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# Blasphemy Laws: A Blatant Violation of the International Human Rights Framework on the Freedom of Expression

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## ABSTRACT

*The most cherished freedom of all freedoms cherished is the freedom of expression. It is common consensus that certain restrictions ought to be placed on the freedom but the extent of these restrictions is a matter of controversy. This controversy leads us to the dissension on the validity of blasphemy laws. Regarded as one of the most abused laws internationally, blasphemy laws have been in existence since time immemorial and in the recent years, their essence has shifted from protecting the deity, which was relevant then, to protecting religious institutions, beliefs, practices and leaders from any criticism or insult, howsoever necessary.*

*The controversy on the validity of blasphemy laws emerges from whether it constitutes a reasonable restriction on the freedom of expression or clearly hinders the freedom for mere religious vendetta. The paper shall seek to critically analyse the relevance and importance of blasphemy laws in the present pluralistic society, considering the present international human rights framework with major focus on the freedom of expression and put forth suggestions for better enforcement and protection of these basic human rights.*

**Keywords:** *Blasphemy, Freedom of Expression, Freedom of Belief/ Religion, Human Rights, Public Order.*

## I. INTRODUCTION

Human rights have been upheld as rights inherent to the very existence of human beings irrespective of their religion, race, ethnicity, sex, language, nationality or any other status.<sup>2</sup> A plausible understanding of human rights includes the comprehension of these rights as rights expressing ultimate, weighty and unrestricted moral concerns.<sup>3</sup> One of the utmost cardinal human rights, regarded as the touchstone of individual liberty, is the freedom of opinion and expression. The universality and interdependence of these human rights is nowhere more

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<sup>2</sup> *Human Rights*, UNITED NATIONS <https://www.un.org/en/sections/issues-depth/human-rights/>.

<sup>3</sup> T. Pogge, *The International Significance of Human Right*, 4 THE JOURNAL OF ETHICS 45 (2000).

evident than in the discussion of the freedom of expression and incitement to religious hatred.<sup>4</sup> The most controversial provision criminalizing religious hatred is blasphemy.

There exists no single comprehensive meaning of the term blasphemy. It has been summarized in the infamous case of *Whitehouse v. Lemon*<sup>5</sup> as “a strongly offensive character that material concerning God or Christ, the Christian religion, the Bible, or some sacred subject must possess in order for it to be penalised by the common law.” It has also been defined as “an act of lack of reverence for God or sacred things.”<sup>6</sup>

Blasphemy laws, irrespective of preserving ones freedom of religion, right against discrimination and the right to privacy, restrict a major chunk of one’s free speech and expression, with evidences narrating the story. With this comes into picture an inevitable conflict between Article 18 and Article 19 of the ICCPR, with the former guaranteeing the freedom of religion and the latter guaranteeing the freedom of expression and opinion.<sup>7</sup>

To understand the conflict in detail, it is essential to note that the scope of both the rights has been restricted to some extent. The freedom of religion is guaranteed to the extent that it does not violate “public safety, order, health, or morals or the fundamental rights and freedoms of others.”<sup>8</sup> In relation to the freedom of expression, as shall be elaborated upon, it also attracts reasonable restrictions in order to maintain law and order in the society.

## II. FREEDOM OF EXPRESSION: THE INDISPENSIBLE HUMAN RIGHT

Having been described as an inevitable prerequisite of every other freedom<sup>9</sup> and an essential for every society,<sup>10</sup> the freedom of expression and opinion is a basic human right guaranteed under Article 19 the Universal Declaration of Human Rights, 1948<sup>11</sup> (hereinafter referred to as UDHR), a document which has been adopted as a legal obligation on all nations<sup>12</sup>. Further, the International Covenant on Civil and Political Rights, 1966<sup>13</sup> (hereinafter referred to as ICCPR),

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<sup>4</sup> PHILIP ALSTON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS, 677 (2012).

<sup>5</sup> *Whitehouse v. Lemon*, [1979] A.C. 617.

<sup>6</sup> *Prisoners of Belief: Individuals Jailed under Blasphemy Laws*, USCIRF 1 (2014).

<sup>7</sup> International Convention on Civil and Political Rights, Dec 16, 1996, 999 U.N.T.S. 171 [hereinafter ICCPR] art. 18(1), “Everyone shall have the right to freedom of thought, conscience and religion;”

art 19, “1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

<sup>8</sup> ICCPR, *id.*, art. 18(3): “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

<sup>9</sup> *Palko v. Connecticut*, (1937) 302 US 319.

<sup>10</sup> *Benhadj v. Algeria*, Comm. 1173/2003, U.N. Doc. A/62/40, Vol. II, at 122 (HRC 2007).

<sup>11</sup> Universal Declaration of Human Rights, Dec 10, 1948, A/RES/217(111) [hereinafter UDHR].

<sup>12</sup> *People Only Live full Lives in the Light of Human Rights*. New York, U.N. D.P.I. (1987).

<sup>13</sup> ICCPR *supra* note 7.

to which most of the countries are signatories, guarantees the right under Article 19 to include in its ambit the freedom to impart, seek and receive information either orally or in print or in written.

With the First Amendment to the US Constitution providing for the freedom of speech in 1971, the Courts have upheld the right as the very foundation of free government<sup>14</sup> for the reason that without it, there could be no effective exercise of correcting errors once committed.<sup>15</sup> From the European perspective, commenting on Article 10 of the European Convention on Human Rights, it has been observed by the Courts that the freedom of speech is a core value of a legal system without which no rule of law can be maintained.<sup>16</sup> The freedom has similarly been placed at a high pedestal and is guaranteed by many documents worldwide<sup>17</sup> thereby evidently manifesting the undeniable importance of the freedom.

Further, it is pertinent to note that the right in the international scenario is not restricted to merely the freedom of speech but includes the freedom of expression which, as per Justice Black, is much extensive in its ambit as it encompasses more than just natural, oral or written expression.<sup>18</sup> The UN Human Rights Committee, 2011 provided for the inclusion of political discourse, commentary on affairs, religious discourse to be protected by the freedom of expression,<sup>19</sup> thereby broadening its scope.

### **Reasonable Restrictions on the Freedom of Expression**

The freedom of expression, despite being absolutely indispensable for the preservation of a free society,<sup>20</sup> is not an absolute right for the reason of maintaining law and order in the society, and that in protecting the right of one, the right of another cannot be breached upon. This freedom can be curtailed but subject to the restriction being a reasonable and proportionate one. The ICCPR provides for the reputation of others, the protection of national security, public order or public health as reasonable restrictions which can be imposed only by law.<sup>21</sup>

As per other international documents, reasonable restrictions also broadly include within their ambit the security and integrity of one's nation, morality, decency, public order, obscenity, defamation or protection of reputation, internal or external aggression, contempt of court,

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<sup>14</sup> Scheinder v. Irvington, (1939) 308 US 147 (160).

<sup>15</sup> Thornhill v. Alabama, (1940) 310 US 88.

<sup>16</sup> R (*Rushbridger*) v. AG, (2003) 3 All ER 784.

<sup>17</sup> See Section 40(6)(1) of the Constitution of Ireland; Article 5 of the West German Constitution, 1948; Article 21 of the Japan Constitution; Section 14(1) of the Malta (Constitution) Order in Council, 1961; Article 19 of the Constitution of India, 1950.

<sup>18</sup> JUSTICE HUGO L BLACK, A CONSTITUTIONAL FAITH, 45-46 (1969).

<sup>19</sup> *General Comment No. 34*, UN HUMAN RIGHTS COMMITTEE, CCPR/C/GC/34, 3 (2011)

<sup>20</sup> Speiser v. Randall, (1958) 357 US 513 (530).

<sup>21</sup> ICCPR, *supra* note 7, art. 19(3).

discrimination and violence based on race, religion, national origin or language, etc.

However, the state and the judiciary must be “eternally vigilant” to check whether these restrictions are indeed required to cease an imminent, present, clear evil and in case of any remote or incidental act affecting one’s rights, such restrictions cannot blindly be thwarted. It ought to be noted that the freedom of expression is a core human right and its limitation must only be an exception. It is therefore pertinent to ensure that in the colour of reasonably maintaining law and order, the State does not wrongly suppress communication.

### III. BRIEF HISTORY OF BLASPHEMY LAWS

Blasphemy laws have been in place ever since the ancient Roman and Greek period, and are regarded as being as old as civilization itself. However, the very essence of having blasphemy laws in place then was not to protect one’s religious sentiments but to protect the “honor of a deity.”<sup>22</sup> Leviticus 24:15-16 had declared that, “[w]hoever curses his God shall bear his sin. He who blasphemes the name of the Lord shall be put to death; all the congregation shall stone him; the sojourner as well as the native, when he blasphemes the Name, shall be put to death.”<sup>23</sup>

With the coming of the Middle Age, blasphemy laws remained but their purpose had changed to punishing heretics and preserving the Church. With the advent of Islam in the seventh century, any statement attacking the sentiments of the religion or mocking the Prophet or the Quaran in any way was regarded blasphemous. All in all, these laws were primarily aimed at protecting the state which then had religious basis for its legal system.

In the present times, blasphemy is speaking or publication of material to shock or outrage the feelings of believers<sup>24</sup> in the established religion.<sup>25</sup> It encompasses all laws which redress all those who have been insulted on their religion. To constitute the offence, no specific intent to commit blasphemy or disrupt public order is required *per se*. Only an intent to publish or speak the offending content is a prerequisite<sup>26</sup> which broadens the scope of the offence to include in its ambit mere questioning or satirizing also.

With regards to recent developments, two kinds of blasphemy laws are seen to be followed globally. The first kind is that which protects individuals and their freedom of religion. These are generally found in Western democratic nations to protect one’s dignity, privacy, freedom of

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<sup>22</sup> LEONARD W LEVY, *BLASPHEMY: VERBAL OFFENSE AGAINST THE SACRED, FROM MOSES TO SALMAN RUSHDIE* (1993).

<sup>23</sup> Leviticus 24:15–16 (Revised Standard Version).

<sup>24</sup> *Whitehouse v. Gay News*, [1979] AC 617.

<sup>25</sup> *R v. Gathercole*, (1838) 2 Lew CC, 237, 254.

<sup>26</sup> *Supra* note 19.

religion and protect individuals from instances of outrage or defamation.<sup>27</sup> On the other hand, we have blasphemy laws that protect the religion as against protecting individuals. This variety is majorly predominant in Islamic countries wherein after Islamization<sup>28</sup> in the 1970s and 1980s, stringent and strengthened blasphemy laws have taken over providing for “heavy punishments” to one who “wages war” upon Allah, His messenger or the Quoran.<sup>29</sup>

#### IV. BLASPHEMY LAWS: A HINDRANCE TO THE FREEDOM OF EXPRESSION

Blasphemy laws in themselves do not evidently and at every instance violate the freedom of expression for they are a mere ban on inciting hatred and are intended to be so in pure public interest. However, it is the nature of these laws, their broad scope, which has far reaching consequences on the human rights framework as they extend to go way beyond a mere ban on communal violence or hatred. Rather than protecting individuals, these laws protect the religion.<sup>30</sup>

It is true that the freedom of religious belief is sufficiently guaranteed and protected in the international framework and it maybe hurtful for the followers of a religion to bear any insults about their religion. But, more often than not, this practice of prohibiting insult tends to extend to a blanket ban on any sort of critique or questioning with regards to one’s religion which can in no circumstance be protected. Such protection would be a strict violation not only of ones freedom of expression but other basic human rights and furthermore, the very freedom of religion would in no circumstance encompass within it the right not to be offended in one’s religion for the state is under no duty to enact laws to protect believers of a religion from any insults.

In the recent past, many countries have abolished blasphemy. The Blasphemy Act which was in force since the reign of William III was repealed by the Criminal Law Act, 1967. Similarly, in common law, despite being an offence, no prosecution was brought for blasphemy for almost half a century, with Lord Denning describing it as a “dead letter”<sup>31</sup> until recent instances in the wake of which it was abolished by many European states.<sup>32</sup> Australia abolished its blasphemy laws in 1955 through the Criminal Code Act but at the federal level. Similar instances of

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<sup>27</sup> See the Irish Defamation Act, 2009, “A person who publishes or utters blasphemous matter shall be guilty of an offence and shall be liable upon conviction on indictment to a fine not exceeding €25,000.”

<sup>28</sup> Islamization is the process which is a result of the Islamic states moving back towards traditional values and incorporating Sharia into the law of the state as a reaction to the world becoming increasingly connected. By 1980, this Islamization became the official government policy of a vast majority of Islamic States.

<sup>29</sup> See Qu’ran 5.33.

<sup>30</sup> USCIRF Welcomes Move Away from “Defamation of Religions” Concept, USCIRH (2011).

<sup>31</sup> The Rt. Hon. Lord Denning. *Freedom under the Law* 46 (Stevens and Sons, 1949).

<sup>32</sup> Abolished by United Kingdom by Criminal Justice and Immigration Act, 2008.

abolition include, Canada wherein it was repealed by the Royal Assent of the Governor General in 2018, partly repealed in Denmark in 2017, etc. With only 37% or 1/3<sup>rd</sup> of the countries having anti- blasphemy laws as of 2016,<sup>33</sup> this in itself shows the degrading relevance of the law in present times.

Most accepted reasons behind the same can be categorized into:

### **I. Freedom of expression encompasses criticizing as an essential factor**

The current notion of blasphemy laws wrongly overprotects the entire religious institution, entailing religious beliefs, practices and its leaders, from necessary and legitimate criticism. Criticizing, questioning or ridiculing, all fall within the domain of the freedom of expression for they aid individuals in attaining self- fulfillment.<sup>34</sup> The freedom is inclusive of the right to scrutinize, debate or criticise even harshly the belief system even if such expression “offends, shocks or disturbs.”<sup>35</sup> Such speech can only be restricted if it provokes imminent lawless action.<sup>36</sup>

Freely availing these modes of discourse reasonably and within necessary limits helps in improving the state of affairs and in making it dynamic. Limiting it in the name of “insult to one’s religion” would be a blatant violation of the international human rights framework for the reason that the restrictions to the freedom of expression are intended to be formulated for the sole purpose of protecting individuals, holding certain beliefs, from discrimination or violence and not the entire religious institution from mere criticism.

Criminalizing blasphemy would also not appreciate symbolic or metaphoric or any other varied form in which literature is capable of being read and understood, in relation to religion, and would criminalise statements strictly on the basis of its plain meaning which would yet again constitute a flagrant violation of expressing one’s opinion through literature.<sup>37</sup>

The Human Rights Committee in General Comment No.34<sup>38</sup> observed that, “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant,... Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”<sup>39</sup>

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<sup>33</sup> UNCIRF, RESPECTING RIGHTS? MEASURING THE WORLD'S BLASPHEMY LAWS (2017).

<sup>34</sup> Naveen Jindal v. Union of India, (2004) 2 SCC 1559.

<sup>35</sup> Handyside v. United Kingdom, 7 December 1976, Application No. 5493/72, 1 EHRR 737, ¶49.

<sup>36</sup> Clarence Brandenburg v. State of Ohio, 395 U.S. 444 (1969).

<sup>37</sup> See Whitehouse v. Gay News, [1979] AC 617.

<sup>38</sup> *Supra* note 20.

<sup>39</sup> *Id* at ¶48.

## II. Blasphemy laws are vague, wide, overly subjective and therefore arbitrary

The wording and language of a provision is essential in narrowing the limit of any law and making individuals well aware of what act or omission exactly constitutes the offence. The principle of legality, a core general principle in international law,<sup>40</sup> provides that a law should precisely and clearly define any offence.<sup>41</sup> In furtherance, the contentions for blasphemy being a vague and arbitrary law are twofold:

### a) Definition of Religion

Firstly, the very existence and definition of the term “religion” is unsettled. Without any precise definition of the term, blasphemy laws that criminalize any expression which is sacrilegious to God or religion would be futile. No concord on what religion is has been reached and on the views of it, no agreement shall be reached anytime in the foreseeable future. The very reason behind this is well explained by what Patrick H. McNamara had quoted, “Try to define religion and you invite an argument.”

The most comprehensible and acceptable definition of religion is “belief in God.” This definition best suits the Western or Abrahamic Religions i.e. Judaism, Christianity and Islam on grounds of being strictly monotheistic for they believe only in Abraham. However, the difficulty arises with other religions globally that do not fall within the monotheistic umbrella. Religions like Hinduism are arguably polytheistic, and atheists religions or those religions like Buddhism that do not believe in God wouldn’t fall within the purview of this definition. Additionally, the very ideological and conceptual differences between these religions would spring into either express or implicit conflicts consequently resulting in blasphemy.

### b) Confusing nature of blasphemy laws

Secondly, the very confused nature of blasphemy laws makes them bad law. It is so stated for the reason that it is the mere intent to publish words apparently hurting ones religious sentiments that in itself constitute the offence as against having an intention to commit blasphemy. However, what may hurt a religious sect is a matter strictly personal to that religion and its beliefs and practices, without there being any precise and uniform standard or degree for a statement to be called blasphemous.

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<sup>40</sup> See UDHR, *supra* note 11, art. 11(2); ICCPR, *supra* note 7, art 15(1); European Convention for the Protection of Human Rights and Fundamental Freedoms art. 9; American Convention on Human Rights, art. 9.

<sup>41</sup> To be in consonance with the principle of legality, the law ought to be “precise and clear” leaving no room for any interpretation. However, blasphemy laws around the world use ambiguous terms like “mocking”, “insulting” or “in the interest of” which clearly violate the legality principle. These definitions need to be narrow and concrete to meet the standards of legality.

Furthermore, most of the religions are polytheistic, having within them umpteen sects with alternative religious views. What maybe blasphemous to one sect may not necessarily be blasphemous to the other sect. Then in such an instance, how is one to decide the very touchstone of a statement to be blasphemous? With mere intention to publish being sufficient to constitute the offence, the scope of the offence has so widely been enlarged and therefore the views of every sect should then independently constitute standards for making a statement blasphemous, which however is out of question. Besides, since there exists no touchstone to measure whether the sentiments of the religious community as a whole have been hurt, it could be a possibility that the sentiments of a few within the community could be hurt who then become vocal about it and this then stands as a ground for censoring such expression in the name of blasphemy.<sup>42</sup> It is this vague nature of the blasphemy law which obtrusively contravenes the freedom of expression thereby making it arbitrary and therefore a bad law.

### **III. Remote problems with the Enforcement of Blasphemy Laws**

#### **a) Instils a feeling of hatred, promotes crimes against the blasphemer and communal violence**

History is witness to religious persecutions in the name of god and religion globally. As quoted by Thomas Jefferson, “On the dogmas of religion as distinguished from moral principles, all mankind, from the beginning of the world to this day, have been quarrelling, fighting, burning and torturing one another, for abstractions unintelligible to themselves and to all others, and absolutely beyond the comprehension of the human mind.”<sup>43</sup>

On similar lines, allegations of blasphemy have consequently been followed by extreme violence against the blasphemer for these accusations serve as a pretext to the religious extremists to stir up violence and hatred in the society. However, the states are under a positive obligation to preserve life as the inherent right to life, liberty and security has been guaranteed as a basic human right under Article 3 of the UDHR<sup>44</sup> and Article 6 of ICCPR.<sup>45</sup> Rather than promoting peace and public order, the blasphemy laws on the other hand have devastating effects on the society as they not only breach the very law and order of a society but also weaken the prevailing religious pluralism.

#### **b) Oppression of only minority religious groups**

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<sup>42</sup> Romila Thapar, *Banning Books* 13 INDIA REV 283 (2014).

<sup>43</sup> JEFFERSON, LETTER TO MATTHEW CAREY: WORDS OF THE FOUNDING FATHERS (Steve Coffman, 1816).

<sup>44</sup> UDHR, *supra* note 11, art. 3: “Everyone has the right to life, liberty and security of person.”

<sup>45</sup> ICCPR, *supra* note 7, art. 6: “1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

As the trend portrays, there are innumerable instances of how blasphemy laws victimize religious minorities as against the majority. Preference for particular religious groups by the state leads to discrimination and is in violation of Article 2(1)<sup>46</sup> and Article 26<sup>47</sup> of the ICCPR. There is high likelihood of such a preference when the state itself adopts a religion or subscribes to a particular ideology.<sup>48</sup>

For instance, if one may consider the cases of prosecution for the offence of blasphemy in Pakistan, a nation with 96.38% Muslim population and around 0.22% Ahmadi population,<sup>49</sup> an instance maybe quoted wherein 37 Ahmadis were prosecuted under the blasphemy laws of Pakistan for identifying themselves as Muslims in 2007. The Supreme Court of Pakistan in the instant case upheld the law which prohibits Ahmadis from following Islam and calling themselves Muslims by declaring that this identification of Ahmadis as Muslims had flagrantly outraged the sentiments of the Sunni Muslims in Pakistan and had observed Ahmadis as heretics to Islam.<sup>50</sup>

This is a mere example quoted out of the umpteen prosecutions that take place worldwide in the name of being blasphemous but in point of fact, such prosecutions are an outcome of propagation of the majority religion, as subscribed by the nation state, to suppress the vulnerable religious minorities.

### **c) Not relevant in today's pluralistic society which is no more based on religion**

As has been observed, when blasphemy laws were brought in force, the legal system of the nations was based on religions. First, it was for protecting the Church which was equated to the State that these laws were brought in force, followed by Islam in the Middle Ages. Blasphemy was regarded as a sanction against those who spoke ill of the religion of the state. However, in this secular and pluralistic world today, the relevance and efficiency of a law like that of blasphemy is in turbulence.

With pluralistic religions being members of a single society, an inevitable conflict is deemed

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<sup>46</sup> ICCPR, *supra* note 7, art. 2: "1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

<sup>47</sup> ICCPR, *supra* note 7, art. 26: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, .colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

<sup>48</sup> See Waldman v. Canada, Comm. 694/1996, U.N. Doc. CCPR/C/67/D/694/1996 (HRC Nov. 5, 1999).

<sup>49</sup> Fanny Mazna, *Blasphemy Laws in the 21st Century: A Violation of Human Rights in Pakistan*, OPEN SIUC (2017).

<sup>50</sup> *World Report*, Human Rights Watch (2010).

to exist between the beliefs of different religious ideologies, whether expressly or implicitly. In such a society, the notion of suppressing ones religious ideas and beliefs would seem an absurdity for every person has the basic freedom of both, expression and belief. Therefore, the law holds no good in the present modern times.

## **V. CONCLUSION**

The freedom of expression is an indispensable human right, essential for humans to enjoy the very essence of life. On a scant scrutiny over the years, the Courts have precisely explained the relation between various freedoms guaranteed and the restrictions imposed upon them the analysis of which would very well assist the author in concluding the paper.

The Courts have observed that while limiting a freedom on grounds of any restriction (public order, morality, etc), one ought to construe its reasonableness by looking into “the nature of right alleged to have been infringed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of its imposition, and the prevailing conditions at that time.”<sup>51</sup> In case of blasphemy, the right to one’s religion would be alleged to have infringed the actual conception of which, as explained earlier, varies drastically from what has been wrongly perceived over time to be protecting religion from any insult. Further, with the scope of the blasphemy laws being indefinite and with innumerable examples being witness to how these laws do not limit their application to imminent evils, the imposition of the offence is unquestionably disproportionate. Lastly, in the present pluralistic and modern society, there is no place whatsoever for the offence of blasphemy.

The best possible solution to the conflict at hand is to harmonize the two. Without the freedom of expression, neither the freedom of religion and beliefs can be exercised nor would there be a platform for constructive deliberations on matters of religion. It is through such an environment of open debate that one can probe into whether or not religious interpretations bring out the true essence of religion and accordingly improve theology, if required. Public order in matters as sensitive as that of religion can be maintained by reasonably restricting the freedom of expression as against having such imprecise laws.

## **VI. SUGGESTIONS**

The freedom of expression, a right required to cherish all other basic human rights including the right to manifest ones religion, cannot be curtailed on a mere possibility of an expression being blasphemous for that would be a risk too great to all the underlying freedoms that flow

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<sup>51</sup> State of Maharashtra v. VG Row, AIR 1952 SC 196

from the former. It would also incite unnecessary fear in the minds of people, hindering any free expression.

From the religious aspect, criticism or ridiculing forms an essential part of evolving the religion with changing times. In case a criticism is false, rather than restricting the freedom of expression, it can be met with legitimate counter arguments and be tested on these contentions raised. However, if such criticism is deemed to be true, it ought to be considered in setting right the errors that the religion possesses, thereby improving theology. Irrespective of the same, it is pertinent to note that no person has any right whatsoever to not be offended in his religious feelings.

Further, analyzing the issue from the perspective of the right to belief and opinion as guaranteed by the international documents, the right to religion here does not imply the right to protect or respect ones religion but implies the right to protect or respect the right of a person to practice and have the right to conscience of a religion of his choice. And with this arises the question on whether blasphemous statements wrongly affect ones right to choose the religion they want to preach and practice? The answer would simply be in the negative as these laws have no impact on the personal choices of people.

Also, as already discussed above, the laws are highly vague and subjective, and therefore one must also be concerned about the high possibility of abuse of these laws throughout the world, irrespective of them being dead letters, for the reason that in any instance of a blasphemous act, the law could revive itself and wrongly prosecute the blasphemer. Additionally, the Annual Report by the Office of the UN High Commissioner for Human Rights has recommended that “[s]tates that have blasphemy laws should repeal the[m] as such laws have a stifling impact on the enjoyment of freedom of religion or belief and healthy dialogue and debate about religion.”<sup>52</sup>

If in the present times the role of blasphemy laws is to protect public order and not protecting the beliefs of an entire religious institution for that has been out rightly rejected above, the restrictions on the freedom of expression would in themselves be sufficient to curtail any expression that would to a great degree incite hatred or usurp the existing public order without any need to have such dormant and indefinite blasphemy laws. This way, abuse of the blasphemy laws could be greatly restricted and public order could also be maintained, which ought to be the primary aim of the law and not mere religious vendetta. The need of the hour

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<sup>52</sup> *Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred*, UNHRC A/HRC/22/17/Add.4 (2013).

is to strike the right balance between freedoms and their restrictions with the freedom being the right and the restrictions a mere exception in order to uphold the sanctity of human rights.

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