

## **ARTISTIC EXPRESSION AND FREE WILL: EXPLORING THE INTERSECTION OF CONTEMPORARY ART AND INTERNATIONAL HUMAN RIGHTS LAW**

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### **ABSTRACT**

*This paper reviews the case that Bangladeshi artist Ahmed Kabir Kishore was arrested for publishing caricatures. Based on the case, it analyses explicitly the human rights of freedom of expression and sorts out the political and ethical difficulties of contemporary artists' freedom of expression. This paper hopes to provide theoretical norms and realistic approaches for protecting artists' human rights by returning to artistic expression's essence and analyzing its legal logic.*

**Keywords:** Expression of Freedom, International Human Rights Law, Dispute Art.

### **INTRODUCTION**

The meaning of human rights is diverse. According to the *Oxford Dictionary of Law*, human rights are defined as: "Human rights require the protection or sometimes require the clarification of those powers that should be recognized and protected in law so that each person can achieve the most sufficient and free development in terms of personality, spirit, moral and other aspects. As rights, they are considered the products of born personal reason, free will, not merely granted by law, and cannot be deprived or cancelled by law" (Brian H. Bewkes, 2007). Among them, human freedom, especially the freedom of speech, is one in all the foremost vital basic human rights.

Respecting the freedom of expression, advocating judicial authority and maintaining social justice is essential to safeguarding human rights in a law-based and democratic society. The common purpose of the three is to protect social justice and promote social harmony, but conflicts often occur in their respective operations (John Mill, 2009). Studies on artists' free speech from the perspective of human rights are scarce. The related academic papers are more focused on examining the freedom of expression and principles and experiences formed in judicial authority and fair precedents, in accordance to the precedents of the European Court of Human Rights, or they are not presented in the form of academic papers, but in the journalistic comments, which introduce the political and ethical dilemmas that artists are facing.

Contemporary art is the artistic expression of "contemporary civilization", which relies on the protection of personal rights and interests, and is a closely integrated and interacting whole of economy, politics and culture (Thomas E. Wartenberg, 2011). It is the primary category of contemporary civilization that emphasis individual subjectivity culturally and the open market in the economy. The artist is the conscience of society, and the protection of artists' freedom of expression is a sign of the progress of social civilization and an expression of human civilization's continuous search for freedom. The freedom of expression of contemporary artists is most worthy of focus and discussion. Artists usually achieve political goals in many ways of depoliticization or non-politicization to maintain their legitimacy and legality. This

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paper will try to speak out for artists worldwide to focus on fundamental human rights, including the rights of freedom of artistic expression- hoping for feedback on the thinking and exploration of social ethics, human rights, politics, as well as the rule of law.

### **Review of the Arrest of Bangladeshi Artist Ahmed Kabir Kishore**

On 16 December 2020, three UN human rights experts, including Karima Bennouna, the UN Special Rapporteur on cultural rights, called on Bangladesh to immediately release Ahmad Kabir Kishor, a prominent cartoonist whose health was deteriorating (UN human rights expert, 2020).

Ahmed Kabir Kishore was arrested in May after posting his caricature "Life in the Time of Corona" on Facebook in March and April 2020. He was accused of spreading fake information and news about Bangladesh's response to COVID-19 in 2020. Kishore was denied bail applications five times at an online hearing, and no trial date had been set. Kishore was a person with diabetes who relied on insulin for his health and was, therefore, at a higher risk of COVID-19 complications. Authorities in Bangladesh have released thousands of people because of the threat posed by COVID-19 in prisons, so there seems to be no valid reason to deny Kishore's bail request. On humanitarian grounds, Bangladesh should also release Kishore to avoid further deterioration of his health.

In fact, the digital security law in Bangladesh is not consistent with international law, and using the law to suppress criticism is not consistent with the fundamental tenets of international human rights law. UN human rights experts said: "The right to free speech and cultural rights allows for criticism of government policies, including through political satires and cartoons, but it should not be 'criminalized' " (UN human rights expert, 2020). In accordance with calling for the immediate release of Kishore, under international human rights law, scholars on human rights appealed to the authorities for dropping criminal charges against him in line with Bangladesh's obligations.

Respecting the rights of artists like Kishore is more important than ever during the coronavirus pandemic. These rights are guaranteed internationally and are vital in promoting important policy discussions. Keeping them silent would undermine their human rights and put all at greater risk. The International Cartoonist Rights Network awarded him the Robert Russell Courage in Cartooning Award for his social participation and defense of human rights.

### **Freedom of Expression in International Law**

Article 19 of The Universal Declaration of Human Rights: "Everyone has the right to freedom of opinion and expression; This right includes the freedom to hold opinions without interference; The freedom to seek, receive and deliver information and ideas through any medium or regardless of national boundaries" (*The Universal Declaration of Human Rights*, 2013). And Article 27 of The Universal Declaration of Human Rights states: 1. Everyone has the right freely to participate in the cultural life of society, to enjoy the arts and to share in scientific progress and its benefits. 2. Everyone has the right to the protection of his spiritual and material interests arising from any scientific, literary or artistic work he creates (*The Universal Declaration of Human Rights*, 2013). To express freely is clearly and deeply embedded in international conventions and regional laws. Freedom belongs to the individual, and freedom belongs to each individual. The freedom is clearly declared in the famous *Universal Declaration of Human Rights* (*The Universal Declaration of Human Rights*, 2013), and these rights have become Customary international law. In *General Opinion No.3* (Committee of ICESCR, 1990), the committee confirms that the State party has a core obligation to ensure the minimum realization of the rights declared in the Convention, in accordance with other human rights instruments and international agreements on the defense of the spiritual and material interests arising from the scientific, literary or artistic works of authors. General Opinion No.17 (Committee of ICESCR, 2013) also stated that everyone is entitled to the protection of the spiritual and material interests of his scientific, literature and art; to the protection of any spiritual and material interests of his work, a human right that arises from the dignity and value inherent to each person. The rights of the spiritual and material interests produced by the scientific, literary and artistic works are also restricted and must be balanced with other rights recognized by the Convention. Nevertheless, the restriction of the rights preserved by Article 15, paragraph 1 (C) must be judged in accordance with the law and in the light of the nature of these rights, and legitimate purposes must be pursued in accordance with the provisions of the

democratic society and strictly necessary to promote the overall welfare of Article 4 of the Convention (Saul, Ben. 2016).

Regarding regional laws, Europe's protection of freedom of expression is more prominent because of its deep economic and artistic basis. The European Convention for the Protection of Human Rights and Fundamental Freedoms' theme is to "take prerequisite steps for the collective implementation of certain rights declared in the Universal Declaration of Human Rights" (Wei Hua, 2016). This emphasis on implementation is reflected in the European human rights supervision mechanism established in accordance with the Treaty and also in the provisions of the Treaty. The right to express freely, as a fundamental human right, is prescribed by Article 10 of the Convention. This regulation also shows the characteristics of emphasis on implementation. In *Alnak v. Turkey* (2005) case, a novel written by a former Turkish lawmaker about the torture of a village in the south-eastern province of Sirnak has been confiscated and banned by the Turkish authorities because it incites ethnic hatred and regional discrimination. Because the book's content involves inciting ethnic hatred and regional discrimination, the European court recognized that the publication is fiction but contains much realistic content. The boundary between fiction and documentary is unclear, and literal understanding will likely lead to confrontation and even violence, especially in the security situation in southeast Turkey. However, its carrier is novel, and its dissemination scope is small. The European Court of Human Rights considered that the treatment of the Turkish authorities did not adhere to the substantive Article 10 of the Convention and ruled it invalid.

The European Court of Human Rights cases can be divided into three categories:

- Political expression with the freedom of the press as a core
- Commercial expression, including radio and advertising
- Artistic expression

Traditionally, the European Court of Human Rights gives a high degree of protection for the freedom of the press, so the restrictions on political expression are very small, in contrast to the much greater range of discretion enjoyed by the Member States in commercial and artistic expression. Therefore, from this perspective, political expression is primarily tied to the value of free expression. And the political element is also prominent, and one of the winning cases ruled by the European Court of Human Rights is *Karata v. Turkey* (1999). Unlike the above judicial precedents, this case doesn't involve endangering public morality but the crime of incitement. The complainant, a Kurdish-Turkish national, published a book of poetry in Istanbul called *The Song of a Rebel Lion* and was convicted by the Turkish National Security Court for separatist propaganda, and the book was confiscated. He filed a complaint to the European Court of Human Rights through the European Commission on Human Rights that the Turkish authorities violated the liberty of speech of Article 10 of the Convention. The Commission on Human Rights unexpectedly sided with the Turkish authorities, arguing that the complainant, while limiting his freedom of expression, was not beyond the scope of Article 10, paragraph 2, of this Convention and was a legal and necessary means based on national security considerations. The committee admitted that poetry as a means of conveying a message does make the case different from ordinary sedition cases. Still, even if artistic expression is special and different from the regular expression, it is indisputable that some of the poetry incites armed rebellion and glorifies martyrdom. Some expressions even give the impression of supporting violent acts of separatism and calling for armed struggle against the Turkish government. Therefore, the Commission on Human Rights considered that the Turkish authorities were fully justified in punishing the poem and its authors for endangering national security and public safety.

Violations of the principles and obligations of respect under international law include actions, policies or laws taken by States parties. As a result, authors' rights to be acknowledged as the authors of their academic, literary, and artistic works are violated, as are their rights to be protected from any alterations that could harm their reputation or honor or cause them to take other damaging actions. These rights also include the right to be free from undue interference with their material interests, which are required for them to live comfortably, to prevent the authors from using administrative, judicial, or other legal means to enforce their rights; to find remedies when their spiritual and material interests are harmed; discrimination against specific authors in the defense of spiritual interests and material profits. Expounds the freedom of expression is not without line, but by the legislation of the procedures, conditions, limits or penalties, for

national security, territorial integrity, or public security interests, to prevent disorder or crime, preserve health or morals, maintain the reputation or rights of others, prevent intelligence leakage, or to maintain the judicial authority and impartiality required. Therefore, the Digital Security Law of Bangladesh violates the moral basis of international law and lacks the necessary ethical basis. The draft has attracted wide attention from the international community. The new law, which contains vague meaning, disrupts law and order, affects religious sentiment or disrupts community harmony, according to Ravina Shamdasani, a spokeswoman for the OHCHR. As a quasi-law of this case, the bill seriously affects the freedom of expression of Bangladeshi people. At the same time, the unreasonable imprisonment of artists suffering from serious chronic diseases is also against humanitarian principles.

### **The Discretion of the National Freedom of Artistic Expression**

Fulfilling international obligations in good faith is a fundamental principle of international law. The achievement of human rights protection under international human rights treaties depends on their local implementation (Liu Huawen, 2015 April). In order to ensure that States parties fulfil their obligations, International human rights treaties typically demand States parties to take operational legislative, administrative, judicial and additional actions to avoid and punish the those who commit violations of human rights recognized by those treaties in the territory under its jurisdiction, and to establish specific provisions, i.e., the particular responsibilities of the state. For example, Article 2 of the International Convention on Civil and Political Rights stipulates the general obligations of Contracting States, in which Article 2 (1) states, "Each State party to this Convention undertakes to respect he guarantees that all individuals within its territory and under its jurisdiction enjoy the rights recognized in this Convention" (Sun Shiyan, 2022).

Any basic right should always be protected; restricting fundamental rights is the exception. The connection between general laws and exceptions must never be the opposite in a democratic society. The foundation of a democratic society, the right to freedom of expression, is also valid. The boundaries of free speech can only be established by identifying the legal exceptions. It was necessary to strike a balance between the protection of various rights and interests because no right is absolute, not even the preservation of a basic right, and can conflict with the protection of other fundamental rights. The legal systems of many countries prioritize maintaining a balance between various rights and interests. But the way to notice this balance, and between rights within which facet is a lot of inclined, could be a question for all governments. To show respect for differences and to avoid excessive interference in the sovereignty of the contracting parties, the Court of Human Rights follows the principle of discretion in its precedents. It gives the contracting parties sufficient space and freedom to formulate standards and methods to restrict freedom and regulate behavior according to their national conditions to avoid excessive intervention. The freedom given to the contracting states is immense in cases involving controversial artistic expressions violating mainstream moral boundaries. For example, a classic case of the European Treaty of Human Rights restriction caused a sensation in the West and the Islamic world. The Danish prime minister called it the most serious international relations event in Denmark since World War II. Although the case finally apologized under the pressure of public opinion, it also had a malicious glimpse of the effectiveness of the principle of discretion.

On the one hand, such respect for the discretion of all States reflects respect for national sovereignty. It enables the supervision and "intervention" of the regional human rights authorities, at least in the freedom of artistic expression. It also encourages the paternalism of the States parties, providing the conformation and weakening the role of the human rights courts to supervise, interpret conventions and guide directions.

The European Court of Human Rights has formed the habit of trying not to overturn the judgment of the courts of the Contracting States when morality is involved. The emergence of this law seems to be attributed to state parties being primarily developed countries with sound legal systems and respect for human rights. Their court decisions have balanced their interests fairly according to their particularity, especially in understanding moral standards. But going deeper into the back of these judgments, we will find that this explanation may be only superficial. At a deeper level, the court's conservative judgment is derived from the legal person's lack of understanding of the art; In particular, art and law are incompatible

in the way of thinking and the path of expression, making it easy for both the courts of States parties and the European Court of Human Rights to enter the misunderstanding of the Taoist trial on the grounds of "public security interests, prevention of disorder or crime, protection of health or morality" and other reasons when faced with controversial forms of artistic expression, thus losing the opportunity to interpret and develop Convention rights more actively, more accurately, and more clearly in response to changes in social development.

### **Express by Domestic and Foreign Artists from a Civic Perspective**

The essence of contemporary art lies in the free expression of individuality. And almost all contemporary art involving social issues has a civic perspective (Yao Yu, 2009 December). The arrested Kishore is also a very civic representative. The aspects of political meaning for readability and the cause of perceived impact are essential in the pandemic context.

Contemporary art is one of the most political kinds of art. Contemporary art is characterized by its avant-garde, experimental, cutting-edge radical ideas. And these are the qualities that lead to this kind of intense debate. On the other hand, it makes something worth debating about because it has a certain vigor and its own prospective appeal. The worth of any sophisticated civilization built by innovative minds is the result of contradiction, and this is an obvious fact. This process represents the clash between negation and affirmation, the isomorphism of hostile and favorable ideologies, and the course of reciprocal conversion (Yang Yuan, Hu Chaoyang, 2008, February).

To commemorate the 70th anniversary of the Universal Declaration of Human Rights, UNESCO sets up a platform for artists to dialogue with the public. Dancers, choreographers, visual artists, writers, and performing artists will present their art research and share their personal experiences. They are witnesses and, in some cases, victims of abuse of human dignity. As message communicators, they will present lectures on immigrant and refugee status, multicultural identity, collective memory, post-conflict art treatment, and issues related to gender.

A minority researcher at the UN Human Rights Office, Derrick Leon Washington, a cultural anthropologist, dancer and curator, led the launch of City Stomp: From Swing to Mambo, a project of art, community and advocacy. He thinks he is not only a cultural anthropologist and artist, but also a true defender of human rights, and this is of great significance.

At the third American International Human Rights Festival, artists from 40 countries around the world submitted 611 works to the conference, which criticized the human rights abuse of the United States from a "stay involved" perspective to study and discuss the United States. In China, artist Yang Weidong sends an invitation to interview senior government officials by express delivery in the name of individual citizens.

The art of citizenship should be supported, which is the underlying logic of art's existence. The relationship between politics and art is very different in countries with different ideologies. In some countries, arts are closely related to politics, while in some other ideologies art and politics are less relevant. The authorities take a more tolerant and relaxed attitude towards artistic creation, through which an artist can freely express his ideas and opinions, with little or no political interference. It is a social art complex that affects each other. However, political logic is freedom of expression, and the relationship between politics and art should find a balance.

### **Artistic Expression and Human Rights Protection in the Political Context**

Human rights include cultural rights, which are universally inseparable and interconnected like other rights. To protect the dignity of people and the beneficial relationships between people and groups in a multicultural and varied environment, comprehensive enhancing and appreciation of cultural rights are crucial. Young talents from around continental Europe flock to London to live, work, interact, and search for chances and creativity. Supported by the broad European continent, the young, wealthy, and various artists are at ease to select top-notch artists to work with and constantly bring in fresh talent, which serves as a necessary condition for the long-term growth of London's vibrant primary market for contemporary art. Since Brexit, EU nationals no longer had access to free travel. Young artists frequently have to spend several years in London to achieve the demanding "high quality, top technology" criteria, despite Brexit's emphasis on ensuring the influx of high-quality immigration (Zhang Zhiming, 2000, April).

There should be a proper distance between art and politics, and there should be a space of tension, neither too far away from politics as Adorno is nor too close to politics as Sartre is. In the 1950s, with the development of Western capitalist industry, an international post-modern social and cultural trend of thought centered on developed countries was formed in the West, and it penetrated all parts of the world. The increasingly close connection between art and politics began in the period of "making art become the expression of ideas and the achievement of conceptual art". —Art should not only liberate art itself and anti-traditional art but also begin to reflect artists' thinking and political opinions on the real society.

After the "85 art movement" in the 1980s, performance art as an essential branch of Chinese avant-garde art began on the stage of contemporary art. And then, Chinese contemporary art was more political. Since the 21st century, due to various social, political and economic factors. Chinese contemporary art has political attributes, which are difficult to reach the grand situation of the end of the last century. The emotion of an artist is most directly manifested in his works of art. Artistic creation transforms the artist's aesthetic consciousness and abstract emotion into an objective artistic image. The choice of artistic themes reflects the artist's view of the life of the time. Art can show the face of time and reflect the spirit of time, but the political nature of time has also been improved.

The regime stability is frequently not proportional to the art boom. When the politics is harmony and positive, the public usually does not pay much attention to politics. But if there are any political issues, diverse social tensions are concentrated and severe, and the public's moods change. People may rethink different phenomena and consider the rationality of human behavior, so that the prosperity of art will emerge. There are some important artistic prosperity periods that are all related to the social transformation. For example, in the 16th century, the Renaissance swept over European continent. In the 19th century, French literature flourished and all forms of Russian art are prosperous. In China, a number of influential literati emerged during the May Fourth Movement, and various artistic concerns and explorations appeared in the reform and opening up. It is challenging but reasonable for rulers to directly create classic art works. Compared to other ideological works expressing their political will, literary and artistic works also play an irreplaceable role in mobilizing all forces and obeying the mainstream consciousness due to their appeal. Due to their attraction, literary and artistic works perform a unique function in mobilizing all forces and obeying the general consciousness as compared to other ideological works that convey their political will. Politics, literature, and art have laws that must be respected. The coordination between the two is especially complicated in the operation process. Exploring how to coordinate the relationship between politics and art is a process of exploring the right of artists' freedom. The artistic expression of artists is the yardstick of social reality, and there are so many works of art that do have clear political views, which is also very understandable. Humans use art as a means of conveying their thoughts, which are mostly the outcome of interactions with this crowd, society, and particular culture. Therefore, as a crucial aspect of culture, politics is bound to have a lot of emotions and views on it. We need St. Peter's Basilica, Athenas, Kishore's "life under the epidemic", and Hockney's Normandy (Davidson Chiwala, Jiang Mingming. 2018, January).

### **The Realistic Approach of Artistic Expression and Free Will**

"Man is born free". Freedom of expression has always been a hot topic in international human rights law. Generally speaking, restricting the exercise of human rights is to seek a balance between individuals and individuals, society or the state to maximize the protection of the interests of all parties. For one thing, due to the likelihood that exercising individual rights would infringe on the rights of others, restrictions on the exercise of individual human rights are in place to preserve the public interests and safety. For another, individuals' ability to utilize their human rights may be limited in order to prevent the state from abusing its power and arbitrarily interfering with that activity. This helps to delimit the basic scope of state behavior and make it impossible to transcend this scope and restrict human rights.

The need to restrictions on individual human rights is subjective, and countries often have different understandings of the necessity according to their national conditions. In the expert seminar on links between articles 19 and 20 of the International Conventions on Civil and Political Rights held in Geneva in October 2008, it was called on that article 9 should not be generally restricted but should be measured as exceptions and as necessary, the context of things from country to country and culture influences the meaning of the word necessary (Wang Nanming, 2006, June). In essence, necessity represents an urgent

social need. In addition, the Convention gives the party State a certain degree of discretion over the matter, which is enjoyed by domestic legislators and applies to the judicial bodies or other entities authorized to interpret or apply the current law. However, the discretion is not unlimited. For example, the restriction standard for exercising the same right should be consistent and cannot be changed frequently.

Based on the existing legal norms of freedom of expression in the international community and the current legal norms of respecting the discretion of various countries, we can also make the following efforts to protect the freedom of artists in artistic creation and expression.

Firstly, to build the social ecology and legal logic to protect citizens' free expression, especially artists. The modern and contemporary regulations of citizens' speech are based on the fear that "people's words are terrible", which must be relieved and guided first. In the face of personal freedom of speech, all countries should maintain a cautious and humble attitude towards political color. The discretion of all countries should also be reasonably related to the standards for international human rights law in order to achieve a good cycle of diffusion from international to home and then from home to abroad. In short, "let the people speak" should become the government's and society's general principle to the people's speech. Secondly, to build a good interactive relationship between government expression and citizens' expression. Government expression should be taken on citizens and used by citizens rather than control. The political discourse system of the government is not incompatible with the discourse system of artists. Under the great background of politicization, it is also necessary to listen to the civic expression of artists and other groups. It can be said that secular civic expression should become the source of political expression.

Finally, to establish a stable and good review mechanism. We must admit that there are many incited, irrational voices in the expression of citizens; how to screen this part of the speech and reasonably control them is an effective test of government governance ability. Only appropriate censorship mechanisms, reasonable restrictions on the freedom of artistic expression, reasonable and free expression bottom line, and the establishment of a former small government and big society pattern in front of free expression can fully protect the rights and freedom of speech of the people.

## CONCLUSION

Human freedom, especially freedom of expression, is one of the most important fundamental human rights. It is clearly enshrined in important international human rights conventions such as the Universal Declaration of Human Rights and in regional laws such as the European Convention for the Protection of Human Rights and Fundamental Freedoms. Cultural rights are an integral part of human rights. Economy, politics and culture are closely integrated and interact with each other. Contemporary art is the artistic expression of "contemporary civilization", and the protection of artists' freedom of expression is a sign of the progress of social civilization. There should be a proper distance between art and politics. There should be a space for their tension. We have reasons to believe that, with the development of human beings and the progress of world civilization, artistic prosperity and social harmony as well as political stability will coexist in more and more countries.

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