



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Blasphemy Laws: A Threat to Modern Society?

Mehar Kaur^a Dhruv Tiwari^b

^aFaculty of Law University of Delhi, Delhi, India ^bFaculty of Law University of Delhi, Delhi, India

Received 27 November 2022; Accepted 08 December 2022; Published 16 December 2022

The incident of blasphemy prosecution and punishment is still a cause of worry across the world today. This article mostly discusses blasphemy laws and sanctions in India as well as other nations. This article will examine several incidents involving blasphemy legislation. In the pretext of religion and customs, the legislation of blasphemy has been abused several times over the years as well as subsequently to crush dissent and silence emerging voices. The article's overarching goal is to give some insight into the critical need to alter blasphemy laws across the world.

Keywords: *religion, blasphemy, freedom, defamation, rights.*

INTRODUCTION

Blasphemy is derived from an ancient Greek term that means "speaking evil," but in religious contexts, the term refers to spoken offences against values or beliefs that are considered sacred. Blasphemy has a lengthy and complicated history. Its origins may be traced back to the early history of Christianity when the earliest Believers were punished for their faith. The meaning of blasphemy has evolved over centuries, and the penalties for this sin have ranged from exile to death. Blasphemy was never a static concept. It has varied from the ancient sin of disparaging God's holy name to disrespectful utterances that insult the religious vulnerability of other sects.

Blasphemous acts vary by civilization and may change over time and location, but whatever is deemed blasphemous is always considered an abuse of social as well as personal liberty and indicates the true nature of the state of society. It shows what society cannot and will not allow. Possessing religious opinions that differ from conventional religious beliefs is deemed disrespectful and may amount to blasphemous acts. Blasphemy serves as a mirror to the ethics that culture feels it must uphold and preserve to maintain religious harmony, order, structure, morality, and, most importantly, redemption. Blasphemy is prohibited in all places where organised religion exists.¹

Instances wherein blasphemous acts were viewed as a core element of allegation infiltrated western nations and their notions of liberty in terms of individual and creative freedom. States varying from the United Kingdom to Iran, The USA, Canada, and the Dutch republic have had to consider the legal position of faith inside their boundaries, as well as the cultural remnants left by blasphemy laws. Blasphemy laws have traditionally been enacted and enforced in jurisdictions where a certain religion is professed by the majority of individuals to defend that dominant faith explicitly. Within the last four decades, blasphemy has grown in prominence as a matter of modern concern. Even though blasphemy is no longer a capital offence in most countries, it remains a punishable offence in many parts of the world. Blasphemy laws are employed in certain nations to oppress religious minorities or suppress dissent. In others, blasphemy is punishable by death.

RELIGIOUS FREEDOM

“Religion is like a pair of shoes.....Find one that fits you, but don't make me wear your shoes”

- George Carlin²

¹ 'Blasphemy: Christian Concept' (*Encyclopedia*, 19 November 2022)

<<https://www.encyclopedia.com/environment/encyclopedias-almanacs-transcripts-and-maps/blasphemy-christian-concept>> accessed 19 November 2022

² George Carlin, 'Religion Is like a Pair of Shoes: Find One That Fits for You, but Don't Make Me Wear Your Shoes' (*The Tribune*, 10 September 2015) <<https://www.tribuneindia.com/news/archive/thought-for-the-day/religion-is-like-a-pair-of-shoes-find-one-that-fits-for-you-but-dont-make-me-wear-your-shoes-%E2%80%94-george-carlin-131449>> accessed 19 November 2022

The laws surrounding blasphemy are often controversial and have led to several debates. Some people believe that these laws are necessary to protect religious communities, while others believe that they are used to silence dissent and suppress free speech. The recent trends around the world show that religious freedom is under some serious threats these days. Article 18 of UDHR says that *“Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”*³ In layman's words, religious freedom is a basic right that includes the ability to worship, promote, and express one's faith without coercion or duress. It moreover includes the right not to affiliate with any faith, hence it is also known as religious freedom. The global community first defined freedom of speech and expression in the UDHR in 1948. The ICCPR, signed in 1966, granted them the authority of international statute. Additionally, the right to freedom of faith or religion is centred on a person's conscience to identify their religious preferences. The Committee on Human Rights highlights the importance of preference in practising religious freedom, asserting that the liberty to "have or adopt" a faith or religion involves the freedom to adopt a faith and also the freedom to swap one's existing faith or religion with a different or to embrace atheism and in addition to the right to practise one's beliefs or religion.

The freedom to profess or substitute a faith or belief, as provided by ICCPR under Article 18, must also include the liberty to full and candid debate on the reality, merits, and flaws of any faith or belief. The freedom to counter, oppose or debate any or all faiths or beliefs is an essential element of religious freedom. Furthermore, it should be emphasised that religious or cultural freedom applies solely to individuals and does not establish rights on faiths or doctrines in their entirety. This right does not shield the substance of religious beliefs against questioning, nor does it safeguard the sentiments of believers who may feel offended when their views are challenged.

³ Universal Declaration of Human Rights 1948, art. 18

DEFAMATION OF RELIGION

*"All human rights are universal, indivisible and interdependent, and interrelated. Yet nowhere is this interdependence more obvious than in the discussion of freedom of expression and incitement to racial or religious hatred."*⁴ Blasphemy has existed as a legal principle for many generations. Religion was considered to be the foundation of a culture's ethical and political behaviour. To oppose or transgress against that creed, therefore, was to significantly endanger the fundamental structure of ethical and political society, and it needed to be punished ruthlessly. That seems to be not the case, and some individuals may be upset, but that doesn't change the fact that legislation is now interested in the safeguarding and maintaining of peace, and the emphasis is not so much on religious beliefs as it is on the overall well-being of mankind. If it constituted defamation to state that one faith was higher than the other, religious persecution would follow people who indulged in the intellectual analysis of faiths or who were within their rights to claim that their faith was superior.

Legislation governing human rights somehow doesn't acknowledge a right to have one's faith protected from criticism, mockery, or disrespect at all times, or a right to recognize one's sentiments. The liberty of speech and expression is not an automatic right since it implies supplementary duties and obligations. Certain grounds for limitation can be used to limit this right; however, the interest of 'religion' as such is not one of them. Laws regarding libel and slander are in place to safeguard people's reputations from being hurt by false remarks. The individual seeking redress for their image must be identifiable, must have experienced demonstrable harm, and must demonstrate that the "defamatory" utterances were untrue. Trying to extend the idea of "defamation" to faiths would be a challenging task. For instance, showing the veracity of a remark always constitutes an effective defence to a defamation allegation. However, judicial criteria of truth are typically challenging to apply to problems of

⁴ 'Freedom of Expression and Incitement to Racial or Religious Hatred' (OHCHR, 22 April 2009) <https://www2.ohchr.org/english/issues/racism/rapporteur/docs/Joint_Statement_SRs.pdf> accessed 20 November 2022

religion. Religious defamation should be exempted from the ambit of human and civil rights since it contradicts freedom of speech and expression.

Over 200 civil society groups from 46 countries ranging from Muslim, Christian, Jewish, liberal, secular, and atheist organisations lobbied the UN Council in 2009 to oppose any resolution against religious defamation. We hardly agree that restricting communication is the right approach to foster empathy and tolerance, and we tend to see the "defamation of faiths" concept used to legitimise suppression, prosecution, and, in many instances, violent attacks and killings of ideological, as well as religious minorities across the nations.⁵

BLASPHEMY LAWS IN INDIA

"Freedom to think as you will and to speak as you think means indispensable to the discovery and spread of the political truth" - Justice Louis Brandeis⁶

India is a democratic state, a secular nation, and a multifaith community regulated by the rule of law that is the Constitution. The right to practise, profess and propagate any religion is a fundamental right enshrined in the Constitution. The same clauses impose appropriate constraints on both the government and the individual, stating that such rights must not jeopardise the country's public order, morality, or state security.

There is no formal legislation in India dealing with blasphemy, however, the Indian Penal Code, of 1860 contains some restrictions that deal with matters considered blasphemous. The practice of punishing someone who makes, publishes, or utters "blasphemous" statements or actions is based on religious beliefs and has been passed by Parliament through several acts, including Section 295 IPC which makes it illegal for someone to hurt religious feelings by insulting religion or its symbols. Section 295A is one of the key provisions for blasphemy in chapter XV of IPC. Chapter XV also includes other sections related to maliciously disturbing places where the

⁵ 'Combatting Defamation of Religions: U.S. Explanation of Vote' (*U.S. Mission to International Organizations in Geneva*, 25 March 2010) <<https://geneva.usmission.gov/2010/03/25/combatting-defamation-of-religions-u-s-explanation-of-vote/>> accessed 20 November 2022

⁶ Mary Welek Atwell, 'Louis Brandeis' (*The First Amendment Encyclopedia*) <<https://www.mtsu.edu/first-amendment/article/1316/louis-brandeis>> accessed 20 November 2022

religious assembly is going on and even trespassing in burial places. Surprisingly, the blasphemy rule that was imposed on Indians during the British raj has now been repealed in the United Kingdom itself.

WORLD'S BLASPHEMY LAWS WITH THEIR PUNISHMENTS

A total of 79 countries maintained blasphemy laws currently in 2022.⁷ Currently, approximately 1/4th of the nations of the world have specific criminal penalties for blasphemy. The punishment varies from a ticket in Croatia to capital punishment in Iran. Various European states like Germany, Italy, Poland, Greece, etc still have blasphemy laws in their codes whereas many countries like Denmark and The United Kingdom have gone to an extent of abolishing the laws of blasphemy since the end of the 20th and the beginning of the 21st century.

Some countries like Australia and England abolished blasphemy laws in 2005 and 2008 respectively. The United States rejected the blasphemy legislation because it infringed self-expression. Because India is a secular nation, there was no provision against blasphemy laws until 1927, when Section 295(a) was introduced to the IPC, in 1860. A colonial-era law penalises anyone who speaks, writes, or prints matter that is defamatory to any religion. India, the world's biggest democratic country, has incorporated religious freedom and religious liberty as essential rights in its constitution and has always committed to the philosophy of secularism and multiculturalism which was also incorporated into India's Preamble. But on the other end, Pakistan's so-called "blasphemy laws" render "derogatory statements" regarding religion illegal. Since Islamabad has taken the forefront in proposing the UN resolution "Combating Defamation of Religions," it's worth mentioning that this idea of "defamation of religions" appears to be rooted in its blasphemy laws.

Over the previous few decades, these statutes have been abused to punish numerous Pakistanis. On the resolution's approval in United Nations in 2010, US Hillary Clinton as Secretary of State of the United States remarked that any action that may lead to the punishment of religious

⁷ Virginia Villa, 'Four-in-Ten Countries and Territories Worldwide Had Blasphemy Laws in 2019' (*Pew Research Center*, 25 January 2022) <<https://www.pewresearch.org/fact-tank/2022/01/25/four-in-ten-countries-and-territories-worldwide-had-blasphemy-laws-in-2019-2/>> accessed 20 November 2022

defamation is "a false remedy, that substitutes one injustice for another:" "We are persuaded that the greatest cure to intolerance is a combination of powerful legislative safeguards against hatred and discrimination crimes, active government engagement to minority religious organisations, and the robust support of both religious liberty and expression," she said.⁸ A 2008 incident in Jordan spotlighted the dangers of internationalising ideas of defamation or blasphemy. A Jordanian court summoned eleven Danish people on accusations of "blasphemy" for creating and reproducing caricatures representing the Prophet Mohammed. Jordanian attorneys believe the lawsuit would "help build an international rule against bad mouthing religion," according to Danish sources. Due to their strict views on religion and free speech, nations like Afghanistan, Brunei, Iran, Sudan, Nigeria, Pakistan, and Saudi Arabia may impose capital punishment for breaches of blasphemy laws. Expressions of unapproved religious ideas and political protest are both considered blasphemy in Iran.⁹

Apostasy is also illegal in 14 nations in the North African and Middle Eastern zone. The act of abandonment of a religion. Iran and Pakistan are the only two which have explicitly enshrined the death penalty in law, it is also carried out in Afghanistan. Many reports suggest that the population and living conditions of religious minorities in the countries where blasphemy laws are more rigorously applied are demographically getting low each year due to intimidation and persecution.

CASES OF BLASPHEMY LAWS AROUND THE WORLD

In *Ramji Lal Modi v State*, 1957, the question regarding the constitutionality and maintainability of Section 295A of the Indian penal code was challenged because the section did not define a reasonable restriction well within the scope of Article 19(2) of the constitution. The court stated that Section 295A sanctions only serious forms of religious insult done with the conscious and deliberate agenda of offending the religious sensibilities of any community.¹⁰

⁸ 'Editorials on Voice of America' (VOA) <<http://www1.voanews.com/policy/editorials/Defamation-Of-Religion-Resolution-90884719.html>> accessed 20 November 2022

⁹ 'National Laws on Blasphemy: Iran' (*Berkley Center for Religion, Peace and World Affairs*)

<<https://berkleycenter.georgetown.edu/essays/national-laws-on-blasphemy-iran>> accessed 20 November 2022

¹⁰ *Ramji Lal Modi v The State of U.P* (1957) SCR 860

Ashraf Fayadh of Saudi Arabia is a writer who was given the death penalty for apostasy in November 2015 for presumably questioning Religion and propagating atheist ideas through his writings. In January 2016, Mustafa Abdel-Nabi, an Egyptian social activist was convicted of three years imprisonment for sacrilege over comments advocating atheists on his social media accounts. Al-Basham was imprisoned for a few days in September 2015, and again on February 8, 2016, and sentenced to serve in jail on charges of insulting the Sultan and breaking Islamic principles, and other offences¹¹. A Sunni Muslim preacher Abdullah al-Nasr was sentenced to six years in jail in February 2017 for "utter disrespect of religion" for challenging various interpretations of Qur'anic verses. In one instance, an Indonesian Roman Catholic woman was prosecuted on blasphemy accusations for bringing her pet into a place of worship. Authorities in Sri Lanka arrested a writer after a Buddhist monk claimed his work was desecrated.

CONCLUSION

Finally, in the opinion of Ludwig Feuerbach, *"God is not liable to the offence; and even if he were offended, He would not under any circumstances wish the punishment of his offenders."* It is worth emphasising that blasphemy laws were created for a pre-modern culture that was neither secular nor democratic. In our opinion, the various governments must not empower people to carry their religious sentiments as a weapon over the speech of others. *To begin with*, religious freedom is never a legitimate limitation. Individuals are protected by human rights, not ethereal concepts or cultural beliefs. Personal "religious sentiments" or the maintenance of "societal peace" are insufficient justifications for curtailing our fundamental rights.

Secondly, blasphemy laws are employed extensively in ways that contradict fundamental legal concepts. A blasphemy prohibition may safeguard some viewpoints, but it will almost certainly limit others' values. This comprises atheists and other nonbelievers, among many others. Thirdly, there is insufficient information that blasphemy laws reduce prejudice, disagreement, or conflict; in reality, the contrary could be the case. The various examples cited above show that the stricter the blasphemy law, the more serious the human rights violations. Hence, in our

¹¹ 'Omani Activist Hassan Al-Basham Passes Away in Prison' (SMEX, 16 June 2019) <<https://smex.org/omani-activist-hassan-al-basham-passes-away-in-prison/>> accessed 20 November 2022

opinion, Blasphemy laws should be considered a thing of the past era in 21st-century modern society as it carries a burden to the expression and fundamentals of the rights of a human being.