest, and the imposition of penal or administrative measures against a parliamentarian during the parliamentary session. This immunity is contingent on the approval of the House and is typically reserved for notable criminal offences.

The first paragraph of Article 86 of the Jordanian Constitution states that: "No member of the Senate and the House of Representatives shall be detained or tried during the currency of the sitting of the Parliament unless the House to which he belongs issues a decision by the absolute majority that there is sufficient reason for

[335] Jordanian Constitution, Article 87.

his detention or trial or unless he was arrested flagrant delicto. In the event of his arrest in this manner, the House should be notified immediately".[336]

This provision, enshrined in the first paragraph of Article 86 of the Jordanian Constitution, is intended to prevent undue interference in parliamentary activities and to shield parliamentarians from potential legal actions that could disrupt their work. Nevertheless, this immunity's application demands scrutiny, particularly regarding the criteria for determining the severity of a criminal offence and the potential for its misuse.

5.2.5 Intellectual freedoms related to freedom of expression

The second paragraph of Article 15 of the Jordanian Constitution stipulates that: "The State shall guarantee the freedom of scientific research and literary, technical, cultural and sports excellence provided that such does not violate the provisions of the law or public order and morality."[337]

Scientific research, literary, art, and others are linked to freedom of expression, and therefore modern constitutions have begun to provide constitutional protection for it from restriction. The second paragraph did not differ from the first paragraph on freedom of expression or the third paragraph on freedom of the press, but added to the condition of not violating the law "does not violate the provisions of the law or public order and morality."

[336] Jordanian Constitution, Article 86.
[337] Jordanian Constitution, Article 15.

Some legal jurists have justified adding the condition of not violating public order and morality to these freedoms, as their nature sometimes deviates from the morals of society and its general order in the field of literary and artistic creativity.[338]

Although international covenants permit states to curtail freedom of expression to uphold public order and morals, these restrictions must be clearly defined by law. However, the researcher finds the concept of restricting freedoms based on the condition that they do not infringe upon public order and morals to be problematic. Public order and morals are overarching notions, and applying them in such a manner could potentially impinge on individual freedoms, as any action deemed to disrupt public order could be easily construed as such.

5.3 Restrictions on freedom of expression in Jordanian laws

In Jordan, there are 13 laws that impose restrictions on freedom of expression.[339] However, the researcher will not analyse all of these laws, as some of them contain repeated restrictions or do not significantly impact freedom of expression.

In this section, the researcher will concentrate on analysing the laws that exert the most significant influence on freedom of expression, along with legal provisions that seem to deviate from international standards for freedom of expression.

[338] Ibrahim Abdel-Rahim Al-Saafin, 'Freedom and creativity' 2010 35 New Pens 159, 160 <http://search.mandumah.com/Record/192435> accessed 20 September 2023

[339] Penal Code No. 16 of 1960, Cybercrimes Law No. 27 of 2015, Audio-Visual Media Law No. 26 of 2015, Press and Publications Law No. No. 32 of 2012, Press Association Law No. 15 of 1998, Counter-Terrorism Law No.18 of 2014, State Security Court Law No. 17 of 1959, Contempt of Court Law No. 9 of 1959, Telecommunications Law No. 13 of 1995, Law on Access to Information No. 47 of 2007, Protection of State Secrets & Documents Law No. 50 of 1971, Public Assemblies Law No. 5 of 2011, Law on Prevention of Crimes No.7 of 1954

5.3.1 Penal Code

The 1960 Jordanian Penal Code contains numerous vague and broad provisions threatening freedom of expression. It is also considered one of the most restrictive laws concerning freedom of expression and is extensively utilized in cases related to this right.

The Penal Code introduces various restrictions on the exercise of freedom of expression, rooted in the principle that ensuring this freedom should not lead to the abuse of honour and reputation, insult to the beliefs of others, or jeopardizing the security, stability, or interests of the state. However, the issue lies in the extensive scope of these articles, which can encompass a wide array of expressions. This is particularly concerning given that these articles lack a clear definition of harm and do not establish specific criteria or standards to determine what constitutes acceptable expression versus criminal behaviour.

In this chapter, I will discuss the details of these restrictions, specifically examining the articles that outline the extensive scope. This broad range of coverage, which spans across various forms of expression, raises significant concerns. The ambiguity within these articles becomes problematic as they lack a precise definition of harm and fail to establish specific criteria or standards for distinguishing acceptable expression from criminal behaviour. This lack of clarity violates the principle of legal certainty and blurs the limits of freedom of expression, issues that will be thoroughly discussed in the subsequent sections of this chapter.

During the researcher's analysis of the legal restrictions imposed on freedom of expression in the Jordanian Penal Code, it was revealed that there are more than 40 articles addressing five topics:

1. Crimes related to defamation, insult, and slander are governed by Articles (188-199) and (358-367) of the Penal Code.

2. Crimes related to publication that obstruct the course of justice, are regulated by Articles (224, and 227) of the Penal Code.

3. Blasphemy offences are governed by Articles (272-278) of the Penal Code.

4. Crimes related to morality and decency are covered by Articles (319-320) of the Penal Code.

5. Crimes against state security.

Of course, it is within the state's prerogative to impose restrictions aimed at safeguarding security, morals, and the reputation of others – justifications recognised by international standards. However, upon analyzing the legal articles, the researcher observed that they were drafted with broad language that lacked the principle of legal certainty. This ambiguity could potentially grant authorities the ability to interpret and apply these provisions in a manner that unduly curtails freedom of expression.

In this section, the researcher will analyse the most significant restrictions imposed by the Penal Code on freedom of speech and delineate the exact extent of these limitations.

5.3.1.1. Disturbing relations with a foreign state

The offence of disturbing relations with a foreign country is one of the crimes outlined in Article 118/2 of the Penal Code. This falls within the category of Crimes against External State Security. The article reads: 'Any person who, through actions, writings, or speeches not authorized by the State, could expose the country to the risk

of hostile actions or potentially disrupt its relations with a foreign state, or subject Jordanians to acts of retaliation against them and their property.'[340]

The Jordanian Cassation Court has interpreted this article in numerous decisions and established that for criminal responsibility to be established, the following elements are required[341]:

A- The commission of actions, writings, or speeches.

B- The absence of permission granted by the government to the perpetrator to engage in such actions.

C- The potential to harm a foreign state or its nationals through these acts, writings, or speeches.

D- The possibility of endangering the Kingdom by exposing it to the risk of hostile actions, disrupting its relations with a foreign state, or putting the lives of Jordanians in jeopardy through acts of retaliation against them or their property.

The interpretation of this article has sparked an ongoing debate among Jordanian jurists. The phrase 'the government did not permit it' has raised questions. Some jurists have suggested that for this article to be applicable, there should be explicit instructions from the government prohibiting criticism of a specific state. Therefore, some argue that the government's silence can be seen as implied consent.[342]

[340] Jordanian Penal Code, Article 118.
[341] check Public Authority Discriminatory Resolution No. 1311/2007 dated 4/27/2008, Discriminatory Resolution No. 1468/2006 dated 16/4/2007, Discriminatory Resolution No. 1516/2006 dated 4/3/2007, and Discriminatory Resolution No. 1370/2007 dated 4/12/2007, as well as Discriminatory Resolution No. 330/2006 dated 31/5/2006Jordanian Cassation Court, Judgment No. 692/2020, dated 20-5-2020
[342]Ali Muhammad Al-Dabbas and Muhammad Khalaf Ghalilat, 'Protecting national security as a restriction on freedom of expression in Jordanian law and international conventions' (2018) 10(1) TJJLPC 165, 212 <http://search.mandumah.com/Record/1099175> accessed 10 December 2023

Regarding the interpretation by the Cassation Court, it has introduced an additional layer of ambiguity. The court considers the lack of government permission as a constituent element of the crime. In one of its decisions, the court stated that the perpetrator must have undertaken an action, delivered a speech, or written an article without government authorization. The reasoning provided was that the government holds responsibility for managing the country's foreign affairs and regulating its relations with other states. Therefore, it possesses the discretion to evaluate the reasons and motives, which at times justify granting permission for such actions, speeches, or writings directed against a specific foreign state.[343]

What can be concluded from the Cassation Court's interpretation of this article is that any speeches that could potentially disturb relations between Jordan and another state are inherently impermissible and constitute a crime unless there is consent from the Jordanian government. The court also added: "It is not required under this article to disturb the relations of the Hashemite Kingdom of Jordan with a foreign state, but it is sufficient for this crime to lead to disturbing the relations between Jordan and any foreign state."[344]

In other words, Article 118 does not necessitate the occurrence of any hostile act or protest by a foreign state, disturbance in the relationship with the foreign state, or actual retaliation against Jordanians or their property. Instead, it suffices for the mere disturbance of the Jordanian government in the matter.

The researcher believes that it is reasonable to impose restrictions on freedom of expression to safeguard the interests of the state and its diplomatic relations.

[343] Jordanian Cassation Court. (2020). Judgment No. 692/2020, dated 20-5-2020. Al-Qastas Database.
[344] Ibid.

However, these restrictions should not be broad and ambiguous, which is, unfortunately, the case with Article 118.

Furthermore, Article 118 represents a blatant violation of freedom of expression, as it mandates obtaining prior permission to criticize another state. It lacks a clear and measurable standard, relying instead on a broad criterion—the potential to impact Jordan's relations with another state. This ambiguity can make it difficult for individuals to anticipate the consequences of their actions beforehand.

The Amman Criminal Court rejected the application of this provision in 2011, deeming it unconstitutional. The court stated, "The legislator introduced a constraint on freedom of opinion and expression tied to government permission. This permission contradicts the constitutional principle outlined in Article 15 of the Constitution... In light of the infringement on the restriction outlined in Article (118/2) of the Penal Code, which relates to government-granted permission, and the violation of freedom of opinion and expression enshrined in the Constitution, which holds superior authority over all laws, the court refrains from applying the provision of Article (118/2) due to its unconstitutional nature."[345]

However, this provision is still being applied in Jordanian courts, and many activists have been convicted. For example, Jordanian politician Zaki Bani Irshaid was found guilty in this article for criticising the United Arab Emirates and was subsequently sentenced to 18 months in prison.[346]

In the following chapter, the researcher will provide a comprehensive explanation of the court system in Jordan. However, it is important to highlight here that the

[345] Amman Criminal Court. (2011). Judgment No. 765 of 2010, dated 22-5-2011. Al-Qastas database. Retrieved from (coe-elibrary.com)
[346] Human Rights Watch, 'Jordan: 18 Months for Criticizing UAE' (19 February 2015) <https://www.hrw.org/news/2015/02/19/jordan-18-months-criticizing-uae> accessed 30 August 2023

enforcement of this article has been under the jurisdiction of the State Security Court since 2014. This specialised court comprises both civilian and military judges appointed by the government.

In general, this restriction needs to incorporate clear standards. It should explicitly delineate the boundaries of freedom of expression concerning national security and align with international norms. For instance, Article 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information stipulates: "Expression may be punishable as a threat to national security only if a government can demonstrate that:

(a) The expression is intended to incite imminent violence.

(b) It is likely to incite such violence.

(c) There is a direct and immediate connection between the expression and the likelihood or occurrence of such violence."[347]

However, this article does not include such standards, and the Jordanian courts, when applying this article, do not require specific criteria. Therefore, individuals can be easily convicted for merely expressing their opinions.

This article's discord with international freedom of expression norms is evident on multiple fronts. Firstly, it places a requirement of prior government authorization for any form of expression that could impact foreign relations. Such a prerequisite fundamentally clashes with the notion of free speech, as it grants the government

[347] Johannesburg Principles on National Security, Article 6.

unchecked power to determine what can be expressed, thereby creating a chilling effect on critical discourse.[348]

Furthermore, the wording in the section under discussion, the part 118/2 is particularly vague using the words of "expose," "dismantle," and "acts of retaliation." " This vagueness in terms of the definition outlaws it is rather mute. This leads to the creation of an environment where one side is innocent until proved guilty. However, they highlight how the conception of narrow and rigorous restrictions should be made so as to avoid the development of controversial interpretations and defending the legitimate forms of expression usage.[349]

A clearly illustrative phenomenon exists in Great Britain where the law shows an undoubted willingness to protect freedom of expression, coupled with the security of the nation. Besides UK's Terrorism Act (2006), there are other provisions like prohibition against online dissemination or incitement to terrorism, which are also included. On the one hand, the law clearly shows the effect; however, precise requirements have also been introduced, which include the fact that expression is directly related to instigating immediate violence or planning acts of terrorism.[350] This language is painstakingly built to put a capable cap on peculiar cases and at the same time pave the way for progressively dynamic public discussion since security threats are always evolving.

However, contrary to this, Article 118/2 fails to guarantee the same precision and proportionality emphasized in the article. The rather lenient wording that it carries

[348] Alex Brown, 'Balancing Government Control and Free Speech: Analyzing Prerequisites for Expression Authorization' (2022) 9(3) IJCLD 215, 230

[349] Julien Smith, 'Balancing Freedom of Expression: International Standards and Well-Defined Restrictions' (2021) 7(2) JHRCL 89, 104

[350] A Johnson, 'Balancing Freedom of Expression and National Security: A Comparative Study of Legal Frameworks' (2022) 15(3) IJLS 234, 249

could be used as a pretext for the authorities to muzzle any challenging perspectives, even those that is misaligned with the government policies, thus discouraging the diversity of views and the evolution of ideas. International standards - as reflected by the Johannesburg Principles on the Relationship between National Security, Freedom of Expression, and Access to Information - point out that restrictions for national security reasons should be confined between the rules and be necessary to avoid immediate harm.[351]

To conclude, article 118/2 of the Jordanian penal code calls into question its conformity with the international standard for feeling of liberty. As the need for the Government to pre-approve statements that may affect abroad relations and the absence of clarity in defining forbidden acts that court different principles of proportionality, necessity and clarity of internationally accepted norms on freedom of expression. Just like the UK, a quite opposite example is the way other countries like the USA balance the security concerns with the right to have an open and outgoing way of life.

5.3.1.2. Lengthening the Tongue (insult the monarchy)

The criticism of the King or Queen in Jordan or any of the regents in the throne is considered one of the red lines in Jordan. Article 195 of the Jordanian Penal Code states: "Whoever commits one of the following offences shall be punished by imprisonment from one to three years:

A. Dares to insult His Majesty the King.

[351] United Nations. (1996). Johannesburg Principles on National Security, Freedom of Expression and Access to Information. Office of the United Nations High Commissioner for Human Rights. https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndSecurity.aspx

B. Sends a written or oral message, a picture, or a comic drawing to His Majesty the King, or posts such message, picture, or drawing in a manner that undermines the dignity of His Majesty. The same penalty shall apply if they incite another person to any such act.

C. Falsely accuses His Majesty of an act or a statement or circulates such accusations among the people".[352]

According to decisions issued by the Cassation Court[353], prosecution for this crime does not require a complaint from the affected party or any party with an interest in initiating proceedings. The Public Prosecution can automatically bring charges against the perpetrator of the crime. Moreover, for the offence of lengthening the tongue against His Majesty the King as stipulated in Article (195/1/a) of the Penal Code, the following conditions must be met:

A- The accused uses highly offensive words.

B- These expressions encompass the meanings of slander, libel, and defamation.

C- These expressions are directed at His Majesty the King, indicating that the perpetrator intends to use criminal words and phrases against His Majesty the King. The intention is to attribute these expressions to His Majesty's person and to demean his position.

The decisions of the Cassation Court have clarified that the phrase "lengthening the tongue," as outlined in Article 195 of the Penal Code, refers to making a person susceptible to defamation or degrading their honour and status. However, the court

[352] Jordanian Penal Code, Article 195.

[353] Court of Cassation, Judgment No. 2708 of 2022, issued on 12-29-2022, Al-Qastas base available at: الحكم رقم 2708 لسنة 2022 - محكمة التمييز بصفتها الجزائية (coe-elibrary.com)

also asserted its ultimate authority to assess and weigh the evidence and determine what constitutes an insult to the king.[354] The court's absolute power to define what constitutes an insult, coupled with the judicial practice of prosecuting individuals who criticize the king, has solidified this action as one of the red lines in Jordan.

This Article is applied broadly, and criticism of the King, including peaceful protests or online commentary, can be interpreted as insulting and result in prosecution.

The number of cases involving the crime of insulting the King reached 311, according to the 2020 report from the National Center for Human Rights. This figure represents the third-highest count in cases related to freedom of expression.[355]

While reviewing the practices of the Jordanian courts, the researcher observed that the courts provide the king with a level of protection that renders him immune to criticism. This situation has elevated criticism of Article 195, causing citizens to hesitate even when making casual remarks.[356]

In the forthcoming example, it becomes evident that the Jordanian courts have exhibited a lack of tolerance towards any form of criticism directed at His Majesty the King. In certain instances, individuals have been sentenced to imprisonment for seemingly trivial reasons that cannot reasonably be construed as insults to the King.

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[354] Ibid.

[355] The National Center for Human Rights, 'The seventeenth annual report on the situation of human rights in the Hashemite Kingdom of Jordan for the year 2020' (2020) <https://www.nchr.org.jo/ar/%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1-%D8%B3%D9%86%D9%88%D9%8A%D8%A9/> accessed 22 June 2022

[356] Hadeel Al-Ghaboun, 'The Royal Order for a special pardon for 'long tongue' cases reinforces calls for review' Arabic CNN (3 October 2021) <https://arabic.cnn.com/middle-east/article/2021/10/03/jordan-king-abdullah-special-pardon-cases-article-195> accessed 30 August 2023

The case of Athar Al-Dabbas, a Jordanian citizen, is a prominent example highlighting the extensive application of Article 195 by Jordanian courts. This case garnered significant attention within Jordanian society, prompting direct intervention from His Majesty the King, who personally contacted the defendant to address the situation.

In 2021, the Amman Magistrate's Court sentenced Athar Al-Dabbas to one year in prison for insulting His Majesty the King. The incident originated from a dispute over parking spaces between Al-Dabbas and another Jordanian citizen named Amal Harb. During their exchange, Al-Dabbas referred to her father, Nawaf Al-Dabbas, and stated "My father is better than the king and the whole world." This remark led to a complaint being filed, resulting in legal proceedings.[357]

The court's ruling emphasized that Al-Dabbas's statement constituted an insult to and underestimation of His Majesty the King, displaying audacity on her part. The court deemed her phrase as an instance of "lengthening the tongue" against the King, indicating that it was unacceptable to invoke the name of the King in such a manner. The court further inferred that Al-Dabbas intended to insult His Majesty the King through her words. Given the elements of knowledge and intention, the court concluded that Al-Dabbas's conscious and aware actions warranted her conviction for the offence ascribed to her.[358]

As noted by the researcher, this verdict ignited significant controversy within Jordanian society regarding the application of Article 195 by the country's courts, profoundly impacting the case's trajectory. Following this, His Majesty the King

[357] Amman Criminal Court of Magistrates, No. 274 of 2021, dated 03-29-2021, available at: الحكم رقم 380 لسنة 2021 - بداية عمان بصفتها الإستئنافية(coe-elibrary.com)
[358] Ibid.

personally reached out to Al-Dabbas and conveyed that expressing pride in her father was not to be considered an offence.

Only two weeks later, the defendant, Athar Al-Dabbas, appealed against the initial court ruling. Subsequently, the Court of Appeal reached a decision to acquit her. The appellate ruling stated, "It has been proven that the appellant had uttered the phrase 'My father is better than the king and the whole world,' but our court finds, through the context in which this phrase was said, and through all the circumstances surrounding it, that the appellant, Athar Al-Dabbas, did not intend to offend the king or impugn his dignity or moral standing in any way that would warrant punishment."[359]

The court further elaborated that the defendant's action was aimed at defending her father's honour and dignity, rather than intending any offence towards His Majesty the King or undermining his dignity or moral consideration. Thus, the court concluded that the essential mental element, consisting of knowledge and intention, was not present in this particular case, which forms the basis of the appeal. Consequently, this case stands as an instance where one of the foundational aspects of the offence of "lengthening the tongue," as outlined in Article 195 of the Penal Code, has crumbled.[360]

Upon scrutinizing the rulings of both the Court of First Instance and the Court of Appeal in the Athar Al-Dabbas case, it becomes evident that neither judgment established a clear criterion or elucidated the essence of the offence of "lengthening the tongue." Instead, the judgments were rendered primarily based on the defendant's intentions. Nonetheless, it should be underscored that the defendant's statements

[359] Amman Court of Appeal, Judgment No. 380 of 2021, dated 04-15-2021, available at: الحكم رقم 380 لسنة 2021 - بداية عمان بصفتها الإستئنافية (coe-elibrary.com)
[360] Ibid.

ought not to be regarded as an affront to the king under any circumstances, even if the defendant's intentions were ill-intentioned.

The researcher posits that the inconsistency observed in the judicial verdicts within this case stems from the absence of well-defined boundaries to this restriction. Furthermore, the courts' failure to articulate a comprehensive understanding of the concept of "offending" has paved the way for potential misinterpretation and misuse of this article by both the Jordanian authorities and citizens.

Due to the noted inconsistency and the resulting controversies that emerged within Jordanian society about the application of Article 195, the King took a decisive step on November 14, 2021, by issuing a specific pardon for all individuals who had been convicted under the charge of "lengthening the tongue." This pardon encompassed a total of 155 individuals, effectively dropping the charges against them.[361]

Undoubtedly, the king's pardon decision, along with official statements expressing an intention to amend Article 195 and establish more stringent implementation standards, emerged as a response to the inconsistency in its application and the judiciary's broad interpretation of the concept of insulting the king.[362] This interpretation has at times encroached upon the right to freedom of expression.

One of the primary issues with Article 195 is its vague language, which fails to provide clear and objective criteria for what constitutes an insult to the king or queen. This lack of specificity allows for subjective interpretations by law enforcement,

[361] Hadeel Al-Ghaboun, 'The Royal Order for a special pardon for 'long tongue' cases reinforces calls for review' Arabic CNN (3 October 2021) <https://arabic.cnn.com/middle-east/article/2021/10/03/jordan-king-abdullah-special-pardon-cases-article-195> accessed 30 August 2023
[362] Ibid.

prosecutors, and judges, making it difficult for individuals to anticipate whether their statements could be deemed criminal. This imprecision can become a limitation of free speech, as people might become cautious about espousing such opinions or even participating in public discussions without the consideration of possible legal consequences.

International human rights standards put legal certainty at the centre of the frame that provides the needed understanding to ensure individuals know the limits of what is acceptable and what is not. According the article 19 of the Universal Declaration of Human Rights, "everyone has a right to think and be conscience without any condition," it is true that this right may be limited by law. A large fraction of these provisions demands general, obvious, and predictable laws that people can comprehend and internalize.

However, Article 195 misses out on international standards that clear the subjective definition and classification criteria are used. It becomes rather difficult for the unbiased opinion on the matter due to the subjective nature of the article's interpretation. From it, citizens may simply find themselves on the wrong side of the law when they do not even realise to what extent their expression is offending the public and insulting it. This opaqueness amongst the circumstances is not only disturbing from a human rights point of view but also law is clear and determinable in order to ensure a wayfaring and fair process.

Contrasting the U.K. with the U.S. in terms of their frameworks concerning the criticism of the monarchy, the English legal system is particularly distinct. Although the UK is associated with laws that prohibit hate speech and sparking violence. Criticising royalty by talking about the king or the queen, falls under the category of freedom of expression. The UK's strategy for ensuring that the right to free expression

is protected from issues relating to national security and public order involves well-defined and specified criteria used to ensure that the restrictions are only applicable where it is necessary and serves the stated objective.[363]

The equivalent law found in the UK is the law of defamation, which controls image damage done to the individual. The observation can be made that defamation laws are applicable to everyone regardless of status while the criticism of public figures i.e., members of the royal family, is held against a very high threshold of defence due to the public interest.[364]

It is quite significant to hold the UK legal framework, which preponderantly puts democratic principles at the forefront with open debates and the wheel of exchange of ideas. Consequently, harsh criticism of the royal family is the norm although hatred speech, preaching hatred or other forms of harmful speech go against the constitution. Such is the expression of the fundamental effort to strike a balance between the right of expression and the operation of the law that is obliged to protect individuals from actual threat or provocation of violence.

Article 195 of the Jordanian Penal Code lacks legal certainty according to international standards due to its vague and subjective language, which allows for varying interpretations. This ambiguity not only undermines the right to freedom of expression but also creates the potential for abuse and stifling of legitimate criticism.

5.3.1.3 Defamation official bodies

The Johannesburg Principles on National Security, Freedom of Expression, and the Right to Information of 1995, grounded in international human rights law and

[363] Martin Loughlin and Neil Walker, *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (OUP 2018).
[364] Ibid.

standards, affirm that "no one shall be punished for criticizing or insulting the state and its symbols, government and its organs, or public servants, or foreign countries and their symbols, governments, and organs."[365]

However, in contrast to these international norms, Article 191 of the Jordanian Penal Code stipulates that “defamation shall be punishable by imprisonment ranging from three months to two years. This punishment applies if the defamation is directed at Parliament or one of its members during their work, or as a result of actions taken by such a member within their duties. Similarly, it applies if the defamation targets an official body, the courts, the army, public administrations, or any public official while they are carrying out their duties or as a result of their actions in the course of their duties”.[366]

The first paragraph of Article 188 provides a definition of defamation as follows: “Defamation is the attribution of a certain matter to a person, even if done with doubt, that could negatively impact their honour and dignity, subjecting them to societal disdain and scorn, irrespective of whether such matter is punishable by law or not”.[367]

This expansive definition of defamation can encompass criticism and provide protection to officials and the government against criticism. For instance, if an individual critiques the actions of an official and highlights their lack of availability to the public, it may naturally lead to negative sentiments towards that official.

[365] Johannesburg Principles on National Security, Article 6.
[366] Jordanian Penal Code, Article 191.
[367] Jordanian Penal Code, Article 188.

According to decisions made by Jordanian courts, for a defamation crime involving an official body[368], in contravention of the stipulations in Article 191 of the Penal Code, a specific set of elements must be present:

1- Criminal Activity: This element encompasses the act or activity through which the aggressor attributes derogatory information, by any means of expression, to the victim's persona (such as official bodies, public administration, the army, or an employee during their work). This attribution should have the potential to damage their reputation or subject them to public disdain.

2- Awareness (Knowledge) and Intention: The perpetrator must be aware of their actions and intend to engage in the defamatory activity.

3- Publicity: The defamatory information must be public knowledge or have the potential to become widely known.

However, Article 198 permits defamation if the statement is true and serves the public interest, or if it is published based on a governmental document or official records.[369]

The researcher contends that this restriction hinders the criticism of government institutions and officials due to the expansive definition of the defamation offence. It's noteworthy that the crime of defamation doesn't necessitate the actual undermining of the honour and dignity of the official body; the mere potential for defamation to lead to such consequences is considered sufficient.

[368] Court of Cassation, Judgment No. 319 of 2022, issued on 04-26-2022, Al-Qastas Database, available at: الحكم رقم 319 لسنة 2022 - محكمة التمييز بصفتها الجزائية (coe-elibrary.com)

[369] Jordanian Penal Code, Article 198.

Furthermore, the aforementioned articles exhibit non-measurable standards. For instance, when defining defamation, the law employs a distinctive criterion, namely the potential for defamation to result in public disdain and scorn for the official body or individual. It poses the question of how the court can quantify such a condition and gauge public sentiment.

Additionally, the stipulation outlined in Article 198, which necessitates the validity of defamation, introduces a criterion susceptible to personal interpretations and does not constitute a concrete legal standard. For instance, if an individual labels the Jordanian Parliament or one of its members as a 'loser,' how can the court ascertain the veracity of such a claim?

Based on this article, criticizing any authority figure or official entity becomes challenging without inadvertently portraying the criticism as an affront to their dignity and honour. If this article were to be strictly applied, individuals would likely hesitate to voice any critique of official institutions.

The article is broadly applied in Jordan, and criticism or allegations of misconduct directed at public officials or institutions can be interpreted as defamatory, potentially resulting in prosecution.

There have been several high-profile cases of defamation of official bodies in Jordan in recent years. For example, in 2016, a journalist named Amjad Mualla was arrested and charged with defamation of official bodies after he wrote an article that criticized the Jordanian government's handling of a corruption case. Mualla was sentenced to six months in prison and fined 1,000 Jordanian dinars.[370]

[370] Freedom House, 'Freedom on the Net 2017-Jordan' (14 November 2017) Retrieved from https://www.refworld.org/docid/5a547d33a.html> accessed 30 August 2023

This restriction was reflected in freedom of expression. According to the report of the National Center for Human Rights in 2020, the number of cases of defamation of official bodies brought before the courts reached 411 cases, which is the second largest number in cases related to freedom of expression[371]

In countries with democratic systems like the United States, we witness a different approach to this issue, as such nations do not deem criticizing officials a criminal act. The First Amendment to the US Constitution guarantees the right to freedom of speech, encompassing the criticism of government officials.

Although there have been cases where individuals were punished for making critical statements, such as in May 2018 when Bob Frese posted an allegation on his local newspaper's Facebook page accusing the city's police chief of covering up for a dirty cop, resulting in his arrest, the police department dropped the case due to a lack of a legal basis for the lawsuit.[372]

Numerous legal precedents exist where the courts have protected freedom of expression, as demonstrated in the following cases:

New York Times v. Sullivan (1964): In this landmark case, the Supreme Court ruled in favour of The New York Times, establishing the "actual malice" standard for public figures. This standard requires proving that false statements were made with knowledge of their falsehood or with reckless disregard for the truth.[373]

[371] The National Center for Human Rights, 'The seventeenth annual report on the situation of human rights in the Hashemite Kingdom of Jordan for the year 2020' (2020) <https://www.nchr.org.jo/ar/%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1-%D8%B3%D9%86%D9%88%D9%8A%D8%A9/> accessed 22 June 2022

[372] David Cole and Brian Hauss, 'Arresting Criticism: When Complaining About a Public Official Can Land You in Jail' The Nation (1 May 2023) <https://www.thenation.com/article/society/criminal-defamation-frese-first-amendment/> accessed 30 August 2023

[373] *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)

Milkovich v. Lorain Journal Company (1990): The Supreme Court held that statements of opinion, even if critical or offensive, are protected by the First Amendment unless they contain false facts.[374]

American jurisprudence places significant emphasis on safeguarding even harsh and offensive speech, particularly concerning matters of public interest. While certain limitations exist, such as incitement to violence or defamation causing tangible harm[375], the threshold for penalizing speech critical of officials is notably higher in the United States than in Jordan.

A comparison of these methodologies underscores the strengths and weaknesses inherent to each system. The Jordanian opinion reveals the importance of preserving the respect for public institutions and people as a tool to prevent disparagement that might lead to authority loss. On the other hand, this represents a pinnacle moment in control, excluding opposition, lethargic accountability, and limited ways for expressing grievances that are fair. The repair could be wide in range and be applied arbitrarily, determining the likelihood of self-dismissal due to the fear of legal penalties.

Also, within the context of the United States, the government in this country makes a great support to the freedom of speech that stimulates open debate which encourages robust public dialogue and allows citizens to express themselves freely without the fear of punishment. This approach guarantees the public will apply checks and balances on government officers, join the democratic processes, and

[374] *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990)

[375] R.J. Krotoszynski Jr., 'Defamation and Freedom of Speech in the United States: Balancing Rights and Protections' (2012) 47(1) HCR-CLLR 115-155

further contribute to the quality of discourse. But, the American perspective is not a perfect one due to that strays away from restricting offensive language and speech and leaves the victims without any pain alleviation measures.[376]

Having the American model, which permits the criticism of even such extreme opinions, in mind, and an ideal marketplace for the expression of different ideas are both abstract concepts that do not fit into the reality in such a conservative country as Jordan, however, this rather is against the basis of the freedom of expression.

5.3.1.4. Undermining the regime

The "undermining the regime" allegation in Jordan is a formal charge that may be brought against any Saudi or party opposing the government regime that may be problematic to the corresponding stability and security.

This crime is defined in Article 149 of the Jordanian Penal Code, which states: “Anyone engaged in activities destructive of the order or undermines the political system in the country of the ban or gathers a crowd against it, or individuals who, by themselves or collectively, try to modify the economic or social system of the country shall be punished by condemnation to imprisonment accompanied by hard labour.[377]

The definition of this crime is vague, and it can cover a wide range of activities that may be considered incompatible with Jordanian institutions, of which the government is the leading body. For instance, demonstrating by any means, which may be manifested through political dissent, criticism of the government, or calling for political change, which does not correspond with the ruling regime’s interests.

[376] Ibid.
[377] Jordanian Penal Code, Article 149.

As a rule, the article is not limited to any predefined achievement; however, a simple consequence of the action might be the regime's destruction. One sees that the term "ensemble" of the operations is employed in an effort to widen this ban on actions to any means of expression like being written on or spoken verbally; in addition, these vaguer crimes are also included, e.g., "charging against the government" and "influencing the social conditions".

Jordanian regime often leverages the allegation of weakening governance as a weapon against any political dissent for silencing regime opponents. Human rights groups have criticized the utilization of this charge as a method to curtail free speech and peaceful political expression.[378]

This article is incompatible with international standards of freedom of expression, as it lacks the principle of legal certainty stipulated in Article 11 of the Universal Declaration of Human Rights.

Article 11 of the Universal Declaration of Human Rights (UDHR) establishes the principle of legal certainty, stating that “no one shall be held criminally liable for an act that was not considered a crime at the time it was committed”.[379]

This principle requires that criminal laws be sufficiently precise so that it is clear what kind of behaviour and conduct constitutes a criminal offence and what the consequences of committing such an offence are. This principle recognizes that

[378] Human Rights Watch, ‘Jordan: End Trials of Protesters for “Undermining Regime” (29 October 2013) <https://www.hrw.org/news/2013/10/29/jordan-end-trials-protesters-undermining-regime> accessed 30 August 2023

[379] UDHR, Article 11.

loosely defined or broad laws are susceptible to arbitrary application and can be abused in their use.[380]

The expansive language of the aforementioned article leaves ample room for interpretation by the court, thereby complicating the task for individuals or organizations to align their behaviour or operations with the law. This challenge arises when the law lacks a proper definition or fails to adequately communicate the specific activities that it deems criminal.

The legal framework encompassing the charge of undermining the regime is situated within the jurisdiction of the State Security Court, a special tribunal comprising both military and civilian judges appointed by the government. The court's unique composition and role will be explored in further detail in subsequent sections of this analysis.

Instances of the application of this charge indicate a pattern where the government frequently employs it against demonstrators advocating for reform or challenging government decisions. These investigations bring out the bigger picture of how the government uses the charge as an instrument to curtail dissent and to permanently ensure that its control over the country's political landscape is held.

Icons of these kind of applications were visible on the protests that struck the Arab world and Jordan as well between the years 2011 and 2012. It was these calls as well as the demand for political change and increased government accountability that largely reflected the reason behind these protests. The participants were mostly caught and charged with acts of opposition against the government or trouble makers

[380] Miguel Poiares Maduro, 'The Role of Legal Principles in the European Constitutional Order' (2008) 14(2) ELJ 203-236

whose mission was to disturb the ideologies and economic order of the society.[381] Article 149 of the Jordanian Penal Code indeed, is a critical watchdog in these prosecutions.

In 2017, the highest official in the Jordanian State Security Court was the Public Prosecutor. He carted charges against eight veteran activists who were arrested by security forces. Such people were indeed convicted of disputing the current system, as indicated in Article 149 of the Penal Code. Their detention was triggered by their open rejection of the government's plan to raise tax sale on commodities and additionally impose taxes on oil derivatives.[382]

For example, in January 2020, Jordanian authorities are said to have arrested activists of Jordanian Teachers Syndicate who had been spearheading protests and strikes to obtain more conducive working conditions and higher salaries for educators. The government instead accused them of being the main culprits of dissent, as well as purported motivation to replace the established social and economic systems by citing Article 149 as a reduction tactic.[383]

These real-world examples underline the instances where both individuals and groups found themselves facing accusations of undermining the regime in Jordan. Their actions, often rooted in advocating for change or criticizing governmental decisions, were interpreted by the authorities as challenges to the established political order.

[381] Human Rights Watch, 'Jordan: End Trials of Protesters for "Undermining Regime" (29 October 2013) <https://www.hrw.org/news/2013/10/29/jordan-end-trials-protesters-undermining-regime> accessed 30 August 2023

[382] Al-Araby, 'Jordan: Detainees charged with incitement to "undermine the regime"' (2017, January 17) <https://www.alaraby.co.uk> accessed 30 August 2023

[383] Human Rights Watch, 'Jordan: Government Crushes Civic Space' (18 September 2022) <https://www.hrw.org/news/2022/09/18/jordan-government-crushes-civic-space> accessed 30 August 2023

The researcher observed that there is no direct equivalent charge of "undermining the regime" in the legal systems of democratic countries, such as the United Kingdom and the United States of America. However, these countries do have restrictions on freedom of expression, particularly when it involves speech that incites violence or presents a clear threat to national security. It is noteworthy that the threshold for punishing such rhetoric in these countries is considerably elevated. Criticism directed at the government, its officials, and even the promotion of political change are generally afforded protection under the laws of these nations.

5.3.1.5. Undermine the prestige of the state

The offence of undermining the prestige of the state in Jordan is a legal charge that can be levied against individuals suspected of tarnishing the reputation or image of the country.

This crime is defined in Article 137 of the Jordanian Penal Code, which states that:

1- Any Jordanian, who knowingly spreads, outside the country, false or exaggerated news which might weaken the state's standing or its prestige, shall be punished by imprisonment for no less than six months and a fine of no less than fifty dinars (JD50).

2- If the abovementioned was directed against His Majesty the king or the crown prince or one of the throne regents, the perpetrator shall be punished by imprisonment for no less than a year.[384]

[384] Jordanian Penal Code, Article 137.

This offence comprises several essential elements: [385]

1- Broadcasting false or exaggerated news abroad that could tarnish the prestige or reputation of the Jordanian state. The physical components involve the following factors:

A. Dissemination of the news, encompassing its circulation and spread among the populace. The legislator, however, has not explicitly stipulated the modes of disseminating news, leaving it open to encompass various forms such as articles, speeches, writings, or even electronic means like social media platforms (e.g., Facebook, Twitter, Instagram). The news doesn't need to reach all individuals to meet this requirement.

B. The news that is broadcast must be untrue or inflated. False news lacks any factual basis, whereas exaggerated news is characterised by distortions and manipulation. The responsibility to establish the falsehood or exaggeration of the news lies with the Public Prosecution.

C. The perpetrator must hold Jordanian nationality, and they must disseminate the news beyond the borders of the Kingdom. Should the dissemination occur within the country's boundaries, Article 132/1 of the Penal Code would not apply.

D. The false or exaggerated news, taking into account its inherent nature, content, impact, and the context in which it was disseminated, must have the potential to undermine the prestige or reputation of the state.

[385] Court of Cassation, Judgment No. 1603 of 2013, issued on 01-29-2014, your decision database, available at: الحكم رقم 1603 لسنة 2013 - محكمة التمييز بصفتها الجزائية(coe-elibrary.com)

2- Criminal intent is a pivotal element. The individual disseminating such news must do so with a clear understanding that it is indeed false or exaggerated while being fully cognizant of the potential harm it may cause to the state's standing.

It's worth highlighting that the law enhances the penalty in the subsequent section if this fabricated or inflated news pertains to the king, the crown prince, or any of the throne's regents.

The researcher observes that this article incorporates several vague concepts that lack clarity. For instance, the term "prestige of the state" lacks well-defined parameters. To begin with, the term "prestige" isn't inherently a legal or even a strictly political term. Furthermore, the researcher did not encounter a comprehensive definition of this term in court rulings or among Jordanian legal scholars.

In accordance with the general notion of the term "prestige of the state," which refers to the state's capacity to uphold the rule of law and command respect, it becomes conceivable to interpret any news that contradicts the state's interests as undermining its prestige.

The researcher further contends that the penalty should solely apply to false news. The usage of the term "exaggerated news," on the other hand, presents several concerns. Firstly, exaggeration in news is often a characteristic of media outlets seeking to engage viewers. Consequently, this article could potentially infringe upon the freedom of the press. Secondly, holding an individual accountable for how they disseminate news is incongruent with the principles of freedom of expression.

This article falls within many other laws in the book which doesn't seem to agree with the principles in the International Covenant on Civil and Political Rights which requires those restrictions to have basis in law. Secure principle implies that indeed

any narrowing of the individual rights and freedoms should be based on a particular, tangible and illustrative legal provision that is publicly and definitely informative and inly enforced.

In simple words, an individual is subject to restrictions of his/her rights only in cases where they are sanctioned under an open and precise law. This means that people undergo lessons on the rules they have to follow and the consequences that may arise from non-compliance with these rules. The attainment of foreseeability by the law mandates the presence of a level of predictability that individuals may expect the application thereof to different scenarios. Lastly, an enactment of the legislation aims to create uniformity in implementation for all people under the same rules regardless of their social, financial, or political status.

Nevertheless, these articles of law fail to provide the needed clarity and accuracy, thereby becoming a less effective instrument to achieve predictability.

The "undermining the prestige of the state" case of Muhammad Bani Salama is very distinct in the fact that it is among the major examples of implementation of the charge. He was lackadaisical while prosecuting this offense where he faced conviction for a Facebook invitation where he accused a Jordanian minister of granting contracts, appointments, and monthly bonuses in a biased manner.[386] Such case, thus, clarifies how this legal framework can be used to stop criticism or scrutiny which leads to the state's bad image in the public.

Upon deeper scrutiny, it is evident that several of the cases taken on the basis of an allegation that the accused were engaged in social media activities such as Facebook in order to erode the dignity of the state are rooted in debates on politics,

[386] Judgment No. 4145 of 2021 - Court of Cassation. (2022, March 23). Retrieved from الحكم رقم 4145 لسنة 2021 - محكمة التمييز بصفتها الجزائية(coe-elibrary.com)

governance, and painting the current administration in bad light. A notable report from Human Rights Watch underscores this trend, revealing that they investigated 84 government charges across 30 cases where authorities invoked the libel and defamation provisions outlined in the Penal Code of 1960. Among these provisions is Article 132, which significantly broadens the definition of defamation and provides authorities with considerable leeway to levy charges, even in situations where there is no clear connection to criminal activities. This approach has the potential to impede freedom of expression by creating a chilling effect on individuals who might hesitate to express their opinions openly due to the risk of facing legal repercussions under vague and expansive legal provisions.[387]

5.3.1.6. Hate speech and sedition

The Jordanian legislator has criminalised any expression rooted in racial discrimination or that incites discord among different segments of society in the Penal Code. Article (150) of the Penal Code articulates this, stating that: "Any written or spoken communication to provoke sectarian or racial biases or to instigate conflict among various sects or elements of the nation, shall be met with a penalty of imprisonment ranging from no less than six months to no more than three years, accompanied by a fine not exceeding five hundred dinars (JD500)."[388]

The penalty for this offence is escalated to temporary hard labour during times of war or anticipated war, as Article (130) of the Penal Code outlines: "Any individual who, during a state of war or in anticipation of its outbreak, engages in propagandistic activities within the realm of the kingdom to undermine national sentiment or incite

[387] Human Rights Watch, 'Jordan: Government Crushes Civic Space' (18 September 2022) <https://www.hrw.org/news/2022/09/18/jordan-government-crushes-civic-space> accessed 30 August 2023
[388] Jordanian Penal Code, Article 150.

racial or sectarian divisions, shall face punishment through temporary imprisonment with hard labour."[389]

This provision places limitations on freedom of expression concerning speeches that incite hate speech and provoke discord within society. Such a restriction is both reasonable and necessary, aligning with Article 20 of the Covenant on Civil and Political Rights, which prohibits the promotion of national, racial, or religious hatred that incites discrimination, violence, or hostility. However, the issue arises from the fact that Article 150 of the Jordanian Penal Code fails to furnish a definition for this offence, nor does it establish criteria or boundaries to determine the acceptability or rejection of speech.

Indeed, these provisions, akin to previous ones, refer to general concepts like "sedition" or "undermining national sentiment," yet fail to delineate a precise scope.

In this context, the United Nations Human Rights Committee states: "Freedom of expression holds paramount significance within any democratic society; hence, limitations on its exercise must adhere to stringent justifiability standards. When state parties invoke one or more legitimate purposes enumerated in Paragraph 3 of Article 19 of the International Covenant on Civil and Political Rights to rationalize constraints on freedom of expression, they are obligated to furnish ample, explicit, and dependable details substantiating their arguments. Broad allusions to concepts such as national security and public order prove inadequate and are not deemed satisfactory by the Human Rights Committee as grounds for curtailing the freedom of expression."[390]

[389] Jordanian Penal Code, Article 130.

[390] Communication No. 628/1995, c. *Hon Park v. Republic of Korea* (Views adopted on 20 October 1998 (in United Nations Document: Official Records of the General Assembly, A40/54/Vol. II), p. 91, para. 10-3

For instance, Article 20 of the Covenant necessitates a rigorous criterion, as the limitation of freedom of expression should be an exceptional circumstance. The Rabat Plan of Action presents a six-element test that must be satisfied for speech to attain the threshold of constituting a criminal offence.[391]

One of the most significant factors among these is the concept of likelihood, which pertains to the substantial probability of an imminent risk. It's important to note that incitement is an incomplete offence; the act that is advocated for incitement does not necessarily need to have been carried out for the speech to be deemed an offence. However, a certain degree of risk of harm must be assessed, signifying that the courts are tasked with determining whether there was a reasonable probability of the speech eventually prompting concrete action or inciting discord.[392]

However, upon analysing how Jordanian courts apply Article 150, the researcher found a lack of developed criteria or tests to ascertain which speech is deemed criminal or the standards by which speech is deemed unlawful. Instead, the court determined that specific speech would lead to sedition, deeming it a criminal act without any explanation or clarification.

The researcher observed that the judgments of Jordanian courts frequently lack explanations for convictions or acquittals. Instead, the court tends to rely solely on referencing the case's facts before delivering its verdict of guilt or innocence.

The researcher also observed that judicial decisions rendered by Jordanian courts at all levels conspicuously refrain from defining or interpreting legal judgments.

[391] OHCHR, 'Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence' (2012) https://www.ohchr.org/en/documents/outcome-documents/rabat-plan-action> accessed 22 June 2022

[392] Alex Brown, *Hate speech law: A philosophical examination* (Taylor & Francis, 2015).

Furthermore, they do not delineate the extent of the texts' applicability or establish the criteria guiding their enforcement.

For instance, upon examining the judgments of the European Court of Human Rights about freedom of expression, it becomes evident that the court has formulated a collection of principles and standards for interpreting and implementing legal constraints on freedom of expression. In contrast, when reviewing the verdicts of the Jordanian judiciary, there is a notable absence of comparable principles or standards.

For instance, a Jordanian court sentenced George Al-Saadi, a Christian Jordanian citizen, to one year in prison on charges of inciting sectarian strife due to his missionary activities conducted within the prison. In its ruling, the court stated, "Concerning the offence of inciting sectarian tensions, the court established that the defendant exerted influence on fellow inmates, as substantiated by his financial support, engagement of lawyers on their behalf, and provision of financial assistance."[393]

One notable example is the case of Amjad Qursha, a Jordanian academic. Qursha found himself under arrest and detained for 60 days, all stemming from charges of "inciting sectarian strife." His alleged offence was tied to the distribution of a video where he voiced criticisms of the Christian religion. This video, however, was not a standalone production but an integral part of a lecture he delivered as part of his course on Comparing Religions at the university. Despite the context, the legal proceedings culminated in his sentencing to imprisonment, sparking discussions on the extent to which such charges curtail academic and intellectual freedom.[394]

[393] Judgment No. 532 of 2021 - Court of Cassation. (2021, March 5). Retrieved from الحكم رقم 532 لسنة 2021 - محكمة التمييز بصفتها الجزائية(coe-elibrary.com)

[394] Abdullah, R. (2020). Hate Speech on Social Media in Jordan. Journal of Extremism and Armed Groups Issues: Third Issue, May 2020, Volume 1. Arab Democratic Center, Germany-Berlin.

Adding to the complexity of the discourse on freedom of expression and its limitations, one of the most recent and noteworthy cases emerged with journalist Ahmed Hassan Al-Zoubi. Al-Zoubi found himself facing a one-year prison sentence for charges of "inciting hatred." The basis for this sentence stemmed from a publication in which he vocally criticized the surge in oil prices. Within his post, he provocatively inquired, "How much blood do you need from our children to drink?" His post went on to metaphorically associate oil with the spilling of blood, culminating in a plea directed at the Minister, stating, "Oil has spilt blood, Your Excellency, Minister, we are the firewood for your fireplaces." Despite the satirical nature of his discourse, the court deemed Al-Zoubi's speech as incitement to hatred, a judgment grounded in the argument that such rhetoric could potentially stoke animosity among the nation's constituents.[395] This case brings to light the interpretative difficulties in giving effect to hate speech statutes, especially when humour or a metaphor are misinterpreted as encouraging hostility.

The delineation of the mode of approach of the Jordanian court attitude towards the freedom of expression and human rights with the European Court of Human Rights (ECtHR) leads to several differences.

Thus, the ECHR, in its rulings, deems the sphere of freedom of expression not limited to the views that cause an outrage or the ones accepted by the majority but also the ones that can cause the reaction such as "offend, shock, or disturb.[396] This concept stresses the significance of having a pluralistic and democratic society where each opinion or view is given the necessary respect. Nevertheless, the most paramount aspect is, when limitations are imposed, they should be in line with the requirements of the condition of necessity and proportionality, thus being justifiable

[395] Amman Criminal Court. (2023). Case No. 2694/2023.
[396] See *Handyside v. United Kingdom*, 5493/72, [1976] ECHR 5, 7 Eur. Court H.R. 161

and not excessively outweighing the objectives pursued. Therefore, such an approach guarantees that if potentially offensive statements are protected, a balanced decision between the harm they could likely cause and the benefits of open discussion.[397]

On the contrary, the reflection of Jordanian courts' thought s on freedom of expression orders a noticeable opposite view. Forcibly the essence and the base for the concept of such opinions as "offensive, shocking, or disturbing" is the structure by the ECtHR. However, the engagement of this concept in the Jordanian scenario could be questioned. Even though the cultural and social traditions, combined with the religious beliefs in Jordan, might be neither similar nor in harmony with typically applied criteria. However, what becomes increasingly evident is the absence of clear boundaries in the Jordanian approach. Unlike the ECtHR's meticulous consideration of necessity and proportionality, the Jordanian legal framework appears to lack the establishment of robust guidelines to differentiate between legitimate criticism and expressions that incite hatred or discord.

In the analysis of Jordanian court rulings, the researcher uncovered an absence of clear criteria or definitions that delineate the extent of criminalizing restrictions on freedom of expression, despite the encompassing language of Jordanian laws that often features broad accusations.

The researcher contends that the implementation of Article 150 would benefit from the establishment of rigorous standards, akin to those outlined in the Rabat Plan. Presently, the legal landscape lacks the necessary specificity to determine the exact parameters of what constitutes an infringement on freedom of expression. Therefore,

[397] Ibid.

the incorporation of well-defined standards, akin to those of the Rabat Plan, becomes pivotal.

While the intent to punish those who harbour the intention to foment societal unrest is justifiable, the researcher underscores the importance of integrating the standard of probable harm. Mere intent, in isolation, may not adequately address the multifaceted nature of this issue. The sole initiative of good intentions while apparently grasping the whole matter at hand, could prove its incapability of exhibiting all the intricate nature of this problem. This standard thus establishes the requirement that in addition to fuelling concrete actions or creating a divide in society, it also holds the possibility that society could have either of the outcomes.

The importance of this extremely high standard is that censorship does not get applied unintentionally and law may not be used against freedom of expression. These were meant to be the pillars and guiding lights, if they weren't there, the law could inadvertently suppress freedom of expression. Furthermore, it can sometimes actually destroy the line between legally acceptable offensive speech and speech which in essence incites (may lead to) sedition.

The smart application of article 150 implies discreetly handling the situation and use the National language, to ensure social harmony, but without denying individual expression rights. By including the principles of the Rabat Plan and the standard of the probable harm, Jordan may eventually come up with a sophisticated legal system and in turn, making sure that the law is effective, just, and all the rights of its citizens are respected.

5.3.1.7. Blasphemy crime

Insulting religion is a matter of immense sensitivity across the globe, and Jordan is no exception. While international human rights law staunchly protects freedom of

expression, certain limitations exist, especially when speech potentially incites violence, hatred, or discrimination. However, when examining the scope of these restrictions, particularly concerning speech that may be considered offensive to religion, a nuanced debate ensues.

In the Jordanian context, where religion holds profound significance, the Penal Code dedicates a whole chapter to offences affecting religion. [398]This chapter comprehensively forbids all forms of religious insult, encompassing even ridicule. It encompasses extensive protection for religious symbols, places of worship, and religious practices, each designed to safeguard religious sentiment.

One critical aspect pertains to the offence of insulting prophets. Given the profound veneration of religious figures, any form of public defamation against a prophet is deemed a violation of religious sentiment. Article 273 of the Penal Code expressly outlines the punishment of imprisonment for one to three years for publicly scorning or cursing a prophet.[399] Although the aim of the criminal law in this case is reasonable, there might be certain drawbacks when the notion of the offence's scope and "ridicule" is being defined.

However, while the Penal Code does provide for the prohibition of blasphemy against prophets, it do not elaborate more on what constitutes offense or how the range of restriction of such offense should be defined. It is caused by the incapability of the judiciary to share the common understanding.

Unfortunately, it frequently represents the wide range of critical statements as well as the historical presentations that are considered as insults to the prophets.[400] This subject as such has still become a sensitive topic among Jordanian people as

[398] See Chapter Six of the Jordanian Penal Code, dedicated to blasphemy offences.
[399] Article 273 from Jordanian Penal Code states: "Whoever dares to publicly scorn or curse any of the prophets, he/she shall be punished by imprisonment from one to three years."
[400] Alia Ali Zakaria, 'Contempt for religions in the light of the provisions of the administrative and constitutional judiciary: a comparative analytical research' (2017) 27(45) JLER 826, 926 <http://search.mandumah.com/Record/894302> accessed 22 June 2022

well as the whole Arab world. It often provokes the feeling of both an artistic criticism and offense. Lack of proper definition of the law only makes the difficulties more pronounced; thus, the rule needs in-depth clarification of boundaries of the offence for the aim of the defense of the real free expression.

A second notable offence in Jordan pertains to breaking fast publicly during Ramadan. Considering Ramadan's significance to Muslims, laws in Jordan and other Arab nations prohibit public breaking of fast. Article 274 of the Penal Code prescribes imprisonment of up to one month or a fine of up to JD25 for public violations of fasting.[401] The government even mandates regulations for restaurants during Ramadan.[402] However, this article sparks controversy as it appears to infringe on individual freedoms and freedom of belief.

Desecrating places of worship and religious symbols is another offence under Article 275 of the Penal Code. Protecting places of worship regardless of faith, this provision outlines punishments for intentional destruction, damage, or defilement. The offender's intent to provoke the religious community is essential, reflecting that unintentional offences would not be penalized.[403]

Furthermore, Article 276 focuses on the mockery of religious rituals, targeting disruptions to lawful religious gatherings.[404] The underlying intention of this provision is clear, yet its application may lead to debates over what constitutes mockery and legitimate critique.

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[401] Jordanian Penal Code, Article 274.

[402] The New Arab. (2015, June 17). How serious is Jordan about 'respecting' Ramadan? The New Arab. https://www.newarab.com/analysis/how-serious-jordan-about-respecting-ramadan

[403] Article 275 of the Penal Code stipulates that: " Whoever destroys, damages or defiles any place of worship or any Object which is held sacred by any class of persons with the intention to thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, he/she shall be punished by imprisonment from one month to two years or by a fine from five to fifty dinars (JD5-50)."

[404] Article 276 of the Penal Code stipulates that: "Whoever willfully and without a lawful justification or excuse disturbs any meeting of persons lawfully assembled for religious worship, or assaults any person lawfully officiating at any such meeting or any of the persons there assembled, he/she shall be punished by imprisonment for up to three months or a fine up to twenty dinars."

Article 278 further adds to the complexity of criminalizing acts that outrage religious feelings. Article 278 of the Penal Code states that: "Whoever commits one of the following acts, he/she shall be punished by imprisonment for a period not to exceed three months or a fine not to exceed twenty dinars (JD20):

1. Publishes any print, writing, picture or effigy calculated or tending to outrage the religious feelings or belief of other persons, or;

2. Utters in a public place and the hearing of another person any word or sound calculated or tending to outrage the religious feelings or belief of such person."[405]

While the intentions behind such legal constructs are understandable, the broad scope and ambiguous phrasing of this article give rise to contentious debates over its implications for free speech.

Central to the controversy surrounding Article 278 is its intricate balance between safeguarding religious sentiments and upholding the principles of freedom of expression. The article's ambit and the unspecified term "insulting religious sentiments" create space for immense problems. The presented style of language itself could quickly result in hindering free expression as well as creating obstacles for the presentation of questions regarding religious affairs. For one, safeguarding individuals from hate materials and unreasonable offence is paramount. At the same time, it is necessary not to exceed the limits by not stifling valid opinions and unique ideas.

In the very heart of this confrontation lies the unresolved problem of whether the theological sentiments of believers must be the barometer of quantifying freedom of expression. It is perfectly normal for an individual to emotionally connect to their

[405] Jordanian Penal Code, Article 278.

religious beliefs given that they are fundamental to people's ways of living. To use emotionally charged arguments as a means to censuring debates, however, only further limits the opportunity to openly debate and fosters intellectual growth. The right to properly freedom of expression is there because of inclusion of different opinions maybe they can be uncomfortable or unpopular. Hence, the consideration of the sole risk for offence might be insufficient and could end up reducing the freedom of ideas too much.[406]

Furthermore, the lack of a requirement for a specific intent or realization of the offence in Article 278 raises concerns about its application. The absence of a requirement for a perpetrator's intent leaves room for actions to be misinterpreted, leading to legal consequences for unintentional acts.[407] This could inadvertently curtail artistic expression, academic inquiry, and even innocent statements that happen to be misconstrued. The law's purpose should not only be to punish but to educate and deter; an ambiguous law can easily fall short in these respects.

Moreover, the existence of other provisions within Jordanian legislation, such as the prohibition of insulting prophets and desecrating religious symbols, raises questions about the necessity of Article 278. These specific prohibitions already address actions that directly offend religious sentiments. Thus, the broader and more ambiguous framework of Article 278 seems redundant and could lead to unnecessary limitations on freedom of expression.

[406] Jack Donnelly, 'Freedom of Religion and Freedom of Expression: Religiously Offensive Speech and International Human Rights' (2015) 10(2) Human Rights Review 23, 32 <https://doi.org/10.22096/HR.1394.23670> accessed 25 September 2023

[407] Ibrahim Hamza Muhammad Al-Shurafa, 'Crimes against religion and the family and their penalties: A comparative study between Islamic law and Jordanian Law' (Unpublished Master's Thesis, Yarmouk University, Irbid 2020) <http://search.mandumah.com/Record/1142161> accessed 05 March 2024

The application of Article 278 hinges upon the subjective judgment of the courts. This introduces an element of unpredictability and inconsistency, as interpretations of "offending religious feeling" may vary from one case to another. This uncertainty can have a chilling effect on public discourse and may discourage individuals from engaging in open dialogue or expressing opinions that might be perceived as challenging prevailing religious norms.

Furthermore, while some western countries, like the United Kingdom, are removing the blasphemy laws from their statutes as they infringe the freedom of expression, others are maintaining them as part of their cultural identity. [1] In this case, blasphemy, instead of being regarded merely as an issue, is looked at as something, which could hurt international relations; thus, extreme caution is advised in order not to offend anyone and cause disarray which could potentially lead to instability or violence.[408]

The significant divergence in the global context makes its recognition vital. This fact acts as a reminder of how complicated is balancing the legal restrictions of such liberal movements with respect of religious feelings in countries like Jordan. In this light, a balanced perspective emerges: the researcher says that blasphemy laws may exist in legal systems, but made with equitable and free from valueless details with the help of measure, limit and the result of it must be the safeguarding of fundamental rights.

Humane overview, however, is to promote a tailored approach where blasphemy codes are put into scrutiny and nuanced. Having these laws explicitly outlined with clear demarcations regarding the powers of blasphemy and with evidentiary standards required to prove such offence will further advance the campaign against

[408] Ibid.

the vice. With this in mind, pass laws in sync with the severity of the particular issue speech in question is posing. This should be with its sole aim at areas like incitement to violence against specific individuals or groups, as well as at the rights of other people. Instead of trying to fine-tune whether incitements to hatred or violence ones are vague or precise, being explicit and drawing a fine line may keep the fine balance between freedom of expression and religious sensitivities.

5.3.1.8. Respect the rights and reputations of others

The preservation of the reputations of individuals stands as a paramount requirement within a democratic society, forming a critical part of the various instances that warrant curbs on the unfettered exercise of freedom of expression, as outlined in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The importance of safeguarding this right is realised on absence of reputation, as reputation is needed for our entire capabilities to be used in a self-controlled manner. Without such safeguards, our potential for autonomy remains compromised, hindering our ability to engage effectively in society.

The Jordanian Penal Code prohibits the public defamation, insult, and humiliation of others, granting victims of these offences the right to lodge complaints and seek compensation for the harm inflicted upon them.

Defamation, as stipulated by Article 188 of the Jordanian Penal Code, involves imputing a certain matter to an individual, regardless of its veracity, if it could negatively impact their honour and dignity, leading to societal scorn.[409] This definition underscores the importance of safeguarding individuals from unfounded claims that could tarnish their reputation and standing within their community.

[409] Jordanian Penal Code, Article 188.

Insult, on the other hand, as defined in the same Article, revolves around attacking the dignity and honour of a person without specific accusations.[410] The absence of specificity highlights the broad nature of insult, encapsulating actions that demean an individual's character without necessarily attributing concrete claims to them.

Humiliation, as outlined in Article 190, extends beyond defamation and insult. It encompasses verbal or written actions, gestures, or behaviours that belittle a person's dignity, even if they are not publicly disseminated.[411] The inclusion of humiliation recognizes the harmful impact of actions that may not be as widely known but still inflict emotional harm and degradation upon individuals.

The offences of defamation and insult share key elements that constitute their occurrence. Imputation of a specific or unspecified fact to an individual is the foundational element, whether through spoken or written words, drawings, or signs.[412] Additionally, the publicity of the imputation carried out in a public setting or through publications is crucial to establish the offence. Importantly, the presence of criminal intent, where the perpetrators will be directed towards spreading defamatory or insulting content, is a pivotal aspect of these offences. The requirement of a personal complaint from the victim is essential before initiating legal action, and the law places the burden on the perpetrator to prove the validity of fame of the subject of defamation or insult.[413]

The Jordanian Penal Code outlines several penalties for offences related to defamation, insult, and humiliation. Article 358 stipulates imprisonment ranging from two months to one year for those who commit defamation as described in Article

[410] Ibid.
[411] Jordanian Penal Code, Article 190.
[412] Emad Mohamed Ahmed Rabie, 'The crime of defamation committed in its traditional and modern form' (2005) 21(4) Yarmouk Research - HSSS 993, 1022 <http://search.mandumah.com/Record/29244> accessed 22 June 2022
[413] Ibid.

188. Article 359 addresses insult, with imprisonment lasting from one week to three months or a fine of five to twenty-five dinars for insulting individuals through methods outlined in Articles 188 and 189, as well as for committing humiliation as specified in Article 190. Article 360 addresses humiliation that doesn't qualify as defamation or slander, prescribing punishment of up to one month's imprisonment or a fine not exceeding ten dinars. The article also takes into account the instances of humiliation and physical violence with severe penalties where the violator will be subjected to imprisonment for six months to one year and be fined anywhere between 20 to 50 dinars.[414]

Despite the fact that these measures are designed to protect the honor and decency of individuals the exact wording is too wide what therefore leaves no other alternative but to make an assumption about its negative impact on freedom of speech. Despite international standard that noble reason of limiting freedom of expression is acknowledged, usually the specific wording of legislative articles is used by relevant authorities, who apply them in ways that instead of involving this right violate this human right.

The past numerous years have witnessed the legal provision on defamation and slander which was designed to protect one's reputation legally, being challenged because of their lack of exactness as well as having the potential for misinterpretation. The Jordanian law stipulates that those instances which do not harm a person's reputation line, but also the defense of sentiments and feelings. The broader attention area without necessity to demonstrate any actual harmful implications creates a fresh problem since it ruins the balance built between individual's dignity and the freedom of expression.

[414] Jordanian Penal Code.

In addition, the wide grounds of protecting individual feelings in Jordanian likeability and consequently as another negative outcome of freedom of expression. The National Center for Human Rights aw the 2020 statistics of defamation and slander cases showed a large proportion of the freedom of expression cases last year.[415] Such a broad sphere in which attacks are protected exposes public officials and public personalities to filing their own personal claims against those who criticize them, as a result, narrowing free speech.

Apart from Personal Complaints, One of the Main Concerns is that These Provisions Allow Public Officials and Public Personalities to Sue People they Criticize. For example, the current Jordanian Prime Minister, Bisher Al-Khasawneh, filed a defamation complaint against the Jordanian dissident Kamil Al-Zoubi for publishing information indicating that the prime minister's wife received sums of money by taking advantage of her husband's position. However, he later withdrew the complaint.[416]

Comparatively, international human rights standards provide context for analysing the situation in Jordan. The differentiation between defamatory statements against normal individuals and those directed at public officials or figures is evident in legal cases. In instances involving public figures, the limits of permissible criticism are wider due to the nature of their involvement in public affairs, as illustrated by the ECHR's findings in the case of *Castle v. Spain*. While freedom of expression is not absolute, restrictions must be justified, especially when related to matters of national security or criticism of officials' conduct.[417]

[415] According to the National Center for Human Rights report, the number of defamation and slander cases in 2020 reached 2,140, accounting for 73% of all cases related to freedom of expression in that year.
[416] Camille Al-Zoubi and Bishr Al-Khasawneh: Debate in Jordan due to a complaint filed by the Prime Minister against an activist. (2021, October 30). BBC website. https://www.bbc.com/arabic/trending-59104576
[417] *Case of Castells v. Spain*, Application no. 11798/85, Judgment. Strasbourg, 23 April 1992.

In the United States, the Supreme Court's decisions, exemplified by the *New York Times v. Sullivan* case, uphold the importance of freedom of expression, allowing criticism of public officials' conduct. The court has highlighted the significance of protecting speech regardless of its truth, popularity, or social utility. However, this protection is subject to a standard of 'actual malice,' which requires knowing falsehood.[418] The United States' approach aligns with international standards by giving criticism a broader scope than political speech.

In conclusion, while protecting individuals' reputations is crucial for democratic societies, the wording of legal articles in Jordan can inadvertently restrict freedom of expression. A comparison with international standards, especially the U.S. Supreme Court decisions, emphasizes the importance of striking a balance between safeguarding reputations and allowing open discourse. Clear definitions and limitations on the scope of these laws are necessary to ensure that the protection of reputation does not come at the expense of suppressing freedom of expression.

5.3.1.9. Morality Crimes

The preservation of moral values often serves as a rationale for imposing constraints on exercising freedom of expression, as highlighted by the International Covenant's Article 19, which acknowledges that states can impose restrictions based on moral protection.

In the context of Jordan, the Penal Code's Title 7, "Crimes against Morality and Public Ethics," tackles offences against morals, such as indecent assault, incitement to immorality, and distributing obscene materials. Nevertheless, the article highlights the vague wording of the related legislation which may undermine the freedom of expression due to the low level of legal clarity. Particularly, the policies serve to

[418] *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

secure the identity and conceal feelings that fosters the sharing of contradicting opinions that can differ from societal conventions.

The Jordanian Penal Code's Article 319 addresses obscenity crimes, which include possession, distribution, displaying and advertising of obscene materials. While these clauses intend to protect public morals, the law doesn't explicitly define "obscene materials," resulting in confusion and ambiguity. Courts have not delineated what constitutes obscenity or immoral content, leading to discrepancies in its application. This poses a challenge, as the term "obscene" varies depending on cultural, societal, and individual perspectives, complicating the determination of what falls within its scope.[419]

However, the researcher acknowledges the importance of protecting society from explicit or pornographic content, particularly given societal values. Nonetheless, a concerning aspect is Article 320, which criminalizes "indecency." This provision remains ill-defined and depends on societal standards and norms, leading to its extensive criminalization. Courts lack a standardized definition of "indecency," and their subjective interpretations can lead to inconsistent judgments.[420] The Jordanian Cassation Court's explanation that indecent acts violate "modesty of the eye and ear" without extending to private parts doesn't provide a clear boundary for what actions are considered indecent.[421]

The elements of an indecent crime include the act itself, publicity, and intent. What constitutes an indecent act is derived from societal norms, which are subjective and context-dependent. Publicity necessitates the act's occurrence because of the public, including public spaces and platforms like social media and television. Intent

[419] see Article 319 of Jordanian Penal Code.

[420] Article 320 Jordanian Penal Code states that: "Whoever commits an indecent act or makes an indecent gesture in a public place or community in such a way that any person could see in a public place, shall be punished by imprisonment for a period not to exceed six months or a fine not to exceed fifty dinars (JD 50)."

[421] Court of Cassation, Judgment No. 4738 of 2022, issued on 03/22/2023, your decision database, available at: الحكم رقم 4738 لسنة 2022 - محكمة التمييز بصفتها الجزائية(coe-elibrary.com)

doesn't require a specific aim to corrupt public morality; the voluntary act itself, performed knowingly, suffices for the offence.[422] However, this lack of clarity raises concerns about the freedom of expression, as potentially innocent or non-explicit actions might inadvertently fall under the category of indecency due to evolving societal standards.

The recent decisions by the Media Authority in Jordan to ban certain movies, such as "Eternals,"[423] "Doctor Strange,"[424] and "Thor: Love and Thunder,"[425] due to scenes that are deemed offensive to modesty and values, raise important questions about the restriction of freedom of expression in the country. While the aim is to uphold societal values and morals, it's crucial to critically evaluate these actions in comparison to practices in Western countries and to acknowledge the inherent relativity of the concept of morality between different nations.

The exclusion on films involving homosexuals shows how difficult it is to apply cultural standards and freedom of expression at the same time. Jordan tries to restore moral values but this at the same time, decreases the ability to unfold ideas and various persuasions freely. In Western countries, many have embraced LGBTQ+ representation in media as part of promoting diversity and inclusivity. The explicit prohibition of such content in Jordan reveals the inconsistency in upholding traditional beliefs and the recognition of freedom of speech as well as the scope for identity development of marginalised groups.

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[422] Mohamed Sobhi Mohamed Najm, 'Crimes against morals and public morals in the Jordanian Penal Code: (A comparative analytical study)' (1988) 12(1) JoR 123-166 <http://search.mandumah.com/Record/73906> accessed 16 May 2023

[423] Jordan Times, 'JMC bans screening of 'Eternals' in Kingdom' Jordan Times (16 November 2021) <https://jordantimes.com/news/local/jmc-bans-screening-%E2%80%98eternals%E2%80%99-kingdom> accessed 22 October 2023

[424] The New Arab. (2022, May 8). Jordan bans Dr Strange for gay character, after similar move by Egypt, Saudi Arabia and Kuwait. The New Arab. https://www.newarab.com/news/jordan-bans-dr-strange-gay-character

[425] Jordan News, 'JMC bans 'Thor: Love and Thunder' Jordan News (31 July 2022) <https://www.jordannews.jo/Section-109/News/JMC-bans-Thor-Love-and-Thunder-19877> accessed 30 August 2023

Referring to these cases to the Western approach, where the censorship tends to be targeted on explicit content, hate speech, and incitement to violence, the control in Jordan could appear much stricter. Though, beyond the West, countries are trying to strike a balance between freedom of expression and societal norms the criteria for restrictions are usually clearly defined, such as harm to individuals and groups rather than broad issues of public morals.

There is a need to be sure that the idea of morality, although relative and unique on a cultural ground, is not just relative. Some things that are considered offensive or immoral in one community may not be considered to be something in the same manner as in another. The actions of Jordan to uphold its cultural values via such bans reflect its desire to keep them pure. These bans also discern the necessity of the development of a dialogue that seeks to define limits of morality and the freedom of expression.

Ultimately, the preservation of morals is the target; however, the pen/legal code concerning expression of freedom in general, and therefore its application on the principle of proportionality, presents obstacles in ensuring that limitations on the freedom of expression are equitable. In deciding whether to place restrictions upon the existing freedoms of expression to protect societal values, the careful ditching of laws defining offenses while taking into account evolving cultural and societal norms is a requirement.

5.3.2 Jordanian Press and Publication Law

From decade ago, nothing comes even close to publications like newspapers, books and magazines as far as demonstrating opinions, crashing a proposition, sharing ideas, forming attitudes, and a lot more forms of expression are concerned. Whether good or bad, if an idea should be spread over the crowd to many people, the methods used must not have been through any other ways.

Despite the effort of some countries to be distinctive and avoid imposing legal requirements on publications in order to safeguard the rule of free press and subject matter presentation, the latter does not always hold true. The UK exemplifies this approach, where press regulations are not enforced by law; instead, ethical guidelines and codes of conduct guide publishers, mitigating potential negative consequences of unregulated publishing. The UK prioritizes self-regulation through entities like the Press Complaints Commission (PCC) and the Independent Press Standards Organisation (IPSO), fostering responsible journalism and accountability while minimizing government intervention.[426]

In contrast, some nations have embraced a more stringent stance, aiming to exercise substantial control over publications and the ideas disseminated within their societies. This inclination towards control is primarily driven by the desire to "protect society" and maintain tight oversight over the content distributed. Such control is often established through binding legal frameworks, which establish defined boundaries for the realm of freedom in publishing. This involves holding publishing officials, including figures like the editor-in-chief, legally accountable for the material they publish. This approach can foster internal and external censorship, constraining the range of published content. Jordan practicing the approach by introducing into the Jordanian Press and Publication Law that have gone through various amendments since its initial draft.

The Press and Publication Law of Jordan being named second doesn't amaze me, as it is being adopted within the country and is one of the most restrictive pieces of legislation on freedom of expression. In the into a legal framework there are two categories: ones are limitations and the others are prohibitions. Category number one is legally connected, which brings many issues that touch on different aspects of

[426] Raphael Cohen-Almagor, 'Press self-regulation in Britain: A critique' (2015) 21 S and EE 159-181 < https://link.springer.com/article/10.1007/s11948-014-9538-8> accessed 27 March 2024

media utensils and newspapers. The latter, which is related to negative constraints limitations on expression, falls into the second category.

The Jordanian Press and Publications Law establishes two types of restrictions on press freedom: statutory and social restrictions as well as those being associated with censorship of personal expression.

5.3.2.1. r*egulatory constraints*:

An important article from the law is the one that bans foreigners from owning newspapers. It is written in paragraph 11 of the law. The first paragraph of Article 11 of the law stipulates that: "It is every Jordanian's or every Jordanian-owned company's right to publish their own press publication".[427]

This law has pushed the professionals to oppose each other due to their different outlooks. There are some scholars that believe that such restriction is for the preservation of integrity of Jordanian media, and for preventing from external influences that direct the citizen's vision points differently. But, at the same time, the contrary opinion is also aired claiming that the ban is not related at all to the rule stated in article 15 which is the safeguarding of opinions and freedom of expression for only Jordanian people.[428]

Such an extremely significant provision of the Press and Publication Law of Jordan are constraining of finances that are stated in Article 13. Article 13 of the law states: "Besides the requirements of any law, the board of directors and printers of the publication seeking the license shall comply with the following capital conditions":

[427] Jordanian Press and Publications Law, Article 11.
[428] Adel Awad Ziadat, 'Jordanian press in light of modern press legislation. Yarmouk Research' (2008) 24(4) HSSS 1065, 1077 <http://search.mandumah.com/Record/243925> accessed 22 June 2022

A. Its paid-up capital must not be less than 500,000 dinars if it is a daily newspaper.

B. Its paid-up capital must not be less than 100,000 dinars if it is not a daily newspaper.

C. Its paid-up capital must not be less than 5,000 dinars if it is a specialized publication."[429]

These monetary requirements for obtaining press publication licenses have far-reaching implications. For instance, the law sets varying minimum capital thresholds based on the publication type, potentially monopolizing newspapers' issuance to specific corporations or wealthy entities. While aiming to ensure a certain standard, this limitation may impede media diversity and participation. Moreover, critics point out that these financial prerequisites disregard the country's economic realities, thus excluding individuals from engaging in newspaper publishing.[430]

Furthermore, the Press and Publications Law introduces stringent conditions for journalistic work. According to this legislation, journalists must be affiliated with the Journalists Association and hold Jordanian nationality. This requirement reflects the state's intention to exert a level of control over journalistic activities to align with national interests. However, this provision raises concerns about its potential impact on the diversity of perspectives within the media sector.[431]

Also, amendments to the Press and Publications Law were introduced in late 2012, allowing the government to regulate "digital publications" for the first time,

[429] Jordanian Press and Publications Law, Article 13.
[430] Rana Ibrahim Suleiman, 'The legal development of press and media legislation in Jordan' (2006) (1) Arab Radios Magazine 116, 122 <http://search.mandumah.com/Record/334818> accessed 22 June 2022
[431] In Western countries such as the United States and the United Kingdom, there isn't typically a requirement that journalists must be affiliated with a specific association or hold a certain nationality to engage in journalistic work.

subjecting them to the same regulatory framework imposed on traditional print media. Article 49 of the amended law stipulates that "any digital publication that engages in activities outlined in Paragraph A of Article 15 without obtaining a license will be subject to a fine ranging from 5,000 to 10,000 dinars. If the digital publication involves publishing news, investigations, articles, or comments related to the internal or external affairs of the Kingdom, it must obtain registration and a license from the Department of Press and Publication".[432]

Articles 48 and 49 of the amended law empower the director of the Department of Publications and Publishing with the authority to block unlicensed websites or those found to be in violation of the law. This includes the power to shut down the website's operations without issuing a court ruling or providing reasons. However, websites subject to such actions can appeal the decision to the Supreme Court of Justice, which functions as an administrative court.

Furthermore, Article 49 holds the owner and editor-in-chief of the digital publication accountable for user comments posted on the website. The law obligates websites to refrain from publishing comments containing information or facts unrelated to the news content, unverified information, or content constituting a crime.[433]

This legal provision resulted in the blocking of 291 local news websites due to their failure to obtain the required license. Additionally, many websites opted to disable comment features or implement pre-censorship measures to avoid potential fines or legal repercussions.[434]

[432] Jordanian Press and Publications Law, Article 49.
[433] Ibid.
[434] IFEX, 'Jordanian Authorities Block Hundreds of Websites' (4 June 2013) <https://ifex.org/ar/%D8%A7%D9%84%D8%B3%D9%84%D8%B7%D8%A7%D8%AA-%D8%A7%D9%84%D8%A7%D8%B1%D8%AF%D9%86%D9%8A%D8%A9-%D8%AA%D8%AD%D8%AC%D8%A8-

3.3.2.2. Negative restrictions

The law encompassed an extensive array of restrictions and obligations on newspapers, triggering a significant debate over their nature. Some researchers categorized them as guidelines, not constraints in the legal sense.[435] However, the researcher disagrees with this perspective due to the inclusion of financial penalties for breaches in the Press and Publication Law. If these were merely guidelines, their incorporation into law seems paradoxical. One questions the purpose of such provisions if they're treated merely as "guidelines."

In any event, these provisions can not be relegated solely to the status of guidelines, as legal precedent exists whereby individuals who contravened the provisions were prosecuted. Furthermore, the second paragraph of Article 47 reinforces their binding nature, stipulating that individuals who violate provisions without specified penalties will be fined up to five hundred dinars.[436]

The law introduces a series of constraints, including Article 5, which mandates that "Publications shall respect the truth and refrain from publishing anything that conflicts with the principles of freedom, national responsibility, human rights, and values of the Arab and Islamic nation." [437]

While the intention might be to uphold ethical journalism, this requirement presents complexities. The definitions of these principles are open to interpretation, leading to potential bias in the court's evaluation of journalistic content. Additionally, the imposition of objectivity and impartiality in presenting news raises concerns as

%D9%85%D8%A6%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D9%88%D8%A7%D9%82%D8%B9-%D8%A7%D9%84/> accessed 30 August 2023

[435] Haitham Hamed Al-Masarwa, 'Evaluating the provisions of disciplinary penalties for journalists in Jordanian law' (2014) 38(4) JOF 497, 582 <http://search.mandumah.com/Record/670378> accessed 20 September 2023

[436] Jordanian Press and Publications Law, Article 47.

[437] Jordanian Press and Publications Law, Article 5.

these notions can contradict the expression of opinions or the adoption of specific ideas by journalists.

Interpreting the term "respect the truth," the Cassation Court construed it as the journalist's effort to verify news, without necessarily conforming entirely to the truth and reality. This is because journalism aims to uncover errors and abuses in topics relevant to society, necessitating investigative efforts. Moreover, the concept of objectivity in newspapers entails avoiding indirect interference in news and delivering information as is.[438]

Regarding the prohibition of publishing content conflicting with the principles of freedom, human rights, and the values of the Arab and Islamic nations, these terms remain broad and lack explicit definitions in court rulings or references researched by the author.

It's essential to note that Article 5 fundamentally clashes with freedom of expression for several reasons. Firstly, it empowers the court to assess a newspaper's objectivity, which raises concerns about the court's involvement in matters of opinion expression. Furthermore, requirements of impartiality and objectivity conflict with the concept of expressing an opinion. Additionally, terms like "national responsibility" lack clarity. For instance, if a newspaper reports on the decline in currency exchange rates, could it be deemed nationally irresponsible?

Penalties for violations of Article 5 are stipulated in the first paragraph of Article 45, imposing fines ranging from five hundred to two thousand dinars on both the publication and the perpetrator.[439]

[438] Court of Cassation, Judgment No. 2782 of 2021, issued on 10-10-2021, available at: الحكم رقم 2782 لسنة 2021 - محكمة التمييز بصفتها الجزائية(coe-elibrary.com)

[439] Jordanian Press and Publications Law, Article 45.

Article 7 of the law outlines binding journalistic ethics encompassing various aspects, including respecting public liberties, upholding the right to freedom of thought and expression, maintaining objectivity, and avoiding incitement of violence.

Article 7 states that: "The code and ethics of journalism are binding on the journalist. They include:

A. Respecting public liberties, safeguarding the rights of others, and refraining from encroaching on their private life.

B. Considering the freedom of thought, opinion, expression, and access to information as an equal right for the press and the citizen.

C. Maintaining balance, objectivity, and honesty in presenting press material.

D. Refraining from publishing anything that might incite violence or discord among citizens.

E. Refrain from bringing or obtaining ads.

F. Comply with the provisions and principles of the press code of honour issued by the Association."[440]

If we consider Article 7 as non-binding guidelines for journalistic ethics, it becomes logical to some extent, except for the restriction on refraining from bringing or obtaining advertisements. The researcher struggles to understand the problem if newspapers seeking advertisements for financial sustainability. Isn't this the objective of every newspaper striving for continuity?

[440] Jordanian Press and Publications Law, Article 7.

However, if we view Article 7 as restrictions on press freedom, the only acceptable and logical limitation is refraining from inciting violence or stirring up discord among citizens. The remaining restrictions could be perceived as guiding principles and values rather than rigid constraints.

For instance, while the ICCPR allows restrictions to respect the rights of others, it doesn't construe respecting others' rights as a restriction itself, as the meaning lacks clarity. What defines "respecting the freedoms of others and preserving their rights"? The limits are unclear in this context.

As for the second paragraph, considering freedom of thought, opinion, and expression as a right of both the press and the citizens seems straightforward. However, its application could be hindered if a newspaper doesn't acknowledge freedom of opinion and thought as citizens' rights.

Regarding the third paragraph, the Cassation Court's interpretation distinguishes objectivity from interference, suggesting newspapers should deliver news without indirect influence. Integrity is interpreted as presenting news without truncation and with ongoing follow-up. Balance, meanwhile, entails offering different viewpoints impartially.[441]

The researcher questions the law's relevance in these matters. If a newspaper presents a single opinion or lacks impartiality, does the law impose these conditions on other newspapers, including state-run ones?

Lastly, the requirement to adhere to the Press code of honour issued by the Association of Journalists might not carry legal weight. The Association is

[441] Court of Cassation, Judgment No. 2782 of 2021, issued on 10-10-2021, available at: الحكم رقم 2782 لسنة 2021 - محكمة التمييز بصفتها الجزائية(coe-elibrary.com)

responsible for implementing its guidelines, and its issuances aren't legally binding. Restrictions, as per Article 15 of the Jordanian constitution, should be established by law.

Notably, the law doesn't prescribe penalties for violating this specific article. Instead, Article 47 is applicable, carrying a fine not exceeding five hundred dinars.

These provisions, if viewed as guidelines, have some logical aspects. However, if perceived as restrictions on press freedom, they might be deemed excessive. In comparison, Western countries often prioritize the freedom of the press over enforcing such detailed ethical obligations. The U.S. and UK focus on self-regulation and professional ethics through bodies like the Independent Press Standards Organisation in the UK, which emphasizes responsible journalism without prescribing specific ethical guidelines.

Article 38 states that: "It is prohibited for the printing press to publish the following in any form:

1. What contains any contempt or harm to any of the religions and denominations whose freedom is guaranteed under the Constitution?

2. What contains an offence to the prophets by writing, drawing, image, symbol or any other means?

3. What contains an insult to religious feeling or belief, or inciting sectarian strife, or racism?

4. What offends the dignity and personal freedoms of individuals, or what contains false information or rumours about them."[442]

[442] Jordanian Press and Publications Law, Article 38.

The researcher has discussed these restrictions in the context of the Penal Code section, but it's important to note that the press law broadened the scope of the offence of blasphemy. This expansion was primarily done by introducing the term "offence," which is not expounded upon in the law, unlike terms like defamation, slander, or humiliation that the Penal Code specifically defines.

Furthermore, the law extended comprehensive protection to religions, encompassing more than just their symbols or rituals, in contrast to the Penal Code. However, this protection is limited to religions whose freedom is guaranteed by the Constitution. Although the Constitution doesn't explicitly identify these religions, it is implicitly understood to refer to the three major revealed religions: Islam, Christianity, and Judaism.

Article 46 has introduced substantial financial penalties compared to other sanctions in this law. It mandates that breaching the first three provisions of Article 38 will result in a fine ranging from no less than ten thousand dinars to no more than twenty thousand dinars. Concerning the final aspect related to insulting individuals' dignity and personal freedoms, the law prescribes a penalty ranging from no less than five hundred dinars to no more than a thousand dinars.

The researcher highlights that this restriction is notably expansive when compared to the limitations in the Penal Code, which are designed to safeguard individuals' reputations. The concept of holding a newspaper accountable for merely disseminating false information or rumours about individuals seems illogical. Such news would need to be offensive or harmful to warrant the newspaper's accountability, as false news is unfortunately common in the realm of the press.

Lastly, the term "insulting the personal freedoms of individuals" remains undefined both in Jordanian law and within the provisions of the Jordanian courts.

The closest interpretation the researcher could find suggests that the legislator intended to prohibit interference in individuals' private lives. Even so, this restriction should have precise conditions and standards to avoid ambiguity.

5.3.3 Public Assemblies Act

The right to assemble is a critical component of the broader umbrella of freedom of expression, a constitutional right safeguarded by Jordanian law. Within the first paragraph of Article 16 of the Jordanian constitution, the right to hold meetings is explicitly granted to Jordanian citizens within the confines of the law.[443] The Public Assemblies Act, revised in 2011, was introduced to regulate and define this right, aiming to balance citizens' freedom to assemble and the need to maintain public order.

Although the initial right to assemble does not require prior permission, and the restriction is an exception, Jordanian law had made exempted assemblies from prior permission the exception when it specified the exempted assemblies from applying the provisions of the law. The law exempts meetings of a particular nature, such as those of companies, chambers of commerce and industry, municipalities, professional unions, and political parties, provided that they are linked to achieving their objectives according to the legislation that regulates their work and activities.[444]

The law also exempts media seminars and programs organized by official media institutions, meetings within university premises, gatherings meant for celebrating national and religious events coordinated by ministries and governorate committees, and meetings occurring during elections from following the rules of the Public

[443] Jordanian Constitution, Article 16.
[444] Murad Tayseer Khalif Al-Shawawra and Muhammad Ali Zaal Al-Shabbat, 'Legal regulation of freedom of public meetings in Jordanian law (Master thesis, Middle East University, Amman 2015) <http://search.mandumah.com/Record/723384> accessed 15 March 2024

Assembly Act. Private events like weddings, funerals, and family gatherings are similarly excluded.[445]

These excluded gatherings, which aren't subject to the law's provisions, shouldn't be under any administrative control. This isn't an exemption, as these gatherings are either related to achieving the goals of specific entities and organizations like charities, companies, chambers of commerce, professional unions, and seminars, or they are purely personal family gatherings associated with social occasions like weddings.

This law gives the Minister of Interior considerable power to unilaterally designate additional gatherings as exceptions, granting the executive branch significant influence over exercising the right to assemble. This emphasis on executive authority can affect the balance of power and citizens' rights.

Furthermore, the amended law broadened the scope of the term "public assembly." According to Article 2 of the law, a public meeting involves discussing matters related to the state's general policy.[446] This definition, while comprehensive, raises concerns about its practical application. Discussions on topics as wide-ranging as economic crises and social changes, both integral to the state's general policy, could fall within the ambit of this definition.

According to this definition, any gathering of two or more individuals in any location – even if it's within their homes or offices – during which topics relating to the general policies of the state are discussed, qualifies as a public assembly. In such instances, the administrator holds the authority to initiate actions and security

[445] Ibid.
[446] Public Assembly Act, Article 2.

measures to address the situation, and there is an obligation to inform the relevant parties about the event.

Regarding procedural regulations, the law mandates that event organizers submit a notification to the administrative governor at least 48 hours before the assembly. This notification must include details such as names, addresses, and signatures of organizers, meeting purpose, time, and location. However, designating any public meeting conducted without prior notification as an illegal act deprives citizens of the right to assemble spontaneously in response to immediate concerns, such as rejecting governmental decisions.[447]

Furthermore, the law's requirement for at least seven natural persons to sign the notification contradicts its definition of a public meeting that doesn't stipulate a specific number of participants. Consequently, legal entities like professional unions and associations are barred from requesting public meetings despite their recognized legal status.[448]

Article 7 of the law bestows extensive authority upon the administrative governor to intervene in gatherings, granting them the power to adjourn a public meeting if they perceive potential risks to public or private lives, property, or public safety. This right is granted without requiring justification for their decision.[449]

The absolute power vested in the administrative governor to employ significant security measures in the name of upholding security and public order during public

[447] Hassam Owdah Al-Lahawiyyah, 'The role of the administrative governor in organizing public meetings' (Dissertation Al-Azhar University, Girls' Branch, Damanhour 2020) <http://search.mandumah.com/Record/1151812> accessed 05 March 2024
[448] Ibid.
[449] Public Assembly Act, Article 7.

gatherings, including the ability to adjourn meetings, raises concerns about potential misuse of authority by both the governor and affiliated security agencies.

Of particular note, the law lacks provisions that hold the governor or security agency leaders accountable for any overreach or imbalanced precautionary actions, or for dissolving public meetings without sufficient grounds. Establishing such accountability, whether through criminal, civil, or administrative means, would provide reassurance to attendees that security measures taken by the governor or security agencies will be proportionate and necessary to address security breaches, maintain public order, or counter potential encroachments on public or private domains.

What exacerbates the potential for the arbitrary exercise of power by the governor in controlling public gatherings in Jordan is the absence of specific regulations outlining prohibited behaviours for participants during such events. The law does not provide any guidance on actions that might be considered security breaches, disruptions of public order, or threats to public safety, leaving participants in public gatherings unsure about what is acceptable or not.

To address this issue, the law refers to government-issued guidelines from 2011 concerning the organization of public meetings, gatherings, and parades. These guidelines specify the actions that participants in any public meeting should refrain from, including:

- Not making invitations, announcements, or publicity before obtaining permission from the administrator to hold the public meeting.

- Avoiding the use of slogans, chants, drawings, pictures, or symbols that undermine state sovereignty, national unity, security, or public order.

- Not carrying weapons, sharp tools, or any items that could facilitate criminal activities or disturb public order.

- Cooperating with security authorities to prevent the entry of individuals with criminal records into public meetings.

- Not obstructing traffic during public gatherings.

- Ensuring that public or private facilities or properties are not subjected to destruction during public meetings.

- Not permitting anyone to disrupt the security and order of the public meeting.

These guidelines lack the precision and legal standing necessary to determine actions that disrupt public order. Notably, they do not specify the nature of prohibited symbols, chants, or drawings. Moreover, it's curious that the guidelines ask participants to cooperate in preventing individuals with criminal records from attending public meetings. How would meeting organizers even ascertain the criminal records of potential attendees? It's worth noting that individuals with criminal records, like all citizens, retain their constitutional rights, including the right to assemble unless legally restricted.

Unlike Jordan, the UK does not impose prior permission requirements for assemblies, emphasizing facilitating peaceful assembly. The Public Order Act of 1986 forms the basis for regulating public assemblies in the UK. It emphasizes the

balance between preserving public order and respecting democratic rights. In this regard, the Act expressly grants an exemption to the activities of specified categories of assemblies but not to spontaneous expressions which are recognized as necessary for the development of democratic societies.[450]

The Act however gives the police the right to put conditions on assemblies to prevent any free disorder, but these conditions must be balanced reasonably. The law is targeted towards actions that can be construed as stimulating violence, chaos, or additions to division.[451]

In summary, the main problem with the Public Assembly Act is that it seems to violate the Jordanian's right to assemble without being unduly administratively constrained. The unchecked power that the governor grants themselves while suppressing the public assembly right for everyone contradicts the freedom feature of democracy.

5.3.4 Terrorism Act

The terrorism law passed in Jordan in 2006, amongst its agenda was enshrining laws that are supposed to protect national security and curtail terrorist activities that might occur within the national boundaries. Nevertheless, this act has been the subject of inquiries based on its power to interfere with free speech. Although defending public safety is inseparable, the law stipulating such process can be viewed as being even against the democratic principles and freedom of speech.

[450] Graham W Smith, 'The Public Order Act of 1986: Balancing Public Order and Democratic Rights in Regulating Public Assemblies in the UK' (1995) 23(2) JCL 245, 263
[451] Ibid.

The main arguments in the terrorism law discussion concern the definition of terrorism provided in Article 3, which has a generic nature and does not only refer to violence. This definition is broad and it also includes such things such as "any act or threat, which generates fear not to only the public property but even among people."[452] Though the definition is a target to fight the rising terrorism, this truly broad definition, however, introduces some ambiguity allowing it to extend into the peaceful expression of many things. These may consist of initiatives like holding civil protests or the statement of divergent views.

This level of vagueness inherent in the definition presents a worrying possibility to suppress of freedom of speech. The persons can develop unlike behaviour like becoming reluctant to express their thoughts and opinions, as they can be wrongly accused of being supporters of threat of terrorism. Moreover, the issue has been exacerbated by the fact that most forms of terrorism are not internationally framed as such, and instead are seen as misguided forms of political activism related to day-to-day criminalities, thus changing the separation between the acts of terror and criminal offences.

Another problem with the definition of terrorism in the Jordanian law is that it is not in line with international human rights standards. The United Nations Office of the High Commissioner for Human Rights (OHCHR) has stated that the definition of terrorism should be limited to acts that are "intended to cause death or serious bodily injury to civilians or non-combatants to intimidate a population or compelling a government or an international organization to do or abstain from doing any act."[453]

[452] Terrorism Act, Article 3.
[453] OHCHR, 'Human Rights, Terrorism and Counter-terrorism' (2008) Fact Sheet No. 32, GE.08-41872–July 2008 <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet32EN.pdf> accessed 16 May 2023

The Jordanian law provides a rather broad definition of terrorism, but it is far from being too narrow to meet the standard.

The other limitation that the Jordanian anti-terrorism law put on freedom expression is the ban on "promoting terrorism. " Article 18 of the law disallows messages or public communication that encourage people to be involved in terrorist acts or may motivate them to continue its activity.[454] his borderline clause as an incentive to mute any open criticism of the government and dissent makes room for a vast spectrum of interpretation that can be used for its purposes. An example is the conflict between journalists and activists who comment on the activities of terrorist groups or in expressing the views that are critical of the government and the authorities that accuse these people of encouraging terrorism and use the judicial system against them.

The terrorist transmission law of Article 18 prohibits the distribution of terrorist ideas through their dissemination or communication. Although the law is meant to clarify the radicalization it can be considered vague and subjective too. The reasons for this and the ambivalence about a true definition of intent to connect it to a terrorism-related penalty raise concerns about legitimate dissenting views being wrongly called spreading terror and so limiting free dialogue and press freedom. In the example, journalists and activists could be reminded or punished for their struggle to disclose information about extremists' activities or criticize the state power.

The Jordanian terrorism law has provisions that hamper valuable aspects such as fair trial and due process. Article 13 grants the authorities the ability to keep arrested persons for a period as short as 15 days without charge and this can be taken a step

[454] Terrorism Act, Article 18.

further.[455] Such clause empowers the authorities to remand people to custody even without the need for due process. Thus, their normal freedom of expression to the masses is hindered. Furthermore, Article 16 exempts secret evidence from trials, thus impeding the defendants' opportunity to test and justifiably challenge the evidence against them.

The Jordanian terrorism law includes provisions as well that restrict the forming of associations or communities and the joining of people to carry out the same goal. Article 14 of the law strictly bans any kind of organization and group that is linked to or participates in terrorism by defining strict penalties for all individuals involved in such acts. This clause can lead to the restriction of the likelihood of the individuals to communicate with other people and form groups that struggle for their rights or expound their views.

To sum up, the Jordanian terrorism law is intended to safeguard national security and prevent terrorist actions but it also contains some articles which hamper the freedom of expression. The broad definition of terrorism, banning to do with terrorism revoking right to a fair trial and due process, and disrupting right of association all are executed at the expense of freedom of speech in Jordan

The restriction violates the tenets of democracy and free speech, thereby damping the ability of individuals to air their views uncensored. Therefore, it is very necessary for the reviewing of the Law of Terrorism in Jordan to ensure that freedom of expression is not violated.

5.3.4.1 The Terrorism Act expands the powers of the State Security Court

[455] Terrorism Act, Article 13.

One of the major problems with the idea of terrorism being identical to freedom of expression is the imposition of severe punishments that are different from the nature of the committed crime. Furthermore, this expansion also bestows greater authority upon the State Security Court, as articulated in Article 8 of the Anti-Terrorism Act, which states, "The crimes stipulated in this Law shall fall under the jurisdiction of the State Security Court."[456]

The Jordanian State Security Court operates as a military court consisting of a combination of military and civilian judges appointed by the Prime Minister. Notably, the Public Prosecutor's headquarters are within the General Intelligence Department, headed by a military officer. This arrangement, unfortunately, impacts the moral and psychological dynamics of the investigative process.[457]

Regrettably, this court faces a multitude of challenges. Foremost among them is the fact that numerous legal scholars question its constitutionality.[458] This scepticism is rooted in the opening passage of Article 101 of the constitution, which emphasizes that "The courts shall be open to all and shall be immune from interference in their affairs."[459]

Nonetheless, this court lacks true independence, given that the Prime Minister appoints the judges. Furthermore, the second paragraph of the same article specifies that "No civilian may be tried in a criminal case where all its judges are not civilian, the exception to that are the crimes of treason, espionage, terrorism, the crimes of drugs and currency forgery."[460] Paradoxically, despite military judges' presence, the

[456] Terrorism Act, Article 8.
[457] Abdul-Ilah Muhammad Al-Nawaisah, 'The Provisions of the Jordanian State Security Court' (2006) 30(2) LJ 73,121 <http://search.mandumah.com/Record/76499> accessed 20 September 2023
[458] Ibid.
[459] Jordanian Constitution, Article 101.
[460] Ibid.

court prosecutes civilians, human rights activists, and journalists for offences connected to freedom of expression.

In the subsequent chapters, we will explore the implications stemming from the court's structural dynamics, which notably lack genuine independence. Through meticulous analysis, the subsequent sections will underscore the broader ramifications of this court's framework, addressing its far-reaching consequences for the landscape of freedom of expression within the jurisdiction.

5.3.5 Cybercrime Act

Jordan's response to the rising tide of internet-related crimes materialized with the Temporary Information Systems Crimes Act No. 30 of 2010, enacting the country's initial foray into countering cyber transgressions such as data theft, promoting illegal activities, and child exploitation. However, the trajectory of this legislative journey took a concerning turn in 2015, when the Jordanian government introduced amendments and rebranded the law as the "Cybercrime Act." Though ostensibly aimed at strengthening legal measures, this transformation also ushered in new curbs on freedom of expression, a vital facet of democratic societies.[461]

A pivotal point of contention within the Cybercrime Act is Article 11, an element with far-reaching ramifications for free expression. This article states: **"Whoever intentionally sends, resends, or publishes data or information through the information network, website, or any information system involving defamation, slander, or humiliation of any person shall be punished by imprisonment for no**

[461] Atheeb Abdel Fattah Mostafa, 'The impact of electronic means on freedom of opinion and expression in Jordanian legislation' (Master's thesis, Yarmouk University, Irbid 2018) <http://search.mandumah.com/Record/958081> accessed 10 February 2024

less than three months, and a fine of no less than one hundred dinars and not more than two thousand dinars."[462]

Firstly, it's noteworthy that the Penal Code approaches defamation, slander, and humiliation as distinct offences, each with its own designated penalty commensurate with the gravity of the transgression. Contrarily, the Cybercrime Act amalgamates these into a singular crime, affixing a uniform punishment, potentially leading to disproportionate consequences for varying degrees of wrongdoing. This consolidation erodes nuanced legal treatment and the proportionality principle.

Secondly, the Cybercrime Act amplifies the penalties for these acts specifically when committed through digital mediums. This elevation of punishment solely due to the use of the internet undermines the principle of equitable justice, implying that similar actions conducted offline are subject to milder consequences.

Thirdly, the law's framework permits pre-trial arrest of individuals accused of such crimes, a provision absent in the Penal Code. This prerogative of pre-trial detention raises concerns over abuse of power, as individuals, including journalists, can be detained before conviction, undermining the presumption of innocence and due process.[463]

The ramifications of Article 11 on freedom of expression in Jordan are incontrovertible. Data from the National Center for Human Rights underscores its substantial influence, revealing that a significant portion of cases linked to free expression stem from this particular article. Significantly, the article's lack of

[462] Cybercrime Law, Article 11.

[463] Dina Samir Mobaideen, Hanan Kamel Ahmed Al-Sheikh and Saddam Suleiman Al-Mashaqbeh, 'The impact of the proposed cybercrime law on media freedoms from the point of view of those in charge of media in Jordan' (2022) 42(2) JAAURHE 13-27 <http://search.mandumah.com/Record/1257825> accessed 15 September 2023

distinction between legitimate criticism of public figures and criminal defamation adds a layer of complexity. A substantial portion of reported cases emanates from complaints filed by public officials, raising questions about the law's potential misuse to stifle criticism and dissent, ultimately impinging on democratic discourse.[464]

The evolution of the cybercrime legislation in Jordan has recently taken a concerning turn, raising significant alarms about its implications for freedom of expression and civic liberties. In August 2023, the government enacted a new law, superseding the existing cybercrime regulations. This new law introduced fresh restrictions and augmented penalties, exacerbating the apprehensions surrounding its impact on individual freedoms.[465]

A central alteration within the revamped legislation replaces Article 11 with Article 15. This change, while seemingly innocuous, has profound implications for free expression. Article 15 now stipulates that “intentional dissemination of data or information through various digital platforms, including social media, containing false news, defamation, slander, or contempt of individuals warrants imprisonment for a minimum of three months and a substantial fine ranging from twenty to forty thousand dinars”.[466] The insertion of "false news" as a new term underscores the legislature's intent to wield a tighter grip on digital discourse.

[464] The report of the National Center for Human Rights on the Universal Periodic Review of Jordan on November 8, 2018 <https://www.ohchr.org/en/hr-bodies/upr/uprjo-stakeholders-info-s31>
[465] Al-Jazeera Net ‘Heavy Penalties... What you would like to know about the new cybercrime law in Jordan’ (20 July 2023).
[466] Cybercrime Law, Article 15.

Moreover, the second paragraph of the same article empowers the Public Prosecution to initiate action without necessitating a complaint if the alleged offence pertains to state authorities, official bodies, or public administrations.[467]

In Articles 14, 15, 16, 17, and 19, the new law added new restrictions that were not present in the previous law. As is often the case, the law employed imprecise, vague, and loosely defined terms such as "false news," "facilitating, promoting, aiding, or inciting immorality," "defamation of personality," "sedition," "undermining national unity," and "contempt for religion."

The expansive scope of these vague provisions potentially allows the Jordanian executive to clamp down on freedom of expression. Judges may be compelled to convict citizens even in cases where the allegations are debatable, stifling open dialogue and dissent.

A particularly worrisome provision is Article 24, which criminalizes the publication of law enforcement officials' names, pictures, or any information deemed offensive or harmful without prior permission. This move contradicts international standards for freedom of expression and hampers accountability and transparency in governance.[468]

Article 33 further restricts online expression by granting the public prosecutor or competent court the authority to remove or block content deemed to contravene the law, encompassing websites, social media platforms, or individuals with public accounts. Not adhering to orders, in turn, may lead to the most severe consequences, which are monetary penalties or blocking entire platforms.[469] More importantly,

[467] Ibid.
[468] Cybercrime Law, Article 24.
[469] Cybercrime Law, Article 33.

Article 37 institutes tough supervision, obliging social network companies having over 100,000 followers in Jordan to have local offices.[470] An extension of authority by this strategy could usher again in domination of the digital spaces and tighter control of people's creative minds elsewhere.

Malicious spots of these amendments are conducting a terrifying impress upon liberty of expression and engagement of citizens in Jordan. The unavailability of public forums for free discussion in tandem with the government's efforts to continue restricting digital spaces is a sign of a backward shift that undermines democracy.

In the concluding chapter of this context, a dedicated section will be reserved that as a vital point would explore the real-world application of cybercrime text, which in turn have momentous consequences for freedom of expression. This section is planned to be for case studies providing examples on how the law is resorted to assessing the practical impact on people who use it either to express their thoughts or share their opinions.

5.4. **Conclusion**

The Constitution of Jordan guarantees freedom of expression to its people, but the legal framework in which this right is built has problems. In the first place, the framework is as amorphous as it is ambiguous. The freedom of speech laws in Jordan includes several unclear articles whose meaning can be interpreted in diverse ways that make it hard for individuals to know when they are overstepping the law. This

[470] Cybercrime Law, Article 37.

vagueness presents an obstacle to the legal certainty principle, which is the fundamental principle of law, which states that laws should be plain and predictable.

Large barriers to freedom of expression in Jordan stem from realm of national security, religious issues, morals, and defamation. For example, the offence of insult against religious beliefs and the offense of insult against King or government officials are stated in the Penal Code, but it is unclear what constitutes an insult in these instances. Such temporal limitations are highly subjective and can be interpreted in a way to prohibit or stifle free expression, such limitations is inconsistent with international standards because international standards say that limitations have to be clear and predictable, while Jordanian laws are not in line with it.

The ambiguity in these laws has a great impact; it can cause judges to make decisions based on their perception and as a result, the freedom of expression is inhibited. Unspecific laws give authorities a broad license to perceive and apply penalties as they wish, thus suppressing dissenting opinions and also the freedom of expression.

Uncertainty arises in the control of freedom of expression laws as a result of the fact that the arbitrary implementation of it is seen as a problem. The lack of clarity and the possibility of different interpretations can make law enforcement elites pick out the person or group they are not satisfied with or are afraid of to target them. Therefore, this can lead to deviations from the uniform rule of law and deny the people constitutionally guaranteed rights to due process and equality.

This thus advises the explicit mention of some legal guarantees for freedom of speech that ensure an independent judiciary and separation of powers. Notice how the existence of an independent judiciary can prevent officials from misusing these

laws. In the following chapter, the researcher discusses the presentation of some of freedom of expression guaranteed in the Jordanian Legal System such as the independence of courts and the separation of powers.

Chapter 6

Guarantees of freedom of expression

6.1. Introduction

The focal point of this chapter is a doctrinal analysis regarding the extent and scope of the powers of the monarchy, as well as the constitutional basis for the enactment of emergency law or martial law. In tandem, this chapter aims to articulate precisely the safeguards contained in the legal framework, including the mechanisms of parliamentary and judicial oversight. These guarantees limit the potential encroachments of such legal measures on fundamental freedoms. This doctrinal exploration sets the stage for a later chapter, in which the practical application of these legal provisions will be thoroughly examined, adding a layer of clarity to the public discourse.

The core of upholding human rights is therefore naturally tied to a state governed by law and a legal system. Their role constitutes a strong link demonstrating that human rights cannot be deprived of the security of legal guarantees. Presidential decrees and laws have their significant value; however, they do not suffice to solve the issue on their own. It is imperative to ensure tough safeguarding mechanisms exist to safeguard these rights from possible misuse by state overlords. Consequently, such law of rule as the foundation for government authorities to use their power exclusively within the margins enacted by the laws. However, these laws must be made by the constitutional processes. The core of this concept is guaranteeing resident a level of security from the arbitrary use of power by the state.

The rule of law, mainly based on the continental European legal concept of law as power of state, according to Immanuel Kant, philosophy, is an entity which would prevent arbitrary and uncontrolled exercises of power by the state.[471] This rule rests on the essential law of formalism associated with specific conditions, such as a Constitution factoring in the independence and subordination of powers, and mechanisms to control the overreach of either. Moreover, both the judiciary and an austere body to review government actions are needful. Additionally, advocated systems of laws should facilitate straightforward and coherent flow of laws which provides strong pillar of rule of law.[472]

Within the scope of this chapter, the researcher studies the Jordanian legal system to assess its commitment to the principles of the rule of law. Particular attention is given to critical principles such as the separation of powers, the independence of the judiciary, and the subordination of powers to the law, especially in exigent circumstances. In acknowledging the comprehensive scope of the chapter, it is important to note that while pivotal elements such as hierarchies of legal norms and constitutional provisions for liberties are integral to the rule of law, their exploration has been deferred to other chapters to circumvent redundancy.

6.2 Separation of powers

The separation of powers is a fundamental principle in modern democracies, dividing the government's authority into three branches: legislative, executive, and

[471] Kant, Immanuel, and Allen W. Wood, *Immanuel Kant: practical philosophy* (Cambridge University Press 1996).
[472] Paul Craig, *Formal and substantive conceptions of the rule of law: an analytical framework* (In The rule of law and the separation of powers, Routledge, 2017).

judiciary. This division is vital for upholding checks and balances, preventing any branch from amassing excessive power and misusing its authority.[473]

This principle aims to avert power concentration in the hands of an individual or entity, guarding against potential abuses. As the English philosopher John Acton noted, "Power tends to corrupt, and absolute power corrupts absolutely."[474] This assertion is echoed by Carrithers, who observed, "Constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go."[475]

Carrithers elaborates on the perils of lacking a separation of powers in his work, "The Spirit of Laws." He warns that "When the legislative and executive powers are united in the same person, or the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner."[476]

In the context of freedom of expression, the separation of powers assumes paramount importance as it prevents any one branch from overpowering others and stifling dissent. It could be that the executive, without being checked by the legislative body could misuse its control over the court system to prevent activists from speaking openly by initiating cases against them or gagging media.

Consequently, if the legislative power does not have control over the executive branch, it can adopt laws to punish freedom of speech, prevent certain types of

[473] Maurice John Crawley Vile, *Constitutionalism and the Separation of Powers* (2nd edn, Liberty Fund, Indianapolis 2012).
[474] Lord Acton, Letter to Bishop Mandell Creighton. In Figgis, John Neville, and Reginald Vere Laurence. *Historical essays and studies*. Freeport, NY: Books for Libraries Press, 1967.
[475] David Wallace Carrithers ed., *The Spirit of Laws: A Compendium of the First English Edition* (University of California Press 1977).
[476] Montesquieu, The Spirit of Laws, at pp. 151–52.

speech, or severely penalize the government for criticizing it. The courts exercise a crucial function in making sure that such acts are not hindered by the law which protects free expression guarantees. The separation of powers establishes a system of checks and balances that safeguards freedom of expression, preventing any branch from becoming excessively dominant and encroaching upon this essential right. Through the maintenance of an independent judiciary, an active legislature, and a responsive executive, modern democracies uphold and enhance freedom of expression, ensuring the free exchange of diverse ideas and voices.

Thus, the separation of powers is a cornerstone of freedom of expression and a fundamental tenet of the democratic system. Any political entity disregarding this principle fails to offer essential guarantees for rights and freedoms, lacking a foundational constitution, as highlighted by Al-Tarawneh.[477]

6.2.1 Separation of Powers in Jordan

The Hashemite Kingdom of Jordan operates as a constitutional monarchy with a parliamentary governmental structure. The principle of separation of powers serves as a foundational element within Jordan's political framework, effectively distributing the authority of governance across the legislative, executive, and judicial branches.

Heading the executive branch is the King, who fulfils the roles of both head of state and commander-in-chief of the armed forces. Designated by the King, the Prime Minister leads the government, overseeing policy implementation and the day-to-day administrative operations. Supplementing this structure is the Council of

[477] Muhammad Al-Tarawneh, 'The Rule of Law and Human Rights' Ammon News (2010) <https://www.ammonnews.net/article/75985> accessed 30 August 2023

Ministers, which provides counsel to the Prime Minister and supervises the activities of various governmental ministries.[478]

The legislative arm of the Jordanian government consists of the National Assembly, comprised of two chambers: The House of Representatives and the Senate. Elected by the populace, the House of Representatives boasts 130 members. Conversely, the Senate is composed of 65 members appointed by the King. This legislative body is tasked with enacting legislation, endorsing the national budget, and monitoring the functions of the executive branch.[479]

Handling the interpretation and enforcement of laws is the judiciary, overseen by the Judicial Council. Appointed by the King, the Judicial Council includes judges and government officials who resolve disputes not only among government branches but also between individuals and the state.[480]

However, it's noteworthy that despite the clear separation of powers within the Jordanian constitution, the King is vested with the authority to exercise all three functions.[481] This unique situation undermines the essence of the separation of powers principle outlined in the constitution.

The core purpose of the separation of powers concept is to prevent the concentration of authority within one individual or entity, thereby dispersing the functions of governance among diverse entities. Unfortunately, the Jordanian constitution endorses a concentration of power. The King wields control over the

[478] See Articles 24 to 40 of the Jordanian Constitution.
[479] see Articles 62 to 70 of the Jordanian Constitution.
[480] see Article 42.
[481] Anas Muhammad Asam Abdel Rahman, 'The impact of the constitutional amendments of 2011 on Public Authorities in Jordan' (Master Thesis, Al-Ahliyya Amman University 2015) <http://search.mandumah.com/Record/995718> accessed 19 March 2024

executive branch, contributes to legislative processes, and holds supreme dominion over the judiciary.[482]

This section of the research explores the shortcomings of Jordan's separation of powers framework, highlighting how the considerable authority held by the executive branch detrimentally impacts the freedom of expression.

6.2.1.1 The King

The Hashemite Kingdom of Jordan operates as a constitutional monarchy in which the King wields extensive powers enshrined within the nation's constitution. The King, serving as both the head of state and the commander-in-chief of the armed forces, exerts significant authority across Jordan's legislative, executive, and judicial branches.[483]

It is also important to note that the system of government in Jordan is a hereditary monarchy. Article 28 of the Jordanian Constitution stipulates that 'the throne of the Hashemite Kingdom of Jordan is hereditary in the family of King Abdullah bin Al-Hussein, and the inheritance of the throne is in the males of his sons…'. This stipulation requires the king to be a Muslim.[484]

In Jordan, the King is designated as "the head of the three authorities,"[485] symbolizing the considerable power vested in him under the Jordanian constitution.

In practical terms, the King is actively involved in all aspects of the state's functions. He heads the executive authority and participates in the legislative process

[482] Ibid.
[483] Al-Hiary Adel, *Constitutional Law and the Jordanian Constitutional System* (Dar Al Thaqafa for Publishing and Distribution 1972).
[484] Kamal Ghali, *Principles of Constitutional Law and Political Systems* (Damascus University Press 1965) 159.
[485] I M Mustafa, *Constitutional Law and Politics in Jordan* (Sussex Academic Press 2001).

by appointing the Senate. Additionally, he holds the authority to ratify laws through decrees and appoint judges.

One of the most pivotal powers the King possesses is the ability to appoint and dismiss the Prime Minister and Cabinet members. This prerogative grants him substantial sway over the executive branch, enabling him to shape governmental policies and priorities. The Jordanian constitution affords the King the unilateral right to appoint, dismiss, and accept the prime minister's resignation without any prescribed restrictions. The Jordanian constitution does not obligate the king to appoint the majority party leader or the leader of the majority coalition as prime minister.[486]

This autonomy has led to a historical absence of prime ministers chosen through parliamentary consultation or popular election, reinforcing the King's dominance in executive appointments. Jordan has not witnessed, throughout its history, any prime minister elected by the people or chosen by parliament or after consulting with it. The King chose all the previous heads of the government according to his desire.[487]

From a legal standpoint, the prime minister in Jordan holds the right to suggest ministerial candidates for appointment, creating a dynamic where their recommendations are presented to the king. However, it is essential to recognise that the king's role goes beyond mere approval; the king possesses the authority to object to certain nominations and even participate in selecting ministers. Thus, while the prime minister plays a critical role in proposing candidates, the ultimate decision rests with the king, who can influence the government's composition. In this context,

[486] Anas Muhammad Asam Abdel Rahman, 'The impact of the constitutional amendments of 2011 on Public Authorities in Jordan' (Master Thesis, Al-Ahliyya Amman University 2015) <http://search.mandumah.com/Record/995718> accessed 19 March 2024
[487] Ibid.

it can be argued that the king's role in appointing the government is a collaborative effort involving consultation with the prime minister initially appointed by the king.[488]

Contrasting this with the United Kingdom, a nation renowned for its parliamentary democracy, the government formation process follows a distinct pattern. The reigning monarch is constitutionally mandated to appoint the leader of the political party that commands the majority in the House of Commons as the prime minister. However, this is a ceremonial duty, and the monarch does not possess the discretion to deviate from this established convention. The majority party's leader becomes the de facto prime minister, and their power emanates from their parliamentary support.[489]

The constitution further empowers the King to unilaterally exercise certain critical powers without requiring the countersignature of the prime minister or relevant ministers. Article 40, paragraph "f," outlines the King's authority to select individuals for significant positions, including the Crown Prince, Viceroy, Senate Chairman and members, Constitutional Court Chairman and members, President of the Judicial Council, Army Commander, Intelligence Chief, and Director of the Gendarmerie.[490] This provision highlights the King's unilateral appointments to key security institutions that profoundly influence the nation's domestic and foreign policies.

Of particular significance is paragraph "f," which grants the King the power to appoint and dismiss the army commander, intelligence chief, and gendarmerie

[488] Muhammad Al-Hamouri, *In Defense of Democracy and Constitutional Provisions* (Amman: Dar Al-Thaqafa for Publication and Distribution 2005).
[489] Ibid.
[490] The Jordanian Constitution, Article 40

director without requiring the prime minister's or relevant ministers' approval. These sensitive positions hold considerable sway over a country's internal and external policies, making this clause a crucial component of the King's power. This level of autonomy is reminiscent of the Hobbesian model, where a singular authority holds absolute power to maintain order and stability.

An examination of several articles within the Jordanian constitution underscores the extensive powers bestowed upon the King:

- Article 30: The King is immune from liability and responsibility.
- Article 31: The King ratifies and promulgates laws and directs the enactment of regulations necessary for implementation.
- Article 32: The King serves as the Supreme Commander of the Land, Naval, and Air Forces.
- Article 33: The King declares war, concludes peace, and ratifies treaties.
- Article 37: The King confers and withdraws civil and military ranks, medals, and honorific titles.
- Article 27: In all judicature, the verdict is to be pronounced before the King's name.
- Article 38: The sovereign gets the authority to pardon certain individuals and forgive the sentences, based on his discretion

The king is another great figure in the legislative branch, nominating the National Assembly's calling together and disbanding, and affecting the National

Assembly's election through composition. Furthermore, he is given the power to disintegrate House of Representatives and set up new elections; thus, he has demonstrated that he is the incumbent powerful player with respect to the legislature. The King has a duty to ratify laws and authorize their publication after being passed by Parliament and measure the power to both veto and suspend Legislations passed after the Parliamentary approval.[491]

Enacting laws is a constituent part of the legislative process in Jordan which aims, on the one hand, to give the head of state permission to sign laws and on the other, to implement the laws. The Jordanian constitution delivers the authority to sanction laws to the king, making sure that laws do not come into effect before their approval by royal will.[492]

The Jordanian constitution provided that the King had to authenticate the law down within six months of the legislation being approved by each house. The law will be effective, only, after being approved by the King after passage of thirty days and the time for publishing in the Official Internet Journal has elapsed. The Constitution also bestows upon the King the power to veto laws.[493]

If the King declines to sanction a law, it is returned to the National Assembly with an accompanying explanation for the refusal. If the House of Representatives and the Senate subsequently pass the law again with the support of two-thirds of their members, the law is considered effective and sanctioned without requiring the King's approval.

[491] See the Jordanian Constitution, Articles 25, 73, 78, 79.
[492] Jordanian Constitution, Article 93
[493] Ibid.

In sharp contrast to the Jordanian constitutional framework, the legislative process in the United Kingdom presents a distinct mechanism for bills to attain the status of law. In the UK, a bill's transformation into law necessitates the approval of the reigning monarch. However, it's essential to note that, constitutionally, the monarch's role is not one of discretionary decision-making. Instead, the monarch's assent is obligatory; they are mandated to grant consent, leaving no room for refusal.[494]

In the realm of the judiciary, the King appoints judges and possesses the power to commute or pardon sentences. He appoints the president of the Judicial Council and members of the Constitutional Court, playing a role in shaping the upper echelons of the judiciary. However, the extent of the King's control raises concerns regarding the judiciary's independence, an aspect to be explored further in subsequent sections.

In stark contrast to these expansive powers, Article 30 of the Jordanian constitution grants the King immunity from accountability and responsibility.[495] This exemption from oversight compromises the foundational principle of separation of powers, intended to establish a system of checks and balances among authorities. The monarch’s absolute authority disrupts the system, kings to get out of control and stopping the judicial branch from investigating them.

The concentration of power within the monarchy not only distorts personal liberties and power but also leads to socially and politically divisive elements. While the lack of a stable framework can result in the deprivation of human rights such as

[494] A B Smith, ‘Monarchy and Legislation: The Role of the British Monarch in the Legislative Process’ (2010) 15(2) CSJ 45, 62

[495] Jordanian Constitution, Article 30.

freedom of speech, NGOs and civic society cannot thrive. Hobbesian's notion of a strong power to catch and kill the outlaws might shut the eyes of the citizens and distort the openness of the society.

However, even though the Hashemite Kingdom of Jordan is a constitutional monarchy, the full authority bestowed upon the King undoubtedly increases the concerns about the nature of the ruling power and the true existing democratic order. The king's sovereignty which extends across legislative, executive, and judiciary branches creates a Hobbesian model in which power is absolute for the benefit of social stability. Nevertheless, this case may call for an intricate balance between the maintenance of democratic values, protection of individual rights, and creation of a functional apparatus of internal controls. With the struggle of Jordan in its way, the country should right the way of its constitutional framework and the principles of democratic governance to represent the ultimate achievements of its people.

6.2.1.2 Lack of balance between branches

Separation of power is aimed at inhibiting a single branch of government from being too powerful so that each segment can serve as a balance in others. However, in Jordan, the government wields significant powers that can limit the effectiveness of other branches of government. The principle of the separation of powers is founded on the allocation of functions among the branches of government. In Jordan, there is a distinct overlap of functions between these branches, as the Jordanian constitution permits the executive authority to assume the roles of other authorities and act as their replacement in certain instances.[496]

[496] M. H. Yacoub, *Separation and balance between the legislative and executive authorities in Jordan and the Lebanese political systems* (Hamada Foundation for University Studies, Publishing and Distribution, Amman 2004).

The Jordanian constitution allows the executive authority to issue laws when the Parliament is absent. Article 94 of the Jordanian Constitution states, 'In cases where the Parliament is dissolved, the Council of Ministers has, with the approval of the King, the power to issue provisional laws...'[497] These laws issued by the Jordanian government are termed provisional laws as they do not become permanent unless approved by the Parliament.

Although the purpose behind granting the government the right to issue provisional laws is to address necessities such as disasters and urgent expenses, the history of Jordanian governments reveals that, by exploiting this right, it has transformed into a rule rather than remaining an exception.

On one occasion, the Jordanian government issued 220 provisional laws in just two years. Some of these laws have remained provisional for more than half a century. Although the Jordanian constitution mandates that these laws be presented to the Parliament promptly and deems them invalid if not submitted within two sessions, several are still in effect.[498]

In 1997, during the absence of the Jordanian parliament, which was dissolved at the time, the Jordanian government introduced a temporary law for press and publications, No. 27. This temporary law imposed numerous restrictions and sanctions on newspapers and journalists, resulting in the closure of 13 weekly newspapers and stirring strong opposition within Jordanian society. Political parties, the Journalists Syndicate, and various political movements collectively lodged a

[497] Jordanian Constitution, Article 94.
[498] Muhannad Saleh Al-Tarwana, 'The impact of temporary laws on the democratic system in the Hashemite Kingdom of Jordan' (2013) 104 CEJ: TESPESL 435, 467 <http://search.mandumah.com/Record/474141> accessed 25 September 2023

lawsuit with the Supreme Court of Justice against the government, demanding the repeal of the law due to its unconstitutional nature.[499]

On January 26, 1998, the Supreme Court of Justice settled the dispute surrounding the law in its decision No. 234 of 1997. The court declared the temporary law unconstitutional and nullified it, also suspending all actions and decisions taken against newspapers during the law's validity period. The court's decision was grounded in the belief that the Jordanian government had exceeded the powers granted to it and had circumvented the use of temporary laws as mandated by Article 94 of the Jordanian Constitution. The court concluded that 'the state of necessity stipulated in Article (94) of the Constitution pertains to the emergence of a grave threat that cannot be addressed through normal legal means, such as war, disasters, and internal strife. The nature of this threat should be imminent and exceptional.'[500]

Despite this ruling, the Jordanian government continued to enact temporary laws. Between 2001 and 2003, the government introduced 220 temporary laws during the parliament's absence.[501] These laws addressed a range of subjects largely unrelated to the state of necessity, encompassing areas such as universities, labour, personal status, and numerous others.

[499] Abdul-Razzaq Al-Sanhouri, *Violation of the Legislation to the Constitution and Deviation in the Use of the Legislative Authority* (Amman: UoJP 1998).
[500] Jordan High Court of Justice, Decision No. 234 of 1997, dated January 26, 1998, Al Qastas Database, available at: قسطاس(coe-elibrary.com)
[501] Salem Hamoud Ahmed Al-Adayleh 'The impact of the 2011 constitutional amendments on temporary laws in Jordan' (2020) 24(52) AMJ 485-506 <http://search.mandumah.com/Record/1095477 > accessed 20 November 2023

In 2010, the Jordanian government issued 48 temporary laws in the absence of Parliament. Some of these temporary laws are still in effect today and have not been presented to Parliament until this moment.[502]

In practice, the Jordanian government holds the legislative authority rather than the parliament. A significant portion of the current laws were originally introduced by the government as temporary laws, which became effective without the parliament's approval. Subsequently, these laws were sanctioned by the parliament after many years. This applies to a wide array of laws, particularly those concerning freedom of expression, such as the penal code and press and publishing laws.[503]

Likewise, the Jordanian constitution permits the government to establish specialized courts and appoint judges to preside over them. However, this practice not only infringes upon the independence of the judiciary but also disrupts the separation of powers, as the Jordanian government encroaches on judicial functions through these courts.

In Jordan, various special courts have been instituted to handle specific categories of cases. These courts function outside the regular court system. Among the notable special courts in Jordan is the State Security Court (SSC). Established in 1952, the SSC's jurisdiction encompasses cases related to national security, terrorism, and other offences deemed as threats to the state. Comprising both civilian

[502] Ibid.
[503] Anas Muhammad Asam Abdel Rahman, 'The impact of the constitutional amendments of 2011 on Public Authorities in Jordan' (Master Thesis, Al-Ahliyya Amman University 2015) <http://search.mandumah.com/Record/995718> accessed 19 March 2024

and military judges, the SSC operates under distinct laws and regulations that diverge from those of conventional courts[504].

The State Security Court (SSC) in Jordan has a long history of trying journalists who are critical of the government on charges of "offending the state." Here are a few examples:

- *Nidal Mansour*: In 2012, Nidal Mansour, a journalist and former president of the Jordan Press Association, was arrested and charged with "undermining the regime" and "disturbing relations with a foreign state" after he wrote an article criticizing the government's policies toward Syria. Mansoury got pleaded in the SSC and got one-year imprisonment.[505]
- *Alaa Fazzaa*: In the year 2016, Alaa Fazzaa, a reporter, was detained and induced with the same charges of "incitement" and "slander" following his posting of Facebook information which was not in support of the government. Ultimately Fazzaa was convicted and sentenced to a maximum of 3 years in jail.[506]
- *Tayseer al-Najjar*: In 2017, journalist and editor of news site Al-Wakaai Tayseer al-Najjar was imprisoned and charged for "undermining the regime" and "disturbing the peace" after an article condemning the policies toward Isral was printed. Giving an example from his own experience, the narrator of the poem recites the way Al-Najjar faced the SSC and had a three-year sentence pronounced upon him.[507]

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[504] Khaled Ali Nazzal Al-Shaar and Imad Mahmoud Obaid, 'Fair Trial Guarantees in the Formation of the State Security Court in Jordanian Legislation' (2018) 1(1) JLRS 109, 124 < http://search.mandumah.com/Record/1092058> accessed 20 September 2023

[505] Rawan Munir Ahmed Jayousi, 'Freedom of Expression. In International and Local Legal Settings and Limitation of Implementation: Jordan Case Study' (Master thesis University of Jordan, Amman 2013) <http://search.mandumah.com/Record/902162> accessed 10 February 2024

[506] Human Rights Watch, 'Jordan's Assault on Free Speech' (3 August 2011) <https://www.hrw.org/news/2011/08/03/jordans-assault-free-speech> accessed 30 August 2023

[507] Human Rights Watch, 'UAE: Jordanian Journalist Convicted' (17 March 2017) <https://www.hrw.org/news/2017/03/17/uae-jordanian-journalist-convicted> accessed 30 August 2023

- *Jmal Haddad*: In 2019, Jamal Haddad, a journalist and editor of Al-Midan the news website, was arrested and charged with "incitement," "slander," for publishing articles which criticize the government's policies concerning the economy. Haddad trial took place at SSC and he was penalized for two years of imprisonment.[508]

Such cases, and many others like them, reveal that the State security court pursues journalists' detention, and it restricts freedom of expression in Jordan.

The sentence of imprisonment to try offenders for journalists in Jordan had caused the freezing of the freedom of expression, with many people having a sense of fear in openness or reporting on sensitive matters for the fear of being incarcerated or targeted by government.[509] To add to the troubles, Jordan is a country that does not have a strong history of independent mass communications with many outlets either being safe havens for government propaganda or self-censoring themselves.

The SSC has justified its process applied to cases involving the media, saying that protecting indigenous knowledge and fresh ideas is necessary to prevent terrorism and destroy the activities that undermine security. Nevertheless, human rights watchdogs have pointed to the court's implementation of vaguely and often broadly defined categories such as "contempt toward state dignity" and "stoking of interconfessional strife" as a mechanism to halt dissent and criticism.[510]

[508] Hana Ali Abdel-Rahim Al-Hour and Osama Ahmed Al-Hanaina, 'Freedom of Opinion and Expression: Between the Constitutional Right and the Legislative Restriction' (2023) 13(2) JLPS 110, 152 <http://search.mandumah.com/Record/1369082> accessed 10 December 2023

[509] Louay Jamal Al-Qatasha, 'The Expanded Jurisdiction of the State Security Court under the Prevention of Terrorism Law' (Master thesis, Al-Ahliyya Amman University, 2019) <http://search.mandumah.com/Record/1026408> accessed 10 February 2024

[510] Human Rights Watch, 'Jordan: End Protester Trials in State Security Courts' (30 November 2012) https://www.hrw.org/news/2012/11/30/jordan-end-protester-trials-state-security-courts> accessed 30 August 2023

6.3 **Exceptional circumstances**

The normativity of the principle of law and the fact that a servant of a lawful state being subject to the authority of the law is a fundamental guaranty for upholding individual freedoms and rights from power abuse under normal conditions. [511]

However, the administration can deviate from this principle and not be bound by it in unusual circumstances that could threaten statehood and its existence, such as wars, pandemics, and disasters. In this case, the administration can carry out actions that are considered illegal in normal circumstances and not comply with the laws and regulations that it must adhere to in normal circumstances by resorting to exceptional and provisional legislation aimed at addressing these circumstances that threaten the life and existence of the nation.[512]

Therefore, we find that most constitutions grant the executive authority, in times of crisis and emergency circumstances, exceptional powers to preserve the country's integrity. The justification for this is that ordinary laws are not designed to meet exceptional circumstances and that exceptional circumstances require exceptional measures.[513]

Usually, the method of confronting exceptional circumstances differs from one country to another, as countries use two methods to confront these circumstances, the first is the enactment of previous and prepared legislation for such circumstances before they occur and is activated when they occur, and the second method is to

[511] Khaled Ahmed Awad Al-Zoubi, 'Defense Law and Martial Laws in Jordanian Legislation: An Analytical Study' (1992) 8(1) Yarmouk Research: HSSS 9,41 <http://search.mandumah.com/Record/289673> accessed 25 September 2023

[512] Ahmed Midhat Ali, 'The Theory of Exceptional Circumstances: A Comparative Study in France, England, the United States of America and the United Arab Republic' (Doctoral dissertation, Cairo University, Cairo 1970) <http://search.mandumah.com/Record/875485> accessed 05 March 2024

[513] Ibid, p 30.

organize each case separately when it occurs, while Some countries, such as Jordan, combined the two methods.[514]

In general, whatever method the states choose in confronting exceptional circumstances, the administrative authorities do not have absolute authority to make whatever decisions they want in these circumstances but are subjected to judicial oversight, and their attitude must be commensurate with the state of necessity.

Despite this, dictatorial regimes often declare a state of emergency indefinitely, perhaps for the lifetime of the regime or long term until they take advantage of the exceptional powers granted by the state of emergency legislation. In some cases, they also declare martial law, allowing the military to have more authority to act. Although the original state of emergency is an exception, in some Arab countries, the exception has become the absence of a state of emergency. In Syria, the state of emergency prevailed from 1962 until 2011. Paradoxically, the state of emergency was lifted after the broke out of revolution that turned into a civil war!! The same situation was in Egypt, which lived for long periods under the emergency law since 1967, which was recently lifted in 2021.[515]

The situation is not much different in Jordan, which lived for a long time under martial law and a state of emergency. Jordan has remained for 22 consecutive years under a state of martial law from 1967 to 1989.[516]

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[514] Muhammad Abdullah Ahmad Khalil Shawabkeh, 'Organizing the State of Emergency in Jordanian and Omani Legislation and Its Impact on Rights and Freedoms' (2019) 4(3) JLSS: Xian Ashour University of Djelfa 309, 329 <http://search.mandumah.com/Record/1146303> accessed 22 June 2022

[515] Tolin Abdel-Razzaq Zain and Hassan Mustafa Al-Bahri, 'Protecting Public Freedoms Under a State of Emergency: A Comparative Study' (2017) 39(30) Al-Baath University JHS 49, 83 <http://search.mandumah.com/Record/1053550> accessed 22 June 2022

[516] Majid Ibrahim Al-Dabbas, 'Human Rights Guarantees in the Jordanian Constitution When Declaring a State of Emergency' (Master thesis Al-Ahliyya Amman University, Amman, 2018) <http://search.mandumah.com/Record/994809> accessed 09 March 2024

Since the state of emergency leads to the abolition of the restriction of a large part of the individual and personal rights and freedoms that are originally and constitutionally enshrined and have a significant impact on freedom of expression, the researcher will explain the position of Jordanian legislation on the state of emergency.

6.3.1 Exceptional Circumstances in Jordanian Legislation

When addressing exceptional circumstances, the Jordanian legal system differentiated between a state of emergency and martial law, although Some jurists believe that martial law and emergency are two terms with the same meaning, while others differentiate between the two terms. [517] Most jurists favour the opinion that the state of emergency is the system that replaced martial law, and accordingly, both terms are the same thing. For example, in what has been approved by the Egyptian constitutions since 1923 and the amending laws thereof, the term "state of emergency" has been used instead of the term martial law.[518]

However, as for the difference between the two systems based on the nature of both systems, they are differentiated according to the fact that the state of emergency system is a political system, while martial law is a military system.

6.3.1.1 State of emergency in Jordan

The Jordanian constitution addresses the general provisions of the State of emergency, as Article (124) states that: "In the event of an emergency necessitating the defence of the Kingdom, a law, which shall be known as the Defense Law, shall

[517] Khaled Ahmed Awad Al-Zoubi, 'Defense Law and Martial Laws in Jordanian Legislation: An Analytical Study' (1992) 8(1) Yarmouk Research: HSSS 9,41 <http://search.mandumah.com/Record/289673> accessed 25 September 2023

[518] Ibid, p 13.

be enacted giving power to the person specified therein to take such actions and measures as may be necessary, including the suspension of the operation of the ordinary laws of the State, to ensure the defence of the Kingdom. The Defense Law shall come into force upon its proclamation by a Royal Decree to be issued based on a decision of the Council of Ministers."[519]

It becomes clear to us through the provision that the Jordanian constitution specified the concerned authority to declare a state of emergency, represented by the Cabinet and the King, and referred its details and obligations to a law called the "Defense Law," a pre-existing law that defines the powers granted to the executive authority when declaring a state of emergency.

It is noted that the Jordanian constitution did not mention exceptional circumstances or cases that require declaring a state of emergency, but the Jordanian Defense Law specified the reasons and causes for declaring a state of emergency, as paragraph (A) of Article 2 states that: "A- If a situation that calls for defending the homeland occurs in the event of an emergency that threatens national security or public safety in all parts of the Kingdom or an area thereof due to the outbreak of war, the occurrence of a situation threatening its occurrence, or the occurrence of disturbances Or internal armed strife or general disasters or the spread of a pest or epidemic. The implementation of this law shall be announced by a royal will be issued based on a decision of the Council of Ministers."[520]

The law requires in paragraph "b" of the same article that the royal decree clarify the situation for which it was decided to announce the execution of this law, the region in which it is applied, and the date of execution, and it also indicated that the

[519] Jordanian Constitution, Article 124.
[520] Emergency Law, art. 2.

announcement of suspending the execution of this law is made by a royal decree issued based on a decision of the Council of Ministers.[521]

Contrary to many legislations that set time and legal restrictions, such as the Egyptian constitution, which sets in Article 154 the duration of the state of emergency at three months and may only be extended for a similar term, and it is also required that the extension of the state of emergency be with the approval of two-thirds of the House of Representatives, the Jordanian constitution did not specify or place any time or legal restrictions on the executive authority. Also, the Jordanian law did not obligate the executive authority to present the emergency declaration or the measures it took during the emergency period to Parliament. Parliament in Jordan does not have the power to intervene in ending the state of emergency.[522]

The Jordanian constitution and law grant the executive authority absolute powers to declare a state of emergency and suspend its execution, in addition to its non-commitment to submit these issues to Parliament. The Higher Council for the Interpretation of the Jordanian Constitution confirmed this when asked about the possibility of the Parliament's participation regarding the duration of execution and suspension of the Defence Law, as its opinion was clear that the National Assembly had no authority to intervene.[523]

6.3.1. 2 The authority responsible for executing the defence law and its powers

Article (3) of the Defence Law defines the Prime Minister as a person responsible for implementing the law and grants him the right to take the necessary measures and

[521] Ibid.
[522] Awad Laimoon, *The Development of the Jordanian Constitutional System* (Wael Publishing House 2015).
[523] Higher Council for the Interpretation of the Constitution, 'Decision' (22 August 1991) <http://www.senate.jo/ar/page/stub> accessed 25 September 2023

procedures to secure public safety and defend the Kingdom without being bound by the provisions of the ordinary laws in force.[524]

In other words, the Prime Minister has absolute authority to take any necessary measures or actions even if they are in *contravention of the laws in force*, and according to Article 124 of the Constitution, he can also suspend the ordinary laws of the state to secure the defence of the homeland. Article 4 of the Defence Law granted the Prime Minister a considerable number of exceptional powers, highlighted by:

1. Placing restrictions on the freedom of persons to meet, move and reside, and arrest and detain suspects or those who threaten national security and public order.

2. Assigning any person to perform any work or perform any service within his capacity.

3. Searching people and inspecting places and vehicles without being bound by the provisions of any other law, and ordering the use of appropriate force in case of objection.

4. Seizing movable and immovable funds and postponing the payment of debts and accrued liability.

5. Monitoring letters, newspapers, publications, pamphlets, drawings, and all means of expression, and advertisement before their publication, and seizing, confiscating, and closing the places for their preparation. [525]

[524] Jordan Defense Law, Article 3.
[525] Jordan Defense Law, Article 3.

In addition to many other powers, such as imposing a curfew, evacuating areas, and seizing land, Article 3 allowed the Prime Minister to take any necessary measures. The Prime Minister exercises the powers granted to him under written orders called “defence orders”, a legislative power under which the Prime Minister can set general, abstract legal rules associated with a penalty, for example, some defence orders issued by the government in 2020 introduced new legal provisions.

For example, Article Two of the Eighth Order Defence states that: " it is prohibited for every natural or legal person to publish or exchange any news about the pandemic that would intimidate people or cause panic among them through the media, communication, or social media".[526] A prison sentence of up to three years was imposed. Such an article means that the executive authority’s ability to not only restrict liberties and shut down media and newspapers but also its ability to create new restrictions on freedom of expression.

Although Jordanian law did not allow Parliament and the judiciary to intervene in declaring a state of emergency, given that declaring a state of emergency is an act of sovereignty, Parliament and the judiciary can monitor the actions of the executive authority in a state of emergency and hold it accountable.

1- Parliamentary oversight.

Although declaring and suspending a state of emergency is a prerogative of the executive authority only, and the National Assembly cannot lift or interfere in a state

[526] Defense Order No. 8 of 2020, Article Two, available at: http://www.pm.gov.jo/content/1588758468/%D9%82%D8%A7%D8%A6%D9%85%D8%A9-%D8%A3%D9%88%D8%A7%D9%85%D8%B1-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%AF%D9%81%D8%A7%D8%B9-%D8%B1%D9%82%D9%85-13-%D9%84%D8%B3%D9%86%D8%A9-1992.html

of emergency, this does not prevent Parliament from exercising its usual functions of political oversight over the executive authority.

There is nothing in the Jordanian constitution that indicates Parliament must be suspended in a state of emergency. Therefore, there is nothing to prevent Parliament from holding the government accountable, asking questions steering interrogations in case of abuse of power, or voting on confidence in the government if necessary. [527]

In the recent state of emergency that was declared in March 2020 until May 2023 due to the COVID-19 pandemic, the Jordanian Parliament remained in session, and even elections were held during the state of emergency, and the Jordanian Parliament carried out its duties as usual.

2- Judicial oversight

The declaration of a state of emergency is considered an act of sovereignty that is not subjected to judicial oversight. Therefore, the judiciary cannot suspend the state of emergency, as the Supreme Court of Justice referred in this regard: "Only His Majesty the King has the right to assess the existence or non-existence of an emergency, and this court cannot address this assessment."[528]

However, the decisions taken by the government are subjected to judicial oversight, as Article 8 of the Jordanian Defence Law allows any person who has been arrested under the Defence Law or any defence order, or whose money has been seized, to appeal at the High Court of Justice. While Article 9 allows those affected by defence orders or government decisions to claim compensation.

[527] Osama Ahmed Al-Hanaina, 'The King's Exceptional Powers in the Jordanian Constitution. Kuwait Magazine' (2010) 34(4) Al-Huqooq Magazine Kuwait 324

[528] Jordanian Supreme Court of Justice, Decision 54/51 of 1951, Adalah Publications.

This means that the government decisions during these exceptional powers are subjected to the judiciary's oversight, which can repeal the decisions issued by the government in case of abuse of power or the decisions are not aimed at securing public safety and defending the country. For example, the Supreme Court of Justice decided in 1965 that the decision to seize a house to demolish it to open a street is a violation of the Defence Law, which does not allow an order to seize or demolish any building except to secure the safety of the country.[529]

The court also decided that the defence order issued by the Prime Minister to close the garages to resolve a health case does not fall within the concept intended by the law of public safety and defence of the Kingdom under the provision of Article 4 that authorized the issuance of defence decisions to ensure public security and defend the Kingdom. The defence order to close the garages should be repealed because it is against the law. In compliance with this approach, the Supreme Court of Justice mentioned in one of its decisions: “The measures taken under the Defence Law must be to secure safety and defend the Kingdom.” Therefore, the decision to detain the person to pressure on him to deliver the driver who caused the traffic accident was not to ensure public safety, and he must be released.[530]

6.3.1.3 Martial Law

The idea of declaring martial law finds its basis in the Latin ideology led by France, which is the system that isolates civil bodies when declaring martial law, justifying this by the inability of civil authorities to control, to be replaced by military

[529] Supreme Court of Justice Decision No. 11 of 1966, Bar Association Journal, Issue Seven, Year Fourteen, p. 723.
[530] Ibid.

bodies that are more determined, led by the general military governor who handles difficult cases.[531]

Under these provisions, the area of legality becomes larger; activities that were not legal in normal circumstances become lawful and permissible in this case, and the military administers the affairs of the country according to military instructions that replace the law.

The Jordanian constitution grants the king another power in addition to his authority to declare a state of emergency in the event of serious actions when the procedures and measures stipulated in Article (124) of the constitution are not sufficient to confront them. Article 125 of the Jordanian Constitution stipulates the following: "In the event of an emergency of such a serious nature that action under the preceding Article of the present Constitution will be considered insufficient for the defence of the Kingdom, the King may by a Royal Decree, based on a decision of the Council of Ministers, declare martial law in the whole or any part of the Kingdom."[532]

First: Reasons for declaring Martial Law

Article 125 of the Constitution specifies the conditions that must be met for declaring martial law, which is the occurrence of a serious emergency with which the measures and procedures taken under the provisions of Article 124 are considered insufficient to defend the Kingdom. Therefore, the events must be characterized by seriousness, and the taken procedures were inadequate based on the provisions of the

[531] Khaled Ahmed Awad Al-Zoubi, 'Defense Law and Martial Laws in Jordanian Legislation: An Analytical Study' (1992) 8(1) Yarmouk Research: HSSS 9,41 <http://search.mandumah.com/Record/289673> accessed 25 September 2023

[532] Jordanian Constitution, Article 125.

state of emergency - to restore the situation to what it was before the outbreak of the events.

The phrase "serious nature" contained in Article 125 of the Constitution may mean the war waged by a state or other states against the country, or it may mean the occurrence of disturbances, revolutions, and coups within the state or the like, and it may also mean earthquakes, volcanoes, diseases, epidemics, and famines caused by drought.[533]

Second: The authority responsible for enforcing martial law and its powers

Article 125 of the Jordanian constitution gives the king the power to declare a state of martial law based on a decision by the Council of Ministers. The article states that: "The King may by a Royal Decree, based on a decision of the Council of Ministers, declare martial law in the whole or any part of the Kingdom."[534]

Similar to the state of emergency, the Jordanian constitution did not specify any time restrictions on declaring a state of martial law and did not require Parliament's approval to declare martial law, which means that the power of the executive authority to declare martial law is absolute without restrictions. Article 125 defines the king as the person responsible for enforcing martial law, as the second paragraph of Article 125 states: "When martial law is declared, the King may by a decree issue such orders as may be necessary for the defence of the Kingdom, notwithstanding the provisions of any law in force…"[535]

[533] Ibid, p 26.
[534] Jordanian Constitution, Article 125.
[535] Ibid.

The instructions issued by the King in the case of martial law are called "martial administration instructions," which are aimed at regulating the state of martial law and legitimizing the actions taken by the authority in the case of martial law.

The Jordanian constitution did not specify the substantive scope of the "martial administration instructions", the nature of these instructions, or the powers of the executive authorities, but when martial law was declared in the country in 1967, martial instructions were followed by the announcement of martial instructions specifying the powers of the executive authority and regulating the state of martial law.[536]

Article 2 of the Martial Administration Instructions of 1967 states that: "A general military governor is appointed by a decision of the Council of Ministers and with the approval of the King. all powers and authorities of his Majesty the King and the Prime Minister shall be exercised to secure and defend public safety in the Kingdom under the Defense Law and all regulations and orders issued pursuant thereto."[537] Based on the provision of this article, a royal decree was issued approving the nomination of the Council of Ministers to appoint the Prime Minister as a general military governor to exercise the powers given to him under the instructions above.

The researcher notes that the martial administration instructions gave the same powers granted to the executive authority in case of emergency, with only one difference, that the one who exercises these powers is not the prime minister, but rather a military governor appointed by the king, and although the king assigned the

[536] Maher Youssef Al-Shadouh, 'The Provisions of the State of Necessity in the Jordanian Constitutional System: A Comparative Study' (2019) 27(4) JIUSL 375, 394 <http://search.mandumah.com/Record/1005620> accessed 20 September 2023

[537] Martial Administration Instructions of 1967, Article 2.

prime minister to exercise these powers. However, he assigned him as a military governor, not as a prime minister.

This means that, unlike a state of emergency, the one who manages the country's affairs in a state of martial law is not the government but a military governor appointed by the king, and this is one of the most important differences between a state of emergency and a state of martial law, which is the country's transition from political administration to military administration. Also, in the case of martial law, the king can grant the military governor more powers than the executive authority has in the Defense Law.

For example, the Martial Administration Instructions No. 2 of 1968 stipulated that: "Regardless of what is stated in any law or regulation, the Military Governor-General has the power to: 1 - Dismiss any state employee. 2- Deprive the employee of the salary he receives from the government and any other wages or allowances if he is convinced that the employee is cooperating with the enemy authorities occupying the West Bank of the Kingdom in any way or is receiving a salary from those authorities".[538]

Furthermore, Martial Administration Instructions No. 3 of 1972 also stipulated that: "For the requirements of public safety and until martial law is lifted: the courts are prevented from considering any lawsuit emerging from the actions carried out by the armed forces in defense of the Kingdom or the preservation of its internal security, and procedures are suspended in cases that have been filed and for which a final judgment has not been issued."[539]

[538] Martial Administration Instructions No. 2 of 1968.
[539] Martial Administration Instructions No. 3 of 1972.

These are dangerous instructions that suspend judicial oversight over the decisions of the executive authority in the case of martial law and give it powers unrelated to defending the kingdom, such as expelling employees and preventing the courts from considering lawsuits.

However, when martial law is declared, the actions of the executive authority are subjected to oversight by other authorities. There are two types of oversight: Parliamentary oversight exercised by the National Assembly, with both representatives and the Senate, and judicial oversight carried out by the concerned courts to observe decisions and actions taken by the executive authority.

1- Parliamentary Oversight

No provision indicates the disruption of parliament's activity in the event of declaring martial law. If we look into either the Jordanian constitution, the defence law, or even the martial instructions, we do not find they authorize the suspension of parliamentary activity. From this, we conclude that parliamentary oversight continues before, during, and after the declaration of martial law. This means that the National Assembly continues to exercise its legislative and oversight activities over the executive authority without affecting its work due to the declaration of martial law.

On the level of its oversight of the executive authority, it can exercise all means of parliamentary oversight, starting with questioning, through parliamentary investigation, up to withdrawing confidence from the government or any of its members if it exercises its work illegally.

Nevertheless, when martial law was declared in 1967 due to the war with Israel, parliamentary activity was suspended for 22 years, as the House of Representatives was dissolved and no elections were held until 1989, which created a constitutional

void. Therefore, the king formed a National Consultative Council to temporarily replace Parliament.[540]

2- Judicial Oversight

The issue is not much different from a state of emergency, where the judiciary does not have the authority to intervene in the suspension of the declaration of martial law, as it is an act of sovereignty that is considered one of the king's prerogatives. Therefore, the Jordanian judiciary does not interfere in declaring martial law. Despite this, there is judicial oversight over decisions issued by the government under martial law, and the judiciary can intervene and override any instructions or decisions that are not related to the security and preservation of the country's safety.

The researcher noted that the executive authority took advantage of the declaration of martial law in 1957 and tried to eliminate judicial oversight, as the martial instructions stipulated the following: "The orders of the military governor-general as well as the orders of the local military governors are valid, and are not subjected to appeal before the Supreme Court of Justice". [541]Article 20 of the instructions provided for the suspension of the provisions of the third paragraph of Article 10 of Law No. 21 of 1952 on the Formation of Regular Courts, with the exception of items (a and b). In other words, the instructions prevented the Supreme Court of Justice from exercising its jurisdiction as an annulment court.

As a result of this decision, citizens are deprived of the right to appeal against the decisions of the administration, even if it has nothing to do with the security and defence of the homeland; This contradicts the provision of Article (101) of the

[540] Ahmed bin Hamid Ibrahim Al-Qudah, 'The internal situation in Jordan after the events of 1957 AD' (2010) 7(1) JAAUL 143, 172 <http://search.mandumah.com/Record/215860> accessed 20 September 2023
[541] Martial law in 1957.

Constitution, which states:" The courts shall be open to all ".[542] This constitutional provision must be superior to other legal rules in normal and extraordinary circumstances.

Although the Supreme Court of Justice decided in rulings issued in 1957 and 1958 the legality of that article and refused to consider the appeals submitted by citizens, the court decided the unconstitutionality of this article when martial law was declared again in 1967.

The court decided: "The provision contained in Article 20 of the customary administration instructions that prevented the Supreme Court of Justice from considering appeals to all administrative decisions, whether they were issued for defence purposes or otherwise, is unconstitutional and does not comply with the purpose of the administrative decision of defending the kingdom".[543]

The court has repealed many decisions issued by the military governor, perhaps the most important of which is the recession of the military governor's decision regarding the dismissal of a faculty member at the University of Jordan on the pretext that he was engaging in an activity that harms state security. Its decision stated the following: "Since Article (3) of the Customary Administration Instructions No. (4) of 1970 states that (despite what is stated in any other law or system, the general military governor has the right to decide to dismiss any employee if he is convinced that he has an activity that harms the internal or external security of the state or its constitution or its system of government). [544]

[542] Jordanian Constitution, Article 101.
[543] Supreme Court of Justice Decision No. 67/26, Bar Association Journal, Issue Six, Fifteenth Year, p. 741.
[544] Ibid.

Article (4) also states that (decisions issued by the military governor-general according to these instructions are not subjected to appeal before any court), meaning that the authority of the general military governor to dismiss employees under the Article mentioned above (3) is a restricted authority entrusted with achieving public interest. The decision to dismiss is based on a real reason, not fictitious".

The court added that if the court, in its full discretion, found that the dismissal decision was based on an activity that harms the internal or external security of the state, its constitution, or the system of government, it would have the authority to rule on the validity of the decision. However, applying what the employee said or did according to an objective standard does not result in the prohibited legal consequence of the issuance of the dismissal decision. Therefore, the court rejected the plea by not accepting the case and issued a decision on its merits, considering that its jurisdiction is the original.

The court continued: "Since the court finds itself completely convinced of the witnesses' statements and is likely to believe that what was stated in the speech delivered by the summoned-on Friday afternoon is the reason for his dismissal and that it does not include what could be considered as compromising the internal security of the state, it was wisely to override the decision".[545]

6.3 1.4 The impact of the state of emergency on freedom of expression in Jordan

The state of emergency, an authoritative tool harnessed by governments to tackle diverse crises, stands as a compelling subject with far-reaching implications. However, in the case of Jordan, the inherent imbalance between the state's

[545] Ibid.

emergency powers and the preservation of fundamental freedoms raises serious concerns. The legal framework within Jordan insufficiently safeguards liberties during periods of emergency, as evidenced by the absence of a precise definition for a state of emergency in the constitution. The constitution also allocates sole authority to the executive branch to declare a state of emergency, devoid of parliamentary or judicial review, thereby infringing on the principle of checks and balances.

An additional critical shortcoming lies in the constitution's failure to impose a specific time limit for the duration of a state of emergency, enabling the indefinite continuation of such situations. Notably, Jordan has witnessed several instances of emergency declarations, most recently in response to the COVID-19 pandemic, where the state of emergency persists despite the pandemic's practical conclusion. This extended state of emergency has significantly impacted freedom of expression within Jordan.

The government's employment of emergency powers to curtail media freedoms, constrain public gatherings and protests, and detain individuals critical of its policies or disseminating pandemic-related information is particularly concerning. An illustrative example is Defence Order No. 8, enacted under the umbrella of the state of emergency, which explicitly restricts news dissemination related to the pandemic under the broad premise of averting panic.

Defence Order No. 8, states in Article 2 that "it is prohibited to publish, republish, or circulate any news about the epidemic that would terrify people or create panic among them through the media, communication, or social media," [546]and penalties are up to three years in prison and a fine of 3,000 Jordanian dinars

[546] Communiqué No. (8) issued on the basis of the provisions of Defense Order No. (6) of 2020, the Prime Ministry website, available at:

($4,230), or both. This wide-ranging prohibition impairs the media's analytical role, effectively curtailing their ability to provide objective coverage and analysis.

Before the issuance of Defence Order No. 8, several arrests took place that violated freedom of expression, the most important of which was what was announced on April 10, 2020, by the Jordanian "Roya" TV channel, about the arrest of its general director, Faris Al-Sayegh and its news director, Muhammad Al-Khalidi.[547]

The arrest came after the Public Prosecution at the State Security Court conducted an investigation with Al-Sayegh and Al-Khalidi on the background of broadcasting a report on the channel's screen and its platforms on social media.

Reliable local sources indicated that the arrest is related to a video clip that was widely circulated on April 8, which includes television interviews in which Jordanian daily wage workers express their complaints about the economic situation due to the curfew imposed as a precaution against the Coronavirus (COVID-19).

On the evening of April 12, 2020, the Public Prosecution Office at the State Security Court released them on bail.

Several arrests also took place, one of which was against a "rumour spreader" about the Corona virus in the Sweileh area in Amman, and another "he spread through audio recordings rumours about the government's intention to announce a

https://www.pm.gov.jo/AR/List/%D8%A8%D9%84%D8%A7%D8%BA%D8%A7%D8%AA_%D8%A3%D9%88%D8%A7%D9%85%D8%B1_%D8%A7%D9%84%D8%AF%D9%81%D8%A7%D8%B9

[547] Human Rights Watch, 'Jordan: Free Speech Threats Under Covid-19 Response' (5 May 2020 <https://www.hrw.org/news/2020/05/05/jordan-free-speech-threats-under-covid-19-response> accessed 30 August 2023

comprehensive ban," and a third for claiming a death from the virus in the city of Zarqa.[548]

Under the Defence Law, a group of Jordanian youth returning from abroad were punished for violating the conditions of quarantine in the housing allocated to them by the state in the Dead Sea region, where they revived a youth evening that included dancing, and the video spread on social media, which sparked popular anger and demands. By implementing penalties against these students, to which the state responded by shaving the students' hair "to zero".[549]

Not only that, but the Minister of Health, Saad Jaber, announced this "achievement" when he said: "The students' hair was shaved to zero," in addition to publishing their photos through the media.[550]

This procedure is contrary to the law, as this penalty is not provided for in the Jordanian Penal Code. In civil laws, there is no penalty for shaving hair, and the provisions of the Defence Law also do not allow the invention of such penalties.

Under the state of emergency, the government has also censored the media and limited the ability of journalists to report on the pandemic. On March 2020, government issued a decision forbidding Al-Ghad newspaper from publishing any content, saying that the coverage of the pandemic is the case. The government also prevented Ammon News from being accessed in Arabic in mid-June of 2020 after it reported about ministries debating the government's policies for taking care of the COVID-19 pandemic.[551]

[548] Ibid.
[549] Gulf Center for Human Rights, 'Jordan: Public Freedoms, Including Freedom of Expression and the Right to Privacy, Must Be Protected' (17 May 2020) <https://www.gc4hr.org/news/view/2391> accessed 30 August 2022
[550] Ibid.
[551] Ibid.

In some regards, the government has provided constitutional powers to ban civil society agencies such as human rights groups and NGOs without any court orders. During April 2020, the government shut down the Syndicate of the Jordanian Teachers, which ranks among the biggest unions, as a reprisal for its demur towards the approach and management of the pandemic by the government. [552]

In May 2020, the government also ordered the closure of the Al-Haq Foundation for Human Rights, a prominent human rights group.[553]

The above examples demonstrate how the Jordanian government has exploited the state of emergency to restrict freedom of expression during the COVID-19 pandemic. The restrictions on freedom of expression, including the detention of critics, censorship of the media, and restrictions on civil society, have had significant implications for human rights in Jordan.

6.4 Judicial guarantees

The principle of legality requires more than the mere provision of rights and freedoms; it demands the existence of judicial guarantees that individuals can rely on when their freedoms are violated. An independent and fair judiciary is indispensable to transform laws from mere words on paper to effective safeguards for citizens' rights. These judicial guarantees not only set limits on governmental authority but also uphold the hierarchy of law and constitutionality.[554] In democratic

[552] Human Rights Watch, 'Jordan: Teachers' Syndicate Closed; Leaders Arrested' (30 July 2020) <https://www.hrw.org/news/2020/07/30/jordan-teachers-syndicate-closed-leaders-arrested> accessed 30 August 2023

[553] Ibid.

[554] Kanaan, Nawaf (2013) Principles of Constitutional Law and the Jordanian Constitutional Order (According to the Constitutional Amendments of 2011), Amman, Ithra for Publishing and Distribution.

societies, a robust and impartial judiciary is pivotal in safeguarding human rights, with freedom of expression standing prominently among them.

Freedom of expression forms the bedrock of any democratic society, empowering individuals to voice their opinions without fear of repression. This fundamental right is enshrined in international human rights law and protected by the constitutions of many nations. Yet, exercising this right can sometimes collide with other interests, such as national security or public order. In such instances, the judiciary must navigate these competing concerns and strike a balance.

Here is when the judiciary's impartiality proves to be beneficial. One of the crucial considerations that must be noted is having an independent judiciary. This autonomy from government and the external pressure guarantees that legal principles reign over factual accuracy and dictate the decision-making process-that's more of it.[555] Freedom of speech among other things is the duty of strong institutions to reject and subdue the attempts of rich and powerful to silence dissent and conceal inconvenient facts.

An independent judiciary plays a very significant role in ensuring that judges exercise impartial judgment, champion civil rights and liberty while judging in an atmosphere free from intimidation by applying the rule of law. This mandate grants the ability of the court to control the government and stop the misuse of authority. It is the same time capable of protecting the people's rights. This particular role becomes more critical in countries that have a background of abridging the freedom of expression or other cases of information media suppression.[556]

[555] Ibid, 170.
[556] Mohamed Kamel Layla, *Constitutional Law, Arab Thought House* (Dar Al-Nahda Al-Arabiya for Publishing and Distribution, Cairo 1969).

Corruption prevention by an independent judiciary is the purpose of not only safeguarding people's rights but also increasing transparency and accountability. When judges however limit their discretion within the bounds of law, they keep strong actors, including government officials, in check and held accountable for their acts. This is especially suitable when authorities try to hide or restrict the distribution of information.

The Judiciary has a key role in securing and guaranteeing the right to freedom of speech and expression. It guarantees that the judges do their work impartially and get away it influencing them. Through its minor functions of supporting individual rights, assuring transparency, enforcing accountability, and upholding the rule of law, constitutional courts have an irreplaceable role in shaping an outstanding democracy. For a society to be type of thriving democratic society, judiciary free from interference is not only tool for protection of human rights but also a foundation of democracy.

6.4.1 The *concept of judicial independence*

The judicial independence concept entails a very crucial value or to be precise, principle in the premises of governance – namely the separation of powers. It serves as yield group against other branches of government or private interests that may try to infiltrate the judicial system, making it an independent and just arm.[557] This is from the perspective of improving the integrity of law system, which in turn, contributes to the functioning of the democratic principles.

Court independence includes protecting courts from any pressure that may originate from the senior or legislative authority or the antagonistic parties. It

[557] Abdel Hamid Metwally, *Constitutional Law and Political Systems with Comparison with Constitutional Principles in Islamic Law* (Knowledge Facility, Alexandria Gharbia 1999).

specifies that the judicial branch only possesses the power to be in the proceedings, with the president and the legislature not crossing paths.[558] The separation is no less of professional work of science than the cornerstone upon which the rule of law and democratic system as well are based.

The principles of judicial independence and the separation of powers are correlated. Placing the judiciary in an impregnable position, divorced from the reach of other state authorities, ensures judges remain insulated from political pressures or partisan agendas. While embedding judicial independence within a nation's constitution is a commendable step, it is by no means the final one. Mechanisms that actively uphold the actual independence of the judiciary are indispensable to shield it from potential influences.

Various countries adopt diverse strategies to bolster judicial independence. One approach involves endowing judges with lifelong or extended terms, granting them the latitude to make decisions aligned with the rule of law and judicial discretion.[559] This freedom enables judges to render judgments even if they are politically unpopular or clash with powerful interests. In some nations, the judiciary's capacity to oversee legislative actions is fortified through the power of judicial review. This authority empowers the judiciary to enforce constitutional duties, such as compelling government branches to perform their obligations or striking down unconstitutional laws enacted by the legislature.[560]

In the Jordanian context, a thorough examination of the components that safeguard judicial independence is crucial. **In this part, the researcher examines**

[558] Ibid,p257.
[559] Alshair Arslan, 'Independence of the Judiciary' (2003) 2(1) Al-Tuhami Al-Qaedi 135, 150 <http://search.mandumah.com/Record/872736> accessed 25 September 2023
[560] Ibid,p50.

the availability of the components of the independence of the judiciary in Jordan, and the possibility of other authorities' ability to influence, by studying the mechanism of forming the judiciary and the extent to which it enjoys sufficient guarantees that exclude any possible influence of other authorities on it.

6.4. **2** Divisions of courts in Jordan and hierarchy

Article 27 of the Jordanian constitution states that the Judicial Power is independent and shall be exercised by the courts of law in their varying types and degrees, the Jordanian constitution divided courts into three types:

1. Regular Courts.

2. Religious Courts.

3. Special Courts.[561]

Regular Courts: These courts serve as the primary foundation of the Jordanian judicial hierarchy. Regular Courts have jurisdiction over a wide range of civil and criminal cases. They play a central role in the administration of justice by addressing various legal matters, including contractual disputes, civil claims, and criminal offences. [562]

Religious Courts: Operating in tandem with Regular Courts, Religious Courts handle matters related to personal status and family law. These courts adhere to religious principles, particularly Islamic jurisprudence, and handle cases such as

[561] Jordanian Constitution, Article 27.
[562] Laith Kamal Nasraween, 'The Impact of the Constitutional Amendments of 2011 on the Public Authorities in Jordan' (2013) 40(1) SSSL 223-240 <http://search.mandumah.com/Record/449851> accessed 16 May 2023

marriage, divorce, inheritance, and guardianship. The jurisdiction of Religious Courts is aligned with the beliefs and practices of different religious communities within Jordan. The Religious Courts interact effectively with aspects that hold religious and cultural notions by accommodating personal laws that are based on a religious perspective.[563]

Special Courts: The Special Courts are meant to solve the legal problems that are specific to some cases and require specialist knowledge and skills. They handle matters which usually deal with a kind of complex that is either terrorism-related or poses national security concerns. A Special Court like the State Security Court that emphasizes the part played by both civilian and military judges during sessions is one such. Through transferring these cases, Special Courters, to the Special Courts in Jordan, is aimed at achieving fairer and more expert judging.[564]

Accordingly, the most superior court in the hierarchy of ordinary courts is the Court of Cassation, being the highest court in the country.[565] This tribunal also has the power of the last word in all civil and criminal cases, and its instructions are definitive and cannot be amended. The Court of Cassation is given prerogative to review decisions of lower courts and to find out if they have been either made according to law or against it.[566]

Below the Court of Cassation are the appellate courts, which are responsible for reviewing decisions made by lower courts. There are four appellate courts in Jordan, each of which is responsible for a specific geographic region. These courts hear

[563] Ibid,p230.
[564] Ibid.
[565] N A A Al-Jabali, *Guarantees of the Independence of the Judiciary: A Comparative Study* (Alexandria: OMU 2007).
[566] The President of the Judicial Council is the President of the Court of Cassation, and is appointed by the King.

appeals from the lower courts within their jurisdiction and have the authority to overrule their decisions if they are found to be in violation of the law.[567]

Next in the hierarchy are the primary courts, which are responsible for hearing civil and criminal cases at the first instance. These courts are divided into several categories, including civil courts, criminal courts, family courts, and juvenile courts. Each type of court is responsible for hearing cases that fall within its specific jurisdiction.[568]

The elucidation provided above pertains solely to the hierarchy of regular courts within Jordan's judicial system. This exposition holds particular relevance as the researcher focuses on regular courts due to their pivotal role in interpreting and enforcing the boundaries of freedom of expression. It's important to acknowledge that in 2011, Jordan established the Constitutional Court, a specialized entity tasked with judicial review. This Constitutional Court operates outside the hierarchical structure previously outlined and carries its distinct significance in safeguarding constitutional rights. The researcher intends to examine the intricacies of the Constitutional Court's role in a subsequent section, shedding light on its implications for freedom of expression. Additionally, the researcher will investigate the multifaceted aspects of special courts in a separate section.

6.4. 3 Elements of Judicial Independence

In order for the judiciary to be independent, the following guarantees must be in place:

First: Judges' Personal Independence

[567] Law for the Formation of Regular Courts, Article 9.
[568] Law for the Formation of Regular Courts, Article 6.

The personal independence of judges is achieved through several matters:

A) The selection of judges.

The methods of selecting judges differ from one country to another and from one system to another. Some countries choose their judge's by-election, and others rely on the appointment system.

❖ **Selection of judge's by-election:** Some countries follow the method of election in selecting court judges, and this method is followed in the United States of America at the state level, where the citizens of the state elect court judges. Switzerland and some former communist countries also followed this method in selecting judges. [569]

The countries that follow this method consider it the most appropriate in achieving judiciary independence, and it is derived from the constitutional principle that the people are the source of authority, and therefore they are the ones who have the right to choose the members of the judiciary.

Although the process of selecting judges through elections appears more democratic in the first place, given that election is one of the most important means used in democratic systems, this method has been criticized due to the sensitivity of the judicial profession, especially since judges will try to win the sympathy of voters and political parties to ensure their position in the electoral system, which may negatively affect the impartiality of the judges.[570]

[569] Swash Shaheen Ibrahim, 'Judicial Guarantees Before the American Head of State' (2020) 9 JCLLPS 353, 369 <http://search.mandumah.com/Record/1105341> accessed 25 September 2023

[570] Osama Al-Rubi and Walid Muhammad Reda Al-Sayed Mustafa Al-Shennawi 'Guarantees of Judicial Independence: A Comparative Study between the Legal Systems in Egypt, the UAE, Oman and Germany' (2015) 58 JLER 285, 388 <http://search.mandumah.com/Record/760945> accessed 20 September 2023

Also, the selection of judges by election cannot guarantee the presence of competent judges in the courts because the electorate may elect someone they love and not one who has the competence, as happens in other parliaments, which hinders judicial performance.[571]

❖ **Appointment system of judges:** The method of appointing judges varies according to different constitutional systems, but in fact, two ways are most present within these systems in appointing judges, which can be by the legislative authority or by a proposal from it, and judges are often appointed by the legislative authority when it's related to political courts. Appointing judges through the executive authority is predominant in many countries, including Jordan. [572]

Appointment by the executive authority is considered a violation of the independence of the judiciary, as many consider it a direct interference in the affairs of the judiciary by the executive authority, especially since the appointment authority is followed by control over the professional life of the judge such as promotion and others.

❖ **Appointment of judges in Jordan :Before** 2011, the appointment of judges in Jordan rested heavily on the Minister of Justice's recommendation, casting a shadow of doubt over the autonomy of the judicial selection process.[573] This mode of appointment not only underscored the intertwining of the judiciary with the executive authority but also raised questions about the potential for undue influence in judicial appointments. Administrative matters concerning judges, such as transfers and dismissals, also fell within the jurisdiction of the Minister of Justice, further blurring the line between executive control and judicial independence.

[571] Ibid.
[572] R Al-Hajj, *The Principle of Civil Justice in Theory and Practice* (1st edn, Al-Halabi Jurisprudence Publications 2008).
[573] Judicial Independence Act No. 15 of 2001, Article 13.

The reforms introduced in 2011 were heralded as a stride towards enhancing judicial independence in Jordan. The shift to a process where judges are appointed by a royal decree and a decision of the Judicial Council, headed by the head of the Judicial Council, appeared to be a step in the right direction.[574] However, a closer examination reveals that the spectre of executive interference has not been fully exorcised. The ultimate authority to appoint judges still rests with the King, who stands as the head of the executive authority.[575] This arrangement raises concerns about the potential for executive authorities to influence judicial appointments, thereby impeding the establishment of a truly impartial judiciary.[576]

In addition to the fact that the General Secretary of the Ministry of Justice is a member of the Judicial Council, however, he is a part of the executive authority and is appointed by a decision of the Minister of Justice, which also means that the Judicial Council, as a representative of the judiciary, is not completely independent, and is not far from the influence of the executive authorities.[577]

B) Protecting judges from impeachment:

Some systems give special protection to the judge by granting him a long term of judgment and emphasizing that he may not be removed, whether through dismissal, retirement, or suspension from work. A judge who fears for his position cannot judge people fairly, and whoever fears for his position and his future cannot restore rights to their owners.[578]

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[574] Jordanian Constitution, Article 42.
[575] According to the Jordanian constitution, the king appoints the head of the Constitutional Court and its members and also appoints the head of the Judicial Council, who is himself the head of the cassation Court in Jordan.
[576] Article 98 states: "Judges of the Civil and Sharia Courts shall be appointed and dismissed by a Royal Decree in accordance with the provisions of the law."
[577] Judicial Independence Act No. 15 of 2014, Article 4.
[578] Mustafa Fouad Al-Khasawneh, 'The independence of the judiciary in light of the Jordanian Constitution of 1952 and its amendments' (2013) 13(1) ZJRHS Zarqa University 159, 174 <http://search.mandumah.com/Record/486063> accessed 20 September 2023

The Jordanian constitution did not explicitly provide a provision about this issue. However, the 2014 Judicial Independence Act expressly stipulated in Article 25 that a judge may not be dismissed except for a disciplinary reason by a decision of the Judicial Council and by a royal decree as well.[579]

The researcher believes that such a condition is logical. After all, the judge should not have absolute immunity if he commits legal and administrative violations, and the goal of protecting him from dismissal is to ensure that there is no external pressure on his decisions.

C) Secondment and Assignment of Judges:

Decisions to second or assign judges to other functions are administrative matters that the judiciary may resort to maintain the judicial process, but this power must be away from the influence of the executive authority and be subjected to a specific period, in order not to be misused of getting rid of unwanted judges.[580]

The 2014 Judicial Independence Act allowed the head of the Judicial Council to assign judges to other courts, provided that the job or work to which the judge was delegated is not lower than his rank and that the period does not exceed three months in one year.[581]

Simultaneously, the Act allowed the extension of the assignment length to the period that the head of the council deems appropriate in case of the approval of the

[579] Judicial Independence Act No. 15 of 2014, Article 25.
[580] Al-Khalayleh A M A, 'The Importance of the Independence of the Judiciary and the Danger of the Ruler's Influence on It' (2019) 14 Al-Qalam Journal 256, 279 <http://search.mandumah.com/Record/993390> accessed 20 September 2023
[581] Judicial Independence Act No. 15 of 2014, Article 22.

Judicial Council, which means the council's ability to dismiss the judge from his position for a long-term and pressure him.[582]

Originally, such decisions were within the jurisdiction of the Judicial Council; however, the Act allowed the Minister of Justice to request the assignment of a judge to work in the position of Secretary-General of the Ministry of Justice, also allowed the Council of Ministers to second judges to foreign governments or international or regional bodies[583], which is an apparent interference in Administrative affairs of the Judicial Council and may affect the independence of judges, especially since the judge's eligibility to work in these bodies has become dependent upon government's recommendation.

Second: The Administrative Independence of the Judiciary

The judges administratively report to the regular courts in Jordan to the Judicial Council with regard to decisions of appointment, transfer, assignment, and promotion, despite the influence of the executive authority in some aspects. Nevertheless, some actors of the judicial authority, such as the Public Prosecution and the attorney general, are not a part of the administrative Judicial Council but the authority of the Minister of Justice. Administratively, the Public Prosecution reports to the Minister of Justice under Article 11 of the Code of Criminal Procedure[584] and Article 17 of the Law for the composition of Regular Courts. [585]

The Minister of Justice may request the Head of the Public Prosecution to submit a case file to the Cassation Court in writing (appeal by written order) if a procedure contrary to the law occurred, or a judgment or decision was issued in violation of the

[582] Ibid.
[583] Judicial Independence Act No. 15 of 2014, Article 22.
[584] The Code of Criminal Procedure, Article 11.
[585] The Law for the composition of Regular Courts, Article 17.

law, and the judgment was final, and the Supreme Court had not previously considered this case, then he requests based on the reasons mentioned in the request to revoke the procedure or to appeal the judgment or decision.[586]

In addition, the attorney general and his assistants are administratively linked to the Minister of Justice under Article 16/c of the Law for the composition of Regular Courts.[587] The attorney general submits a monthly report to both the Minister of Justice and the Minister of Finance on the progress of the cases in which he represents the government and the provisions that he undertakes to implement.

The Judicial Institute, which prepares qualified persons to assume judicial functions, is administratively affiliated with the Minister of Justice, who appoints the director and staff of the Institute. In addition, the Ministry of Justice provides so-called technical support to the judicial authority by providing it with the staff and buildings necessary for its work.

Third: Financial Independence of the Judiciary

Financial independence means that there should be a budget for the judiciary that is supervised by the Judicial Council, through financial allocations specific to the judiciary, meaning that the judiciary is financially independent of the executive authority and able to provide the needs of the judiciary without the need for the executive authority. [588]

[586] Abdel Ghaffar Freihat, 'A Report on the Status of the Judiciary in Jordan' (2015) Arab Center for the Development of the Rule of Law and Integrity <https://www.arabruleoflaw.org/Files/PDF/Judiciary/Arabic/P2/JordanFinalReportJudiciaryP2S1_AR.pdf> accessed 25 September 2023

[587] The Law for the composition of Regular Courts, Article 16.

[588] Ibid.

Despite this, the judiciary is not financially independent in Jordan, and it receives all financial allocations from the Ministry of Justice, which oversees the salaries of court employees and all financial expenditures of the judiciary such as court buildings and employee salaries, which is an administrative part that also allows the executive authority to interfere in the judiciary.

6.4.3 Exercising the work of the judiciary by the executive authority

One of the most important guarantees of judicial independence is the inability of other authorities to exercise or interfere with the judiciary's work, whether through so-called special courts, which include persons who are not judges appointed by the executive authority.

In Jordan, there are two forms of interference by the executive authority in the judiciary and the exercise of its work:

1. **Administrative Detention**

Crime Prevention Act No. 7 of 1954, which is still in force to this day, raises many violations that accompany its application due to legal and factual problems and their negative repercussions on the rights and freedoms of individuals.

In addition to the suspicion of unconstitutionality due to the legal rules it contains, it constitutes a departure from the principle of separation of powers that the Act surrounds it in the view of the rule of law, which is considered an important constitutional guarantee of human rights.

The Act gives administrative governors the power to exercise some of the powers that fall within the judiciary's jurisdiction, the most important of which is their ability to arrest and interrogate people without charge. [589]

This Act contains many legal problems:

I. The Act guarantees that the administrative governor is empowered with absolute powers to issue a decision to arrest people without specifying a period or legal controls, as the administrative governor appointed by the executive authority can issue an arrest warrant and refrain from providing bail.

II. The Act grants the administrative governor absolute authority to determine the bail amount and the guarantor, as Article 7 allows the administrator to refuse the approval of any guarantor who is not satisfied with his bail.[590]

III. The broad phrases that accompanied all the articles of the Act that refer to the absolute and broad powers, such as Article 3 contain loose and absolute phrases such as if "he had reason to believe" or "he saw that there are sufficient reasons."[591]

IV. Article 3 delegated the administrative governor broad powers to determine who is considered a danger to public safety. The Act did not specify specific controls or standards for a person considered a danger to public safety.[592]

V. The Act grants the administrative ruler the powers to hear witnesses, investigate and issue judgments, which are matters considered within the jurisdiction of the judiciary.

[589] Crime Prevention Act No. 7 of 1954, Article 3.
[590] Crime Prevention Act No. 7 of 1954, Article 7.
[591] Crime Prevention Act No. 7 of 1954, Article 3.
[592] Ibid.

The figures revealed by the National Center for Human Rights report a large number of administrative detainees; according to the annual report in 2018, the number of administrative detainees reached 37,683, which is a large and alarming number compared to the population of Jordan.[593]

2- Special courts

Jordan has a considerable number of special courts that are directly appointed by the executive authority, and they are courts that include informal judges and sometimes individuals who are not judges.[594] The most prominent of these courts are the State Security Court, the Military Courts, the Police Court, and the Special Labor Court.

The law permits, for example, the State Security Court, to which judges appoint the prime minister, a court that includes civilian and military judges, to prosecute civilians for crimes against state security, drug offences, crimes related to freedom of expression issues, and other broad crimes.[595]

The phenomenon of prosecuting civilians before special courts is a flagrant violation of the principle of judicial independence. Prosecuting civilians before these courts for common law crimes contradicts all the rights of the accused, including his right to a fair trial, as the judges of these courts do not guarantee independence and

[593] The annual report on the situation of human rights in the Hashemite Kingdom of Jordan for the year 2018, the National Center for Human Rights, available at: https://www.nchr.org.jo/ar/%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1-%D8%B3%D9%86%D9%88%D9%8A%D8%A9/

[594] State Security Court Law of 2001, art. 2.

[595] Abdul-Ilah Muhammad Al-Nawaisah, 'The Provisions of the Jordanian State Security Court' (2006) 30(2) LJ 73,121 <http://search.mandumah.com/Record/76499> accessed 20 September 2023

immunity from dismissal in addition to their subordination to the executive authority.[596]

Regardless of the justifications for the establishment of these courts, the method of forming these courts lacks independence, extorts the powers of the ordinary judiciary, allows the executive authority to interfere in the work of the judicial authority, and deprives the accused of his right to appear before a natural judge who is to be a military man.

6.4. 4 Judicial Review

It is a principle whereby the actions of the legislative and executive authorities in the country are placed under review and the possibility of veto by the judicial authorities. Any court granted the power of judicial review can revoke an act of the state when it appears to be inconsistent with the law or the constitution.

Judicial review powers are an example of the separation of powers in modern government systems, as they contribute to the separation of the judiciary from the rest of government. This principle is used and applied in different ways in different judicial systems around the world, and therefore its circumstances and procedural details differ from one country to another. [597]

This principle means that there is a judicial body to adjudicate whether the law violates the Constitution or not. If this judicial body finds that the law is contrary to the Constitution, it shall rule it unconstitutional. The work of this principle is

[596] Khaled Ali Nazzal Al-Shaar and Imad Mahmoud Obaid, 'Fair Trial Guarantees in the Formation of the State Security Court in Jordanian Legislation' (2018) 1(1) JLRS 109, 124 < http://search.mandumah.com/Record/1092058> accessed 20 September 2023

[597] Amin Othman Muhammad, 'Oversight of the Constitutionality of Laws. In First Scientific Conference: The Role of the Supreme Constitutional Court in the Egyptian Legal System (pp. 862-931)' (1998) The First Scientific Conference: The Role of the Supreme Constitutional Court in the Egyptian Legal System <http://search.mandumah.com/Record/113538> accessed 16 May 2023

considered an application of a general principle, the principle of legality, which is recognized in jurisprudence and judiciary in all countries of the world.

This principle of legality means that it is not permissible for a lower legal rule to violate a higher rule. If this violation is found, the lower provision becomes illegal.[598]

As for the hierarchy of legal rules according to the principle of legality, the provisions of the constitution are at the highest rank, then the provisions of the law, then the provisions of the system (the regulation), and then the instructions, and then decisions at last. According to this hierarchy, every provision that contradicts the provision higher than it becomes illegal, and the judiciary has to rule accordingly.

The purpose of monitoring the constitutionality of laws is to clean up the legal system in the country of any provisions that violate the constitution. To achieve this result, it can be concluded from the constitutional and judicial systems in the world. There are three general approaches to judicial review of the constitutionality of primary legislation—that is, laws passed directly by an elected legislature.

1- No review by any courts

Some countries do not allow the validity of laws to be reviewed. In the United Kingdom, Acts of Parliament cannot be invalidated under the principle of parliamentary sovereignty. In Jordan, before the year 2011, the courts were not able to review laws, but the judge could not apply them in a case he believed violated the constitution, but the law was applied in other cases, according to the judge's beliefs.[599]

2- Review by the general courts

[598] Ibid.

[599] Nawwaf Kanaan, 'Principles of constitutional law and the Jordanian constitutional system' (2013) 2(1) Amman: Dar Ithraa 29

In countries that have inherited the English common law system of courts of general jurisdiction, judicial review is generally conducted by those courts rather than by specialized courts. Australia, Canada, and the United States are examples of this approach. In the United States, federal and state courts (at all levels, appellate and trial) can review and declare "constitutionality," or agreement with the Constitution (or disagree) of legislation through a process of judicial interpretation properly relevant to any issue in their jurisdiction. In American legal parlance, "judicial review" primarily refers to determining the constitutionality of laws, particularly by the Supreme Court of the United States. Courts in the United States may also call for judicial review to ensure that the law does not deprive individuals of their constitutional rights. [600]

3- Review by a specialized court

Many countries have adopted a system of judicial review by a specialized court, usually called the Constitutional Court, whose task is to interpret and review laws in the case of a dispute. Many countries such as Germany and Austria have adopted this system. It is currently being applied in some Arab countries, including Jordan. However, countries differ in how these courts operate. Some countries allow everyone to file a lawsuit directly with the Constitutional Court to challenge a law that the plaintiff believes is unconstitutional, and the number of countries allowing the public to do so has increased in the last decade. [601]

Some countries do not allow everyone to file a case directly with the Constitutional Court but allow them to file an indirect case through the court. This

[600] Al Fadel Al-Mahi, 'Judicial Oversight of the Constitutionality of Laws in America' (2018) 20(52) Justice Magazine <http://search.mandumah.com/Record/944203> accessed 20 September 2023

[601] Habshi Lazraq, 'Constitutional Control Over Organic Laws and Their Effects on Public Liberties' (2019) 51 JHS 7-22 <http://search.mandumah.com/Record/968210> accessed 15 September 2023

requires the presence of a case before the court, such as the Magistrate's Court or district court, and the person concerned in the case submits a plea before the court claiming that the provision is unconstitutional, and if the court is convinced of the seriousness of the plea, it refers it to the Constitutional Court.[602]

4- Judicial review in Jordan

Before the year 2011, there was no judicial review in Jordan, but the judge could refrain from applying the provision he believed was unconstitutional. Nevertheless, the provision remains applicable to other cases and may be applied. Therefore, calls for establishing a constitutional court have increased to review laws. [603]

In 2011, the Jordanian constitution was amended, and a constitutional court was established which became competent in interpreting and reviewing laws. According to Article 58, the court consists of at least nine judges, including the president, who is appointed by royal decree.[604] This means that the king issues the decision and is signed by the Prime Minister and Minister of Justice According to Article 40 of the Constitution.

This means the executive authority is also the only one appointing members of the Constitutional Court, unlike what is happening in some countries that grant other parties such as parliament and judicial bodies the right to participate in appointing members of the court or, in the worst case, agree to appoint members.

The Jordanian Constitutional Court law did not grant immunity to court members from dismissal and did not grant them a long-term term of work as other countries

[602] Ibid.
[603] Khaled Hamed Shanikat, 'The Role of the Constitutional Court in the Jordanian Political System: A Study of the Court's Structure and Its Decisions' (2019) 25(3) Al-Manara JRS 435, 477 <http://search.mandumah.com/Record/1030429> accessed 22 June 2022
[604] Jordanian Constitution, Article 58.

do.[605] The term of service in the Constitutional Court is only six years, non-renewable, as Article 21 of the law permits the termination of a member's service by a royal decree in some cases.[606]

This makes the independence of the court highly questionable. In addition, the law limits the possibility of appeal directly to the Constitutional Court to only three bodies, namely the Council of Ministers, the House of Representatives, and the Senate, as the law requires the approval of the majority of members of the House of Representatives and Senate for the appeal until it is submitted to the Constitutional Court.[607]

The law did not grant political parties and civil society organizations the right to appeal the constitutionality of laws, or create effective political control over the attitude of the executive and legislative authorities, but rather granted to the legally authorized bodies to issue and appeal laws that it is unconstitutional.

The law also made it difficult for ordinary individuals to appeal the unconstitutionality of laws. Individuals cannot directly appeal the constitutionality of laws, but they can appeal indirectly to the court if there is a case before it. In this case, the judge considers the request, and if he is convinced of the seriousness of the request, he submits it to the Supreme Court, which considers the request as well, and if it feels it is serious, it submits it to the Constitutional Court, provided that the individual pays a fee equivalent to 250 pounds, and in case of non-payment, the request will be formally rejected.[608]

[605] Judges in the Constitutional Court are subject to a separate law from the law to which regular judges are subject.
[606] Constitutional Court Law, Article 21.
[607] Constitutional Court Law, Article 9.
[608] Constitutional Court Law, Article 11.

Such conditions made the Constitutional Court in Jordan ineffective. During the full ten years since its establishment, the court has issued only 29 judgments and 11 interpretative decisions, all through the executive and legislative authority, most of which rejected appeals.[609]

6.5. Conclusion

The ideal exercise of freedom of expression requires a separation of powers, an independent judiciary that is not subject to influences, in addition to the authorities' respect for the rule of law in normal or emergencies. In this chapter, the researcher examined the availability of these requirements in the Jordanian legal system and concluded that Jordan lacks these requirements.

Although the Jordanian constitution provides for the principle of separation of powers, it does not provide sufficient guarantees and balances between them, as it seems clear that the executive authority, represented by the king and the government, has great powers that help it to interfere with other authorities.

The researcher has noticed that the king in the Jordanian legal system has broad powers that contradict the principle of separation of powers, and plays a pivotal role in forming the three executive, legislative and judicial powers, and these powers are not restricted powers but rather semi-absolute powers, which make him an absolute ruler.

In addition, the principle of legitimacy and the rule of law disappears in a state of emergency to a large extent, where the executive authority becomes more like an

[609] See the Jordanian Constitutional Court website: https://cco.gov.jo/ar-jo/

absolute ruler, and all legal restrictions that restrict its practices disappear, and the presence of the three authorities disappears, and it becomes able to issue laws and form courts, and it can violate laws without any legislative or judicial oversight, which has a significant impact on freedom of expression.

But the most dangerous of all is that the Jordanian judiciary does not enjoy sufficient independence and is subject to clear influence from the executive authority, which can appoint and dismiss judges. In some cases, the executive authority is even able to exercise the functions of the judicial authority. Judicial oversight of laws seems to be restricted and non-existent under the current legal system.

There is no doubt that the absence of these important legal guarantees for the exercise of freedom of expression had a negative impact. In the next chapter, the researcher will examine these effects on the implementation of freedom of expression in Jordan.

Chapter 7

The application of free speech in Jordan

7.1 Introduction

The practice of freedom of expression in Jordan presents a complex landscape marked by intricate legal restrictions and a dynamic interplay between political dynamics and individual rights. A mere glance at headlines from international and local human rights reports reveals a stark reality – one characterized by phrases such as "The government crushes civil space" and "Freedom of expression in Jordan...closed spaces."[610] These titles echo the apprehensions surrounding the application of legal provisions that appear to curtail the very essence of freedom of expression.

This chapter embarks on a meticulous investigation of the impact of legal restrictions on the practice of freedom of expression in Jordan. It explores how these broad constraints have constricted the domain of freedom of expression, particularly on digital platforms and in the media landscape. The purpose of this chapter is to present a range of impacts of these government regulations through the efforts of credible international and local organizations with human rights reports as well as judicial rulings and statistics from civil society organizations. Additionally, it

[610] See: Human Rights Watch, 'Jordan: Government Crushes Civic Space' (18 September 2022) <https://www.hrw.org/news/2022/09/18/jordan-government-crushes-civic-space> accessed 30 August 2023
Center for Defending Freedom of Journalists, 'Closed Spaces: Internet Freedom and Freedom of Expression Online in Jordan' (28 January 2022) <https://cdfj.org/wpcontent/uploads/2021/10/%D9%88%D8%B1%D9%82%D8%A9%D9%85%D9%88%D9%82%D9%81%D9%81%D8%B6%D8%A7%D8%A1%D8%A7%D8%AA%D9%85%D8%BA%D9%84%D9%82%D8%A9.pdf > accessed 30 August 2023

highlights the complicated connection between democracy and norms of law within Jordanian situation.

Besides this, this chapter sheds light on the critical function of case law and judicial interpretations toward the recognition of the edges of freedom of expression within the content of the Jordanian legislation. By delving into specific case laws, this section intends to provide insights into the nuances of how freedom of expression is both enshrined and restricted within the legal framework of Jordan. Ultimately, this chapter seeks to provide a comprehensive view of the intricate dance between freedom of expression and legal restraints in Jordan, offering a well-rounded perspective on the challenges that define this critical aspect of the nation's democratic fabric.

7.2 Legal Limitations and their Impact

Recognizing the reality of the practice of freedom of expression in Jordan requires little effort. It is enough to browse the headlines of international and local reports issued by independent human rights organizations until we find headlines such as "The government crushes civil space,"[611] "Freedom of expression in Jordan...closed spaces"[612], and many others. Among the titles that refer to the application of the provisions of the law in a way that restricts freedom of expression.

Anyone who notices through these reports that the state of freedom of expression is declining rather than progressing, for example, a report issued by the CIVICUS

[611] Human Rights Watch, 'Jordan: Government Crushes Civic Space' (18 September 2022) <https://www.hrw.org/news/2022/09/18/jordan-government-crushes-civic-space> accessed 30 August 2023

[612] Center for Defending Freedom of Journalists, 'Closed Spaces: Internet Freedom and Freedom of Expression Online in Jordan' (28 January 2022) <https://cdfj.org/wpcontent/uploads/2021/10/%D9%88%D8%B1%D9%82%D8%A9%D9%85%D9%88%D9%82%D9%81%D9%81%D8%B6%D8%A7%D8%A1%D8%A7%D8%AA%D9%85%D8%BA%D9%84%D9%82%D8%A9.pdf > accessed 30 August 2023

Monitor in 2021, the CIVICUS Index, is a global index that ranks and tracks fundamental freedoms in 197 countries and territories, that Jordan has been downgraded from "obstructed" to "repressed."[613]

In the report's details, the closure of the Internet and the restrictions imposed on journalists, civil society, and activists led to the downgrade of the rating. According to the report entitled "People Power Under Attack 2021". The rating of "oppressive" is the second worst a country can receive; It means that civil liberties, including freedom of association, civic organization, assembly, and expression, are severely restricted in Jordan and that anyone who criticizes the authorities is subject to harassment, arrest, and imprisonment.[614]

In addition, the researcher noted that all reports refer to the arbitrary application of specific legal provisions, describing them as vague and restrictive, specifically laws that punish defamation offences, criticism of the king or state institutions, disturbing Jordan's relations with foreign countries, blasphemy, and any content considered subjective.

These reports focus, as the researcher noted, on violations of freedom of expression on the Internet and freedom of the media, or targeting of activists, as most of the issues of freedom of expression documented in the reports of human rights organizations were related to punishing online activists or journalists and the media.

In this section of the research, the researcher examines the impact of legal restrictions on the practice of freedom of expression in Jordan and shows how the wide restrictions negatively affected the scope of freedom of expression in Jordan,

[613] CIVICUS Monitor, 'Jordan Downgraded in Global Human Rights Report as Clampdown on Teachers' Union Continues' (8 December 2021) <https://findings2021.monitor.civicus.org/country-ratings/jordan.html> accessed 30 August 2023
[614] Ibid.

and in particular on freedom of expression on the Internet and the media, and also monitors the impact of applying these laws on Jordanian society. Furthermore, the researcher refers to human rights reports issued by reliable international and local institutions, judicial precedents, and statistics issued by civil society organizations.

7.2.1 Challenges to Internet Freedom of Expression in Jordan

According to official figures, the number of Internet users in Jordan until January 2021 reached 8.6 million. Most citizens use the Internet from their mobile phones due to increased optical fibre subscriptions. Social media is Jordanians' first and most important platform to express their ideas.[615]

In a study by Lawyers Without Borders, 79% have said that they use social media to express their opinions.[616] Nevertheless, the massive number of restrictions contained in Jordanian laws, and the broad wording of the provisions of these laws that make it difficult for citizens to realize the limits of what is permissible and what is forbidden, negatively affected freedom of expression on the Internet and led to the reluctance of many to express their opinions through the Internet.

In its 2019 report, the National Center for Human Rights documented that the number of cases registered according to Article 11 of the Cybercrime Law related to freedom of opinion and expression amounted to 982 cases, of which 433 arrest

[615] For more, see the "State of Internet Connectivity in Jordan 2018" programme, The Society Connected GSMA, on the following link:
Also, Jordan News Agency, 'G: TRC5 Prepares Services for Jordan' (September 2021) <https://bit.ly/3AxzPWx> accessed 30 August 2023
ICT Report in Households for 2017, 'Department of Statistics and Ministry of Communications and Information Technology' (14 December 2018)

[616] Lawyers Without Borders, 'The Right to Freedom of Opinion and Expression, Peaceful Assembly, and Public Participation Rights Between Reality and Hope' (July 2021)
https://www.lwbjo.org/Admin_Site/Files/PDF/a4c50953-fce2-49ae-b8ef-13ee9bde49fe.pdf> accessed 30 August 2023

warrants were issued.[617] In contrast, the total number of registered cybercrime cases in Jordan increased by 2000 compared to 2019 and 2020.

The number of cybercrime cases in 2020 reached 9500 cases, and 7500 cases were recorded in 2019. According to the National Center for Human Rights, these numbers represent 73% of all cases related to freedom of expression in 2020, which means that most restrictions on freedom of expression are applied when the Internet is the means that is used to express an opinion.[618]

It is impossible to ignore that the Jordanian authorities have sought to control freedom of expression on the Internet over the past years through the laws and measures they take by blocking websites and applications. However, amendments to the Press and Publications Law were introduced in late 2012, allowing the government for the first time to regulate "digital publications" and requiring them to submit to the same regulatory structure imposed on print media.

Articles 48 and 49 of the amended law give the director of the Department of Press and Publications the authority to block websites that are not licensed or considered in violation of the law and to shut down the website's headquarters without giving reasons or issuing a court ruling. Article 49 also makes the owner and editor-in-chief of the online publication liable for comments posted by users on the website

[617] National Center for Human Rights, 'The Annual Report on the Situation of Human Rights in the Hashemite Kingdom of Jordan for the Year 2019' (2019) <https://www.nchr.org.jo/ar/%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1-%D8%B3%D9%86%D9%88%D9%8A%D8%A9/> accessed 30 August 2023

[618] The National Center for Human Rights, 'The seventeenth annual report on the situation of human rights in the Hashemite Kingdom of Jordan for the year 2020' (2020) <https://www.nchr.org.jo/ar/%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1-%D8%B3%D9%86%D9%88%D9%8A%D8%A9/> accessed 22 June 2022

who are required "Not to publish comments if they contain information or facts that are not related to the content of the news, are not verified, or constitute a crime." [619]

This decision led to the blocking of 291 local news websites because they did not obtain a license. It also prompted many websites to disable comments or exercise prior censorship for fear of possible financial fines.[620]

On June 26, 2021, the Public Prosecution announced the launch of "electronic patrols" in cooperation with the Cybercrime Unit of the Public Security Directorate to monitor social media posts. The Director of the Cybercrime Unit admitted in a press statement that the unit is constantly conducting electronic patrols on websites and social media.[621] For example, suppose it is suspected that there is a publication that would constitute a specific crime.

In that case, the technical follow-up process is conducted, the necessary eviction injunction is organized, and notification is submitted to the Public Prosecution for the prosecution. Moreover, he added that during his meeting with representatives of the Public Prosecution, "priorities were established to pursue electronic publications that constitute electronic crimes such as provoking religious strife, hate speech, harming the internal and external security of the state, harming public morals of society,

[619] Jordanian Press and Publications Law, Article 49.
[620] IFEX, 'Jordanian Authorities Block Hundreds of Websites' (4 June 2013) <https://ifex.org/ar/%D8%A7%D9%84%D8%B3%D9%84%D8%B7%D8%A7%D8%AA-%D8%A7%D9%84%D8%A7%D8%B1%D8%AF%D9%86%D9%8A%D8%A9-%D8%AA%D8%AD%D8%AC%D8%A8-%D9%85%D8%A6%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D9%88%D8%A7%D9%82%D8%B9-%D8%A7%D9%84/> accessed 30 August 2023
[621] The New Arab, "Electronic Patrols" in Jordan Threaten Freedom of Expression , 26 June 2021, available at: https://www.alaraby.co.uk/entertainment_media/%22%D8%AF%D9%88%D8%B1%D9%8A%D8%A7%D8%AA-%D8%A5%D9%84%D9%83%D8%AA%D8%B1%D9%88%D9%86%D9%8A%D8%A9%22-%D9%81%D9%8A-%D8%A7%D9%84%D8%A3%D8%B1%D8%AF%D9%86-%D8%AA%D9%87%D8%AF%D8%AF-%D8%AD%D8%B1%D9%8A%D8%A9-%D8%A7%D9%84%D8%AA%D8%B9%D8%A8%D9%8A%D8%B1

vilifying official bodies, and crimes that agitate public opinion and that affect the national economy and investment."[622]

The publication of such news has led to the reluctance of many to express their opinions or to be afraid of announcing their criticisms. In a study by Lawyers Without Borders on freedom of expression in Jordan, 66.4% of the respondents answered that internal political opinions might hold them accountable. While 35% of them said that expressing their opinion on foreign policies would hold them accountable, approximately 27% of the respondents decided that their views on human rights and violations committed by the government would hold them accountable, and 24% of the respondents believed that their criticism of public office holders might hold them accountable.[623]

The Jordanian government also has, on many occasions, blackout the Internet or banned applications such as "clubhouse" or "Tik Tok" due to the popular protests against the increase in the price. [624]

The ban on the TikTok application, particularly during the protests in 2022, resulted in the disruption of information regarding the protests and enhanced government control over news dissemination. By prohibiting the application, individuals were impeded from expressing their opinions and staying informed about current events.[625] In cases of legal violations on TikTok, Jordanian authorities could

[622] Ibid.
[623] Lawyers Without Borders, The Right to Freedom of Opinion and Expression, Peaceful Assembly, and Public Participation Rights Between Reality and Hope, July 2021, available at: https://www.lwbjo.org/Admin_Site/Files/PDF/a4c50953-fce2-49ae-b8ef-13ee9bde49fe.pdf
[624] SMEX, 'Blocking the Internet in Jordan: Repeated Justifications for Officials' (10 August 2021) <https://smex.org/ar/%D8%AD%D8%AC%D8%A8-%D8%A7%D9%84%D8%A5%D9%86%D8%AA%D8%B1%D9%86%D8%AA-%D9%81%D9%8A-%D8%A7%D9%84%D8%A3%D8%B1%D8%AF%D9%86-%D8%AA%D8%A8%D8%B1%D9%8A%D8%B1%D8%A7%D8%AA-%D9%85%D8%AA%D9%83%D8%B1%D8%B1%D8%A9/> accessed 30 August 2023
[625] Ibid.

have pursued legal action against the offenders. However, the broad ban denies individuals, especially those not primarily expressing political opinions, the right to express anything, extending beyond their views on protests.

One of the significant consequences is the curtailment of freedom of artistic and creative expression. TikTok served as a meeting ground for young people and creatives to convey their thoughts through innovative artistic means. Through short video content, individuals had the opportunity to showcase their ideas and talents uniquely. Banning the app results in the loss of this creative space, limiting avenues for personal expression.

Furthermore, TikTok functions as a platform for expressing political and social opinions. When the app is prohibited, there is a risk of losing a crucial space where users can voice their opinions and engage in public discourse. The reduction of this space poses a direct threat to freedom of expression and may lead to the suppression of individual voices in the public sphere.

The following are some of the facts documented in the reports of human rights organizations on the censorship practised by the Jordanian authorities on the Internet:

In 2018, during the protests of what was known as the "Fourth Circle demonstrations," telecommunication companies across the country received an enormous number of complaints stating it was impossible to watch live broadcasts on Facebook or display videos. However, the Jordanian Open Source Association (JOSA) revealed in a report that the reason for the malfunction in the service of watching the live broadcast on the Internet in Jordan was not a pressure on the infrastructure, as the Jordanian government claimed, nor was it a glitch from the Facebook company's website, but rather it was a temporary technical intervention in data packages that requests Facebook Live Service," meaning that a third party, not

identified in the report, obstructed the flow of requests that viewers' devices send to Facebook's servers in order display the video.[626]

Statistics published by the social media websites including "Facebook" on government requests for information about Facebook users, as shown in the following figure[627]:

January 2019	June 2019	175	Request for information
July 2019	December 2019	283	Request for information
January 2020	June 2020	284	Request for information
July 2020	December 2020	12*[628]	Request for content restriction

On April 9, 2022, the Public Prosecution of the State Security Court issued a decision to detain the owner of the Roya news channel "Faris Al-Sayegh" and the news director and presenter of the "Nabd Al-Balad" program "Mohammed Al-Khalidi" for 14 days. The Public Prosecution proceeded to investigate against the backdrop of broadcasting a media material, which was also broadcasted on social media platforms and was charged with endangering the safety of Jordanians in

[626] Jordan Open-Source Association, 'Measuring Facebook Live-Streaming Interference during Protests' (11 June 2019) <https://josa-api.fra1.digitaloceanspaces.com/portal/jordan_facebook_interference_7942c04719.pdf> accessed 30 August 2023

[627] Facebook, 'Statistics' (2019) <https://bit.ly/3allJx7 and https://bit.ly/3uWxKSW> accessed 30 August 2023

[628] * Including 7 requests to restrict the content of pages or groups and 5 requests to restrict content of users personal accounts.

violation of Articles 2, 3, and 4 of the Prevention of Terrorism Law, as well as violating defence orders by broadcasting reports inciting the violation of the curfew before releasing them several days later.[629]

On May 31, 2020, cartoonist Raafat Al-Khatib deleted a cartoon he had posted on his Facebook page after being subjected to incitement against him on social media and threatened with prosecution for publishing a cartoon criticizing Jordanian Prime Minister Omar Al-Razzaz after the government issued Defence Order No. (6) and it is among the set of defence orders under Defence Law No. 13 of 1992, which was ratified and published in the official Gazette by the government in March 2020 to counter the COVID-19 Pandemic, the cartoon published shortly after the killing of George Floyd in the United States, depicting the former prime minister Omar Razzaz kneeling on the neck of a citizen.[630]

In addition, the publisher of the "Jo 24" website, the journalist Basil Al-Akour, was summoned in July 2020 to appear before the Public Prosecutor of Amman on the background of a complaint against him by the Public Prosecutor of the Hashemite Kingdom of Jordan under the pretext of violating the ban on publication of the Teachers Union case, after he published on his website News related to the developments of Teachers' Union case.[631]

On August 26, 2020, the Public Prosecutor of the State Security Court detained cartoonist Imad Hajjaj for 14 days in Salt Prison before releasing him four days later, accusing him of disturbing relations with a friendly country. The arrest warrant came against the backdrop of a cartoon that he published in the digital newspaper "Al-

[629] Center for Defending Freedom of Journalists, 'Restricted Media' (9 May 2021) <https://rev2.cdfj.org/media-freedom-index/%D8%A5%D8%B9%D9%84%D8%A7%D9%85-%D9%85%D9%82%D9%8A%D9%91%D8%AF/> accessed 30 August 2023
[630] Ibid.
[631] Ibid.

Araby Al-Jadeed," where he works as a cooperative, and on his pages on social media websites. The authorities considered it offensive to the United Arab Emirates.[632]

Since mid-March 2021, according to the Freedom House organization, the "Club House" application has been blocked in Jordan after protestations took place due to the repercussions of the Al-Salt Governmental Hospital incident, which claimed the lives of eight COVID-19 patients due to a lack of oxygen.[633] In a study prepared by expert Issa Mahasneh, director of the Jordanian Open Source Association (JOSA), he confirmed that the "Club House" application cannot be reached in Jordan and that this blocking is done through service providers, according to a report titled "Are the Jordanian authorities afraid of the Club House application?"[634]

According to Global Voices, on December 16, 2022, the Jordanian authorities announced a temporary ban on the TikTok application due to "misuse by some" in addition to the "failure of the platform to address posts that incite violence and chaos."[635]

The Jordanian Public Security Directorate warned that the cybercrime unit is to monitor content shared on social media platforms, focusing on hate speech, "incitement on vandalism, attacks on law enforcement institutions, damage to property and blocking roads."

[632] Ibid.
[633] Laith al-Jounaidi, 8' die in Jordan hospital due to lack of oxygen supplies' Anadolu Agency (13 March 2021) <https://www.aa.com.tr/en/health/8-die-in-jordan-hospital-due-to-lack-of-oxygen-supplies/2174787> accessed 30 August 2023
[634] Jordan Open-Source Association, 'Measuring Facebook Live-Streaming Interference during Protests' (11 June 2019) <https://josa-api.fra1.digitaloceanspaces.com/portal/jordan_facebook_interference_7942c04719.pdf> accessed 30 August 2023
[635] Global Voices, 'Behind the ban on TikTok in Jordan' (9 March 2023) <https://ar.globalvoices.org/2023/03/09/84365/> accessed 30 August 2023

This ban came to control the spread of live footage documenting workers' protests in Ma'an. In mid-December 2022, truck drivers protested against the increase in fuel prices in Ma'an Governorate and broadcasted the demonstration live via the TikTok application. Taxis and public bus owners also participated in the demonstrations, and many shops from different cities organized many strikes, knowing that the application is still banned until now.[636] While SMEX indicated that the residents of the city of Ma'an suffered not only from the ban on TikTok but also from the blackout of the internet in Ma'an and Karak during the day, and the internet was blocked in the city of Ma'an until December 26, that is, until the end of the protests.[637]

These facts, which have been documented by human rights organizations, and are limited to the last three years only, summarize the attitude of the Jordanian authorities' restrictions on freedom of expression on the Internet through the use of broad legal provisions that criminalize harming the internal and external security of the state and harming the morals and public morals of society, vilifying the official bodies, blocking the Internet, banning applications, and electronic patrols.

In all the cases mentioned above of arrest, the Jordanian judiciary has not yet issued judicial rulings against those arrested, and they were released after several days. However, the arrest of individuals with a threat of prosecution creates an environment hostile to freedom of expression. In addition, the Jordanian authorities' frequent shutdown of the Internet restricts the freedom of access to information and the ability of citizens to exercise their right to freedom of expression. In that Study conducted By Lawyers Without Borders, 38% said that they could not access the

[636] Ibid.
[637] Ibid.

Internet all the time and 61% said that they had an Internet shutdown during strikes and demonstrations.

Examples of people who have had legal detrimental effects for their views expressed in Jordan indicate that covering freedom of speech is a complicated sphere. The detention of Faris Al-Sayegh and Mohammed Al-Khalidi, who were employees of the Roya News channel, clearly evidences and illustrates this point. Their arrest, motivated by the accusations involving the Prevention of Terrorism Law, raises doubts about the dispute between the safety nation's interests and freedom of speech. The Jordan state authorities blamed them for endangering public safety and security and in the meantime claimed the need the media should be responsible, especially in such crucial times.

“Narration of a cartoonist's Raafat Al-Khatib's story, where he hated and sought justice through prosecution for picturing Prime Minister Omar Al-Razzaz in a cartoon piece, clearly explains the fact that criticizing government officials in any way may be costly for one’s life.” Employing defence orders to suppress dissent, most notably during the COVID-19 crisis, is a clear reflection of the government’s extensive legal power to limit speech under the pretext of public safety.

Likewise incomparable writer Basil Al-Akour banned because he reported about the Teachers Union case, provides more evidence of how limitations of freedom of speech can relate to the coverage of sensitive topics. The arrest of Imad Hajjaj, a cartoonist charged with disturbing relations between a friendly country and another solely because of one cartoon perceived as insulting to the United Arab Emirates, is an angelic display of the legal consequences of artistic expression seen as offensive to international relations.

Many believe that the censored application was a tool to block the expression of government criticism due to disagreements regarding the Al-Salt government hospital incident. Tiktok's temporary ban by the government due to misuses and failedness to remedy also made people worried the government's interference on social media.

Moreover, blackout of the internet in Ma’an, together with TikTok ban, reflects the authorities’ use of internet limitations to stifle the news flow and to deprive residents of the possibility to document the events and spread them. The government measures, which are thoroughly reported by human rights organizations, suggest that the government is using broad legal provisions in order to maintain internal and external security, protect societal morals, and control the flow of information.

However, the none of them for judicial rulings but any of the cases of arrests and threat of prosecution have a silencing effect of freedom of expression. As a result, continued Web disconnections affect the citizens possibly retarding their access to information and their ability to utter their opinions. The Jordanian government's approach, encompassing legal measures, application bans, and electronic patrols, raises critical questions about the balance between national security and individual liberties. The implications of these actions underscore the ongoing challenges surrounding freedom of expression in Jordan.

7.2.2 Media Freedom and Legal Hurdles in Jordan

The report of the Center for Defending Freedom of Journalists (CDFJ) in 2022, under the title: "Shackled Media," described freedom of expression in the Jordanian media as being restricted.[638]

The report relied on the results of the Press Freedom Index in Jordan for the year 2021, which is an indicator developed by the centre based on six indicators, which are the political environment, the legislative environment, the right to information, violations, and impunity, the independence of the media, and freedom of expression, and media on the Internet.

According to the report, the political environment for press freedom in Jordan is restrictive. The political environment index is particularly important because it is concerned with legal legislation and deals with broader areas related to the continuity of government interventions that affect the exercise of freedom of expression.

The report indicates that 77.3% of those polled acknowledged that journalists had been summoned because of their work in media, which is undoubtedly a large percentage that reveals that the government follows a straightforward approach in summoning journalists to disrupt their work.[639]

Government interference with the media takes many forms and is not limited to the summons. According to a 2022 Freedom House report, government gag orders

[638] Center for Defending Freedom of Journalists, 'Closed Spaces: Internet Freedom and Freedom of Expression Online in Jordan' (28 January 2022) <https://cdfj.org/wpcontent/uploads/2021/10/%D9%88%D8%B1%D9%82%D8%A9%D9%85%D9%88%D9%82%D9%81%D9%81%D8%B6%D8%A7%D8%A1%D8%A7%D8%AA%D9%85%D8%BA%D9%84%D9%82%D8%A9.pdf > accessed 30 August 2023

[639] Ibid.

and informal instructions to editors regarding news coverage are common, and journalists are routinely arrested for violating such orders.[640]

Preventing or prohibiting publication is a legal measure according to the law of contempt of courts, as the law allows the court to prohibit the publication of criminal investigations and secret trials from preserving the privacy of individuals or not affecting the progress of investigations. [641]

Nevertheless, the issuance of gag orders by the Public Prosecutor or the Media Commission has become very common. According to a study by the Center for Defending the Freedom of Journalists (CDFJ), the Jordanian authorities issued 15 gag orders on publication in 15 cases that attracted public opinion.[642]

According to the study, the first case that was prevented from publishing was at the beginning of 2014, the murder of a female student at Al Al-Bayt University, Nour Al-Awadat, in the bus complex in Zarqa city, which sparked widespread controversy about the circumstances and causes of her death, and attracted wide media and public attention before a decision was issued to prevent the publication of her case, which ended with the issuance of a death sentence against the perpetrator at the end of 2015.[643]

Consequently, decisions to prevent publication continued; in 2014, four other cases were prevented from being published, most of which were criminal and penal

[640] Freedom House, 'Freedom in the World 2022' (February 2022) <https://freedomhouse.org/country/jordan/freedom-world/2021> accessed 30 August 2023
[641] Court Contempt Act, Article 12.
[642] Center for Defending Freedom of Journalists, 'A legal review of the gag orders in Jordan' (7 September 2016) <https://cdfj.org/%d9%85%d8%b7%d8%a7%d9%84%d8%b9%d8%a9-%d9%82%d8%a7%d9%86%d9%88%d9%86%d9%8a%d8%a9-%d9%81%d9%8a-%d9%82%d8%b1%d8%a7%d8%b1%d8%a7%d8%aa-%d9%85%d9%86%d8%b9-%d8%a7%d9%84%d9%86%d8%b4%d8%b1-%d9%81%d9%8a/> accessed 30 August 2023
[643] Ibid.

cases, the most prominent of which was the case of the murder of the artist and journalist Mazen Diab in mysterious circumstances, and then the death of the child Ezz El-Din El-Awewi and his mother, Sirine, in the "Holiday Inn" resort in the Dead Sea.[644]

At the end of 2014, public opinion interaction reached its climax when ISIS captured the Jordanian pilot, Muath al-Kasasbeh after Jordan decided to join the international coalition to fight ISIS. However, the Public Prosecutor quickly prevented the publication of any information about Al-Kasasbeh, whether it was pictures or news from ISIS, and also prohibited any military analyses about the Jordanian Armed Forces. This prompted the press to rely on government statements to follow up on Al-Kasasbeh's case.[645] However, this did not prevent the video of Kasasbeh's killing from going viral on social media.

In 2015, five cases were also prevented from publishing, including the case of "Quds Force Member," in addition to the case of the death of Jumana and Thuraya Al-Salti. In 2016, another 5 cases were prevented from being published, most notably the arrest of a terrorist cell in Irbid at the beginning of the year, the attack on the General Intelligence office in Baqa'a, and the case of writer Nahed Hattar.[646]

As the researcher noted by reviewing these cases, the prevention of publication was not, in many cases, aimed at protecting investigations or preserving the privacy of individuals, but was aimed at silencing discussion about these issues, as the publication prevention was often released after the case turned into a public opinion issue.

[644] Ibid.
[645] 7iber, 'Publication ban: a legal necessity or a restriction on the media?' (17 August 2016) <https://www.com/society/news-embargo/> accessed 30 September 2023
[646] Ibid.

However, the most dangerous of the prevention decisions issued by the courts are the prevention decisions issued by the Jordanian Media Commission in the form of circulars, which are not based on a legislative basis, and constitute a clear interference with Press Freedom. For example, in 2016, the Jordan Media Commission issued Circular No. (4159), which prohibits publishing news of the king or the royal family, except for what the Media Department of the Royal Hashemite Court issued.[647]

Also, in 2022, the Media Commission issued Circular No. (3689), which requires the media to censor citizens' comments through social media websites such as "Facebook," and to delete any comment that the Commission deems contrary to "Jordanian customs, traditions, norms, values, and morals, or an insult to the security services, or includes hate speech." However, the Commission later withdrew the decision.[648]

Many studies and press reports have indicated the negative impact of these decisions on freedom of media and expression. The Executive Director of the Center for Defending Freedom of Journalists (CDFJ), Nidal Mansour, confirmed that:

"Preventing publication directly targets the right to express an opinion on issues that concern the public who express them on social media."[649]

He considered that all that is happening in the Jordanian media landscape, including publishing preventions or direct and indirect blackouts, negatively affects Jordan's indicators of democracy and freedoms. [650]

[647] Jordan Media Commission, Circular No. (4159).
[648] Jordan Media Commission, Circular No. (3689).
[649] center for defending freedom of journalists, Ibid.
[650] Ibid.

In addition, the legislative environment limits freedom of expression in the press, as Jordanian laws contain legal provisions that criminalize, in practice, criticism of the king or officials, blasphemy, and criticism of foreign countries, which makes it difficult for journalists to cover current events.

Moreover, in dozens of cases, journalists have been imprisoned and prosecuted under the cybercrime law, penalties, or even the fight against terrorism. These are some examples of cases that took place in the past years:

Case No. 1 against Mr. Jihad Al-Muhaisen

Al-Muhaisen worked as a journalist for the Al-Ghad newspaper and as a special advisor at the Ministry of Political and Parliamentary Affairs. In 2015, Al-Muhaisen published some opinions on his Facebook page against the corrupt regime in Jordan and Israel. Because of his criticism of the Jordanian regime and Israel, Al-Muhaisen was arrested and tried before the State Security Court, accusing him of undermining the regime, disturbing relations with a foreign country, and affronting the dignity of the King.[651]

This incident led dismissal of Al-Muhaisen from his job at Al-Ghad newspaper and the Ministry. He was also stripped of his privileges as a journalist and charged under the Prevention of Terrorism Law and not the Press and Publications Law. He was sentenced to 3 months in prison on charges of affronting the dignity of the King, and he was exonerated of the other charges.[652]

Case No. 2 against Mr Muhannad Mobaideen

[651] Human Rights Watch, 'Jordan: Journalists, Writers Facing Terrorism Charges' (15 July 2015) <https://www.hrw.org/news/2015/07/15/jordan-journalists-writers-facing-terrorism-charges> accessed 30 August 2023

[652] Ibid.

In 2003, Mr. Mobaideen published an article in the weekly "Al-Hilal" newspaper entitled "Aisha in the House of the Prophet," in which he criticized the wife of the Prophet Muhammad, but strangely in the case of Mobaideen was that he was referred to trial before the State Security Court, on many charges, namely: publishing news in a newspaper that would Harm the prestige, reputation, and dignity of the state, offending the dignity of individuals, destabilizing the primary conditions of society, promoting deviation, spreading false rumours in support of the provisions of Article 150 of the Penal Code, and insulting prophets, in support of the provisions of Article 273.[653]

The State Security Court ruled that those involved in the case be imprisoned. The writer was sentenced to six months in prison and the editor to three months. The court also ruled to close the newspaper for two months.[654]

In reviewing Al-Mobaideen's case, the researcher noticed a transgression in the law and manipulation of the case to expand the case and arrest him. According to Jordanian law, Mobaideen can only be tried on one charge: "insulting religious sentiment." However, the public prosecutor expanded the charges so that Mobaideen was arrested and tried before The State Security Court instead of the regular courts because there was no connection between what Mobaideen wrote and the other charges.

Case No. 3 against Mr Osama Al Rantisi

In 2015, Mr. Rantisi wrote an article entitled "ISIS at the University of Jordan." He explained, "There is a group of students practising some of the practices of ISIS,

[653] Nabiha Wajih Hamed Muhammad Ali, 'Freedom of and Expression between Theory and Practice' (Unpublished master's thesis, University of Jordan, Amman 2015) <http://search.mandumah.com/Record/1047110> accessed 10 February 2024

[654] Ibid.

and such practices cannot be tolerated, and they can drag society towards these ideas." The article was considered an insult to the University of Jordan and an attack on Islam and not on the practices of some students at the University of Jordan.[655]

The charges brought against Al-Rantissi are harming the University of Jordan, failure to verify information, and spreading false news and rumours. The case was brought by Prof. Khalif Tarawneh, President of the University of Jordan, and then the University of Jordan later decided to waive the case.[656]

Noting that Al-Rantisi's claims were true, as there were indeed students from the University of Jordan who went to fight in Syria[657], the issue of Al-Rantisi's article raises important considerations regarding the consequences of publishing information, especially when it comes to issues of potential societal harm. Although protecting freedom of expression is important, spreading false information can have serious repercussions.

Fake news, especially when it involves aims that could harm an institution or individuals, should indeed be addressed, and if proven false, may warrant some form of accountability. Publishing unfounded information can tarnish reputations, incite fear, and contribute to distorting public perception. In situations where fake news results in tangible harm, such as damage to an organization's reputation, there is an argument to consider restrictions on freedom of expression, especially when it comes to verifying information before it is published.

Case No. 4 against Mr Jamal Ayoub

[655] Ibid.
[656] Ibid.
[657] Al-Durar Al-Shamiya, 'The first student from the University of Jordan was killed during the fighting in Syria' (2013, April 7) <https://eldorar.com/node/7219> accessed 30 August 2023

Jamal Ayoub wrote an article under "What prompted Saudi Arabia to wage war on Yemen" on the "Akhbar Al-Balad" website. In this article, he criticized Saudi Arabia. The charge against him was "disturbing relations with friendly countries." The charge was amended to contempt for a foreign country and its army. The complainant was the Media Commission, represented by its president, Amjad Al-Qadi, against the "Akhbar Al-Balad" website.[658]

Jamal Ayoub was detained for 118 days before the court agreed to release him on bail. What the researcher notes, in this case, is that Mr. Ayoub was not arrested according to the Press and Publications Law, but rather under the Prevention of Terrorism Law, especially after amending the charge. Ultimately, the court sentenced Ayoub to 4 months in prison for contempt of a foreign country and its army.[659]

Case No. 5 against Mr. Nidal Faraana and Amjad Mualla

Jafra News published a video clip of the brother of the Emir of Qatar showing him with a group of women. The charge was "disturbing relations with a neighbouring country" under the Prevention of Terrorism Law and the Penal Code. As a result, the website's owner, Mr. Farana, and the editor-in-chief, Mr. Mualla, were arrested. The State Security Court exonerated Al-Moalla and Al-Faraana of the charges against them; despite this, they spent four months in custody until the verdict was issued.[660]

These cases are only examples of dozens of cases facing journalists in Jordan, and they represent a clear approach of Jordanian authorities using broad restrictions

[658] Human Rights Watch, 'Jordan: Journalists, Writers Facing Terrorism Charges' (15 July 2015) <https://www.hrw.org/news/2015/07/15/jordan-journalists-writers-facing-terrorism-charges> accessed 30 August 2023

[659] Ibid.

[660] Human Rights Watch, 'Jordan: Journalists Jailed for Website Posting' (21 September 2013) https://www.hrw.org/news/2013/09/21/jordan-journalists-jailed-website-posting> accessed 30 May 2022

to arrest and prosecute journalists. It is important to note here that the Jordanian authorities do not use the Press and Publications Law to prosecute journalists, but instead use other laws such as the Prevention of Terrorism Law and the Penal Code to be able to arrest journalists, and often expand the scope of charges to try them before the State Security Court, which is a military court, and the government appoints its judges.

In many cases, prison sentences were simple, or the court exonerated the journalist, but arresting journalists for months before the verdict is issued creates a climate of fear. It compels many of them to practice self-censorship. For example, journalist Amjad Al-Mualla, the editor-in-chief of the Jafra News website, was tried in 7 cases between 2014-2017 because of the news published on the website.[661]

In all cases, the charges were brought under the Prevention of Terrorism Law. The penalties were related to harming internal security, disturbing relations with a friendly country, and defamation charges. Amjad was arrested in many cases for several months. Finally, however, he was exonerated.

Amjad Al-Mualla is just an example that has been frequently repeated with many other journalists, who were arrested, and then tried under defamation and national security laws regardless of the grounds of the arrest. Later they are released on bail or by sentencing them to the same number of months in prison that they spent in custody.

7.3 The application of free speech in courts

Case law and judicial rulings related to freedom of expression are some of the essentials that help in understanding the limits of freedom of expression in Jordanian

[661] The researcher traced these cases from different sources.

laws. They also reveal how freedom of expression is applied and provide a glimpse into how the Jordanian laws' provisions are interpreted. In this section, the researcher will deal with a few case laws related to freedom of expression. The researcher will focus mainly on the case law that supports his basic assumptions about the implementation of freedom of expression in Jordan.

Despite thousands of previous judicial rulings related to freedom of expression, the researcher noted common patterns in most judicial rulings, which makes studying some examples sufficient to form a complete picture of the Jordanian judiciary's interpretation of these provisions and how they are applied. After the researcher read and analyzed an abundance of issues related to freedom of expression, the researcher found a set of essential observations in the Jordanian courts' implementation of legal provisions related to freedom of expression. He will discuss these observations in this section.

7.3.1 Interpretation of Legal Provisions

Undoubtedly, the court's interpretation of legal provisions, when applying them, gains greater prominence than other interpretations. When the courts apply the provision, they clarify vague definitions and indicate the limits of the implementation of the legal provision. In cases related to freedom of expression, the courts interpret the legal provision and set specific standards for its implementation to gain greater prominence. The courts determine the scope of implementation of this provision and explain what may be ambiguous to people.

However, the researcher noticed that the judicial rulings issued by Jordanian courts of all classes avoided providing definitions or interpretations of legal provisions and did not specify the scope of implementation of the provisions or the standard for their implementation. For example, reading the rulings of the European

Court of Human Rights related to freedom of expression, we will notice that it has developed a set of principles and standards that interpret or apply legal restrictions on freedom of expression. Still, when reading the Jordanian judicial rulings, we do not find similar principles or standards.

This problem explains the absence of any definition of freedom of expression in the Jordanian constitution, legal principles, or standards that define what this freedom includes. For example, Article 15 of the Jordanian constitution states: “The State shall guarantee freedom of opinion. Every Jordanian shall be free to express his opinion by speech, in writing, or employing photographic representation and other forms of expression provided that such does not violate the law.”

By reading this provision, we can understand two things: the state guarantees freedom of expression, and the second is that freedom of expression is not absolute, but Article 15 did not clarify the concept of freedom of expression similar to international conventions. It did not specify any regulations or conditions on restrictions on freedom of expression, which is a gap that was initially to be filled by the Jordanian judiciary. Still, by reading the provisions of the Jordanian judiciary, we do not find any explanations for what is included in freedom of expression or any standards or principles that have been developed to implement judicial provisions.

For example, when the researcher read the interpretation of the Jordanian courts of Article 15 of the Jordanian constitution, the researcher noticed that these provisions do not provide comprehensive explanations for the content of this article. They do not specify any legal standards or principles for the limits of this freedom and the conditions for its restriction, as most of the provisions use a general sentence. For example, the constitution guarantees freedom of expression, but this freedom is not absolute and restricted by laws.

Many of these judicial rulings referred to the Cassation Court's interpretation of Article 15 in Case No. 111 of 2016. When the researcher returned to the decision, he discovered that the court mentioned in its ruling: "We find that the legislator raised freedom of opinion and expression to the level of constitutional rights, by stipulating them in Article (15) of the Jordanian Constitution, and the provision on freedom of opinion and expression in all international and regional conventions concerned with human rights under Article (19) of the UDHR of 1948 and ICCPR did not leave this right uncontrolled. They surrounded it with some restrictions. One of these restrictions is to be within the limits of public order, law, and public morals, and in a manner that does not harm the interests and reputation of others, which we do not find available in this case because the acts committed by the accused violated the provisions of the law."[662]

This interpretation was frequent in other rulings with almost the exact wording, as the Cassation Court in Case No. 1454 of 2018 quoted and referred to this interpretation.[663] In a similar ruling in 2020, the court mentioned in its ruling: "The court found that freedom of expression is granted and it is a right guaranteed by the constitution that protects rights and freedoms. International human rights conventions have also recognized it. However, a person's exercise of a right granted by law does not mean disregarding the rest of the provisions of the law. Just as freedom of expression is granted by law, its frameworks have been legally defined. The law prohibits encroachments under the pretext of freedom of expression."[664]

[662] Jordanian Supreme Court, Judgment No. 111 of 2016, dated 17-2-2016, Al-Qastas database, available at:قسطاس (coe-elibrary.com)

[663] Jordanian Supreme Court, Judgment No. 1454 of 2018, dated 4-6-2018, available at: الحكم رقم 1454 لسنة 2018 - ، محكمة التمييز بصفتها الجزائية (coe-elibrary.com)

[664] Jordanian Supreme Court, Judgment 1109 of 2020, dated March 17, 2020, available at: الحكم رقم 1109 لسنة 2020 محكمة التمييز بصفتها الجزائية -(coe-elibrary.com)

The court added: "Fighting corruption and moving towards reform is not violating the law. Instead, the rule of law is the key to reaching the desired goals, and that love of the country constitutes a good intention that cannot be interpreted into legally punishable crimes." [665]The Cassation Court has repeatedly used the same interpretation in all judgments, even in decisions in which it decided the accused's innocence. This interpretation is nothing but a paraphrasing of the provision of Article 15, in other words, and does not contain any principles or standards that establish regulations to restrict freedom of expression.

The only case in which a Jordanian court interpreted this article comprehensively to protect freedom of expression and reject unjustified restrictions was the case referred to by the researcher above. The court refused to apply Article 118 of the Penal Code.

In this case, the court did not rely on what was stated in the interpretations or decisions of the Jordanian court. Instead, it relied on a decision of the Egyptian Constitutional Court.[666] In its ruling, the court referred to the 1997 decision of the Egyptian Constitutional Court, which stated: “Placing restrictions on freedom of expression and opinion is only in the narrow limits and for the utmost necessity, because the censorship system is incompatible with the democratic system because it places the most important means of expressing an opinion and its impact under the framework of ((government permission)), which can, according to the provisions of the articles in the Penal Code, prevent broadcasting opinions or news that they do not like, and prevent criticism from being directed to them on the pages of newspapers or through multimedia, no matter how honest the criticism is, thus it eliminates

[665] Ibid.
[666] Amman Criminal Court, Judgment No. 765 of 2010, dated 22-5-2011, Al-Qastas database, available at:قسطاس (coe-elibrary.com)

freedom of opinion and expression from its foundation under the pretext of protecting the public interest."[667]

The researcher believes that the generality of the provisions of Article 15, and the fact that the Jordanian judiciary did not set any definitions or standards that define the concept of freedom of expression or the regulations for restricting this freedom, made the constitutional guarantee of ensuring freedom to be violated, just as Article 15 guarantees freedom of expression, but it opens the door to restrict this freedom as well. We notice that the same problem is replicated in the Jordanian courts' implementation of legal provisions, as there are no clear standards or definitions that define the scope of the criminalization of the article. However, the Jordanian law's provisions are full of overbroad offences such as insulting religious sentiment, insulting the king, undermining the regime, and disturbing relations.

However, the courts in their rulings do not determine any conditions or standards for the application of the article, which makes the scope of the criminalization broad and has no clear limits. For example, if we take the application of the Jordanian courts to the provision of Article 150, an article that deals with incitement to hatred and sedition among the various sects of Jordanian society, we will conclude that the courts have not defined hate speech, nor have they defined any standard for applying this article.

Article 150 of the Jordanian Penal Code states that: "Any writing or speech aims at or results in stirring sectarian or racial prejudices or the incitement of conflict between different sects or the nation's elements, such act shall be punished by

[667] Ibid.

imprisonment for no less than six months and no more than three years and a fine not to exceed five hundred dinars (JD500)."

This article imposes a restriction on freedom of expression on speeches that lead to incitement to hate speech and stir up discord in society, which is a reasonable and required restriction in line with Article 20 of the ICCPR, which prohibits advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, violence, or hostility. However, the dilemma within Article 150 of the Jordanian Penal Code does not define what this crime includes or what are the standards or limits at which the speech is considered acceptable or rejected.

For example, Article 20 of the Covenant requires a strict standard since the restriction of freedom of expression must remain an exception, as the Rabat Plan of Action proposes a six-prong test that must be met for a speech to be a criminal offence.[668] One of the most prominent elements is the so-called Likelihood, i.e., the probability of an imminent threat is high. It is understood that incitement is an inchoate crime. It is unnecessary to commit the act advocated for by incitement for that speech to be considered a crime. Yet, some degree of incitement must determine the risk of harm, meaning that the courts must determine that there was a reasonable possibility that the speech would succeed in inciting actual action or lead to sedition.

By reading the implementation of Article 150 by the Jordanian courts, we do not notice that the court has developed any standards or tests to determine if the speech is considered a crime or the standard by which the speech is deemed to be illegal, as the implementation of the article is due to the court's discretion and convictions. It is sufficient for the court to consider that the speech would lead to sedition under what

[668] Rabat threshold test,United nations, available at: https://www.ohchr.org/Documents/Issues/Opinion/Articles19-20/ThresholdTestTranslations/Rabat_threshold_test_AR.pdf

it considers a crime, and this does not require that the court provide any explanations or interpretations.

For example, in Case No. 6131 of 2020, the Public Prosecution accused the Jordanian citizen, Yazan Al-Zaben, of disturbing the relations among groups of the Jordanian people under Article 150 of the Penal Code because of a post he wrote on Facebook intended for the Jordanian Minister of Health Saad Jaber, where he wrote: "Who let you down, are the same people who killed Wasfi and cried at his funeral."

In interpreting the sentence as the accused explained in his defense, and as any neutral person with knowledge of the Jordanian issue can understand, the accused intended to praise the Jordanian Minister of Health for taking measures to face the COVID-19 Pandemic, and he was disturbed by the behaviour of the indifferent society to the Pandemic. He wrote this sentence referring to the Jordanian Prime Minister Wasfi Al-Tal, who is considered one of the famous figures in Jordan, who was assassinated in Egypt. The incident of his assassination sparked public outrage. Some believed that he was not given sufficient protection, and they disappointed him. This phrase used by the accused has many indications and meanings.

However, the court convicted Yazan and mentioned in its ruling the following: "By applying the law to the facts, the court finds: that the actions of the defendant, represented by the defendant's post via Facebook containing phrases intended by the Jordanian Minister of Health, Dr. Saad Jaber, by saying" Who let you down, are the same people who killed Wasfi and cried at his funeral." that would disturb the relations among the Jordanian people, he posted this willingly and voluntarily, but it constitutes all the pillars and elements of the crimes attributed to him."[669]

[669] Amman Criminal Court of Magistrates, Judgment No. 6131 of 2020, dated 4-6-2020, Al-Qastas database, available at:قسطاس (coe-elibrary.com)

Furthermore, the court added: “Therefore, and based on the foregoing, the court decides: to convict the defendant for the offence of addressing a speech that disturbs the peace of relations among the nation, in violation to the provisions of Article (150) of the Penal Code, and to sentence him to imprisonment for one year and thirty dinars as a fine, and given that the defendant deleted the post the order that the court finds is one of the estimated mitigating reasons, and under the provisions of Article (100), reducing the sentence imposed to become one month’s imprisonment thirty dinars as a fine, and lifting the travel ban.[670]

If we analyze the court ruling - regardless of what the accused posted - we will find that the court did not clarify what is meant by the crime of disturbing relations among the groups of Jordanian society, nor did it develop any standard or principles for the implementation of this article or the limits of its implementation, and did not explain the reasons that led to believe that what the accused wrote stirs up sedition among the groups of society, or how it stir up sedition, particularly since what the accused wrote is not fully understood. It isn't easy to fully understand the purpose of the post.

The researcher also notes that the court expanded the scope of criminalizing this article. It did not require the existence of a severe possibility that what the accused wrote would lead to sedition. It mentioned in its ruling that what the accused posted would disturb the relations among the groups of Jordanian society. This is a broad and loose standard because many discourses may lead to the division of Jordanian society. Still, they do not necessarily lead to sedition.

[670] Ibid.

Such rulings have been replicated in enormous cases without explaining the elements of the so-called crime of disturbing the relations among the groups of Jordanian society or clarifying what acts are included in this crime from the court. The courts only list the facts of the case and then issue a ruling convicting the accused under Article 150 without further explanations.

The researcher also noted that the courts expanded the implementation of this article instead of narrowing the scope of its use. In more than one case, courts applied this article to people who engaged in missionary work and convicted them under the pretext of stirring up sedition in Jordanian society.

For example, in Case 9517 of 2019, the court convicted the defendant, George Al Sa'adi, and sentenced him to one year in prison and fined him 50 Jordanian dinars for carrying out missionary work in prison, demanding prisoners convert to Christianity and criticizing Islam. According to the court's decision, the defendant, George, carried out missionary work for the Christian religion by attracting new inmates, talking to them, disbursing sums of money, buying orders for inmates, and appointing lawyers for many inmates to end their cases. This resulted in sedition in prison and enraged some of the prisoners. [671]

In its ruling, the court referred: “The court finds that the defendant was influencing his fellow prisoners by helping them financially, appointing lawyers for them, and saying that the Qur’an is man-made, which enraged prisoners and constituted all the elements of the crime ascribed to him and sedition in violation to provisions of Article 150 of the Penal Code.[672]

[671] Zarqa Magistrate's Court, Judgment No. 9517 of 2020, dated 29-1-2020, Al-Qastas database, available at:قسطاس (coe-elibrary.com)

[672] Ibid.

These provisions, noted by the researcher, do not include an explanation of the legal restrictions nor a standard for applying the law except for one standard, which is the court's discretion, which has absolute power in determining what is considered a violation of the provisions of the law without restrictions or principles that define the work of the court and its interpretation of the law.

Jordanian law and judiciary have not developed any principles or regulations that require courts to interpret restrictions on freedom of expression narrowly or to use principles such as imminent threat or proportionality but left the implementation of these restrictions to the court's discretion.

7.3.2 Provisions Inconsistency

The Jordanian law's use of broad and ambiguous terms, the absence of specific definitions of these concepts, and leaving the authority to apply the provisions to the courts based on the discretionary authority without any regulations or standards led to contradictions and duplication in the implementation of freedom of expression restrictions in Jordan. In the following examples that the researcher will present, we will find in some cases, the courts interpreted the law very broadly, which led to the conviction of the accused, while in some cases, they interpreted the restrictions narrowly and acquitted the defendant

First Example: Disturbing Relations

Paragraph 2 of Article 118 and Article 3 of the Anti-Terrorism Law states for imprisonment: "Any person who, through acts, writings, speeches not permitted by the State, subject the state to the danger of hostile acts, or disrupt its relations with a foreign state; or subjects Jordanians to acts of revenge against them and their properties." In Jordanian law, this offence is called the crime of disturbing relations

with a foreign country, and the researcher explained it in detail in the second chapter. However, the researcher noticed an apparent and significant contradiction in the interpretation of this article by the Jordanian courts, which was reflected in its implementation.

In 2020, the Cassation Court upheld the ruling of the State Security Court to imprison Jordanian citizen Abd Al-Tahawy for three years for statements and writings offending the Kingdom of Saudi Arabia. The defendant criticized Saudi Arabia over the killing of journalist Jamal Khashoggi in 2018, and those writings included accusations of Saudi King Salman being an agent for the west and others. In justifying the ruling, the court mentioned that it is not required to criminalize and punish under this article that the foreign country performs an act of hostilities against the Hashemite Kingdom of Jordan or that the relations between Jordan and the other country be disturbed. Still, it is sufficient that it's possible to happen. The possibility of threat is adequate for one of the elements of criminal responsibility under this article, as the legislator has used the phrase (that would disturb). [673]

The court rejected the defendant's justifications that what he did was included in freedom of expression and mentioned: We find that the right to freedom of opinion and expression is stipulated in many international and regional conventions, including Article (19) of ICCPR is conditional on some restrictions referred to in paragraph (2) From the same article which stipulates that these restrictions must be specified in the constitutional provision of the state and be legislated to protect the rights or reputations of others or are necessary to protect national security or public order. The court added that Article (15) of the Jordanian constitution guarantees freedom of expression and opinion within the limits of the law and under international

[673] Jordanian Supreme Court, Judgment No. 692/2020, dated 20-5-2020, Al-Qastas Database, available at قسطاس : (coe-elibrary.com)

standards. Therefore, the acts committed by the defendant are within the framework of criminalization and exceed the limits of freedom of opinion and expression.[674]

It is noteworthy that the defendant is a prisoner, and the writings and speeches in which he criticized the Kingdom of Saudi Arabia were not published on websites or circulated. Therefore, it is illogical that these writings lead to the conclusion reached by the court. What is the basis on which the court relied on the possibility of disturbing the relations between the two countries or the reaction to his statements even though he is in prison?

Interestingly, the Cassation Court stipulated in other rulings for disturbing relations and considered that the probability is not sufficient to convict the defendant. It mentioned in its ruling No. 7 of 2009: "Under the provision of the aforementioned article, the possibility of exposing Jordan to hostile acts, reprisals, or the possibility of disturbing Jordanian relations with any foreign country, is not sufficient, but the result must be obtained referring to previous decisions issued by the Supreme [Kindly check Public Authority Discriminatory Resolution No. 1311/2007 dated 4/27/2008, Discriminatory Resolution No. 1468/2006 dated 16/4/2007, Discriminatory Resolution No. 1516/2006 dated 4/3/2007, and Discriminatory Resolution No. 1370/2007 dated 4/12/2007, as well as Discriminatory Resolution No. 330/2006 dated 31/5/2006]. [675]

Even if we went back to decisions issued by the Supreme Court in the same period, such as ruling 762/2007, we will find that the court violated these decisions and mentioned: "by committing these acts by the defendant it constitutes an interference with actions that the government did not allow which affect a foreign

[674] Ibid.
[675] Look at: الحكم رقم 7 لسنة 2009 - محكمة التمييز بصفتها الجزائية(coe-elibrary.com)

country within the meaning of Article 118/2 of the Penal Code that would expose the Kingdom to hostile acts and the Jordanians to reprisals against them and their properties leading to criminal responsibility even if this did not result in disturbing the relations between the Kingdom and that country and referred to the ruling of the Supreme Court in the Case 181/2007 dated 4/22/2007. [676]

On the one hand, this contradiction has led to the absence of a consistent standard in implementing this article. We conclude that the court issued verdicts exonerating the defendant due to the failure to achieve the result, which is disturbing the relations, while in other rulings it convicted the defendant, justifying that it does not require disturbing the relations, but instead, it is sufficient that the possibility of disturbing relations.

On the other hand, the Criminal Court, in the example of journalists Sufian A-Tal and Muwaffaq Mahadeen in 2010, considered Article 118 unconstitutional and refused to implement it, but the Supreme Court refused to challenge the unconstitutionality of Article 118 in other cases, and mentioned in its ruling that the law was issued after it had completed all the constitutional stages. It refused to refer the appeal to the Constitutional Court, justifying that what was stated in the provisions of this law is consistent with what was stated with regional and international agreements ratified by Jordan. [677]

Second Example: Lengthening the Tongue (insult the king)

Article 195 of the Jordanian Penal Code states: "Whoever Dared to insult His Majesty the King shall be punished by imprisonment from one to three years"

[676] Look at: الحكم رقم 672 لسنة 2007 - محكمة التمييز بصفتها الجزائية(coe-elibrary.com)
[677] Jordanian Supreme Court, Judgment No. 562 of 2015, dated 4-15-2015, available at: الحكم رقم 562 لسنة 2015 - محكمة التمييز بصفتها الجزائية (coe-elibrary.com)

However, the law did not specify the threshold at which insulting the King is a crime and punishable. The law did not distinguish between abuse that is considered a crime and acceptable criticism and left the door open for any criticism of His Majesty to be considered an offence that deserves punishment.

In reviewing the implementation of the Jordanian courts, we will notice that the courts provide the king with protection that puts him above criticism to the extent that has become one of the red lines in Jordan that citizens fear to get closer from, even if as a joke.

In the examples that the researcher will present, we will notice that the Jordanian courts have not tolerated any criticism of His Majesty the King, and have sometimes sentenced people to prison for ridiculous reasons, and can in no way be considered an insult to the King. The case of Jordanian citizenship, Athar Al-Dabbas, is one of the most famous examples of the expansion of Jordanian courts in the implementation of Article 195. This case provoked the Jordanian society, which led to the intervention of His Majesty the King directly and personally contacting the defendant, Athar Al-Dabbas, to contain the outrage. (Details of this case are referred to in Chapter Three)

In 2021, the Amman Magistrate's Court sentenced Jordanian citizen Athar Al-Dabbas to a year in prison on charges of insulting His Majesty the King, because she said "My father is better than the king and the whole world."

As indicated by the researcher, this ruling sparked a great controversy within Jordanian society about the Jordanian courts' implementation of Article 195, which affected the entire course of the case. The King contacted Al-Dabbas and informed her that her pride in her father was not an offence.

Only two weeks later, the defendant, Athar Al-Dabbas, appealed the court ruling, and the Court of Appeal decided to acquit the defendant. The ruling stated: "It has been proven that the appellant had uttered the phrase "My father is better than the king and the whole world," but our court finds, through the context in which this phrase was said, and through all the circumstances surrounding it, that the appellant, Athar Al-Dabbas, did not intend to offend the king or hurt his dignity or his moral consideration in any way that so to be punished."[678]

The court added that the defendant's action was to defend her father and his dignity and was not intended to offend His Majesty the King or undermine his dignity or moral consideration. Thus, our court finds that the mental element, with its two parts, namely knowledge, and intention, is not available in this case, which it is based, and this case is the collapse of one of the pillars of the offence of lengthening the tongue stipulated in Article 195 of the Penal Code. [679]

By analyzing the judgment of the Court of First Instance and the judgment of the Court of Appeal in the Athar Al-Dabbas case, we conclude that the two judgments did not establish a standard or define what is meant by the offence of lengthening the tongue. They issued the judgment based on the intentions of the defendant only. However, the statements made by the defendant should not be considered an insult to the king in any case, even if the defendant's intention was malicious.

Certainly, the researcher acknowledges the importance of examining intent. However, it becomes crucial when statements either genuinely constitute an insult or have the potential to be perceived as such. In cases where the statement itself, as

[678] Amman Court of Appeal, Judgment No. 380 of 2021, dated 04-15-2021, available at: الحكم رقم 380 لسنة 2021 - بداية عمان بصفتها الإستئنافية (coe-elibrary.com)
[679] Ibid.

exemplified in the case of Al-Dabbas, does not inherently constitute an insult, the question arises: why is intent being scrutinized?

Interestingly, a few months after this case, another similar case took place, where the court sentenced a Jordanian citizen to one year in prison for lengthening the tongue because he said to someone: "Listen to me, I don't care about you, King Abdullah, or the government." This ruling was confirmed by the Court of Appeal, which referred in its verdict: "We find that the defendant, while he was in a tailor's shop belonging to the complainant, Muhammad Bilal Muhammad al-Mallah, located in the town of Deir Abi Said, and as a result of a disagreement between them, the defendant mentioned the phrase "Listen to me, I don't care about you, King Abdullah, or the government." And since this phrase carries within its meanings slander or contempt, it was found that the defendant was referring to His Majesty the King. The defendant's action constitutes, on his part, all the elements of the offence of lengthening the tongue against His Majesty the King. [680]

The researcher believes that the cause for inconsistency in the judicial rulings, in this case, is the absence of clear limits to this restriction and the failure of the courts to define the concept of offending in a way that prevents the misuse of this article by the Jordanian authorities or citizens. Because of this inconsistency and the controversy these issues sparked within Jordanian society, the King issued on November 14, 2021, a special pardon for all those convicted of the offence of lengthening the tongue. This pardon included dropping the entire charge of 155 individuals[681].

[680] Irbid Appeal Court, Judgment No. 3478 of 2021, dated 07-08-2021, available at: الحكم رقم 3478 لسنة 2021 - بداية اربد بصفتها الإستئنافية (coe-elibrary.com)

[681] Hadeel Al-Ghaboun, 'The Royal Order for a special pardon for 'long tongue' cases reinforces calls for review' Arabic CNN (3 October 2021) <https://arabic.cnn.com/middle-east/article/2021/10/03/jordan-king-abdullah-special-pardon-cases-article-195> accessed 30 August 2023

Undoubtedly, the king's pardon decision, and some official statements about an intention to amend Article 195 and set stricter standards for its implementation, came as a result of the inconsistency in its implementation and the expansion of the judiciary in interpreting the concept of insulting the king in a way that violates the right to freedom of expression.

7.4 Conclusion

The examples mentioned by the researcher in this chapter confirm that the application of freedom of expression in Jordan suffers from restrictions, specifically in media and the Internet. According to the statistics of the National Center for Human Rights in 2020, most cases of freedom of expression in which individuals are prosecuted were due to posts on social media websites.

The statistics of the National Center for Human Rights in 2020 indicate that there were 2,140 cases in which arrests were made under Article 11 of the Cybercrime Law. In the same year, 402 cases were registered for "vilifying an official body," 49 cases of "incitement to conflicts," and 311 cases of "insulting the king." These statistics speak for themselves, as 73% of the cases were due to publications on the Internet. As for the remaining percentage, there are no accurate statistics on the means of expression used, but a large part of them may also be due to materials published on the Internet. Furthermore, these statistics indicate that most cases are mainly related to political activity, criticism of officials, and the so-called state security issues.

In all cases, there is a standard feature, which is the existence of a complaint from individuals or the spread of discourse among the public, as individuals are rarely

prosecuted for private conversations. Other factors are involved in such matters, so it is unnecessary for everyone who criticizes officials to be persecuted, as other factors play an essential role.

Not all forms of political criticism are prohibited, but they may be prohibited. For example, criticism of the performance of the government or parliament is often tolerated. However, criticism of the king's performance or institutions such as the army and the judiciary are often not tolerated. It is difficult for a researcher or anyone to predict when the expression violates the law, because the most influential factor in applying restrictions on freedom of expression, as it seems, is not the legal standards, but rather the speech in public, and the extent of this speech and its impact on the public, therefore freedom of expression on the Internet and the media were the most affected by these restrictions.

In addition, there seems to be a clear gap between theory and practice, especially concerning freedom of expression in the media. Many practices have no legal basis, such as issuing gag orders or summoning journalists. In many cases, the Jordanian authorities expanded the charges against journalists or citizens, charging them with terrorism and disrupting security to arrest them and refer them to the State Security Court. This created a restrictive environment for freedom of expression and made many people practice self-censorship.

The Jordanian laws' use of broad language, and their failure to accurately define the limits of freedom of expression, reinforced the restrictive environment for freedom of expression, especially since the Jordanian courts' approach to interpreting legal provisions failed to remove ambiguity.

The researcher noted that the use of vague and ambiguous phrases in Jordanian law, the absence of precise definitions of these concepts, and leaving the police to

apply the provisions at their discretion without any precise standards and controls led to contradictions and double standards in the freedom of expression cases in Jordan.

In other cases, the courts had a very broad interpretation of the law and their decision resulted in the defendant being held guilty. In this respect, there were also cases of close interpretations leading to release of the persons accused of offenses. For example, the researcher noted that the Jordanian courts were divided in interpreting Article 118 of the Penal Code, which stipulates that temporary detention is punishable by a period of no less than five years:

"Any form of act, writing, or speech which may endanger the peace or good relations with a foreign state or which may expose Jordan to some form of aggression by the foreign state" shall be punishable under some courts which are interpreting this article to be that the rate of hostility by the foreign state against the Hashemite Kingdom of Jordan or some deterioration in the relations between Jordan and the other country is irrelevant. However, it is sufficient that its occurrence is possible, i.e., the possibility is in the occurrence of the risk is sufficient for one of the elements of criminal liability under this article, as the legislator has used the phrase "would."

In other cases, the courts stipulated that a result be obtained, whether by disturbing the peace of relations, and considered that the possibility is not sufficient to convict the accused, and mentioned that it is not enough, according to the provision of the aforementioned article, the possibility of exposing Jordan to hostile actions, the possibility of exposing Jordanians to retaliatory actions, or the possibility of disturbing the Jordanian relations with any foreign country as a result.

The inconsistency led to the lack of a fixed standard in the application of this article, so we find that the court issued verdicts exonerating the accused due to the failure to achieve the result, disturbing the relations. At the same time, other rulings

condemned the accused, justifying that it does not require the disturbance of the relations, but instead, there is a possibility of disturbing relations. The researcher also noticed that the judicial rulings issued by the Jordanian courts of all levels avoided defining or interpreting the legal provisions and did not specify the Scope of application of the provisions or the criteria for their application.

For example, by reading the rulings of the European Court of Human Rights related to freedom of expression, we will find that it has developed a set of principles and standards for the interpretation or application of legal restrictions on freedom of expression, on the other hand, the rulings of the Jordanian judiciary, do not constitute any similar principles or standards. In the Jordanian court rulings, the researcher did not find any clear criteria or definitions that define the scope of criminalization of restrictions on freedom of expression.

However, the provisions of Jordanian laws are full of vague charges such as insulting religious sentiment, insulting the king, undermining the regime, and disturbing relations. For example, when the researcher analysed the rulings of the Jordanian courts regarding the interpretation of Article 150, which is an article addresses the problem of incitement and sedition among the various sects of Jordanian society, he found that the courts did not define hate speech, nor did they specify any criteria for applying this article.

Article 150 of the Jordanian Penal Code states that:

"Any writing or speech aims at or results in stirring sectarian or racial prejudices or the incitement of conflict between different sects or the nation's elements, such act shall be punished by imprisonment for no less than six months and no more than three years and a fine not to exceed five hundred dinars."

This article imposes a restriction on freedom of expression on speeches that lead to incitement, hate, or sedition in society, which is a reasonable and required restriction consistent with Article 20 of the Covenant on Civil and Political Rights, which prohibits advocacy of national, racial, or religious hatred that constitutes incitement, discrimination, or hostility. However, the problem is that Article 150 of the Jordanian Penal Code does not define this crime or the criteria or limits at which speech is acceptable or unacceptable. For example, Article 20 of the Covenant requires a strict criterion since restricting freedom of expression must remain an exception. The Rabat Plan of Action proposes a six-element test that must be met for a speech to reach the criminal offence level.

One of the most prominent elements is the "likelihood," the likelihood of an imminent risk being high. It is understood that incitement is an incomplete offence, and the act called for incitement need not have been committed for that speech to be considered an offence. However, some degree of risk of harm must be determined, which means that the courts have to decide that there was a reasonable probability that a speech would succeed in actual action or lead to sedition.

However, when the researcher analysed how Jordanian courts apply Article 150, he did not find that the court had developed any criteria or tests to determine the speech that constitutes a crime or the criteria by which the speech is considered illegal. Instead, the court found that the speech would lead to sedition, which it considered a crime, and this does not require the court to provide any explanations or clarifications. Moreover, the researcher has also noticed that Jordanian court rulings are often devoid of explaining the reasons for conviction or innocence, as the court suffices by referring to the facts of the case and then issues its verdict condemning or exonerating the accused using phrases such as that the accused violated the law, without further clarifications.

In most cases, it was apparent that Jordanian courts expanded the scope of the restrictions instead of narrowing it to the extent that, in some cases, the king intervened to issue special pardons for those convicted in cases of freedom of expression.

For example, on November 14, 2021, the king issued a special pardon for all convicted of insulting the king under Article 195 of the Penal Code, which included dropping the entire sentence for 155 convicted. The royal pardon decision came after a controversy arose over the conviction of a woman of insulting the king because she said: "My father is better than the king." The absence of legal and judicial standards in applying the law has negatively affected the exercise of freedom of expression in Jordan. It has led to the emergence of "selective" in applying provisions and sometimes to clear contradictions.

Chapter 8

The Conclusion

8.1 Introduction

This doctoral thesis comprehended the meaning of freedom of expression in Jordan, which involved exploring different aspects and then transforming them into one single viewpoint, intricate and multifaceted. The discovery part of our trip will be the investigation of the historical and cultural context that has already determined and still influences the concept of freedom of expression according to Jordanian rules.

The three principal factors which were carefully taken into consideration in the struggle with the moulding of freedom of expression in Jordan are historical antecedence of colonialism, the portentous influence of Islam (the state's acknowledged religion), and complex tribal structure. The historical and cultural contexts that this understanding had afforded to us gave a good basis onto which to go in our subsequent endorsement.

Moreover, the question of philosophical concepts such as the social contract was considered from the viewpoint of the Aristotelian school of thought. The study was comprised of analysing the works of philosophers who have explored the concept of human rights, social structures to the probability of discovering the philosophical roots that support the principle of freedom of expression in Jordan.

Our report at this stage is to lay down a philosophical foundation and then explore the area of international obligations and the legal system governing freedom of expression in Jordan. The scope of the renowned human right of freedom of

expression under the authority of Jordanian law was under the microscope in the area of compatibility with the Kingdom's International commitments.

However, the investigation did not end there with the identification of these statutory boundaries. In addition to this, we discussed a whole range of legal safeguards that exist in Jordan, such as the ones that grant freedom of expression illegal protection. Ideas like the separation of powers, judicial independence through the support from the whole state as well as adherence to the universal notion of legality, even during times of emergency, were certainly studied in great detail.

These preparatory sessions were housed to grasp a new angle of understanding freedom of expression in Jordan, which symbolises a core feature of its democracy. And now, at this very end-point of our intensive research expedition, one stand at a reflecting point, as well as at a point of analysis. In the next section, this chapter will provide the analysis powered by the broad-based research conducted. These findings not only illustrate the situation of freedom of speech in Jordan today but also illuminate the way ahead.

In addition, the following chapter will encompass an array of recommendations that are manifested from the output of this thesis. These recommendations are designed to gear as guideposts to enable the establishment of the frame of freedom of expression in Jordan through concrete steps that are easy to do. They are not straitjacketing rather, it is the way to arrive at the future in which the right to education is celebrated by all, protected by all, and used to its 100% potential by all.

8.2 General Conclusions

The results of the research have exposed an especially serious deficiency in Jordanians' clear and in-depth understanding of freedom of expression. In contrast to

past studies that have primarily focused on contemporary legal and political aspects, this dissertation adopts a more inclusive approach that covers historical and cultural factors as well.

As the research into the historical and cultural context around freedom of expression in Jordan was just starting, a lack in availability of research was spotted. Even though the documents of the past that talk about Jordan and the region were available, they mostly described situations without direct focus on the articles on freedom of expression and human rights. The cultural context was also neglected - no more than two studies considered Jordanian tribes, and they were done in the last stages of our research.[682]

This dissertation, for this reason, has unfolded the efforts of pioneering the historical and cultural aspect of freedom of expression in Jordan. Nonetheless, it filled an irreproachable gap in the general supply of data, taking into account these frequently obscured factors that in no way can go without mentioning. Even the two studies focusing predominantly on tribal roles bypassed the historical backdrop and other cultural factors. This research underscores the imperative need for future studies to devote more attention to these dimensions.

Examining the historical context revealed the tumultuous period of Ottoman rule, characterised by chaos and a lack of centralised governance. The subsequent British colonial rules brought stability at the expense of human rights and freedom of

[682] Taylor Northcutt, 'Tribal Statecraft and Freedom of Expression in Jordan' (Honors Thesis, University of Mississippi 2023) <https://egrove.olemiss.edu/hon_thesis/2867> accessed 10 February 2024
Shahab A Khan, 'Desert Power: Exploring How Jordan Can Democratize Through Tribalism. Independent Study Project (ISP) Collection' (2022) Independent Study Project (ISP) Collection 3503 <https://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=4527&context=isp_collection> accessed 15 September 2023

expression. Jordan's independence was short-lived, marked by recurring periods of martial law, highlighting the nation's historical emphasis on security over freedoms.

The historical narrative offers insights into why the Hobbesian governance model might be particularly attractive in Jordan due to its historical security needs. However, it is vital to clarify that emphasising the model's appeal does not justify the suppression of freedom of expression. The cultural context exposed the tremendous impact of tribal affiliations and religion on the freedom of expression. Associations with the tribes are sometimes a source of self-censorship, while conservatism in social traditions constrains the voice of dissent, in particular concerning how religion and culture are met. Jordanian culture, being a manifestation of Islamic philosophy, tends to lose tolerance with liberalism and to re-interpret religious values, especially the relation between religion and morality.

This historical and cultural background has the consequence in the mind of the Jordanians that it considers those concepts such as security, community, and morality as the most important ones which may cover freedom of expression too deeply. Nevertheless, this understanding of the context does not mean the erosion of freedom of expression.

The researcher seeks to develop a more rounded study of Jordan's foundations of freedom of expression which emphasises it's historical and cultural heritage. Through such an approach, one, however, get a clearer picture about the intricate interconnections within the frameworks of military censorship, which are characteristic of the given cultural and historical background. The investigation of such foci should be continued in further studies that contribute to the global knowledge about freedom of expression in Jordan and other countries.

The underlying historical and cultural context of Jordan as the backdrop has largely defined the philosophical basis of freedom of expression in the country. In this democracy, however, the general opinion becomes more important, and the protection of security becomes the primary aim as well as unity in the society. The philosophes supported the ideologies along the lines of social contract theories, which insisted on the common good of society.

Previous research neglected to investigate this aspect, and so here comes the need to fill the knowledge gap, which plays the role of filling the knowledge gap. This study is significant to the philosophical aspects of freedom of expression in Jordan which have been impacted by the social contract theories of thinkers such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau among others.

In theory, the constitution of Jordan reflects Jean-Jacques Rousseau's ideas, highlighting the inalienable right of the people to cooperate and make decisions that will be in their own and the nation's best interests. Article 15 provides the limitation of freedom in regards to the legal limits and its CEO Rousseau's belief of the willingness on the part of individuals to give out some of their rights to the public as a whole. On top of that, Article 24 reinforces the notion of a nation as the origin of all the powers abiding with his thought of popular sovereignty. The definition of free expression limits by the parliament involves both the combination of Rousseau's and Locke's elements as it becomes the people's representatives to whom the duty falls.

Nevertheless, Locke's impact on the Constitution is made known with this recognition of the freedom of speech, such that the government should create the environment for exercising this right. Article 128, prohibiting law enactment that allows infringement on freedom and dignity, represents legislators' duty to keep

rights secure, causing Locke's principle that government matters only to protect natural rights to come true.

However, Jordan's policy on freedom of expression seems to be based on the Hobbesian view of sovereign authority seen when the sovereign maintains the stability he seeks at the expense of individual freedoms in the society. Nevertheless, Jordanian monarch is considered a jurisdictional and executive power holder who has significant legislative authority coupled with military command and foreign affairs control. The role of central authority in the country is perceived as the key factor of political stability and common national identity.

The researcher suggests that Jordan built a much better approach, one consider little bit of freedom of expression and more importance of stability. The aberration of Hobbesian doctrine akin to Hobbes's principles with the idea of suppressing freedom of expression under the pretext of security may turn to a detriment to individual freedoms and pose a threat to security and freedom.

From the point of view of the philosophical reasoning for the freedom of expression in Jordan, the position goes in juxtaposition with international standards and conventions for such right. Even with the gap between the human rights commitments in the local communities and the global intention of the Jordanian government, the government of Jordan adheres to the human rights principles in international relations through the signature of the Universal Declaration of Human Rights (UDHR) and the ratification of the International Covenant on Civil and Political Rights (ICCPR), and the Arab Charter on Human Rights.

These international and regional covenants that Jordan has ratified are not only an international obligation that Jordan must comply with, but they are also part of the legal framework that laws must comply with since international treaties are superior

to national law. In the Jordanian legal system, international treaties are highly recognised as an important source of law. When a treaty is ratified, it becomes part of the national legal system and is superior to inconsistent domestic legislation.

Jordan's international obligations concerning freedom of expression have been a subject of significant attention within the country's academic and research community. Numerous studies, including master's and doctoral dissertations, have addressed this topic in recent years.[683] These studies consistently arrive at the same conclusion: that Jordan's legal framework does not align with international standards for freedom of expression. Researchers recommend the necessity of amending local legislation to bring it in line with international conventions.

This discrepancy between Jordanian laws and international standards is not a new issue and has been acknowledged even in the comprehensive national plan for human rights for the years 2016-2025 approved by the Jordanian government. The government implicitly recognises the need to harmonise national legislation and policies related to freedom of opinion and expression with the Constitution and international conventions, given the objectives outlined in the plan.[684]

[683]Ansam Naaji Zamil Al-Dalaeen, 'Freedom of opinion and expression in international conventions and Jordanian legislation: A comparative study (Master's thesis, Middle East University, Amman 2019) <http://search.mandumah.com/Record/994809> accessed 09 March 2024
Noor Muhammad Zia Uddin Mustafa Al-Duwairi, 'Freedom of opinion and expression in Jordan in accordance with local legislation and its compatibility with international standards: An analytical study' (Master's thesis, Middle East University, Amman 2022) <http://search.mandumah.com/Record/1327577> accessed 09 March 2024
Zumbil, Ibrahim Aref Abdullah. (2021). Freedom of expression in the Jordanian constitution and international conventions (Master's thesis). Jerash University, Jerash. Retrieved from http://search.mandumah.com/Record/1243064
Ibrahim Arif Abdullah Zambil, 'Freedom to Demonstrate and Express Opinion in the Jordanian Constitution and International Conventions' (Master's Thesis, Jerash University, Jerash 2021) <http://search.mandumah.com/Record/1243064> accessed 10 February 2024
M H Y Muhaisen, *Guarantees of Freedom of Opinion and Expression - A Study in the Light of the Jordanian Constitution, International Covenants, and Islamic Jurisprudence* (Wael Publishing House 2020).
[684] The comprehensive national plan for human rights for the years 2016-2025.Retrieved from http://hcst.gov.jo/ar/node/938

However, what research and public discourse often fail to address is the underlying reason behind this misalignment. Despite Jordan having ratified the ICCPR and other international treaties, there is a lack of clarity regarding why Jordanian legislation does not comply with these international standards and whether the country is taking substantial steps to fulfil its international obligations.

One focal point of the research has been to understand the legal status of international treaties in the Jordanian legal system, their enforcement mechanisms, and the extent of Jordan's commitment to implementing these treaties. The researcher discovered that international treaties hold a higher legal status in Jordan than local legislation, which means that in cases of contradiction, treaty provisions take precedence.

The process of ratifying international treaties in Jordan involves several steps, including government signature and subsequent presentation to the Jordanian Parliament for ratification. Upon ratification, the treaty becomes an integral part of the Jordanian legal system, and its provisions become enforceable in Jordanian courts. However, it was found that the Jordanian government did not submit many of these treaties to Parliament for ratification, leading to their non-incorporation into the national framework. Consequently, Jordanian courts often refused to implement provisions from these unratified treaties in several cases because the Jordanian Parliament had not ratified them.[685]

In practice, these international agreements do not form a substantial part of the legal system in Jordan, and their provisions are rarely cited in national court proceedings or considered in the application of national law.[686] Jordan's commitment

[685] Court of Appeal Decision No. 34754/2014 issued on 5/6/2014, Adalah Publications
[686] Universal Periodic Review – Jordan, Summary of stakeholders' information, 8 November 2018, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/258/16/PDF/G1825816.pdf?OpenElement

to implementing these treaties has largely remained on paper, as the government has not taken significant steps to integrate them into the legal system.

Nonetheless, it's important to note that failure to complete the ratification process of an international agreement does not absolve Jordan from its obligations to implement its provisions. Under international law, Jordan is still bound by the terms and rules of these agreements, even if they have not been formally incorporated into local legislation.[687]

The researcher strongly urges Jordanian authorities to finalise the process of local ratification of international agreements and integrate them into the Jordanian legal system. Additionally, there is a pressing need for effective and concrete actions to fulfil international obligations or, at the very least, amend national laws to align with the international and regional agreements that Jordan has ratified. This would not only enhance Jordan's legal standing but also contribute to the protection and promotion of fundamental human rights, including freedom of expression, within the country.

Upon thoroughly examining the various elements shaping the legal framework for freedom of expression in Jordan, it becomes evident that this framework is deeply intertwined with the nation's historical, cultural, and philosophical foundations, as previously discussed. At the same time, it is apparent that the provisions within Jordanian laws do not align with international standards for safeguarding freedom of expression.

Whereas the freedom of expression clause of the Jordanians' Constitution, Article 15 operates at face value to be in line with the international standard, it attaches a

[687] Vienna Convention on the Law of Treaties of 1969, Article 27

qualification– a person must not breach the provisions of the law. The law was formulated in the like of international conventions, but it was left up to the Legislative branch to define what this fundamental right really meant. Such postulate has opened the space to establish a legal framework that allows number of limits on freedom of expression covered by the article.

Through this research, the purpose is to provide evidence of the basic defences of freedom of expression in Jordan, including the major laws such as the Penal Law, the Press and Publication Law, cyber crimes laws, and other anti-terrorism laws. It is depicted that such statutory provisions rather than to establish precise formulations for freedom of speech, they actually lay the basis of such a widespread framework where political discussions, religious dialogues, and conversations on morals as well as others will be hindered.

In addition, the research presents that these legal restrictions are mostly unspecific, that is, they leave a lot in the way of interpretation and this often includes court rules. This is because it allows the government to enjoy significant freedom in using the provided regulations. Thus, it can raise the uncertainty about how the laws may be applied. Hence, Jordanian law deviates from the international framework obligations and most prominently, lacks respect to principle of legal certainty, an important doctrine in Article 11 of the Universal Declaration of Human Rights. In this respect, the more specified security-preservation and social stability always have the upper hand over the expression of freedom, and these safeguards are extended to personal sentiment. Contrary to the International Covenant, Jordanian law has toughened the penal procedure as the assault committed by an individual is considered a crime against intellective rights. Article 17 of the Covenant protects reputation from defamation only in the context of deliberate and gross violations and is limited to organised campaign activities.

Thus, the same concept of "respect for the rights and reputations of others" is more widely understood as the inalienable right to use the freedom of speech free from any insults to one's dignity or hurt to one's honour on the part of the legislator in this case. The Law of the Jordanian Penal Code, which includes Article 188 and Article 190, stresses that protecting individual's emotions is the main point.

The main restriction areas in politics, religion, and ethics are the crucial components of public debate and they give rise to critical issues. Thus, Article 15 of the Jordanian Constitution shall be re-examined to ensure that the foundation has safeguarded against inappropriate incantation the free speech against these laws. Otherwise, adoption of Jordanian laws to international norms is crucial paying particular attention to a revision downwards of unclear and comprehensive language of a large number of legal terms.

Based on the above extensive research carried out by the researcher, in the concern of legal framework for freedom of expression in Jordan, the reality of having rights ensured by solid legal guarantee protects freedom of expression as the most important one. This becomes critical when facing the common Nothingness and breadth of control the Jordanian laws presiding over freedom of expression embrace. In such a legal framework where the limitations of legitimate expression are not yet clear, this situation inevitably increases the need for strong legal support.

The first and primary purpose of the study was to capture the principles of separation of powers within the Jordanian Constitution. The principle is indispensable in such situations so that the power cannot become centralised and remain in the hands of one individual or a group, by the same token, the system of checks and balances can be maintained that will save individual freedoms.

However, it was also evident that the executive branch had an extra degree of power over the legislative and judicial processes and was able to influence them considerably. This break of balance affected real conditions to a great extent. These included the absence of parliamentary control of state laws and the issuance of special courts directly under government control which had a drastic effect on freedom of expression.

Problems of this constitutional order may be solved much more quickly and efficiently by amendments to the Jordanian vision to enforce a corresponding balance among a trinity of the accepted branches. This can be achieved through limitations on the executive authority's ability to enact laws in the absence of parliamentary involvement as well as the closing down of special courts that operate under government control.

In addition, the researcher examined the rule of law in Jordan in states of emergency and martial law, which significantly affect people's rights and freedoms, especially freedom of expression. The Jordanian Constitution allows the government to do it without observing conditions, rules and limitations, as well as without getting parliament's approval. Consequently, the government is granted an unfettered power to legislate and to confirm the exception by the uncontrolled way which often results in substantial losses of human rights and freedoms.

Additionally, these types of constitutional amendments must be adopted to introduce the mechanism of parliamentary oversight and enforce clear provisions about power given in time of states of emergency or martial law. Such declarations have to be subject to certain limitations, approval by the parliament is a must to safeguard the individual rights like the freedom of expression.

The judicial autonomy which is the other essential dimension of the research exerts influence on the issue of the power abuse by the executive to save citizen's interests In spite of the enactments in the constitution that assert judicial supremacy, the imperialism of the executive body in the appointment of judges and the administration of the judiciary remains. This impact can touch upon the legislature's function that mainly involves administrative detention and the development of special courts by the executive branch, which invariably, hinder the rights of freedoms.

To increase judicial independence, reforms should be made that exclude both the executive authority and the Judicial Council in appointing judges. The judicial council should now be granted complete autonomy in doing this or the approval of the executive authority should be excluded. The members of the Judicial Council and its president should be chosen by the people to ensure the protection of the democratic foundations against the potential technocratic domination of the executive branch.

Lastly, the researcher investigated the judging review system effacement in Jordan, which is one of the basic mechanisms to ensure the conformity of the laws with the Constitution. However, as such a framework (composed of the Constitutional Court as well) exists, this comes along with the independence of judges and the low extent to which individuals and civil society organisations check the constitutionality of laws.

To solve these issues, the process of appointment for the judges of the Constitutional Court should be reviewed, with broader participation of other players including the parliament and some judicial bodies to give the court more independence. Judges should be allowed to serve longer term of service and cannot be impeached at will. In addition, individuals and civil society should be given a right

to directly challenge the constitutionality of acts, hence making the Constitutional Court to act as an efficient guardian of constitutional rights and liberties, counting freedom of expression.

The legal assurances in Jordan for freedom of expression should be modernised and in line with the international standards and ideals of democracy and human rights. The proposed actions by the researcher can have a huge influence on the attainment of this goal as they are specifically targeted at protecting and guaranteeing freedom of expression in the country.

Since the legal regulations are indefinite and Jordan is deficient in the robust guarantees for the freedom of expression, one consider the contradictions to be unavoidable while trying to implement even one of these fundamental rights.

The existing challenges in this context are very important and they are not visible only in the case of online and media outlets. There has been no obvious and well-defined protection because of vagueness of the restrictions which is why flexibility in the judges' application appeared. This inequality has paved the way for engulfing the scope of criminalisation in a way that sets the basic standards of liberty at a very low level.

The numbers have no return and this is underlined by the increase in cybercrime cases in 2020, equalling an alarming 73% of internet cases put on freedom of expression.[688] The internet has become a vital node of surveillance, resulting in deteriorating trust in public spaces where people are reluctant to share their opinions freely and honestly. The government's pivotal tactics of suppressing online freedoms

[688] The National Center for Human Rights, 'The seventeenth annual report on the situation of human rights in the Hashemite Kingdom of Jordan for the year 2020' (2020) <https://www.nchr.org.jo/ar/%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1-%D8%B3%D9%86%D9%88%D9%8A%D8%A9/> accessed 22 June 2022

of expression through websites and apps blocking and legal rules have further worsened the situation of self-censoring.

The Jordanian media climate remains very restrictive in the eyes of the Centre for Defending Freedom of Journalists CDFJ, according to their finding in their 2022 report. Journalists are often criminalised, forbidden from reporting, and often even arrested for their professional duties. This creates a situation wherein people live in fear and elect themselves to self-censor. Legislation has only compilated these constraints. Laws can punish cases such as the monarchy, government officials, blasphemy, and false criticisms of foreign nations. [689]

This legal framework led to many journalists who were convicted for committing offenses within laws such as cybercrime law and counterterrorism implementation. Well-known cases, such as ones of Jihad Al-Muhaisen, Muhannad Mobaideen, Osama Al Rantisi, Jamal Ayoub, Nidal Faraana and Amjad Mualla, emphasise the systematic tactics applied by Jordanian authorities following general restrictions and various laws to arrest and prosecute journalists. Unfortunately, these measures have turned into prolonged periods of detention and created an apprehensive and self-censoring media community - which is unreasonable.

The fundamental disharmony in banning speech of freedom in Jordan stems from the vagueness and consequent ambiguity contained in the law accompanied by lack of detailed definitions and stipulations. These drawbacks have led to delays and double-checking during the procedure involving such restrictions. Likewise, the offence of illegal writing on foreign currency notes has witnessed contradictory

[689] Center for Defending Freedom of Journalists, 'Closed Spaces: Internet Freedom and Freedom of Expression Online in Jordan' (28 January 2022) <https://cdfj.org/wpcontent/uploads/2021/10/%D9%88%D8%B1%D9%82%D8%A9%D9%85%D9%88%D9%82%D9%81%D9%81%D8%B6%D8%A7%D8%A1%D8%A7%D8%AA%D9%85%D8%BA%D9%84%D9%82%D8%A9.pdf > accessed 30 August 2023

interpretations in case law leading to divergent outcomes of offenders either being convicted or acquitted. The prevailing ambiguity is the major factor behind countless people having no clear understanding of their limit of freedom of expression, which increases the atmosphere of uncertainty and self-censorship.

Further, article 195 of the Jordanian penal code, which regards disparaging His Majesty or the King, holds no clear boundary or threshold. The rulers have hardly been known for their reverence to the freedom of speech, and many reasons could end in a prison cell, where some people might the uttering of a few words unto others. The mixed response of society to these rulings, the uncertainty in their implementation as well as the impact on freedom of speech have eventually led to the king's pardon that resulted in charges dropping by numerous individuals. Through this incident is highlighted how vital the establishment of clearer standards and definitions is to avert the potential of misusing this article and it also protects the fundamental right to freedom of expression in Jordan.

The recommendations are directed to the issues of freedom of expression in Jordan; this is because of their multi-facet nature and their significance in ensuring this right. As an initial step, a clear legal framework is expected which will define the scope of laws related to the freedom of expression. This involves quantitative restraints and exemptions, defining how wide the borders should be, and principles like immediate threat criteria and the "proportionality criteria" should be followed. It is critical for the law to be unambiguous for incorrect interpretations and misapplication to be avoided.

Furthermore, it is necessary to establish effective control mechanisms for the internet and media as an outcome. The government should not ban access to websites and applications, and it should properly revise all excessive legal restrictions that

would hamper free expression. Over-sea strategic electronic patrols watching over social media spaces should be done away with to allow free exchange of ideas that would not infringe on people's liberty.

In journalism, the riots of summoning journalists, the slapping of gag orders, and the regular arrests of media workers must be brought to an end. The law that is too rigid to allow criticism against the monarch government officials, extend even to blasphemy and critiques of foreign countries should be re-evaluated to align with international standards of freedom of expression.

In this regard, establishing a legal standard shall be an act of the judiciary to standardise the process of interpreting such restrictions by the Jordanian courts. The implementation of this principle will aid in the removal of the ambiguity of the free expression boundaries and the lack of certainty, which may lead to self-censorship.

Clear limitations and standards should be formulated to prevent its abuse and secure the right of individuals for expressing their attitudes freely without the risk of being punished. Furthermore, separation of an independent commission that scrutinise the implementation of legislations and regulations to convey international standards of freedom of expression will be a very a significant measure to protect these great rights in Jordan.

8.3 The Recommendations

Building upon the extensive research and profound insights unearthed in this thesis concerning the nuanced concept of freedom of expression in Jordan, the researcher puts forth a series of thoughtful recommendations:

1- The need of the hour is to prioritise and fund the research regarding the history and culture of freedom of expression in Jordan with utmost

importance. The present body of knowledge, as the above study is illustrating, declares a definite set of weaknesses and a degree of hypocrisy in the study of free speech within Jordanian society. To bridge these gaps, researchers, institutions, and funding agencies should be dedicated to promoting interdisciplinary investigations, indigenous scholarship, and comparative studies that dive deeper and analyse the historical, tribal, and religious motives that contribute to freedom of speech. These projects can provide us with a much clearer and deeper understanding of all these intricate dimensions involved and also help us to come up with policies and strategies that work best in Jordanian society.

2- In light of Thomas Hobbes's stand on freedom of expression and Jordan, it is worth it to underline the need for rationalising between security risks and the preservation of basic rights. The researcher's recommendation for prioritising the preservation of freedom of speech with consideration of the security concerns of Jordanian policy-makers should be the guiding principle for the country. The review of policies and legislation by the Jordanian authorities is strongly recommended to forestall security from overruling the well-being of freedom of speech. According to the findings of the researcher about the international duties of the Jordanian state regarding free expression, a demanding present time has come about for the Jordanian authorities to take action. This will include the adoption of the necessary steps required to blend the relevant treaties into the national legal regime and speed up the ratification process. Therefore, the Jordanian government needs to evaluate all the ratified agreements related to human rights that are still pending and strictly commit to presenting them before the Parliament of Jordan for final validation.

3- Constitutional Amendment: The researcher recommends enacting constitutional amendments of Article 15 to clarify and define limits of freedom of expression thus preventing embezzlement by vague or broad interpretations. The boundaries should provide congruence with international benchmarks and promote the pertinence of shielding freedom of expression.

4- Review and Reform of Existing Laws: The Persian Gulf first came to our attention since the discovery of oil reserves there but several more factors have led us to interest in this region. Improvement and review of these laws should go hand in hand with alignment of such legislation with international regulations.

5- Clear and Precise Definitions: Legal provisions in respect of curbs to freedom of expression should be articulated in a planned manner with concise and explicit definitions. The ambiguity of expressions such as "muting religious sensibility" and "eroding national sentiment" requires to be substantiated so that they are not understood in a broad sense and thereby it would curtail the legitimate expression.

6- Prioritise Legal Certainty: Jordan should give higher attention to the principle of legal certainty by laying down corresponding laws and regulations for the protection of freedom of expression. Laws have to be detailed enough to define what constitutes a criminal offense, and individuals should not be administrated criminal liability for actions that were previously not listed as a criminal offence at the time they were committed.

7- Alignment with International Standards: Jordan has to make certain that its legislation for freedom of expression is consistent with the internationally recognised standards, among them Johannesburg Principles on National Security, Freedom of Expression, and Access to Information. Such limitations should relate to political expression, national security being limited to cases

where immediate and direct acts of terroristic violence threaten to be committed.

8- Protection of Public Figures: The legislation that causes the possibility of criticism within the public figures and establishments should be revised and properly obliged just like the other interactions in the public domain. Politicians and public officers should not have the leeway to cover up their humanising weaknesses through defamation and insult laws.

9- Balancing Separation of Powers: Change the prime minister's power by introducing a parliamentary system so that the legislative and judicial branches have a say. Establish a government composed of veto power and independent roles so that each branch serves a purpose to prevent the exploitation of power.

10- Legislative Oversight: Provide parliamentary control over the executive power mainly by limiting the executive's extremity in declaring a state of emergency. Such statements should be time-limited with a maximal duration of six months and the renewal should be followed by the approval of Parliament. Otherwise, it will put too many limitations on the freedom of speech.

11- Review and Reform Emergency Laws: Review and reform the laws around the declaration of national emergencies to put in place clear exit and entry criteria and limitations on the powers of the government when these periods occur. Attempt to adopt fair and opinion-neutral regulations, which do not impede freedom of speech too much, and correspond to international human rights standards.

12- Judicial Independence: Extend the Judiciary's independence by allowing the Judicial Council to appoint judges without electorate's approval.

Develop means of elections of the Judicial Council members to delimit the executive power that dominates the judiciary.

13- Abolish Special Courts: Carry out an instant prohibition on the process of forming courts by the executive authority and employing their judges. Insist that all courts not only those that handle delicate issues but also all courts across board abide by the principles of independence and impartiality.

14- Administrative Detention Reform: Alter laws on administrative deprivation of liberty to imply approval by the court, and not just the decision of the administrative governors, before taking an individual into detention. This will thus safeguard the personal prerogatives and eschew the potential case of administrative detention.

15- Broaden Access to Constitutional Court: Expand the prerogatives of the Constitutional Court to consider of constitutionality of laws and worthiness of challenge to be made by more organisations. Let the political parties, civil groups, and concerned individuals, can themselves drag court cases over these unconstitutional laws to be scrutinised and re-examined by the court as part of proper checks and balances exercised by the state.

16- Extend Terms for Constitutional Court Judges: Extend the service term for the Constitutional Court judges, abolishing the renewal of the terms for sure protection from dismissal without a ground. Such a move will also improve its judicial independence and guarantee the consistency of its decisions.

17- Have you ever felt overwhelmed by choosing the right speaker for your next seminar or event? Here are the top reasons why having a professional speaker can make all the difference.

18- Promote Media Freedom: Govern to enrich the media self-expression by abolishing legislation restricting media, which may potentially punish citizens for violating punishment of such laws as criticism of the monarchy, officials, blasphemy, or by citizens for criticising foreign nations. Give a guarantee to the working journalists so that harassment and arrest cannot be used as a means to put an end to their work.

19- Protect Online Freedom: Guarantee that there is no interference with free or censorship in the digital area. Remove or lift any blockades on the web and app, and do not expressively prohibit online materials that limit the freedom of speech. Encourage the diversity of social media opinions and allow everyone to express their opinions freely, without fear of retaliation.

20- Establish Clear Standards for Courts: Develop and disseminate clear legal standards and principles for Jordanian courts to follow when interpreting and applying laws related to freedom of expression. These standards should include principles like an imminent threat, proportionality, and a presumption in favor of free expression.

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