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A Global Blasphemy Law: Protecting Believers at the Expense of Free Speech

Kiley Widelitz

I. Introduction

In September 2012, the 14-minute trailer for *Innocence of Muslims*, an anti-Islamic video posted on YouTube, ignited violent demonstrations and protests that resulted in hundreds of injuries (CNN Wire Staff, 2012). The video sparked debate within member states of the United Nations over whether the United Nations should formally restrict blasphemy, speech that insults religions (Radsch, 2012). The Organization for Islamic Cooperation (OIC), which represents 57 countries and one and a half billion people, pushed for the United Nations to adopt a resolution supporting the criminalization of blasphemy. Western members of the United Nations are against this proposal. The debate surrounds not only what should be protected, but also the effects of blasphemy laws on societies, and whether blasphemy laws constrain or incite violence.

As of June 30, 2009, 44 of the 59 countries that have enacted a blasphemy law have also enforced it (Pew Forum on Religion & Public Life, 2011). The punishment for violating these laws varies by country, but range from fines to death (Pew Forum on Religion & Public Life, 2011). A 2009 Pew Forum on Religion & Public Life indicates that out of the 50 most populous countries, Indonesia, Pakistan, and Saudi Arabia had the highest scores in terms of government

restrictions on both religion and social hostilities involving religion.¹ In the State Department's 2011 Executive Summary of the International Religious Freedom Report, these three countries were highlighted for their continual and expanded use and abuse of blasphemy laws (Bureau of Democracy, Human Rights and Labor, 2011).

The United States, Indonesia, Pakistan, and Saudi Arabia provide a range of analysis, from lesser to greater restrictions, respectfully.² Although several United States state legal codes still contain blasphemy laws, these laws are not enforced, as they are unconstitutional (Pew Forum on Religion & Public Life, 2011). The United States is among the countries, whose laws of religious freedom are considered to be among the least restrictive in the world (Pew Forum on Religion & Public Life, 2011). On the other hand, blasphemy laws in Indonesia, Pakistan, and Saudi Arabia are used as a ruse to constrain freedom of expression, limit religious liberty, and restrict the rights of religious minorities. These laws create an environment of social hostility and intolerance. Although Indonesia, Pakistan, and Saudi Arabia are only three of 44 countries that enforce blasphemy laws, they share much in common with other countries that enforce blasphemy laws.³ In this comparative analysis to United States laws, it will be shown that the United Nations should follow the way of the United States and forgo any restriction on blasphemy.

II. Case Studies

A. United States

¹ Saudi Arabia was the only country on the Pew list of countries that has very high levels of social hostilities as well as very high levels on government restrictions. Countries that also have high scores on government restrictions are Pakistan, Indonesia, India, Iraq, Israel, and Somalia (Pew Forum on Religion & Public Life, 2011).

² However, Indonesia, Pakistan, and Saudi Arabia are among the most restrictive in their use of blasphemy laws and were picked to illustrate what can happen as the result of enforcing blasphemy laws.

³ This article is limited in that it does not discuss all 44 countries as the countries do vary in the extent to which they punish violators of these laws.

The United States is a constitutional federal republic that prides itself on its First Amendment, which protects citizens' right to free speech and religious exercise: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech" (U.S. Const. Amend. I). As of 2007, 51.3 percent of Americans identified as Protestant, 23.9 percent Roman Catholic, 1.7 percent Jewish, 1.6 percent Christian of other denominations, 0.7 percent Buddhist, 0.6 percent Muslim, and the remaining unaffiliated or non-respondents (The World Factbook, 2013d). The United States has never had an official religion.

In the United States, the legal system consists of a common law system at the federal level, state legal systems based on common law (except Louisiana, which is based on Napoleonic civil code), and judicial review of legislative acts (The World Factbook, 2013d). Blasphemy laws in certain states have not been utilized since the United States Supreme Court found them unconstitutional in the 1952 case *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (Brown, 2012). Further, the Fourteenth Amendment's extension of free speech and religious exercise against state regulation ensures that the government does not prosecute blasphemous speech or religious insults.

The United States government holds that protecting individual's rights to free speech is more important than protecting people from religious insults. This is not to say that Americans and the United States do not value religion. In fact, the United States is among the most religious countries in the world (Swanbrow, 2003). In 2003, a University of Michigan Study showed that "about 46 percent of American adults attend church at least once a week, not counting weddings, funerals and christenings, compared with 14 percent of adults in Great

Britain, 8 percent in France, 7 percent in Sweden and 4 percent in Japan” (Swanbrow, 2003, para. 2).

Unlike Indonesia, Pakistan, and Saudi Arabia, in the United States a person is free to insult a religion without legal repercussions. When President Obama addressed the United Nations regarding *Innocence of Muslims*, he stated “[t]he strongest weapon against hateful speech is not repression; it is more speech — the voices of tolerance that rally against bigotry and blasphemy, and lift up the values of understanding and mutual respect” (Kirell, 2012, para. 4). Diversity of opinion is enshrined in the United States Constitution, as the Founders understood the importance of free expression. United States citizens accept diversity of opinions even if they do not agree with those opinions. This allows all citizens to rest assured that their freedom of speech and of religion will not be restricted due to another’s actions. Free speech in America allows all people of all religions to practice their religion without living in fear of violence.

Although there is freedom of religion as well as freedom of speech, social hostilities involving religion still exist in the United States. According to the FBI, from 2006 to 2009, the United States averaged 1,300 hate crimes involving religious bias (Pew Forum on Religion & Public Life, 2011, p. 21).⁴ Even with freedom of speech and religion, intolerance of other religions still exists. However, the frequency and severity of the violence in the United States is not nearly as extreme as in Indonesia, Pakistan, and Saudi Arabia.

B. Indonesia

⁴ The FBI (n.d.) defines hate crimes as an illegal action coupled with bias. To count the annual number of hate crimes, the FBI uses Congress’ definition that describes a hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, ethnic origin or sexual orientation” (Federal Bureau of Investigation, n.d.).

In the early 17th Century, Indonesia was under Dutch colonization, and from 1942 to 1945, Japanese occupation. In 1949, following World War II, Indonesia declared its independence from the Netherlands (The World Factbook, 2013a). Today, Indonesia is the third most populous democracy and the largest Muslim majority country (The Pluralism Project at Harvard University, 2007). Customary law heavily influenced Indonesia's civil legal system (The World Factbook, 2013a).⁵ In a 2010 census, approximately 87 percent of the population were Muslims, seven percent Protestants, three percent Roman Catholics, 1.5 percent Hindus, and 1.5 percent Buddhists, followers of traditional indigenous religions, Confucians, Christians of other denominations, or non-respondents (WCC, 2012).⁶ Despite the strong Muslim majority, Indonesia has six official religions: Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism (The Pluralism Project at Harvard University, 2007).⁷ Religious freedom is constitutionally protected and under article 28E, Indonesia is a secular country (Human Rights Watch, 2010). However, Indonesia has blasphemy laws (WCC, 2012).

Indonesia's current blasphemy law is housed under Article 156(A) of the penal code (Prud'homme, 2010). On April 19, 2010, Indonesia's constitutional court upheld its blasphemy law, arguing it was still needed to "maintain public order among religious groups" (Prud'homme, 2010, p. 47). The constitutional courts reviewed this blasphemy law because Non-Governmental Organizations believed the laws were being used to "discriminate against certain religious groups,

⁵ Presidential Decree 11/2003 authorized Sharia in the Aceh province. Of note, non-Muslims within Aceh are exempt from Sharia. In addition, since 2007 Aceh has not enforced Sharia to the same extent as it had in the past (Bureau of Democracy, Human Rights and Labor, 2012a).

⁶ In parts of Indonesia "it is difficult to find accurate statistics on religious beliefs because people who do not identify as one of the six religions recognized by the government go undocumented" (The Pluralism Project at Harvard University, 2007, statistics and demographics section, para. 2).

⁷ An overwhelming majority of Muslims in Indonesia are Sunni; it is estimated that only half a percent to one and a half percent of Muslims in Indonesia are Shia Muslims (Bureau of Democracy, Human Rights and Labor, 2012a, p. 2). Since, the majority of Muslims are Sunni, the state recognizes Sunni Islam as the official form of Islam (Prud'homme, 2010).

specifically minority groups that have been denied their right to practice their beliefs”

(Prud’homme, 2010, p. 49). Article 156(A) of Indonesia’s penal code forbids anyone from doing the following:

Deliberately, in public, giv[ing] expression to feelings or commit[ing] an act: a) which principally has the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia; or b) with the intention to prevent a person to adhere to any religion based on the belief of the almighty God.

(Prud’homme, 2010, p. 46). This law grants the government the power to impose limitations on religious freedoms due to “security concerns.” Additionally, this law essentially “allows the government to ban groups that ‘distort’” any of the six official religions (Blake, 2010, para. 4).

In 2008, the government issued a joint ministerial decree using Article 156(A) that allowed the government to forbid all members of the Ahmadiyah religion from deviating with the core tenets of Islam.⁸ Although the blasphemy law protects each official religion, most blasphemy cases heard in court are for blasphemy against Islam (Prud’homme, 2010). The accused blasphemers are usually Christians or members of minority Islamic sects (Prud’homme, 2010). Furthermore, the punishment for violating Article 156(A) carries a maximum penalty of five years imprisonment (Prud’homme, 2010).

This blasphemy law restricts freedom of expression of the media as well as individuals and directly contradicts the constitution that accords “all persons the right to worship according to their own religion or belief” (Bureau of Democracy, Human Rights and Labor, 2012). In 2007, 41 members of the Indonesian Students Service Agency were charged and convicted of blasphemy for a 10-minute video “reportedly depict[ing] the Quran as the source of all evil in

⁸ The Ahmadiyah is a minority Islamic sect that does not hold the belief that Muhammad is the last prophet (Blake, 2010).

Indonesia, from violence to terrorism” (Prud’homme, 2010, p. 51).⁹ All 41 people involved in the making of the video were sentenced to five years in prison (Prud’homme, 2010).

Radical Indonesians have taken the blasphemy law into their own hands and used it to justify extralegal discrimination against religious minorities (Prud’homme, 2010). On February 8, 2011, Antonius Richmond Bawengan was sentenced to a five-year sentence for blasphemy because he circulated books considered “offensive to Islam” (Bureau of Democracy, Human Rights and Labor, 2012a). After Bawengan received his sentence, more than 1,000 people protested in front of the District Court because they believed that Bawengan’s sentence was not harsh enough, even though he was given the maximum penalty in the penal code (Human Rights First, 2012).

The blasphemy law has resulted in an environment of intolerance. The constitutional court and Indonesian government argue that the blasphemy law prevents interreligious violence from occurring. However, violence is sparked by comments and often mob violence accompanies court cases. The government has been inconsistent in its crackdown on extremist violence.

C. Pakistan

Pakistan is a federal republic with a common law legal system requiring laws be consistent with its official religion, Islam (Bureau of Democracy, Human Rights and Labor, 2012b). Ninety-five percent of its citizens are Muslim (75 percent Sunni and 25 percent Shia). The other five percent of Pakistani citizens identify as Christians, Hindus, Baha’is, Sikhs, Buddhists, and other (The World Factbook, 2013b).

⁹ The Indonesian Students Service Agency is a protestant umbrella organization (Prud’homme, 2010).

In sections 295(a), (b), and (c) of the Pakistani penal code, freedom of speech is “subject to any reasonable restrictions imposed by law in the interest of the glory of Islam” (Bureau of Democracy, Human Rights and Labor, 2012b, p. 1). Pakistan inherited its blasphemy laws from its founding after the partition of India in 1947. The original blasphemy laws enacted by the British made it illegal to “intentionally destroy[] or defil[e] a place or an object of worship or disturbing a religious assembly [and to] trespass on burial grounds or insult religious beliefs through the spoken or written word or by innuendo or visible representation” (News- South Asia, 2012, section what do the laws say, para. 1). The punishment for violating these blasphemy laws range from one to ten years of imprisonment, with or without a fine.

Between 1980 and 1986, under the military government of General Zia-ul Haq, Pakistan added new clauses to its chapter of religious offenses in the Pakistan penal code. The purpose of these additions was to make the blasphemy laws compatible with Islam and to legally “separate the Ahmadi community, declared non-Muslim in 1973, from the main body of Pakistan's overwhelmingly Muslim population” (News- South Asia, 2012, section when do the laws date from, para. 2). These additional clauses carried more severe consequences. For example, if someone blasphemed the Prophet Muhammad, the offender was subject to either death or life imprisonment. Additionally, a person could be imprisoned for 10 years for “insulting another’s religious feelings” (Bureau of Democracy, Human Rights and Labor, 2012b, p. 3). The National Commission for Justice and Peace estimates that a “total of 1,117 persons were charged under the blasphemy laws between 1987 and 2011” (Bureau of Democracy, Human Rights and Labor, 2012b, p. 11).

For example, on November 8, 2010, a Christian woman, Aasia Bibi, was sentenced to death for insulting the Prophet Mohammad (Bureau of Democracy, Human Rights and Labor,

2012b). Bibi appealed her conviction and is currently in solitary confinement (Human Rights First, 2012). It is also important to note that the government's enforcement of its blasphemy laws is not evenhanded. The 2011 International Religious Freedom Report stated that when minority groups argue that their religious feelings were "insulted," the blasphemy laws are rarely enforced (Bureau of Democracy, Human Rights and Labor, 2012b).

In 2010, there was a movement among members of the popular secular parties to reform the blasphemy laws. Sherry Rehman, a member of the Pakistan People's Party (PPP), introduced a legislative motion in the National Assembly of Pakistan to amend the procedure of hearing blasphemy cases because lower courts often do not require adequate evidence in blasphemy cases.¹⁰ However, the bill was withdrawn in February of 2011 under pressure from religious groups and opposition parties. Because of growing religious conservatism in Pakistan, the secular parties chose not to lose public support over this issue (News- South Asia, 2012).

In the meantime, individuals who seek to reform the blasphemy laws continue to be killed. The governor of Punjab province Salman Taseer was murdered in January 4, 2011 and Minister Shabaz Bhatti was murdered on March 2, 2011 due to their opposition to the blasphemy laws. Following their assassinations, "[t]here were increased reports of . . . activists and members of minorities hesitating to speak in favor of religious tolerance due to a climate of intolerance and fear" (Bureau of Democracy, Human Rights and Labor, 2012b, p. 1, 18). The blasphemy laws, coupled with the government's failure to address religious hostility or punish extremists, have fostered an atmosphere of intolerance and violence.

¹⁰ The failure of lower courts to require adequate evidence has led to some convicted persons spending years in jail before higher courts overturn their convictions. In addition, lower courts often do not allow bail in blasphemy cases. The reasons the courts get away with this is because they claim they are worried that the defendants will flee, since they could be sentenced to death (Bureau of Democracy, Human Rights and Labor, 2012b). Pakistan's blasphemy law clashes with citizens' right to due process.

D. Saudi Arabia

Saudi Arabia is a monarchy that functions according to the Basic Law, which was created in 1922 by royal decree. The Basic Law gives the king absolute power over the government, describes the government's rights and responsibilities and states that the country is a sovereign Arab Islamic state (The World Factbook, 2013c). It also articulates that Sunni Islam is the official religion and the country's constitution, the Quran and the Sunna.¹¹ The public practice of any religion other than Islam is prohibited, meaning there is no separation between state and religion (Bureau of Democracy, Human Rights and Labor, 2012c). Although no law exists that requires all Saudis to be Sunni Muslims, non-Muslim and Muslims whose beliefs differ from the government's interpretation of Islam are required to practice their religion in private (Bureau of Democracy, Human Rights and Labor, 2012c). Therefore, it is reported that 100 percent of Saudis are Muslim (The World Factbook, 2013c) and about 85 percent are Sunni Muslims (Bureau of Democracy, Human Rights and Labor, 2012c).

Saudi Arabia has an Islamic judicial system deriving its laws from the Quran and the Sunna (Bureau of Democracy, Human Rights and Labor, 2012c). Since Saudi Arabia does not have a written penal code, the blasphemy laws are very vague, giving judges the discretion to determine cases based on their own interpretation of the Quran. Thus, people are regularly convicted of blasphemy without the judge citing any legal basis. According to Human Rights Watch, people are convicted for blasphemy such as insulting the Prophet's companions, mocking religion, or using "un-Islamic terminology" (McCormick, 2012). Blasphemy against Sunni Islam is punishable by death. According to the International Religious Freedom Report, apostasy (converting from Islam to another religion) is also punishable by death, but "[t]here

¹¹ The Sunna is the traditional portion of Muslim law based on Muhammad's words or acts.

have been no confirmed reports of executions for either apostasy or blasphemy in recent years” (Bureau of Democracy, Human Rights and Labor, 2012c).

Most offenders serve prison sentences and are subject to lashes instead. In November 2011, Australian citizen Mansor Almaribe was convicted for “insulting the companions of the Prophet,” while in Saudi Arabia. Almaribe’s initial sentence was 500 lashes and a year of imprisonment (Bureau of Democracy, Human Rights and Labor, 2012c, p. 8-9). However, his punishment was reduced to 75 lashes and no jail time (Bureau of Democracy, Human Rights and Labor, 2012c). In February 2012, Hamza Kashgari, a young journalist, was accused of blasphemy for Twitter posts about an imaginary conversation between him and Muhammad. Kashgari could be sentenced to death; however, it is more likely that he will be sentenced to lashes and imprisonment. Interestingly, the prosecutor in the case stated that he will criminally prosecute people who supported Kashgari and his posts (Human Rights First, 2012). According to the United States’ State Department, Saudis who publicly disagree with rulings may also be punished for blasphemy or apostasy (Marshall, 2007).

Currently in Saudi Arabia, the need for freedom of expression is absolutely necessary as free speech is suppressed. There are no checks and balances to prevent the abuse of blasphemy laws. These laws are relative, ambiguous, and create an environment of fear and uncertainty. To avoid being the victims of a blasphemy accusation, the safest thing for Saudis to do is to remain silent.

III. The OIC Pushes For a Global Blasphemy Law

Since 1999, the OIC has annually introduced a United Nations resolution condemning the “defamation of religion” at the United Nations Human Rights Council in an attempt to create an international blasphemy law (Radsch, 2012). This resolution advised member states to restrict

the right to free speech to prohibit insulting religions (Radsch, 2012). From 1999 to 2010, the defamation of religions resolution passed with fewer votes each year (Radsch, 2012).

In 2011, the annual “defamation of religions” resolution was replaced with Resolution 16/18, titled “Combating Intolerance, Negative Stereotypic and Stigmatization of, and Discrimination, Incitement to Violence and Violence Against, Persons based on Religion or Belief” (Radsch, 2012). Instead of limiting individuals’ speech, Resolution 16/18 emphasized using public dialogue and education to reduce the number of hate crimes (Radsch, 2012). This resolution sought to illustrate that it is possible to combat intolerance in a way that does not violate freedom of speech (Radsch, 2012). Member countries of the OIC and western countries voted in favor of resolution 16/18 (Radsch, 2012). However, immediately following *Innocence of Muslims*, the Secretary-General of the OIC, Ekmeleddin Ihsanoglu, called for a global blasphemy law to stop the intentional abuse of freedom of speech that endangers international security (Evans, 2012).

The OIC wants to create an international blasphemy law because it believes “Islamophobia” is a significant problem.¹² The Human Rights Commission of the OIC stated that prejudice towards Muslims requires an “international code of conduct for media and social media to disallow the dissemination of incitement material” (Evans, 2012, para. 5). Turkey’s Prime Minister Recep Tayyip Erdoğan is a strong proponent of the creation of an international blasphemy law (Puddington, 2012). The Ministers of Foreign Affairs and Heads of Delegation of the Member States of the OIC issued a statement in response to the *Innocence of Muslims* YouTube video, in which they noted their concern regarding growing sacrilegious acts, continual hate expressed towards Muslims, and vilification of their religion (OIC Human Rights, 2012).

¹² Islamophobia is a word the OIC uses to describe intolerance and discrimination towards Muslims.

The OIC believes that *Innocence of Muslims* violates freedom of religion and belief as it offended more than a billion Muslims and argues that freedom of expression should be limited to responsible speech (OIC Human Rights, 2012). Furthermore, the OIC statement encouraged all governments to pass legislation to limit acts that lead to incitement and hatred based on religion (OIC Human Rights, 2012). Proponents of a global blasphemy law argue they are necessary to maintain social harmony among religious groups.

On the other hand, western countries believe that a global blasphemy law would violate human rights already supported by the United Nations. Under international law, incitement that calls for violence may restrict freedom of expression to protect the safety of human beings (Prud'homme, 2010). Although blasphemy and incitement are different, these countries contend that the international law against incitement is sufficient. Further, the opponents of a global blasphemy law argue that insults without action should not be criminalized.

Opponents do not believe freedom of expression should be limited because certain groups feel offended by insults to their religion. Furthermore, opponents are worried that it would lead to persecution of the press, silencing minority religions, and greater social hostility. They also fear that governments and majority religions will use the blasphemy law to their advantage. In September 2012, the World Council of Churches (WCC) held a conference in Geneva on the “[m]isuse of the blasphemy law and religious minorities in Pakistan,” in which “Pakistani Christians and Hindus . . . said a global law against blasphemy . . . would only endorse on an international scale the religious intolerance seen in Pakistan and in other Islamic countries” (Evans, 2012, para 9). Thus, enacting a blasphemy law has the potential to incite more tension amongst various religions.

IV. Conclusion

The United Nations should not support a resolution that criminalizes blasphemy. Although such a resolution would not create a binding obligation on member states to comply and initiate blasphemy legislation at home, it would legitimize blasphemy laws already in place. In addition, it would encourage the application of a blasphemy law in countries currently considering introducing a blasphemy law into their penal code, such as Russia.¹³ Further, a United Nations resolution may lead countries to expand their already existing blasphemy law. This is problematic because blasphemy laws do not solve the problems that they are created to address. Governments create blasphemy laws to stop discrimination, while advancing human rights, however, an “examination of the application of blasphemy laws indicates that they typically give rise to the violation, not the protection, of fundamental human rights” (Prud’homme, 2010, p. 1). Thus, it is important for the United Nations to avoid passing a resolution that makes a global blasphemy law, while still acknowledging the concerns of the OIC.

To do this, the United Nations must continue to strive to find an effective means of combating religious hatred. Instead of trying to pass a global blasphemy law, attention should be refocused on passing Resolution 16/18, which does not limit free speech to protect religions and encourages dialogue and communication as means to combat intolerance. Freedom House and other human rights organizations should continue to spread awareness of the hostility and fear that blasphemy laws impose on society.

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¹³ Russia’s Duma (parliament) is debating adding a code that will criminalize a person for insulting religion (Lynn, 2012).

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