
NEXUS BETWEEN ARTISTIC FREEDOM AND HUMAN RIGHTS: AN INTERNATIONAL PERSPECTIVE

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ABSTRACT:

“Any act of the mind that flows pure and free, is art, for freedom is the soul of art”. Art is one of the most basic forms of emotion a human being expresses in this world. But, it becomes a form of oppression when the freedom over art an artist has, gets curtailed for various reasons.

Art is a medium of expression of culture and values. This article is based on recognition of artistic freedom as universal human right and the repercussions artists go through for channelising their thoughts, opinions and views. This article will deal with freedom of expression in an international perspective for various forms of arts. This is especially true in the field of public international law, where jurists have maybe not given enough attention to the concept of freedom of expression as a whole. It also covers and compares incidents that happened worldwide. The way in which politics and religion is seen in two different perspectives by the artists and the oppressors are also covered under this article. Real life experiences of artists in various forms are also dealt with. This article finally takes on how laws that limit the freedom of speech should be applied by an independent body, without bias or arbitrariness, with proper safeguards against misuse, as well as the opportunity for appeal and remedy. These are crucial factors to take into account in light of the ongoing obstacles to artistic freedom, since restrictions imposed on this right through the implementation of legal and administrative actions frequently do not meet the aforementioned requirements.

Keywords: Art, Freedom, Artists, Expression, Human Rights.

INTRODUCTION:

Expressing oneself paves way for a pragmatic society. But often, expression is seen as a threat rather than a progression. For mitigating that issue, freedom of expression is introduced as a fundamental right of an individual. Freedom of expression covers the ambit of right to speak, right to be heard and right to participate in political, social and artistic life¹. One method and venue for democratic discourse is culture. Its foundation is the freedom of artistic expression. There is strong evidence that engaging in culture enhances civic engagement, citizen empowerment, and general well-being².

Artistic freedom (or freedom of artistic expression) can be defined as "the freedom to imagine, create and distribute diverse cultural expressions free of governmental censorship, political interference or the pressures of non-state actors³. In general, artistic freedom refers to the degree of autonomy that artists are granted in order to freely produce art. In addition, artistic freedom involves "the rights of citizens to access artistic expressions and take part in cultural life—and thus [represents] one of the key issues for democracy⁴". The degree of independence required to freely produce art varies depending on whether national tools designed to safeguard, support, regulate, or censor artists and their works of art exist or not. For this reason, laws at the local, state, and federal levels have been put in place to protect the freedom of expression generally and creative expression specifically.

WHAT IS ARTISTIC FREEDOM?

“The right to freedom of artistic expression is a fundamental aspect of cultural rights.”⁵

¹ *What is freedom of expression?* (2023) *ARTICLE 19*. Available at: <https://www.article19.org/what-is-freedom-of-expression/> (Accessed: 17 November 2023).

² *Declaration by the Nordic Ministers of Culture on promoting diversity of cultural expressions and artistic freedom in a Digital age* (no date) *Nordic cooperation*. Available at: <https://www.norden.org/en/declaration/declaration-nordic-ministers-culture-promoting-diversity-cultural-expressions-and> (Accessed: 17 November 2023).

³ (No date) *Re | shaping cultural policies - UNESCO*. Available at: <https://uis.unesco.org/sites/default/files/documents/reshaping-cultural-policies-2018-en.pdf> (Accessed: 17 November 2023).

⁴ *Artistic freedom - wikimili, the best Wikipedia reader* (no date) *WikiMili.com*. Available at: https://wikimili.com/en/Artistic_freedom (Accessed: 17 November 2023).

⁵ (No date a) *Artistic freedom | OHCHR - UN human rights office*. Available at: <https://www.ohchr.org/en/special-procedures/sr-cultural-rights/artistic-freedom> (Accessed: 17 November 2023).

Artistic Freedom is a Fundamental right and Requirement of Artists where they have the freedom to express their vision and emotions through the form of artworks without any censorship in the way of government or any other bodies. When it comes to Art, though it is widely seen as a form of entertainment, sometimes it is also used as a symbol of representation. Art has a reach beyond borders and beyond the barriers like linguistic and cultural. Artists use this advantage to represent a culture or a group of people or to take a stance or to address a particular political, economical, social and even mental issues sometimes. Art is seen as a dynamic form of and left to Artists freedom to use it in a way to stamp a change. This is the Artistic Freedom the whole world of Artists demands and needs. It is barred when freedom is snatched due to a non-alignment of Ideologies. Artistic Freedom also involves where the artist tries to create an identity for himself/herself. The identity gets created when the art is free of any unnecessary involvements and a complete work of what went through the brain of the artist.

CHALLENGES TO ARTISTIC FREEDOM:

When it comes to Artists and their freedom to freely express what they want to create, the obstacle they often face is in the form of government and the law of the land. It is the political parties that control what artists should make and publish or more of like what the world should see. An art projects and becomes a face of a state often and thus whenever an artist stands by something that is actual but tarnishes the images and ideologies of the state, the freedom is curtailed. Sometimes, even if the State fully obliges to the fundamental right of freedom of expression, it is the non-state parties such as religious extremists in the form of terrorism groups that curtail the freedom. The non-state groups pose a much bigger threat as the artists may face violent and harsh actions from these groups if the artists include any part that offends them.

The obstacles being on one side, a lack of solidarity is one of the reasons why artistic freedom is curtailed. Though the people related to industry are now coming up with huge support, a lack in the support has also been a case.

Few countries where the country's orders and functioning revolves around religion like in the instances of the Middle East, the artworks which do not come in the boundary of what according to them as safeguarding the culture and heritage is also curtailed and the freedom is challenged.

UN INSTRUMENTS FOR ARTISTIC FREEDOM:

Article 27 (1) of the Universal Declaration of Human Rights (UDHR) states that every person has the unrestricted right to take part in community cultural events, appreciate the arts, and profit from scientific advancements. Every person is entitled to the defence of the material and moral interests arising from any creative work, be it literary, artistic, or scientific, in which they are the author.

Other instruments include:

1. Article 15 (3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR):

The States Parties to the current Covenant commit to upholding the freedom necessary for artistic expression and scientific research.

2. Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR):

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”⁶

3. Article 13 and 31 of the Convention on the Rights of the Child :

Article 13 states that a child must be entitled to the freedom of expression, which includes the freedom to seek, receive, and impart ideas and information of any sort, across all boundaries, orally, in writing or in print, artistically, or through any other means of the child's choosing. There may be limitations on how this privilege may be used, but they will only apply to the extent required by law:

- a. Out of consideration for others' rights or reputations; or

⁶ (No date a) *International Covenant on Civil and Political Rights*. Available at: <https://nhrc.nic.in/sites/default/files/International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf> (Accessed: 17 November 2023).

- b. For the preservation of morality, public health, public order, or national security.

Article 31 states that States parties acknowledge that children have the right to play and leisure time that is age-appropriate, to rest and relaxation, and to unrestricted access to the arts and cultural life. States Parties agree to uphold and advance children's right to full participation in cultural and artistic endeavours as well as to promote the provision of fair and suitable opportunities for leisure, recreation, and the arts.

4. Article 42 of the Arab Charter on Human Rights:

Everyone has the right to benefit from scientific advancements and their applications, as well as to engage in cultural activities.

5. UNESCO puts forth that "artistic freedom embodies a bundle of rights protected under international law."⁷ These include⁸:

- a. The right to create without censorship or intimidation;
- b. The right to have artistic work supported, distributed and remunerated;
- c. The right to freedom of movement;
- d. The right to freedom of association;
- e. The right to the protection of social and economic rights;
- f. The right to participate in cultural life.

CASE STUDIES:

Lapiro de Mbanga vs. Cameroon⁹

⁷ (No date a) *Re | shaping cultural policies - UNESCO*. Available at: <https://uis.unesco.org/sites/default/files/documents/reshaping-cultural-policies-2018-en.pdf> (Accessed: 17 November 2023).

⁸ Ibid [5]

⁹ Authors Sara Whyatt Campaigner and researcher on freedom of artistic expression and human rights Ole Re, Sara Whyatt Campaigner and researcher on freedom of artistic expression and human rights and Ole Reitov Founder and former Executive Director of Freemuse Independent (2019) *Arts. protecting and promoting artistic*

The reason President Paul Biya of Cameroon has been allowed to remain in office for so long is because in 2008 a constitutional provision restricting the number of presidential terms was deleted. Adopted on April 10, 2008, the Constitutional Amendment Bill gives the president immunity for any acts done while in office and permits an infinite number of presidential mandates. Thus, in 2008, during Biya's reelection, one of Cameroon's most well-known singers, Lapiro de Mbanga, recorded a song named "*Constitution Constipée*" (or "Constipated Constitution"), which addressed injustice and corruption in the nation. The song became an enormous hit, sung by thousands of workers and students when they took to the streets in February 2008 to protest the constitutional changes and the sharp rise in living expenses. The lyrics depict Biya as an old man who is tired and has outlived his usefulness, even though the song was banned on TV and radio.

Lapiro was accused of instigating these mass demonstrations and was arrested. Following multiple court appearances, Lapiro was found guilty of three years in prison and compelled to pay 280 million CFA francs in fines to make up for the harm the protesters' actions had caused. This was in September of 2009.

The PEN International Writers in Prison Committee and Freemuse organised a combined global campaign for Lapiro's release in August 2008. Over the next three years, Freemuse launched a number of new campaigns. These included working with organisations based in the UK, France, and the US; releasing a CD; nominating Lapiro for an international award; and, lastly, partnering with Freedom Now in the US to present Lapiro's case before the UN Working Group on Arbitrary Detention. In 1991, the UN Working Group on Arbitrary Detention was founded. Its mandate encompasses the following:

1. investigating cases of arbitrarily imposed deprivations of liberty or other cases of deprivations of liberty inconsistent with the applicable international standards outlined in the Universal Declaration of Human Rights or in the applicable international legal instruments accepted by the states involved;

freedom, Global Freedom of Expression. Available at: <https://globalfreedomofexpression.columbia.edu/publications/arts-protecting-and-promoting-artistic-freedom/> (Accessed: 17 November 2023).

2. seeking and receiving information from governments, intergovernmental organisations, and non-governmental organisations; receiving information from the individuals, their families, or their representatives;
3. acting upon information submitted to it regarding alleged cases of arbitrary detention by contacting the relevant governments in an effort to get clarification and to bring these cases to their notice;
4. to create discussions on broad topics to help states avoid and combat the practise of arbitrary deprivation of liberty and to make future cases easier to consider;
5. to submit an annual report to the Human Rights Council outlining its activities, results, recommendations, and conclusions.

After receiving Lapiro's case, the UN Working Group on Arbitrary arrest declared that his arrest was arbitrary and demanded that the Cameroonian government free him and compensate him for the infringement of his fundamental rights as guaranteed by international law.

Louis Vuitton vs. Plesner¹⁰

After moving to the Netherlands in 2006 to pursue her studies in fine arts, Danish artist Nadia Plesner found herself living in deprivation and recuperating from a serious traffic accident in less than six months. She was reading a four-line report about the genocide in Sudan's Darfur region from a Dutch newspaper. A full-page story about Hollywood celebrity Paris Hilton getting jailed for parking violations was printed on the page across from it. This portrayal infuriated Plesner, who made the decision to do an artwork criticising the Western media's preference for entertaining news over reports about genocide. The result was her drawing *Simple living*, which included a Chihuahua wearing pink clothing and a Darfurian youngster holding a huge expensive bag. Plesner further generated funds for the Save Darfur Coalition's "*Divest for Darfur*" campaign by having the drawing printed on t-shirts and posters. The painting began to gain popularity almost immediately, and in February 2008, she got a "cease and desist" letter from the fashion company

¹⁰ Ibid [9]

Louis Vuitton. They expressed gratitude for her initiative on behalf of Darfur but thought the bag in the image was too similar to their own "*Audra Bag*".

The company pleaded that Plesner cease selling the t-shirts and posters straight away, claiming that the drawing infringed upon their intellectual property rights. The business demanded that Plesner cease selling the t-shirts and posters straight away, claiming that the drawing infringed upon their intellectual property rights. Plesner kept selling the t-shirts and posters after receiving another letter in April 2008, and she posted both messages on her website. She hadn't been informed that Louis Vuitton had appeared in court in Paris, and the letter contained an ex-parte decision. Due to the items' negative association with Louis Vuitton and the Darfur genocide, Plesner's Simple Living line was being banned by the French court, per Louis Vuitton's appeal.

Plesner claims the corporation tried to use her, but she turned them down. Plesner informed the audience about her meeting with Louis Vuitton at the first World Conference on Artistic Freedom, which was organised by Freemuse and the Fritz Ord Foundation in October 2012 in Oslo. "*They promised to back me if I apologised, or wreck me financially,*" Plesner said. She agreed to cease selling the t-shirts on the advice of her attorney but kept taking Louis Vuitton to court. She continued by producing a sizable piece of art called *Darfurnica*. Genocide victims are shown in the painting alongside wealthy and well-known individuals like Paris Hilton, Britney Spears, and Victoria Beckham. *Darfurnica* mixed entertaining stories that garnered significant media attention during the Darfuri genocide with real-world events from the region, alluding to contemporary mass media. Plesner placed the picture of the simple living child in the painting's core.

Plesner was granted permission to display both *Darfurnica* and *Simple Living*. The threat of €485,000 in fines was dropped, and Louis Vuitton was mandated to pay €15,000 towards a portion of Plesner's legal fees. As per the established case law of the European Court of Human Rights, Plesner has the fundamental right to express her opinion through her art, which is highly valued in a democratic society, in opposition to Louis Vuitton's exclusive rights to the peaceful enjoyment of its design. Regarding their artistic freedom, which in theory allows for art to offend, shock, or disturb, artists are quite well protected in this regard. In this sense, it is also crucial that Plesner's utilisation be considered practical and proportionate for the time being, rather than only being used for commercial gain.

The *Simple Living* artwork by Plesner was selected in 2013 by the office of the Special Rapporteur on cultural rights to serve as the backdrop for the presentation of the Farida Shaheed report on artistic freedom. Plesner received an invitation to Geneva to participate in the report's official launch. Artists were asked to talk about artistic freedom at the UN in Geneva for the first time.

The Case of Jafar Panahi and Mohammad Rasoulof:

Jafar Panahi and Mohammad Rasoulof are two Iranian Filmmakers who got arrested for making films that challenged and criticised the government's functions and corruption. They both faced Legal issues in their countries which involved House Arrests, Banning from making movies and giving interviews. Their cases garnished a huge noise in the industry, gathering a lot of support for the filmmakers.

Jafar Panahi is known for making movies centering around women empowerment and supporting various topics which were seen as anti-governmental and controversial. He was arrested in 2010. Before his arrest he made two movies *Circle* (2000) and *Offside* (2006) focusing on how women suffer in the country of Iran, as the movie *Offside* itself is about how women are banned from watching football games in the stadium. He made *Crimson Gold* (2003) which was seen as anti-governmental as it showcased how corrupted the Iranian Government is. Post these 3 films, Panahi faced legal challenges. All the above mentioned movies were also banned even before their releases. Panahi, Irrespective of the house arrest and a ban to create movies still made movies like *Taxi* (2015) and *This is not a film* (2011) which premiered in many prestigious film festivals and garnered attention about the situation that was going on. Mohammad Rasoulof, just like Panahi, is known for making movies like *White Meadows* (2009) that showcased the corrupted government, faced legal charges and still went on to make films to get international views.

Both the filmmakers also supported and got involved in the Green Movement, a political protest movement conducted by the opposition post the 2009 presidential election which led to more anger from the government side against the filmmakers. This along with the films they made had them branded as Anti-governmental filmmakers and thus the stipulated actions. The International Forums did its part to show support and condemn the Iranian government's action along with the Filmmakers community all around the globe who showed a humongous support for the situation,

supporting the filmmakers as their films premiered in the festivals were welcomed warmly.

Farida Shaheed, The United Nations Special Rapporteur on Cultural Rights condemned the Iranian filmmakers situation. The involvement of the UN brought in the limelight that was required for this situation. The check over Artistic Freedom increased not only in Iran but all around the Globe but the seed was sowed in the Panahi case and UN's involvement where this case brought in a spark and a huge debate, discussion on the importance of Artistic freedom.

Amnesty International and Human Rights Watch condemned what happened to the filmmakers and even appealed to the Iranian authorities for the release as it clearly curtails the artists and their freedom. They also termed both the filmmakers as *Prisoner of Conscience* since they were put in prison for having political and religious views that were seen as wrong in Iran.

CONCLUSION:

Though Fundamental rights like equality and movement are seen much more importantly, the freedom to express and give out opinions are not much dealt with in an international arena. Artistic freedom is one of the most important and required rights as it brings out the more pure form of opinions in any matter and especially when it is relevant to the problems on going. A country's cultural and social values to the outside world is predominantly decided with what is shown to them. Art is one among the few mediums where it reaches beyond the borders and can be accessed by anyone. So, when an artist's sole intention is to represent something wholeheartedly, it's censorship and discardment feels like the artist's soul is snatched due to a non-alignment of views.

Moreover, the International Forums who have the responsibility to foster the fundamental rights of the people in a global map especially when in the today's era the world is shrunk and everything is reaching everywhere, should involve itself more and show much more solidarity so that the artists who already represent the silent voices will have more courage to speak what they want through the precious form of art. When an international forum etches its mark in these kinds of issues, the attention gets wider and the response in the form scrutiny takes place which will bring out many buried and hidden cases of curtailing the freedom of expression and opinion.

“Art is both valued and neglected, both ridiculed and feared. Art is a tool that is quietly disruptive

and powerful. Art is closely linked to human rights and is a freedom that is guaranteed at an international level¹¹.”

¹¹ Hübner, A.M. and Hübner, M. (2020) *Justice. opportunities and challenges for artistic freedom*, *Global Freedom of Expression*. Available at: <https://globalfreedomofexpression.columbia.edu/publications/justice-opportunities-and-challenges-for-artistic-freedom/> (Accessed: 17 November 2023).