

THE LAW OF BLASPHEMY VIS-À-VIS THE MODERN WORLD: VIOLATION OF FREEDOM OF SPEECH AND EXPRESSION

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ABSTRACT

Blasphemy is one of the world's most mishandled law with regards to suppressing the voices and violating the freedom of speech and expression, the researchers, frequently go under a downpour of inquiries over its legitimacy in the present modern foundations of the world. While regularly it is viewed as a reasonable restriction over the Freedom of Speech and Expression, multiple times it is additionally viewed as a deterrent in the improvement of a logical temper among individuals, and an approach of forcing the religious beliefs and virtues of one community over others. In this modern reality where Freedom of Speech is generally considered as fundamental and human right, just as Freedom of Religion; nations in spite of being a pluralist, with a unique assorted variety in its populace, have a law against blasphemy under the pretence of Hate speech. This article traces the footprints of the Blasphemy Laws from its inception, to its existence in Islam to Western World; and why it was adopted in Muslim Countries; and at the same time analyses about how far Blasphemy Law in the world is supported, by comparing the Islamic Blasphemy with Western Blasphemy. This article also has a special mention of India's Blasphemy Laws, and its stance in today's modern era.

Keywords: Blasphemy, Islam, freedom of speech, expression.

1. INTRODUCTION

*"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."*¹

The term blasphemy implies blasphemy toward God, religion, a religious symbol, or something different considered sacred.² It has been held to be custom-based law wrongdoing [in the United States] due to its propensity to work up breaks of the harmony. It is explicitly made deserving of a portion of the rules³. However, the method of reasoning behind announcing blasphemy wrongdoing isn't just appropriate in custom-based law nations yet all through the world.

Numerous nations over the world have blasphemy laws in their penal system, notwithstanding having diverse demography and lawful frameworks. Regardless of whether it is Christian states like Greece or Iceland, the Islamic States like Iraq or Egypt, Jewish majority state Israel, State stressing on Buddhism, Sri Lanka; or secular states like Canada or Germany, nations over the globe have laws against blasphemy⁴.

India being a pluralist nation and secular simply like America, had no provision against blasphemy until the year 1927 when Section 295(A) was incorporated in the Indian Penal Code, 1860⁵ expressing that;

"Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the

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¹ PHILIP ALSTON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS (Oxford University Press 2012) 677.

² BYRAN A. GARNER, THE BLACK'S LAW DICTIONARY (West Group 2009) 193.

³ ROLLIN M. PERKINS & RONALD N. BOYCE, CRIMINAL LAW (Foundation Press 1982) 474.

⁴ 8 RECENTLY ABROGATED BLASPHEMY LAWS (J. Temperman & A. Koltay ed., Cambridge University Press) (2017) 551.

⁵ India Penal Code, 1860, No. 45, Act of Parliament (India) 1860.

religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [three years], or with fine, or with both”.

Before independence, a Pamphlet named *Rangila Rasul* was published by Mahashay Rajpal, the Pamphlet upon its discharge in the year 1926 started the discussion, with the Muslims looking for discipline for Rajpal as it was a fierce assault over the religious sentiments. Rajpal was acquitted in view of the absence of any blasphemy law in India. The British Colonial Government in the period of scarcity, revised the Indian Penal Code, 1860 and added Section 295(A) in the year 1927.⁶ The Section much after the Partition of India, is present in the Indian Penal Code, 1860; just as in Pakistan and Bangladesh.

2. WHY THE WORLD ADOPTED THE BLASPHEMY LAWS?

There have been various purposes behind the act of blasphemy to be outlawed throughout the history in the world. Being a piece of the equivalent, the majority of the reasons in regard to why blasphemy is banned. For the most part, acknowledged reasons can be comprehended as beneath:

2.1. THE SACROSANCTITY OF RELIGIONS

A large portion of the religions builds up in the psyche of individuals, the sacrosanctity of God just as the religion itself. Researchers in the past have held that God is well beyond the extent of any inquiry or uncertainty and acts, for example, impunity, apostasy and blasphemy have been held to be grievous offense, the punishment of which at ordinarily can be demise.

According to one of the most celebrated Jurist and theologian, St. Thomas Aquinas;

“compare murder and blasphemy as regards the objects of those sins, it is clear that blasphemy, which is a sin committed directly against God, is graver than murder, which is a sin against one’s neighbour. On the other hand, if we compare them in respect of the harm wrought by them, murder is the graver sin, for murder does more harm to one’s neighbour, than blasphemy does to God.”⁷

He also declared that;

“Heretics by right can be put to death and despoiled of their possessions by the Secular, even if they do not corrupt others, for they are blasphemers against god, because they observe a false faith. Thus, they can be justly punished more than those accused of high treason.”⁸

2.2. ENFORCEMENT OF RELIGIOUS SANCTIONS

In Afghanistan the Constitution declares Islam to be the official “religion of the state”, stating that;

“no law can be contrary to the beliefs and provisions of the sacred religion of Islam,”

and that;

“the provisions of adherence to the fundamentals of the sacred religion of Islam and the regime of the Islamic Republic cannot be amended.”

For issues on which the Constitution and Penal Code are quiet, courts depend on Shari’a.⁹ Therefore, states that have an official religion, will, in general, keep religious laws as penal laws, or draft their penal laws based on religious laws, banning blasphemy whenever recommended in the religious laws itself.

⁶ Criminal Amendment Act, 1927, No. 25, Act of Parliament (India) 1927.

⁷ 3 ST. THOMAS AQUINAS, SUMMA THEOLOGICA - II (Cosimo Inc. 2013) 1226.

⁸ LEONARD WILLIAMS LEVY, BLASPHEMY: VERBAL OFFENSES AGAINST THE SACRED, FROM MOSES TO SALMAN RUSHDIE (University of North Carolina Press 1993) 52.

⁹ U.S DEPARTMENT OF STATE, *International Religious Freedom Report - II, Afghanistan* (2008).

2.3. STABLE GOVERNANCE

As substantiated by the Greek Supreme Court;

“Religious insult encroaches upon the religious feelings and the religious freedoms of others, both of which are protected as moral-social value, as social & legal interest worthy of protection to the benefit of civilisation and the polity. According to this decision, religion is not a purely personal affair, a wholly inner relationship of the soul of god, irrelevant to the state, but is the foundation of the state, a vector of spiritual civilisation affecting not only the feeling and thoughts, but also the actions of human beings.”¹⁰

Therefore, it very well may be comprehended that Religion influences the activities of individuals, along these lines require security lawfully as a good and social worth that drives a human, prompting a steady society and better administration. The obligation to secure religious estimations of others later changes into a legitimate obligation when the state perceives the ‘Right to Religion’.

3. WHY PEOPLE IN MODERN ERA ARE ANTI-BLASPHEMY LAWS?

All through the world, there have been various oppositions against blasphemy laws which at focuses have to prevail at focuses have not. Most as of late, Malta abrogated its laws against blasphemy. Numerous nations have either annulled or decreased the punishment for blasphemy on different grounds.

The Organization of Islamic Cooperation, additionally moved away from the anti-defamation language of the previous OIC sponsored resolutions to a clearer acceptance of freedom of expression and focused on upholding the rights of the individuals against discrimination in an effort to foster international cooperation,¹¹ which had before been a voice for defining a global anti-blasphemy law.

A portion of the contentions to decriminalize blasphemy can be comprehended as below:

3.1. LACK OF A DEFINITION FOR THE TERM RELIGION

Blasphemy has been portrayed as flippancy towards God or Religion, anyway, the expression ‘Religion’ itself comes up short on a legitimate definition for itself. Confidence in God which may join Judaism, Islam, and Christianity, is obviously inadequate as a definition, since certain religions, for example, Hinduism is ostensible, Polytheistic. The definition that relies upon a conviction upon God or Gods would comparably neglect to incorporate Buddhism, as it doesn’t include belief in a God¹².

The United States has created two principles draws near, first is distinguishing the center substance of conviction and an elective technique is recognizing religion by relationship. Both of the strategies are neither unmistakable nor decisive¹³.

Thus, a law to shield religion from blasphemy misses the mark when the term religion finds no convincing importance.

3.2. A TOOL FOR OPPRESSION

Blasphemy for an exceptionally prolonged stretch of time has been viewed as an apparatus for the larger part to mistreat the minority. Extraordinary compared to another model for it is in Pakistan.

In spite of incorporating Freedom of Speech and Expression, and Freedom of Religion in the Constitution¹⁴, the Pakistan Penal Code has consolidated Sections that express that Any individual of the Qadiani Group or Lahori Group (who call themselves “Ahmadis” or by whatever other name) who

¹⁰ 47 COUNCIL OF EUROPE, EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW, BLASPHEMY, INSULT AND HATRED: FINDING ANSWER IN A DEMOCRATIC SOCIETY (2010) 65.

¹¹ Ambassador Ufuk Goksen, *The Reality of Freedom of Expression in Muslim World*, THE HILL'S CONGRESSIONAL BLOG (May 13, 2020, 09:34 PM) <http://www.oicun.org/71/20121023050752932.html>.

¹² LUCY VICKERS, RELIGION AND BELIEF DISCRIMINATION IN EMPLOYMENT (Europe Commission 2007) 26.

¹³ *Ibid.*

¹⁴ PAKISTAN CONST. Art. 19.

by words, either verbally expressed or composed, or by unmistakable portrayal too, or names, or calls, his place of love a "Masjid"¹⁵ and the mode or type of call to petitions followed by his confidence as "Azan", or discusses Azan as utilized by the Muslims¹⁶ and that who straightforwardly or by implication, acts himself as a Muslim, or calls, or alludes to, his confidence as Islam, or lectures or proliferates his confidence, or welcomes others to acknowledge his confidence, by words, either spoken or composed or by visible representation¹⁷ is liable for punishment.

The proportion of Muslims to non-Muslims among blasphemy litigants shows the degree to which these laws are utilized to abuse religious minorities. Pakistan's Former Minister for Minority, Shahbaz Bhatti, had openly contended that "the blasphemy law is being used to terrorize minorities in Pakistan." Ahmadis are the most influenced, trailed by Christians¹⁸.

Additionally, in 1991, the Federal Shariat Court of Pakistan had decided that any blasphemy against Prophet Mohammad will result in capital punishment and nothing else.

The blasphemy laws of Pakistan are conflicting to International laws and can even fall under the classification of unspeakable atrocity under the Article 7(h) of Rome rule as an 'Oppression against any recognizable gathering or collectively on political, racial, national, ethnic, social, religious, sexual orientation or different grounds that are generally perceived as impermissible under universal law'.

The Above referenced cases are just the tip of the chunk of ice and there are countless situations where charges under blasphemy laws have caused viciousness and disorder.

4. BLASPHEMY IN THE QUR'AN

The death penalty for Blasphemy (*Sabb*) isn't explicitly endorsed in the Qur'an.¹⁹ However, a few sections and entries insinuate and address various clashing situations on issues relating to impiety, which, incorporates the practicing of any religion other than Islam. The inconsistencies encompassing blasphemy in the Qur'an, some of which are the aftereffect of the way where the Qur'an is accepted to have been composed or received. The Qur'an is separated by Islamic researchers into two essential classes: *Meccan Surahs* (Mecca Chapters) and *Medinan Surahs* (Medina Chapters)²⁰. The Meccan Surahs accepted to be the most punctual parts, however not sequentially, are claimed to be disclosures Muhammad got from Allah (by means of the holy messenger Gabriel) while he was in Mecca²¹, when the primary Islamists were not yet ground-breaking enough to take part in battle with non-Muslims; a period where Muhammad was transparently and proudly taunted and disparaged for offering his supposed disclosures to individuals from his non-Muslim clan, the *Quraysh*.²²

The later Medinan Surahs were purportedly uncovered to Muhammad while he was in Medina²³, when his powers - who did battle with the non-Muslims of Medina, had developed in number, riches and military may and had the capacity to swear off the down to earth resistance Muhammad had to suffer in Mecca. Consequently, the Medinan Surahs will, in general, be fiercer and less tolerant than their prior Meccan counterparts, albeit such a division isn't without its flaws and exemptions. In any case, there is an immovably settled example between the two classifications of Surahs. Matusitz states: "The early Meccan Qur'an is progressively serene, idyllic, and religious. The later Medinan Qur'an is progressively fierce and political. This distinction originates from the way that, in Mecca, Muhammad was simply a religious pioneer. In Medina, he turned into a political and military pioneer as well."²⁴ Further, Wild examines Muhammad's progress from frailty to control and the suggestions this change had on the Qur'an, which started in 622 CE with his constrained migration to Medina, saying: "After the 'emigration' (*hijra*) from Mecca to Yathrib (later Medina) in 622 CE, the Prophet turned into the recognized pioneer of a network. A reasonable number of Medinan entries in the

¹⁵ Pakistan Penal Code, 1860, No. XLV, Act of Parliament (1860), §298 B(1)(d).

¹⁶ *Ibid.*, at §298 B(2).

¹⁷ *Ibid.*, at §298 C.

¹⁸ FREEDOM HOUSE, *Policing Belief: The Impact of Blasphemy Law on Human Rights Report* (2010) 77.

¹⁹ LORENZ LANGER, RELIGIOUS OFFENCE AND HUMAN RIGHTS: THE IMPLICATIONS OF DEFACTION OF RELIGIONS (Cambridge University Press 2014) 332.

²⁰ THE CAMBRIDGE COMPANION TO THE QUR'AN (Jane Dammen McAuliffe ed., Cambridge University Press) (2006) 30.

²¹ *Ibid.*, at 42.

²² THE CAMBRIDGE COMPANION TO MUHAMMAD (Johnathan E. Brockhopp ed., Cambridge University Press) (2010) 7.

²³ *Ibid.*, at 30.

²⁴ JONATHAN MATUSITZ, SYMBOLISM IN TERRORISM: MOTIVATION, COMMUNICATION, AND BEHAVIOR (Rowman & Littlefield 2015) 167.

Qur'an are, thusly, of direct social and political importance. Rules of lead corresponding to different religious gatherings, most quite Jews and Christians, laws of legacy, marriage, and separation, yet additionally money related and business guidelines, rules of fighting and the appropriation of goods, counter, the treatment of slaves, and so on, turned out to be a piece of the heavenly text.”²⁵ The distinctions in substance and tone between the Meccan and Medinan surahs in regards to issues related to blasphemy are articulated, yet special cases and varieties do exist.

5. BLASPHEMY IN ISLAMIC JURISPRUDENCE (*FIQH*)

Tragically, there is an ijma inside and between the four Sunni Schools of Fiqh (*Hanafi, Malaki, Shafi* and *Hanbali*) and the two Shia Schools of Fiqh (*Ja'fari* and *Zaydi*) concerning the discipline of Muslims who swear, despite the fact that the particular disciplines fluctuate between the schools; blasphemy is commonly deciphered as either a sign of an expectation to apostatize or the execution of heresy itself.²⁶ Further, there are various classifications of blasphemy that exist across various purviews and over the schools of Sunni and Shia Fiqh.²⁷

6. BLASPHEMY AND THE MUSLIM COUNTRIES

In 2009, a Christian mother of five, Aasiya Noreen aka. Asia Bibi, was arrested and accused of blasphemy under Section 295C of Pakistan's Penal Code.²⁸ In 2010, Aasiya was condemned to death for 'offending/insulting the Prophet'. Aasiya's case has earned global attention, and owing not exclusively to the unconvincing body of evidence against her yet in addition, the assassinations of two politicians related with her case - Punjab Representative, Salman Taseer and Christian Minorities serve Shahbaz Bhatti; Pakistan's enemy of blasphemy law has been put under an undeniably extreme spotlight. In 1986, Pakistan's blasphemy law, which is an authoritative frontier relic of pre-partition India²⁹, was amended under the military administration of General Zia-ul Haq to incorporate the demise penalty. In 1991, the Federal Shariat Court of Pakistan struck down the alternative forever detainment, endorsing passing and a substantial fine as required disciplines under Section 295-C³⁰, which peruses:

“295-C: use of derogatory remarks etc., in respect of the Holy Prophet: – who ever by words, either spoken or written, or by visible representation, or by any imputation innuendo, or insinuation, directly, defiles the sacred name of the Holy Prophet Muhammad (PBUH) shall be punished with death, or imprisonment for life and shall also be liable for fine”.

Before 1986, just 14 cases of blasphemy were accounted for, however after the authoritative change, blasphemy cases drastically expanded, with 1,274 individuals being accused of blasphemy somewhere in the range of 1986 and 2010, and over half of such cases focused on Christians or Ahmadiyya Muslims, who joined with a little Hindu populace make up around 3% of Pakistan's whole population.³¹ Human rights advocates have featured the manner by which Pakistan's blasphemy laws authorize the universality of the religion of the state (Sunni Islam) upon Pakistanis to the hindrance of the human privileges of individuals from minority faiths.³² Advocates against Pakistan's blasphemy laws have additionally noticed that, while at first considered and built to advance congruity in a pluralistic culture (pre-partition India)³³, such laws make social disharmony and encourage religious fanatics. Further, in excess of 60 individuals blamed for blasphemy in Pakistan have been extra-

²⁵ Johnathan E. Brockhopp ed., *supra*, note 20, at 273.

²⁶ LORENZ LANGER, *supra*, note 19, at 332.

²⁷ THE PRINCETON ENCYCLOPAEDIA OF ISLAMIC POLITICAL THOUGHT (Gerhard Bowering ed., Princeton University Press 2013) 71.

²⁸ Dawn Staff, *Blasphemy: What you need to know about Asia Bibi's Trial*, DAWN NEWS (May 19, 2020, 11:10 AM) <https://www.dawn.com/news/1289700>.

²⁹ SHEMEEM BURNEY ABBAS, PAKISTAN'S BLASPHEMY LAWS: FROM ISLAMIC EMPIRES TO THE TALIBAN (University of Texas Press, 2013) 73.

³⁰ CENSORSHIP IN SOUTH ASIA: CULTURAL REGULATION FROM SEDITION TO SEDUCTION (Raminder Kaur and William Mazzarella ed., Indiana University Press) (2009) 174.

³¹ RECONCILIATION: THE WAY OF HEALING AND GROWTH (Janez Juhant and Bojan Zalec ed., LIT) (2012) 200.

³² Bilal Hayee, *Blasphemy Laws and Pakistan's Human Rights Obligations*, 14 UNDAU Law Review (2012) 25.

³³ SHEMEEM BURNEY ABBAS, *supra*, note 20, at 74.

judicially killed somewhere in the range of 1990 and 2014³⁴, and various others blamed for blasphemy have been killed in jail³⁵.

In 2012, in Indonesia, the most crowded Muslim-dominant part democracy³⁶, local official Alexander Aan was charged and indicted for blasphemy for posting on Facebook that he didn't have faith in God³⁷. Indonesia ordered its blasphemy law in 1965³⁸, yet up until the twenty-first century not many cases of blasphemy were accounted for. From 2004 to 2014, under the administration of Susilo Bambang Yudhoyono, the number of blasphemy cases thrived, with 106 announced instances of blasphemy that managed issues from internet-based life articulations of non-conviction to articulations of heterodox Islamic beliefs.³⁹ Whilst Indonesia's blasphemy law doesn't endorse capital punishment, it extends past Pakistan's blasphemy law to explicitly ban deviations from the six perceived religions in Indonesia, just as rebuffing the individuals who don't practice religion at all.⁴⁰

The moderately ongoing pattern towards an expansion in blasphemy cases in both Indonesia and Pakistan is likewise noticeable over various different nations in the Muslim world, including Saudi Arabia, Iran, Egypt, and Algeria.⁴¹ According to a Pew report, 'a fourth of the world's nations and domains punish blasphemy and most of these nations and regions are Islamic states or Muslim-majority states situated in the Middle East and North Africa (MENA).⁴² Thus, given the far-reaching presence of blasphemy laws in the Muslim world combined with the present pattern concerning their inexorably forceful implementation, blasphemy laws in the Muslim world are turning into a significant issue to be tended to by both human rights activism and concentrate in religion grant.

6.1. BLASPHEMY AGAINST HOLY PERSONAGES

There exists plenty of cases wherein Muslims, ex-Muslims and non-Muslims have been given either jail sentences or capital punishment for offending Muhammad. In 2015, an Indian man was imprisoned in Dubai for offending the Prophet (*Sabb al-nabi/Sabb al-Rasool*)⁴³ on Facebook.⁴⁴ Again in 2015, Sara Al-Drees, a 28-year-old Kuwaiti blogger and educator, was arrested for offending Muhammad on Twitter. In Iran, which works under *Shari'a* administered by Shia Islamic *fiqh*, the sentence given for offending the Prophet is death.⁴⁵ In 2015, 19-year-old Sina Dehghan was arrested in Iran; in the wake of being fooled into marking a composed admission, he was given capital punishment for offending the Prophet on social media.⁴⁶

6.2. BLASPHEMY AGAINST BELIEFS AND CUSTOMS

In 2007, an Indonesian man was condemned by the Supreme Court of Indonesia to five years in jail for communicating the unorthodox conviction that he was the rebirth of the Prophet Muhammad - a conviction which conflicts with the built-up conventionality of Islam as well as the Islamic traditions

³⁴ TE Staff, *Blasphemy in Pakistan: Bad-Mouthing*, THE ECONOMIST (May 26, 2020, 11:34 PM) <http://www.economist.com/news/asia/21635070-pakistans-blasphemy-laws-legitimise-intolerance-bad-mouthing>.

³⁵ Asad Hashim, *Living in Fear Under Pakistan's Blasphemy Law*, ALJAZEERA NEWS (May 28, 2020, 08:27 AM) <http://www.aljazeera.com/indepth/features/2014/05/living-fear-under-pakistan-blasphemy-law>.

³⁶ EMERGING DEMOCRACY IN INDONESIA, (Aris Ananta, Evi Nurvidya Arifin and Leo Suryadinata ed., Institute of South East Asian Studies) (2005) 135.

³⁷ Kate Hodal, *Indonesia's atheists face battle for Religious Freedom*, THE GUARDIAN (June 03, 2020, 02:33 PM) <https://www.theguardian.com/world/2012/may/03/indonesia-atheists-religious-freedom-aan>.

³⁸ JEREMY MENCHIK, *ISLAM AND DEMOCRACY IN INDONESIA: TOLERANCE WITHOUT LIBERALISM* (Cambridge University Press 2016) 87.

³⁹ Dawood Ahmed, *Rise of Blasphemy Charges: Saudi Arabia, Iran, Indonesia in Perspective*, DAWN NEWS (June 03, 2020, 05:17 PM) <https://www.dawn.com/news/1154251>.

⁴⁰ *Ibid.*

⁴¹ *Egypt's worrying rise in Criminal Blasphemy Cases*, AMNESTY INTERNATIONAL NEWS (June 04, 2020, 09:08 AM) <http://www.amnestyusa.org/news/news-item/egypt-s-worrying-rise-in-criminal-blasphemy-cases>.

⁴² Angelina E. Theodorou, *Which countries still outlaw Apostasy and Blasphemy?*, PEW RESEARCH CENTER (June 04, 2020, 01:42 PM) <http://www.pewresearch.org/fact-tank/2016/07/29/which-countries-still-outlaw-apostasy-and-blasphemy>.

⁴³ RUDOLPH PETERS, *CRIME AND PUNISHMENT IN ISLAMIC LAW: THEORY AND PRACTICE FROM THE SIXTEENTH TO THE TWENTY-FIRST CENTURY* (Cambridge University Press 2005) 180.

⁴⁴ Thaer Zriqat, *Man jailed by Dubai court for insulting Islam on Facebook*, THE NATIONAL (June 05, 2020, 10:14 AM) <http://www.thenational.ae/uae/courts/man-jailed-by-dubai-court-for-insulting-islam-on-facebook>.

⁴⁵ RUDOLPH PETERS, *supra*, note 43.

⁴⁶ *Twenty-Year Old on Death Row After "Confessing" on Promise of Freedom*, CENTER FOR HUMAN RIGHTS IN IRAN NEWS (June 05, 2020, 07:11 PM) <https://www.iranhumanrights.org/2016/09/sina-dehghan-death-sentence-for-sabb-al-nabi/>.

explicit to Indonesia.⁴⁷ In 2008, a Jordanian artist was accused of blasphemy and skepticism for consolidating refrains of the Qur'an into a book of affection verse entitled, *Grace Like a Shadow* 'Jordan's highest religious authority, Sheikh Nuh Qdah, said, "What Samhan did was a type of atheism and blasphemy."⁴⁸ Islam Samhan was allowed a one-year jail sentence, pronounced a backslider and fined US\$14,000.⁴⁹ Three Moroccan writers were arrested for blasphemy in Morocco and allowed a 3-year suspended sentence just as an \$8,000 fine for distributing cheerful jokes about religion, Allah, and the Moroccan lord, which were regarded to be profoundly offending to the Moroccan people.⁵⁰ In 2007, a British teacher working in Sudan was charged and indicted for blasphemy for permitting her class of 7-year-old understudies to name a teddy bear 'Muhammad'. In spite of the fact that the name itself is exceptionally normal in Sudan, top Islamic priests in Sudan, trusting her activities to be a piece of a Western connivance against Islam, required her to be given 40 lashes and a protracted jail sentence - be that as it may - because of discretionary weight set on the Sudanese government by Britain, Gillian Gibbons got away with a 15-day jail sentence and was from there on deported.

7. WESTERN BLASPHEMY VERSUS ISLAMIC BLASPHEMY

The conceptualization of blasphemy in Islam is somewhat extraordinary to the conceptualization of blasphemy in Christianity. Nash talks about the idea of blasphemy in Judeo-Christian social orders, expressing: "the underlying foundations of blasphemy in the West falsehood all the more promptly in the misuse of the name of God and the misuse of religious images."⁵¹ In the seventeenth century, the Jesuit minister Francisco Suarez characterized blasphemy as "any expression of reprobation, censure, or contumely articulated against God."⁵² Within Islam, then again, blasphemy may best be portrayed as articulations that offer ascent to the doubt of disaffection, in light of the fact that the central rule of Islam is complete accommodation to the desire of Allah and the message of the Prophet Muhammad.⁵³ Any dismissal or deviation from both of these coupling commitments is regarded to be infidelity/disbelief (*kafr*)⁵⁴. Thus, under Islamic law, blasphemy (*sabb*)⁵⁵ is firmly connected with dereliction (*riddah*)⁵⁶ and sin (*zandaqah*)⁵⁷, which all rest inside the guideline of *kafr*, or the dismissal or potentially deviation of conventional/right submission to Islam.⁵⁸

Having made these qualifications, it is important that Islam's conceptualization of blasphemy is all the more firmly likened to early Christianity's comprehension of blasphemy, which, similar to Islam, considered blasphemy to be as a rule firmly connected with blasphemy and infidelity.⁵⁹ On this point, Levy composes: Christianity in the pre-Nicene period, before the fourth century, was vigorously Greek in the language just as a thought. Likewise, 'blasphemy', what might be compared to 'disrespect', matched blasphemy as the name of the wrongdoing. To the Greeks, blasphemy implied any kind of talking abhorrent, boisterous attack, or criticism, particularly profane speech. In spite of the fact that the English word 'iconoclasm' has a delicate sound, which means an absence of devotion or something flippant, in Greek, the word connoted stunning and loathsome thoughts regarding religion. In early Christian ideas, 'impiety', like 'blasphemy', accumulated various and complex implications. Blasphemy turned out to be something beyond reviling or censuring God. It quickly came to mean breaking the solidarity of Christianity.⁶⁰

⁴⁷ Patung, *Abdul Rahman*, INDONESIA MATTERS (June 06, 2020, 09:51 AM) <http://www.indonesiamatters.com/130/abdul-rahman-blasphemer>.

⁴⁸ *Jordanian poet accused of Atheism and Blasphemy*, DAILY STAR LEBANON (June 06, 2020, 07:11 PM) <http://www.dailystar.com.lb/Culture/Art/2008/Oct-25/116271-jordanian-poet-accused-of-atheism-and-blasphemy.ashx>.

⁴⁹ Salah Malkawi, *Jordanian poet prepares for Jail*, THE NATIONAL (June 06, 2020, 11:31 PM) <http://www.thenational.ae/news/world/middle-east/jordanian-poet-prepares-for-jail>.

⁵⁰ *Journalists fined over Islam Joke*, BBC NEWS (June 07, 2020, 08:17 AM) <http://news.bbc.co.uk/2/hi/africa/6262919.stm>.

⁵¹ DAVID NASH, *BLASPHEMY IN THE CHRISTIAN WORLD: A HISTORY*(Oxford University Press 2007) 2.

⁵² Francisco Suarez, *De Relig.*, (June 06, 2020, 07:11 PM) <http://www.newadvent.org/cathen/02595a.htm>.

⁵³ INTISAR A. RABB, *DOUBT IN ISLAMIC LAW: A HISTORY OF LEGAL MAXIMS, INTERPRETATION, AND ISLAMIC CRIMINAL LAW*(Cambridge University Press 2015) 33.

⁵⁴ EBRAHIM MOOSA, *GHAZALI AND THE POETICS OF IMAGINATION* (The University of North Carolina Press 2005) 192.

⁵⁵ KAMRAN HASHEMI, *RELIGIOUS LEGAL TRADITIONS, INTERNATIONAL HUMAN RIGHTS LAW AND MUSLIM STATES* (Martinus Nijhoff Publishers, 2008) 31.

⁵⁶ C. S. PEACOCK, *MEDIAVAL ISLAMIC HISTORIOGRAPHY AND POLITICAL LEGITIMACY* (Routledge 2007) 120.

⁵⁷ *ENCYCLOPAEDIA OF ARABIC LITERATURE*, Julie Scott Meisami and Paul Starkey (ed., Routledge)(1998) 828.

⁵⁸ SHEMEEM BURNEY ABBAS, *supra*, note 20, at 126.

⁵⁹ LEONARD WILLIAMS LEVY, *supra*, note 8, at 31.

⁶⁰ *Ibid.*

This early Christian idea of breaking the solidarity of Christianity is like the Islamic standard of *fitnah* (social change), which can be deciphered to depict common distress, social change, disobedience to a ruler and general mayhem and disunity inside the *Ummah* (Muslim Group) occasioned by words and direct that cause Muslims to wander from the 'true path' of Islam.⁶¹ On the issue of *fitnah*, the Qur'an is unequivocal: "And murder them any place you overwhelm them and oust them from any place they have removed you, and *fitnah* is more awful than slaughtering. Also, don't battle them at al-Masjid al-Haram until they battle you there. Be that as it may, on the off chance that they battle you, at that point execute them. Such is the reward of the disbelievers."⁶² Thus, blasphemy in Islam is a type of *Kufr*, which, whenever left unchecked, is seen to be a conceivably powerful wellspring of *fitnah* inside the *Ummah*, which, as expressed obviously in the Qur'an, is accepted to be a deplorable outcome. Further, in his English interpretation of the Qur'an, the Pakistani-brought into the world Islamic researcher Shayk Muhammad Sarwar deciphers *fitnah* in the section cited above as 'disbelief'⁶³, in this manner exhibiting the longstanding closeness of these ideas, yet in addition the Islamic thinking behind the confining of blasphemy inside the setting of *Kufr*. *Fitnah* is a sensational idea in Islamic idea that conveys many differing yet semi-related implications. Talking about the significance of *fitnah* in Quran, Pandolfo says: "And al-fitna is madness [*al-junun*], and this likewise as *al-futun*. The Qur'an says, "fitnah is worse than slaughter" [*al-fitna ashaddu min al-qatl*, Qur'an 2:191]. What's more, *al-fitna* implies here *al-kufr*, 'unbelief'. Something very similar has been said by the exegetes. Ibn Sidah has stated, "*al-fitna* is unbelief."⁶⁴

Strangely, current defenders of blasphemy laws habitually utilize the idea of *fitnah* (social change) to pluralistic common popular governments, contending that blasphemy laws secure the harmony and amicability of pluralistic social orders by debilitating articulations that may outrage religious gatherings, and it was this (imperfect) thinking that motivated the British colonialists to sanction Pakistan's blasphemy law.⁶⁵ However, as will be illustrated, the requirement of blasphemy laws by and large outcomes in the very *fitnah* they look to mollify.

8. BLASPHEMY LAW AND INDIA

The Indian Penal Code, 1860⁶⁶ has a whole part for offenses against religion; Chapter 15, Section 295 to 298. Anyway, no section meets all requirements to be held as an area for blasphemy aside from Section 295(A).

It is frequently contended that Section 295(A) isn't an area for blasphemy however a section against Hate Speech. In spite of the fact that remembering the occasions as a result of which the area was presented in the penal code, and the part under which the section is, the goal of the administrators can be plainly comprehended that the Section 295(A) is a Section to condemn Blasphemy and halting affectation of violence through disrespectful acts.

There have been various discussions over the legitimacy of Section 295(A) in the post-autonomy India, where a secular setup has been established and Freedom of Speech & Expression as well as Freedom to Practice and Propagate Religion has both been ensured as an essential right under the constitution.⁶⁷

Remembering the contentions favouring and opposing blasphemy laws over the world and the effect of its present or nonattendance, the legitimacy of the blasphemy law in India can likewise be talked about with contentions examined as beneath:

8.1. NATURE OF THE STATE AND SOCIETY

⁶¹ MANSOOR JASSEM ALSHAMS, ISLAM AND POLITICAL REFORM IN SAUDI ARABIA: THE QUEST FOR POLITICAL CHANGE AND REFORM (Routledge 2011) 240.

⁶² The Qur'an - Sahih International Translation, 2:191.

⁶³ The Qur'an - Muhammad Sarwar Translation, 2:190.

⁶⁴ STEFANIA PANDOLFO, IMPASSE OF THE ANGELS: SCENES FROM A MOROCCAN SPACE OF MEMORY (The University of Chicago Press 1997) 159.

⁶⁵ SHEMEEM BURNEY ABBAS, *supra*, note 20, at 100.

⁶⁶ India Penal Code, 1860, *supra*, note 5.

⁶⁷ INDIA CONSTI.art. 19.

'It isn't the matter of the legislature to suppress genuine or fanciful assaults upon a specific religious principle.'⁶⁸

India is a secular state by the righteousness of its constitution. A secular state is neither a supporter of religion nor irreligion.⁶⁹ Anyway, the burden of a correctional arrangement that goes about as an anti-blasphemy law is a bias against the sceptical as, as examined prior the training and spread of irreligion may add up to blasphemy for scarcely any religions.

Likewise, the Indian culture is mind-boggling in nature. There are various religions with various groups and among them are extremely clashing thoughts. The discussion over the festival of Mahishasur Divas⁷⁰ is one such model where the possibility of the festival was exceptionally clashing with the customary Hindu conviction and the celebrators were claimed of spreading abhor noxiously.

Being a secular state, with such a pluralist society, it is deceptive for a state to meddle into the religious issues of the general public with such clashing thoughts, as it will be exceptionally hard to keep an unbiased methodology.

The intricacy in the perspective of the Indian culture can be comprehended from the way that an F.I.R was recorded against two ladies under Section 295(A) over their comments identifying with a Hindu patriot pioneer⁷¹, likening him to religious figure.

8.2. VIOLATION OF FREEDOM OF SPEECH AND EXPRESSION

Since the commencement of Independent India, the area has been characterized as a reasonable restriction over the ability to speak freely to verify the open request.

In the *Ramji Lal Modi Case*⁷², the Court had held that the Constitution in Article 19(2) grants the state to confine the Freedom of Speech and Expression 'in interests of public order'. The Court expressed that the expression 'in interests of' gave it a wide ambit and the state can make any law for it. The Court likewise expressed that the law is for a bothered type of speech proposed to upset open requests. Anyway, the court disposed of the possibility of closeness between the speech and the brutality that the state fears.⁷³

Anyway in *Ram Manohar Lohia's Case*⁷⁴, it was held that the 'limitation forced in light of a legitimate concern for open request to be a reasonable restriction, ought to be one which has a proximate association or nexus with open request, yet not one unrealistic, speculative or problematical or excessively remote in the chain of its connection with public order'. Further, the court on account of *S. Rangarajan Etc*⁷⁵ expressed that the supposed articulation ought to resemble a 'spark in the powder keg' and 'intrinsically perilous to the public interest'.

Further in the *Arup Bhuyan's Case*, Justice Markandey Katju under the light Clarence *Brandenburg v. Territory of Ohio*⁷⁶, stated that a speech can't be confined except if it incites approaching uncivilized activity.

In light of the above state case laws, free speech gets a more extensive degree. Nonetheless, in down to earth approach, the possibility of an up and coming untamed activity makes it exceptionally

⁶⁸ Joseph Burstyn, Inc. v. Wilson 1952, 343 U.S. 495

⁶⁹ JOHN T.S MADELEY & ZSOLT EYENDI, CHURCH AND STATE IN CONTEMPORARY EUROPE: THE CHIMERA OF NEUTRALITY (Annotated Psychology Press 2003) 14.

⁷⁰ S.N Vijetha, *Student Groups come to Blows over Mahishasur issue at JNU Once again*, THE HINDU (June 10, 2020, 01:11 PM) <http://www.thehindu.com/news/cities/Delhi/student-groups-come-to-blows-over-mahishasura-issue-at-jnuonce-again/article6491346.ece>.

⁷¹ Mumbai Bureau, *Mumbai shuts down due to fear, not Respect*, THE HINDU (June 11, 2020, 04:53 PM) <http://m.thehindu.com/news/national/other-states/mumbaishutsdownduetofear notrespect/article4111814.ece>.

⁷² Ramji Lal Modi v. State of U.P., 1957 AIR 620; 1957 SCR 860.

⁷³ Gautam Bhatia, *The Constitutional Case against India's Blasphemy Law*, THE WIRE (June 13, 2020, 09:08 AM) <http://thewire.in/19508/the-constitutional-case-against-indias-blasphemy-law/>.

⁷⁴ The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia, 1960 AIR 633; 1960 DVR (2) 821

⁷⁵ S. Ranga Rajan v. P. Jagajivan Ram, 1989 SCR (2) 204.

⁷⁶ Arup Bhuyan v. State of Assam, Criminal Appeal No. 889 of 2007.

troublesome on account of Blasphemous acts. It is very unusual concerning what proclamation containing components of blasphemy has the capacity to start off violence.

With regards to blasphemous statements, one can't expect or anticipate how the network individuals will respond. An ungodly demonstration by a Christian teacher in Kerala, India prompted his hands being cleaved off by individuals from an Islamic extremist gathering⁷⁷, however, a blasphemous statement in the year 2016 by a Hindu Chief prompted Kaliachak Riots in West Bengal, India.⁷⁸ Anyway, an enormous number of disrespectful proclamations abandon accepting an open response. There isn't a parameter by which it very well may be estimated what articulation may prompt 'imminent untamed action'.

Extraordinary compared to another case of the previously mentioned contention is the *Wendy Doniger's Case*. Writer Wendy Doniger composed a book titled *The Hindus: An Alternate History*. Accordingly, a claim recorded against the book under Section 295(A) and Penguin India chose not to discharge the book in India and selected out of court debate settlement. The key point to be noted is that the court's decision on the book had not come. The book was pulled back exclusively in light of the fact that the distributors dreaded losing the case in the Court and being held blameworthy under Section 295(A) of the Indian Penal Code, 1860⁷⁹.

9. CONCLUSION

On the off chance that blasphemy in Islam is deciphered as lacking clear endorses, regardless of whether as a *hudd* offense or through an *ijma* inside, and between Islamic schools of religious philosophy and law, at that point it might be conceivable to change and nullify Islamic blasphemy laws inside an Islamic structure. To accomplish this, the standards of *al-Islah wa al-tajdeed* (reform and renewal) and *ta'zir* (discretion) would be utilized related to each other, because the fundamental rule of *ta'zir* is the 'prosperity of the general public'. Given that blasphemy laws have been exhibited to cause social disarray and brutality, rulers in Islamic states might change and cancel blasphemy laws under the stipulation that they are a wellspring of 'fitnah'. Revoking Islamic blasphemy laws on such grounds would have a more prominent possibility of achievement, should such a road be held to exist; because the nullification would lay on a simply Islamic talk acknowledged by the constituents of Muslim social orders. Be that as it may, if blasphemy laws are esteemed permanent because of the utilization of *naskh* (abrogation) and the current accords inside and between certain Islamic schools of law, at that point change inside an Islamic setting would be inconceivable. In such a case, especially concerning less well-off Islamic countries like Pakistan, dangers of budgetary and other strategic and political authorizes through joined endeavours by mainstream popular governments might be the main answer for the human rights emergency occasioned by the implementation of Islamic blasphemy laws. Because of the improvement, increment and exportation of a vicious Islamic 'against blasphemy culture', it might be contended that the annihilation of Islamic blasphemy laws is likewise in the West's household intrigue, especially thinking about that Islamic 'blasphemy fear-mongering' in the mainstream West is prospering.

On the other hand, in India, the Supreme Court noted on account of *Shreya Singhal Case*⁸⁰ there exists a contrast among 'incitement' and 'backing'. The Court had opined that any such incitement that upsets the public order can be blue-pencilled. Thusly, the main instigation that must be there is an affectation of violence. This is the place the laws of Blasphemy and loathes speech varies. For despise speech, the speech itself ought to contain components that instigate violence, or proliferation of brutality, for instance, the speech of Jean-Paul Akayesu⁸¹; that assumed a job in incensing the Rwandan Genocide.

Violence against a private gathering of realists and nonbelievers, outraging over a sarcastic comic demonstration of a comic is certainly not an indication of a tolerant, mainstream and dynamic culture

⁷⁷ Lizzie Dearden, *Islamists jailed for Chopping off Teacher's Hand 'Because Exam paper insulted Prophet Mohamed*, THE INDEPENDENT (June 14, 2020, 06:11 PM) <http://www.independent.co.uk/news/world/asia/islamists-jailed-for-chopping-of-teachers-hand-because-exam-paper-insulted-prophet-mohamed-10238701.html>.

⁷⁸ ABP News Bureau, *Communal Tension prevails in Malda after Muslim protest turning Violent*, ABP LIVE (June 16, 2020, 07:11 PM) www.abplive.in/india-news/communal-tension-prevails-in-malda-after-muslim-protest-turning-violent-269938.

⁷⁹ India Penal Code, 1860, *supra*, note 5.

⁸⁰ *Shreya Singhal v. Union of India*, W.P.(Cr) No.167 of 2012.

⁸¹ Wibke Kristin Timmermann, *The Relationship between Hate Propaganda and incitement of Genocide: A New Trend in International law Towards Criminalisation of Hate Propaganda*, 18 *Leiden Journal of International Law*, (2005) 266.

like India; and Government as opposed to giving a device to the general public to legitimately persecute others and sort out ill will, should attempt to build up a soul of resistance among the residents through different organizations, decriminalize blasphemy and ought not permit individuals to hold their religious conclusions as a sword over the tongue of others. As can be noted for models over the world, stricter the blasphemy law, graver the human right infringement.