

Blasphemy and Religious Defamation: What are the Limits to our Freedom?

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Abstract

Incidences of blasphemy and religious defamation occur around the world, often provoking angry, and sometimes violent reactions from religious adherents. However, laws prohibiting blasphemy and religious defamation are heavily criticised as being against freedom of speech, despite their effect on race relations. This article highlights the position of blasphemy and religious defamation according to International Law, and presents counterarguments of the main objections to such laws. It also highlights the issue from the Islamic perspective, and offers an alternative approach to interpreting human rights. This article concludes by explaining the need for human rights and free speech to be interpreted according to *common* moral and religious values, and emphasising the *purpose* of human rights and free speech—which should be for the attainment of justice. In doing so, it is hoped that there will be a

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better balance in enforcing the right to free speech, as well as the protection of religious sensitivities.

Keywords

Blasphemy, religious defamation, freedom of speech, race relations, justice.

Introduction

Laws prohibiting blasphemy were once common in many countries. The position today is different, as more countries adopt a wider approach to what should be allowed under fundamental liberties. No longer are caricatures, books, films, and other forms of expression that mention God, the Prophets or sacred religious symbols in a sacrilegious manner considered justifiable grounds for limiting freedom of speech, even if it is in the interest of protecting religious sensitivities and preserving social harmony. Videos such as “Innocence of Muslims” have provoked angry reactions from Muslims worldwide. This unfortunately—and predictably, resulted in disproportionate responses in several Muslim countries such as Egypt and Pakistan.¹ Violence and vigilantism, even in response to provocation, is not justified. It simply demonstrates how certain people react to insults against their most sacred beliefs. A never-ending debate ensues—should such expression be protected? Or is speech “free for all,” no matter what the consequences?

Generally, blasphemy and religious defamation laws are criticised because they are perceived to protect mere “ideas” as opposed to actual victims. There is also the concern that regulation would lead to infringements on other rights such as free speech. However, this article argues against the main criticisms of blasphemy and religious defamation laws, and highlights the

1. See newspaper articles on “The ‘Innocence of Muslims’ Riots,” *The New York Times*, <http://topics.nytimes.com/top/reference/timestopics/subjects/i/innocence_of_muslims_riots/index.html> (accessed on 5 April 2018).

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issue from the Islamic perspective. Lastly, it is argued that there is a need to recognise an alternative interpretation of human rights which is in relation to, and not separate from, widely accepted religious and moral values. Protecting all religions from being the subject of denigration is complimentary to, and not in conflict with, the purpose of human rights, which should be in the interest of justice. It is hoped that in interpreting human rights in this manner, there would be better encouragement for social harmony and greater respect for the sensitivities of all religious adherents.

Blasphemy and Religious Defamation according to International Law

Blasphemy is usually defined as “the act of insulting or showing contempt or lack of reverence for God.”² Such laws were once common in many countries but presently, they have become highly opposed. Some European nations rarely use these laws, abolished them, or replaced them with more “acceptable” regulations. Countries that still have such laws rarely resort to them, and when such cases are brought before the court, they are often objected to. This can be seen in Greece, where the actors and director for the play “Corpus Christi” were arrested because the play depicted Jesus and his apostles as homosexuals. Members of the Christian community were outraged and staged demonstrations, whilst others argued that the case was a breach of freedom of expression.

Many countries view that blasphemy is not a reasonable ground for limiting free speech and reinforce this belief by referring to A. 19 of The Universal Declaration of Human Rights (UDHR):

2. See report by J. Fiss, and J.G. Kestenbaum, “Respecting Rights? Measuring the World’s Blasphemy Laws,” *United States Commission on International Religious Freedom*, 2017, <<http://www.uscirf.gov/reports-briefs/special-reports/respecting-rights-measuring-the-world-s-blasphemy-laws>> (accessed on 21 April 2018).

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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.³

Speech is of such importance that its limitation is understandably scrutinised. The discussion to protect religions and their sacred symbols has since shifted from blasphemy to religious defamation, which is more restricted in scope and application. However, coming up with a legal framework for religious defamation is challenging. Specifically, the term refers to “negative projections of Islam in the media,” “negative stereotyping of religions or belief,” and “the frequent and incorrect association of Islam with human rights violations and terrorism.”⁴ The move to restrict religious defamation was not well received. It was argued that the objective of international law is not to safeguard the feelings of religious adherents from offense—as religion does not fall under the category of the bearers of fundamental rights.⁵

However, one jurisdiction may interpret the scope of fundamental rights differently from another. For example, there are some major differences in the way the West and the Muslim world interpret and uphold the values of free speech.⁶ This is why many Muslim countries still prohibit blasphemy or

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3. See A. 19 of the Universal Declaration of Human Rights, United Nations, <<http://www.un.org/en/documents/udhr/>> (accessed on 7 April 2018).
 4. See policy paper written by M. Cherry and R. Brown, *Speaking Freely About Religion: Religious Freedom, Defamation and Blasphemy* (London: International Humanist and Ethical Union, 2009), 3.
 5. S. Angeletti, “Freedom of Religion, Freedom of Expression and the United Nations: Recognizing Values and Rights,” *Stato, Chiesa e Pluralismo Confessionale*, no. 29 (2012): 10.
 6. See report by Asma T. Uddin and Haris Tarin, “Rethinking the “Red Line””: The Intersection of Free Speech, Religious Freedom, and Social Change,” *Brookings* (5 November 2013), <<https://www.brookings.edu/research/rethinking-the-red-line-the-intersection-of-free-speech-religious-freedom-and-social-change/>> (accessed on 8 April 2018).

religious defamation against Islam and other religions, as the Qur'an has prohibited insulting the gods and religious beliefs of non-Muslims. Despite this, some writers wrongly concluded that these laws are only meant to protect one religion.⁷ This leads to the question, is it wrong to protect all religions and their adherents from abuse, discrimination, and hatred?

Hatred and discrimination based on ethnicity and religion is a great concern. After September 11, there has been a significant increase of incidences of hateful speech directed towards Islam and Muslims. In 2004, the Council on American-Islamic Relations (CAIR) reported nearly a 50 per cent increase of cases involving violence, harassment and discrimination towards Muslims compared to the year before.⁸ Another study indicated that racism after September 11 was highest against Muslims as opposed to Sikhs, Hindus and Jews. In addition, discrimination on the grounds of religion was more severe than ethnicity.⁹ These findings were echoed by the Pew Research Center, whereby Americans viewed Muslims the least favourably compared to seven other religious groups.¹⁰

Muslims continue to be victims of hate speech due to stereotyping and discrimination. Intellectual commentators and journalists add to this by emphasising on “Islamisation” by the “others,” which leads to an increase in anti-Muslim expression.¹¹ Politicians also leverage on racist discourse,

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7. Brett G. Scharffs, “International Law and the Defamation of Religion Conundrum,” *The Review of Faith & International Affairs* 11, no.1 (2013): 67.
 8. P. Connors (ed.), *Hate Crimes* (Michigan: Greenhaven Press, 2007), 38.
 9. See generally report by L. Sheridan, “Effects of the Events of September 11th 2001 on Discrimination and Implicit Racism in Five Religious and Seven Ethnic Groups: a Brief Overview,” University of Leicester, <<http://www.le.ac.uk/press/press/discriminationandracism.html>> (accessed on 8 November 2013).
 10. Michael Lipka, “Muslims and Islam: Key Findings in the U.S. and Around the World,” *PEW Research Center*, 9 August 2017, <http://www.pewresearch.org/fact-tank/2017/08/09/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/> (accessed on 30 March 2018).
 11. Elchardus and Spruyt, “Universalism and anti-Muslim Sentiment,” *International Journal of Intercultural Relations* 38 (2013): 75.

using fearful rhetoric that immigrants are the “others” who threaten democratic values.¹² This contributes to a climate that breeds intolerance and hatred. The extreme end of continuous, hateful rhetoric has resulted in horrific acts of violence, such as the terrorist act of a white supremacist that opened fire at two mosques in Christchurch, New Zealand, killing 50 Muslims on Friday.¹³ Muslim nations feel called upon to bring about greater protection for victims of Islamophobia, which is one of the reasons why the OIC have worked towards having the UN Resolutions on Defamation of Religions realised. However, this Resolution is not universally recognised, as many States object that religious defamation laws impinge on freedom of speech and freedom of religion. Despite the criticisms against blasphemy laws, the European Court of Human Rights (ECHR) has upheld blasphemy laws in certain circumstances.

ECHR on Blasphemy and Religious Defamation

The ECHR often highlights the importance of free speech, and religious adherents must be expected to tolerate criticisms and speech that may “shock, offend or disturb the State or any sector of the population.” To determine if freedom of speech has exceeded its limits, the “margin of appreciation” is used.¹⁴ This is intended to allow room for national courts to interpret what amounts to a violation of rights. The national courts are in the best position to assess which statements affect religious sensitivities and peace in the context of their own country. In applying this principle, ECHR decisions have upheld anti-blasphemy laws, such as *E.S. v. Austria*. The ECHR explained

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12. P. Gale, *The Politics of Fear: Lighting the Wik* (New South Wales: Pearson Education Australia, 2005), 7–9.
 13. See RSIS commentary by N. Quek, “Bloodbath in Christchurch: The Rise of Far-Right Terrorism,” in *Rajaratnam School of International Studies*, 19 March 2019, <<https://dr.ntu.edu.sg/bitstream/handle/10220/47937/CO19047.pdf?sequence=1&isAllowed=y>> (accessed on 24 April 2019).
 14. *Handyside v. the United Kingdom* (App. No. 5943/72) 24 ECHR, 23.

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that freedom of religion under A.9 of the European Convention on Human Rights does not put a blanket ban on criticisms. However, if the right to freedom of expression under A.10 of the same Convention goes beyond its limits, a State may restrict it. The ECHR held that the applicant's statement in calling the Prophet Muhammad a paedophile was not objective, and failed to explain the historical context at that time, which contributed to a lack of serious debate on the issue. Hence, the Austrian court's balancing exercise between freedom of expression with the protection of religious feelings was rightly carried out for the preservation of religious peace within the community.¹⁵ Nevertheless, some human rights scholars continue to criticise the principle of "margin of appreciation" for its unpredictable and vague character. This leads to the development of incitement to racial and religious hatred.

Development of Incitement to Racial and Religious Hatred

The protection against religious defamation was actively discussed at the international level, but efforts for its codification did not materialise. Presently, the focus of The UN Human Rights Council Resolution 16/18 has shifted to "combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief."¹⁶

There is nothing wrong with such an aim, as it complements the principle in A.2 of the UDHR, whereby:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any

15. *E.S. v. Austria*, (App. No. 38450/12) ECHR, para 52.

16. UN Human Rights Council Resolution A/HRC/RES/16/18, *United Nations Human Rights Council*, <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session16/Pages/ResDecStat.aspx>> (accessed on 18 April 2018).

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kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.¹⁷

The concern in Resolution 16/18 is, leaving out the term “religious defamation” would only protect religious *persons* and provide an open door for continued attacks on religions. The resolution calls upon States to fight against religious intolerance in accordance with the recommendations in the resolution and in conformity with international law. However, the objective of Resolution 16/18 cannot be achieved if blasphemy and religious defamation are allowed under free speech. Blasphemy and religious defamation *reinforce hatred* of the religion which trickles down and negatively impacts its adherents. Despite this, laws against blasphemy and religious defamation continue to be heavily criticised for the reasons explained below.

Blasphemy and Religious Defamation Laws Protect Mere Ideas

Legislation of blasphemy and religious defamation are opposed for many reasons, primarily because the purpose of international law is to protect individuals, and not to protect religion, or mere “ideas” from criticism. The Council of Europe has agreed with the decision of the ECHR, whereby the right to manifest religious beliefs would come with criticism.¹⁸ Yet, on the contrary, religion

17. See A. 2 of the Universal Declaration of Human Rights, *United Nations*, <<http://www.un.org/en/documents/udhr/>> (accessed on 7 April 2018).

18. See “Guide to Article 9 on Freedom of Thought, Conscience and Religion,” *European Court of Human Rights*, <[38](https://www.echr.coe.int/sites/search_eng/pages/search.aspx#%22fulltext%22:[%22otto-preminger%22],%22subcategory%22:[%22case-law%22]}> (accessed on 27 April 2018).</p></div><div data-bbox=)

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is not *merely* an idea. It is one of the most fundamental ideas which shape the worldview of man and greatly influence his actions. The unpopularity of religion and religious values does not negate the fact that religion has contributed greatly to mankind and was the catalysts for the rise of magnificent civilizations.¹⁹ The protection of important ideas is nothing new. Democracy is also an idea and is fiercely guarded according to international law, and many international instruments place an obligation on countries to observe these ideals. For religious adherents, religion is as fundamental as democracy, if not more so.

Laws are meant to prevent socially destructive ideas and behaviours.²⁰ For example, the abolition of discriminatory laws and policies was crucial to bring reform and enforce the rights of discriminated people. This was done when those who committed genocide during the Second World War were persecuted, and when the Apartheid and Jim Crow systems were removed.²¹ Similarly, blasphemy and religious defamation go against the very ideals which international law is aimed at protecting, because the manner it is expressed shows contempt and hostility for the religious tenets of another. The ECHR acknowledges this principle in the judgements of different cases, such as *E.S v. Austria* and *I.A. v. Turkey*.²² Therefore, laws are needed to discourage people from resorting to expression which leads to discrimination and incitement of violence.

Religion plays a pivotal role in the lives of man, which is why there are billions of people in this world who *choose* to be part of religious institutions.²³ Naturally, many religious

19. See generally, Syed Muhammad Naquib Al-Attas, *Preliminary Statement on a General Theory of the Islamization of the Malay-Indonesian Archipelago* (Kuala Lumpur: Ta'dib International, 2018).

20. C. Banks, *Criminal Justice Ethics: Theory and Practice* (California: Sage Publications, Inc., 3rd ed., 2013), 106–107.

21. C. Tarman and D. O. Sears, “The Conceptualization and Measurement of Symbolic Racism,” *The Journal of Politics* 67, no. 3 (2005): 731.

22. See generally, *I.A. v. Turkey* (Application no. 42571/98) ECHR.

23. See statistics provided by PEW Research, “Christians remain World’s Largest Religious Group, but They are Declining in Europe,” *PEW Research*

believers would feel the need to protect their beloved faith from irreverent attacks of the most cruel and degrading nature. When something sacred is intentionally being referred to in a contemptuous manner, the victims include religious persons as well.²⁴ It is submitted that expression which is done in a manner calculated to shock, anger, and invoke religious sensitivities can be just as dangerous as an actual act of violence. Blasphemy and religious defamation can instil suspicion, breed animosity, and incite violence. Those who identify with the religion that is being blasphemed or defamed are the victims—as people start to wrongly associate them with a faith that is perceived to condone violence, subjugate women, abuse children and the like.

Chilling Effect on Free Speech

There is the argument that blasphemy and religious defamation laws have a chilling effect on free speech because they can hinder the search for truth and religious reform. It is believed that there needs to be unrestricted debate in order to allow the ability to assess, strengthen, or reform our beliefs.²⁵ However, in determining if the limits of expression are exceeded, one should look at the manner it was expressed. Islam, Christianity, Judaism and other faiths have tolerated criticism for thousands of years. Blasphemy and religious defamation that warrant State intervention must go further than mere criticism. They are hostile attacks against a religion. The language used is not academic, but involves crude words with intention to provoke and arouse anger. Blasphemy and religious defamation have little to do with

(5 April 2017) <<http://www.pewresearch.org/fact-tank/2017/04/05/christians-remain-worlds-largest-religious-group-but-they-are-declining-in-europe/>> (accessed on 17 March 2018).

24. Mohd Hisham Mohd Kamal, “Protection of Religious Symbols and Freedom of Expression,” paper presentation at *Oceanic Conference on International Studies IV* (University of Auckland and Victoria University of Wellington, 2010), 3.
25. See report by Asma T. Uddin and Haris Tarin, “Rethinking the ‘Red Line’.

the search for truth. The way it is expressed reflects no intention to engage in *genuine* dialogue, as it attacks fundamental religious values, as well as causes tensions. This can escalate to violent outcomes and go beyond the limits of freedom.

Abuse of Law against Minorities

Another concern is the fact that laws may be used as a tool to suppress religious dissent and interfere with the religious freedom of minorities. What some fail to realise is that allowing one to freely express blasphemous and religiously defamatory statements can also affect the rights of minorities. It is not uncommon for a person from a minority religion to be victimised. Timid victims of religiously motivated violence may not retaliate, but their lives could be limited out of fear. They may think twice before entering a place where the majority are, or they may accept the hostility inflicted and do nothing in self-defence.²⁶ This limitation affects their rights to be equal participants in a democratic society.²⁷ Lawrence explains that not all voices are heard, particularly those who have been “silenced” by stronger members of the community.²⁸

Any law may be used illegitimately if enforced by an authority that abuses their power. This was seen in the Pakistani case of Asia Bibi. Her alleged blasphemous remark concerning Prophet Muhammad had caused conflict and divide within the nation. The Court had found her guilty of blasphemy. After a lengthy legal battle, the Supreme Court acquitted her, but the decision was met with anger until protests filled the streets. The

26. Murni Wan Mohd Nor, “Hate Speech in Malaysia: The Necessity For Specific Legislation,” (Ph.D. Dissertation, International Islamic University Malaysia, 2015), 76.

27. See J. Stefancic, and R. Delgado, “A Shifting Balance: Freedom of Expression and Hate-Speech Restriction,” *Iowa Law Review* 78 (1993): 739.

28. C.R. Lawrence III, “Cross Burning and the Sound of Silence: Anti-subordination Theory and the First Amendment,” *Villanova Law Review* 37 (1992): 804.

extreme turn of events led to the murder of Governor Salman Taseer, who was shot at point-blank range by his bodyguard, as he was perceived to support Asia Bibi.²⁹

This case is an example of why laws must be legislated in such a way that they consider the surrounding circumstances of each case, the manner and context which the alleged words were said, and all the relevant evidentiary concerns to ensure laws are not used to oppress minorities. The Supreme Court of Pakistan should be commended for overturning Asia Bibi's conviction. This indicates that justice was the overriding concern when they ruled that the strict burden of proving that blasphemy was committed beyond reasonable doubt was not met considering the involuntary confession of Asia Bibi which was made in a situation where she felt threatened for her life, and the other inconsistencies in the evidence. The Chief Justice, Mian Saqib Nisar, ended the judgement with a strong message:

Beware! Whoever is cruel and hard on a non-Muslim minority, or curtails their rights, or burdens them with more than they can bear, or takes anything from them against their free will; I (Prophet Muhammad) will complain against the person on the Day of Judgment. (Abū Dawūd)³⁰

The case caused damage not only to Asia and the society, but tarnished the image of Islam. Efforts must be made to avoid Asia Bibi's case from recurring. The uncertain characteristics of laws do not conform to natural justice.³¹ However, the problem is not in the spirit of the law alone, but also in how it is worded and enforced. This is why consistent advocacy for a separate

29. Shumaila Jaffery, "Asia Bibi: Pakistan's Notorious Blasphemy Case," *BBC* (1 February 2019), <https://www.bbc.co.uk/news/resources/idt-sh/Asia_Bibi> (accessed on 14 May 2019).

30. See judgment of *Asia Bibi v. The State*, Criminal Appeal No.39-L, Supreme Court of Pakistan (2015), para 49, 34.

31. Murni Wan Mohd Nor and Shahir Ab. Razak, "Regulating Hate Speech on Social Media: Should We Or Shouldn't We?," *MLJ* 4 (2017): cxxxviii.

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and specific legislation for hate speech—which may include blasphemy and religious defamation—to address complicated legal issues involved is necessary. This author has elaborated on the problems of ambiguity:

Key legal terms are not comprehensively defined, and only a few provisions are used to apply to various hate speech offences. There is little effort made to ensure different types of punishment are provided to match the seriousness of the offence committed. This is very unfortunate, as we know that hate speech is a complicated issue and to apply one particular section from a general Act may not sufficiently deal with the problem. In fact, it may compound the very problem the law was hoping to address.³²

The Position of Blasphemy and Religious Defamation in Islam

Islam recognises the right to free speech. The conception goes beyond mere rights, and extends upon man certain responsibilities in exercising it. This is because Islam does not place emphasis on the individual alone, but considers the individual in relation to his community.³³ Freedom is not a privilege to do as one wills; rather it is a trust unto man to do what is right.

Fethullah Gulen stresses on the importance of *good* speech.³⁴ We are discouraged from saying words, whether true or untrue, that would offend others, violate their honour, or expose people's

32. Murni Wan Mohd Nor, "Deterioration of Human Decency: The Problem of Hate Speech on Social Media," full paper presented and published in *The 3rd International Conference on Education, Culture, and Identity* (International University of Sarajevo, 2017), 283.

33. Majid Khadduri, *The Islamic Conception of Justice* (Maryland: Johns Hopkins University Press, 1984), 233.

34. M. F. Gulen., *Muhammad the Messenger of God: An Analysis of the Prophet's Life* (New Jersey: Tughra Books, 2010), 2–8.

faults.³⁵ In Hashim Kamali's opinion, hate speech not only offends the victim and violates his honour, but also creates disunity. He further explains that freedom of expression can be restricted to promote peace and security, and preserve good ties between Muslims and non-Muslims.³⁶

Blasphemy and religious defamation can influence others to adopt a hostile view of religions. Their effects, such as racial intolerance and discrimination, would naturally spill over to its believers. Blasphemy is clearly restricted in Islamic law and is considered a serious crime, for it is an attack against the integrity of the religion. However, it does not have specifically prescribed punishments in the Qur'an. The term *hadd* (or *hudūd* for plural) signifies the prescribed punishments by God as stated in the Qur'an or Sunnah for crimes against the rights of Allah.³⁷ Blasphemy, though an offence, has no punishment specified, thus its punishment has been varied according to Prophetic traditions.

As such, the reports on punishments carried out for blasphemy offences vary.³⁸ Some scholars have pointed out that in some instances, the Prophet forgave the offender. In other instances, the death penalty was deemed to be justifiable due to the seriousness of the crime.³⁹ The differences in punishment do not mean blasphemy is a crime of a lesser degree. Although the punishment is not specifically provided for in the Qur'an, we can gather from reliable sources that, the punishment for an offender of blasphemy varies depending on the circumstances.

35. M. Hashim Kamali, *Freedom of Expression in Islam* (Kuala Lumpur: Ilmiah Publishers, 1998), 167–168.

36. *Ibid.*, 170.

37. Mohamed S. El-Awa., *Punishment in Islamic Law* (Indiana: American Trust Publications, 1993), 1; T. Kamel, "The Principle of Legality and Its Application in Islamic Criminal Justice," *The Islamic Criminal Justice System*, edited by M.C. Bassiouni (New York: Oceana Publications, Inc., 1982), 163; and Muhammad Hashim Kamali, *Islamic Law: An Enquiry into the Hudud Bill of Kelantan* (Selangor: Ilmiah Publishers, 2000), 45.

38. Shamrahayu Abdul Aziz, "The Basic Principles of Blasphemy Law in Islam," [2009] 1 *CLJ* (Sya) i.

39. Mohd Hisham, "Protection of Religious Symbols," 4.

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In the spirit of genuine dialogue and understanding, one must consider the issue of blasphemy through the worldview of affected persons. For Muslims, faith is of utmost importance. The objective of Islamic law (*maqāṣid al-Sharī'ah*) is to protect five values, of which the protection of religion is the highest priority. An offence against Islam or the Prophets is not taken lightly by Muslims. To Muslims, Islam is not merely a religion, but a complete and comprehensive way of life. Just as some democratic countries would impose the death penalty on those convicted of treason and other offences deemed grave and serious in nature,⁴⁰ some Islamic countries provide punishment for the most serious attacks against religion. An attack against God and the Prophet is deemed more heinous than treason, as it shakes the very fundamentals of religion, contemptuously attempts to lower the esteem of Islam in the eyes of others, and creates discord and disunity amongst the people.

Nevertheless, the author opines that the death penalty may not be appropriate for all situations. In the case of Salman Rushdie, declaring the death penalty brought more attention to the author, and resulted in the novel being distributed more aggressively.⁴¹ Thus, the death penalty may not be suitable in each case. Punishments would have to consider the gravity and surrounding circumstances of the offence committed to determine the just and appropriate course of action. For example, even in circumstances where the Qur'an prescribes specific punishments for certain crimes, such as theft, there is room for repentance and reformation.⁴² Indeed, this is reflective of the Islamic spirit that exists in the laws.

40. Japan, the United States and many other countries did not ratify the 2nd Optional Protocol of the ICCPR to abolish death penalties, particularly when it came to certain serious offences like war crimes. See W.A. Schabas, *The Abolition of the Death Penalty in International Law* 3rd ed., (Cambridge: Cambridge Press, 2002), 175–178.

41. E. Kharoufa, *The Punishment for the Crimes of Salman Rushdie* (Kuala Lumpur: Percetakan Sentosa Sdn Bhd, n.d.), 21–23.

42. Mohammad Hashim Kamali, "Punishment in Islamic Law: A Critique of The Hudud Bill of Kelantan, Malaysia," *Arab Law Quarterly* (1998): 204.

It is submitted that education and diplomatic means can sometimes be the best way of overcoming the situation. The Prophet was forgiving and tolerant towards his oppressors despite the insults they hurled against him. A dialogue to create understanding may bring more benefit than a harsh criminal sanction. This way, attacks against Islam or the Prophets can be expelled, whilst demonstrating that Islam is a religion of tolerance. Only when education and reconciliation fail to change the mind of the blasphemer, may punishment be considered. In addition, laws must never be disproportionate or unjust.

Most importantly, restriction on such type of speech also applies to Muslims when in response to expression that does not conform to our own beliefs. Muslims must conform to the principles in the Qur'an and Sunnah, which are to settle disputes and disagreements in the best way. Islam does not allow its followers to condemn or disrespect others due to their creed. It is stated in the Qur'an (*al-Ankabut* (29): 46), "And dispute ye not with the People of the Book, except with means better (than mere disputation)." Muslims should not speak ill and disrespect the faith of others, as it is mentioned (*al-An'am* (6): 108), "Revile not ye those whom they call upon besides God, lest they out of spite revile God in their ignorance." These verses can be used as the basis for prohibiting contemptuous acts against other religions.

Tolerance and understanding should be practised among Muslims and non-Muslims for the maintenance of a harmonious environment. We should avoid from engaging in petty arguments to feed our own ego, for such arguments are pointless.⁴³ Even if people hold different viewpoints on crucial matters such as faith, we should not hurl abuses at them. Intellectual arguments can and should be done in the most polite manner so as to not offend anyone.⁴⁴ Resorting to hateful, demeaning and abusive

43. See commentary note 3472 in Abdullah Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary* (Beirut: Dar Al Arania, 1968), 1041.

44. Maulana Muhammad Razi Khan Afridi, *Hadith on Human Rights* (New Delhi: Annol Publications Pvt. Ltd., 2008), 206.

speech would not convince anyone of an argument, but results in creating resentment, anger and hostility.

The Framework for Human Rights: Is “Universalism” the Answer?

One of the main problems in the discourse of human rights is finding a framework which is accepted by all. What is the appropriate framework in the interpretation of human rights? Would it be fair to adopt the concept of universalism, even if it may negate fundamental religious beliefs?

In answering this, one should consider the history of countries that are deemed to be “defenders” of universal human rights. Is it wise if we embrace their ideals of freedom *without reservation*, whereas some countries have caused injustice and suffering to others on a large scale? For example, Bartolomé de las Casas, a member of the church and Spanish historian, retold the torture of natives and their mass execution upon the instruction of the Crown.⁴⁵ Frantz Fanon, a famous psychologist of African descent observed the same:

The violence which governed the ordering of the colonial world, which tirelessly punctuated the destruction of the indigenous social fabric, and demolished unchecked the systems of reference of the country’s economy, lifestyles, and modes of dress.⁴⁶

Some “democratic” countries have been rather one-sided in their appreciation and application of free speech. The Charlie Hebdo incident that took 12 lives, including the life of an editor, published insulting images of the Prophet Muhammad. The

45. See generally the work of Bartolomé de las Casas, *A Short Account of the Destruction of the Indies* (London: Penguin Books Limited, 1992).

46. Frantz Fanon, *The Wretched of the Earth* (New York: Grove Press, 2007), 6.

attack was seen as one against freedom of expression. Many countries from the West gathered in solidarity against terrorism. The Prime Minister of France thus stated that, it was "...a war against terrorism, against jihadism, against radical Islam, against everything that is aimed at breaking fraternity, freedom, solidarity."⁴⁷ Noam Chomsky observed that the reaction to a similar attack in Serbia that occurred in 1999 was starkly different. The incident in Serbia involved a missile attack that was launched by NATO targeting a Serbian television station which sacrificed 16 lives. However, the attack was seen as a positive development to weaken President Slobodan Milosevic's regime.⁴⁸ It appears that violations of rights are heavily condemned when they go against the interest of certain countries deemed "worthy" of protection. It is submitted that Muslims should not feel confined to accept in *totality*, the concept of freedom as determined by countries with more political power, for history indicates that they do not necessarily abide by human rights principles in certain situations.

Furthermore, universalism of human rights places too much emphasis on the individual and their ability to reason, whereas man's reasoning is subject to certain limitations. This is reflected in social and legal norms which constantly change. Syed Muhammad Naquib Al-Attas stated, "Islam has never accepted, nor has ever been affected by ethical and epistemological relativism that made man the measure of all things..."⁴⁹ Many problems ensue when man is the sole determinant of human rights. Society would be overcome by individualism—a reflection of our selfish ways. Unfortunately, this attitude often drives the execution of rights. Instead, Muslims should return to the true

47. N. Chomsky, "Paris Attacks Show Hypocrisy of West's Outrage," *CNN* (19 January 2015) < <http://edition.cnn.com/2015/01/19/opinion/charlie-hebdo-noam-chomsky/index.html> > (accessed 15 April 2018).

48. *Ibid.*

49. Syed Muhammad Naquib Al-Attas, *Prolegomena to the Metaphysics of Islam: An Exposition of the Fundamental Elements of the Worldview of Islam* (Kuala Lumpur: ISTAC, 1995), 14.

nature of man which has always been, and will always be, inclined to search for his Creator, and find meaning in a higher power.

Human Rights Guided by Religious and Moral Values

People should be given the freedom to determine their own framework on human rights, which should be guided by religious and moral values. Al-Attas explains the components of secularisation qua ideology as the disenchantment of nature; the desacralization of politics; and the deconsecration of values (from the human mind and conduct).⁵⁰ Such an ideology that is being promoted is not compatible with the Islamic worldview. When men fail to cherish religious or moral values, their lives become disoriented and they would find it hard to achieve true happiness, as they are constantly being influenced by their *nafs*.⁵¹ Allah explains:

*Have you seen he who has taken as his god his [own] desire, and Allah has sent him astray due to knowledge and has set a seal upon his hearing and his heart and put over his vision a veil? So who will guide him after Allah? Then will you not be reminded?*⁵²

Muslims believe that the best guidance is found in the Qur'an and Sunnah and it should be within their rights to practise what they believe. Therefore, it becomes incumbent upon them to offer a different interpretation of human rights, in order for it to be aligned and in conformity with their own values.

50. Syed Muhammad Naquib Al-Attas, *Islām and Secularism* (Kuala Lumpur: Muslim Youth Movement of Malaysia, 1978), 18.

51. The term *nafs* here is in reference to *al-nafs al-ammārah*, which is *nafs* that influences one to commit vice. Further explanation by Syed Muhammad Naquib Al-Attas, *On Justice and the Nature of Man: A Commentary on Sūrah Al-Nisā' (4): 58 and Sūrah Al-Mu'minūn (23): 12-14* (Kuala Lumpur: IBFIM, 2015).

52. *Al-Jāthiyah* (45): 23.

Nevertheless, there is great difficulty in enforcing a uniformed conception of human rights, particularly in a multi-racial country. However, it may be possible to encourage a wider acceptance and better enforcement of rights within a particular region. For example, in multi-cultural Malaysia, it may not be achievable or practicable to fully enforce *Shari'ah* laws as was done during the time of the Prophet. This can be attributed to many factors, such as the political system of parliamentary democracy, lack of political will and consensus, weaknesses in the current legal systems of the country, and so on. However, we can focus on the *commonalities* of religious, moral and ethical values of the major religions practised in the nation.⁵³ All religions support values such as honesty, respect, justice, equality and fairness amongst men. Islam does not discriminate against race or religion. The same principle is found in Christianity, whereby it is stated, “There is neither Jew nor Greek, slave nor free, male nor female. For you are all one in Jesus Christ.”⁵⁴ These similarities should be built upon to create an understanding and cooperation amongst the people that can surpass boundaries based on socio-political background, race and religion.

The interpretation and enforcement of human rights must consider our responsibilities, as opposed to our individual desires alone. This is also emphasised by Carol Gilligan who believes that she has...:

...a very strong sense of being responsible to the world that I can't just live for my enjoyment, but just the fact of being in the world gives me an obligation to do what I can to make the world a better place to live in, no matter how small a scale that may be on.⁵⁵

53. Murni Wan Mohd Nor & Ratnawati Mohd Asraf, “Freedom without Restraint and Responsibility: The Problem of Hatespeech in Malaysia,” *Malaysia Law Journal* 5 (2015): xiiv–ixvii.

54. *Letter to the Galatians* (3: 28).

55. C. Gillian, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge: Harvard University Press, 1993), 21.

Blasphemy and Religious Defamation

The preamble of the UDHR states that the foundation of rights for all humans is freedom, justice, and peace. However, it is important to consider what freedom and justice mean. Al-Attas describes it as:

Freedom is to act as one's real and true nature demands—that is, as one's *haqq* and one's *fitrah* demands—and so only the exercise of that choice which is of what is good can properly be called a 'free choice.' A choice for the better is therefore an act of freedom, and it is also an act of justice (*'adl*) done to oneself.⁵⁶

True freedom is the act of doing good deeds, and achieving justice. Justice can only be carried out when knowledge and action is used to put things in their *proper place*, in order to achieve a harmonious balance.⁵⁷ Such is the basic principle that should be used in our conception of human rights. The life of man should not be in separation from his relationship with society and his God. If this were to be the case, then human rights would be implemented in a manner that may slowly cause destruction to the society, country and ultimately—our own soul.

Conclusion

Human rights must be respected. But the prioritisation of individual liberty over the community has resulted in the creation of a selfish and indifferent society. This has aggravated the problem of religious defamation—which leads to racial and religious intolerance. People jealously guard free speech, so much so that they fail to recognise the harm caused to society when religious defamation is allowed free reign. One must consider religious and moral values in the interpretation of human rights in order to encourage a society with a heightened sense of tolerance and increased understanding of religious differences.

56. Al-Attas, *Prolegomena*, 33.

57. *Ibid.*, 65.

In order to encourage a deeper appreciation for and better enforcement of human rights, it should be based on the common virtues shared by different racial and religious groups of a region. All religions enjoin their adherents to do good, avoid vice, command respect of others as well as prohibit oppression. Therefore, blasphemy and religious defamation do not have any place according to the principles of any religion. Even if one does not subscribe to a particular religious belief, following an interpretation of human rights guided by *common* religious and moral values would not hurt a person or negate his rights.

Lastly, it needs to be emphasised that legal restrictions are only a means of achieving an aim. It is more imperative to have the correct worldview in our understanding and application of human rights. We must be responsible in our struggle to uphold human rights, and we must do so whilst bearing in mind the proper limits to our freedom. When we reflect the positive values which religions have in common, human rights may be enforced responsibly in order to achieve the ultimate objective of justice and everlasting happiness.

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