



THE PROBLEM OF BLASPHEMY AND DEFAMATION OF RELIGION LAWS

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Introduction

Precisely on the day the first words of this Spotlight were written, a newspaper story reported that in a court in Tomsk, Siberia, state prosecutors have filed a case seeking to ban the Bhagavad Gita on the grounds that it is extremist and insults non-believers. At the same time, Hare Krishna members have demonstrated against this outside the Russian consulate in Kolkata and in the Indian parliament ministers have called the case an insult to Lord Krishna. (Guardian, 2011) What is happening here? To a detached observer, it seems to be that in Tomsk we have an official move to censor a religious document on the grounds that it is offensive to believers in other religions, and maybe also an incitement to mistreatment of some kind directed at those believers. At the same time we have in Kolkata an attempt to prevent this on the grounds that the legal process is an insult to a possibly mythological, but certainly long dead, object of religious devotion. There may also be an implication here that the process is a threat to believers.

The case in all its aspects constitutes a microcosm of many of the problems that can arise at the intersection between freedom of expression and religious belief. If these incidents were the only example in which such issues were raised it would be bad enough, but they are not. Although a rationalist might be tempted to say that all of this is complete nonsense and not worthy of attention, the incidents are part of a phenomenon that can bring not merely the restriction of free expression but also death and destruction anywhere in the world that it emerges. Hence this Spotlight's attention to blasphemy and defamation of religion laws and the whole complex of intolerance and aggression that surrounds them. Before examining this problem more deeply, we could ask whether there is any authoritative guidance relating to freedom of expression and religion. The answer is that indeed there is, in the form of the UN Declaration on Human Rights, which was proclaimed by the United Nations General Assembly in 1948, and to which the nations of the world, including Russia and India, are signatories.

The United Nations Declaration on Human Rights

Article Nineteen of the UN Declaration says that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The Article is set out as a right to opinion and the expression of opinion, but (significantly for the library and information professions), it contains within it the right to freedom of access to information, expressed as the rights to seek, receive and impart information. Furthermore, although it is clearly a statement of the rights of the individual, there is clearly no intention to deny those rights to bodies of people, such as members of religions and other belief groups. By obvious inference religious expression is protected along with other opinions, be they political or scientific, trivial or important, popular or eccentric.

The protection of religion does not need to rely on Article Nineteen however. Article Eighteen of the Declaration states that:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

What needs to be noted here is that thought, conscience and religion are offered equal protection, thus encompassing atheism and agnosticism; protecting the right to change religion implies the right to proselytise on behalf of one religion to adherents of another; and open observance of religion is also protected. On the face of it, Article Eighteen would seem to make the court process in Tomsk a potential violation of human rights. Also on the face of it, the protestors in Kolkata might have a more solid case, based on the rights set out in Articles Eighteen and Nineteen. What makes their case look less convincing is that it seems to be an insult to Lord Krishna that concerns them rather than freedom of expression or the exercise of freedom of religion.

Religious Objections to Freedom of Expression

If we try to sum up the problems that religious believers identify in relation to freedom of expression, we can place them in a set of categories.

- Blasphemy (discourse that arguably insults religion itself);
- Giving offence (perhaps through blasphemy, but specifically with the intention of inflicting distress on believers);
- Incitement to hatred or violence on grounds of religion (the so-called hate speech);
- Defamation of religion (which rolls up aspects of all of the above in a new structure of argument and assertion).

There is confusing overlap and imprecision in definition which makes any of these a dangerous area for freedom of expression. Blasphemy, for instance, has two connected meanings in English: the cursing and swearing that can be sexual or scatological but also, crucially, religious; and discourse that dictionaries variously describe as irreverent, sacrilegious, disrespectful, sinful, wicked, or evil in the light of religion. The giving of offence is arguably more a matter of the taking of offence by sensitive people. (Sturges, 2005) Hate speech, though often demonstrably vile, can be seen as an extreme form of expression of opinion and is thus protected by Article Nineteen, despite its vileness. What has become currently worrying is that a well-supported movement in favour of outlawing 'defamation of religion' has had considerable momentum in the last decade. Before going on to discuss this, the nature and potential effects of blasphemy laws need to be examined.

A recent survey (Freedom House, 2010) examined the blasphemy laws of a selection of countries. Two examples from these, one Christian and the other Muslim will show the actual effects and potential threats of these laws very clearly. In Greece, the Penal Code, in section Seven, identifies 'Offences against Religious Peace'. Article 198 opens the way to punishment for public and malicious blasphemy against God, whilst Article 199 concerns blasphemy against the Greek Orthodox Church, and other tolerated religions. State prosecutions under Article 198 do occur, despite any doubts about the very existence of a 'God' which might reasonably be raised. Complaints leading to prosecution under Article 199 seem to have always concerned the Orthodox Church rather than the other tolerated religions. These blasphemy laws in Greece effectively serve the purpose of integrating church and state and have been used to the detriment of free speech and cultural manifestations on a regular basis.

The Muslim case, Pakistan, is even more disturbing. Pakistan introduced its current blasphemy laws as recently as 1982-6 and they provide for penalties including life imprisonment and capital punishment. The laws prohibit offences against the religious feelings of believers, insults to religion and to the Prophet Muhammad (died 632). The problem is that to repeat in an accusation the words that were allegedly used would be to compound the blasphemy. Thus cases in which someone is alleged to have said something blasphemous, place the accused under threat of death, without the freedom to question and defend the specifics of what they might or might not have said. The case of Aasia Bibi is particularly disturbing. Bibi, a Christian woman seems to have been involved in a dispute over a drink of water whilst she and others worked in the fields. It was claimed that Bibi uttered a blasphemy, for which she was tried and sentenced to death. The manifest injustice of this at any level at which it is examined was apparent to a prominent politician, Salman Taseer. He showed willingness to try to help Bibi in her nightmarish plight and also proposed the amendment of the blasphemy laws. For this, he was gunned down on 4th Jan 2011 by one of his bodyguards, who has since been celebrated in extremist religious circles, very extensive circles it seems, as a hero. Only in a few countries do blasphemy laws place innocent people in such jeopardy, but the very existence of laws anywhere that offer this level of protection to religion, which is after all an unprovable matter of faith, is an outrage against humanity. The author is pleased to record that in 2008 the British parliament voted to remove the country's disused, but still existing, blasphemy laws from the statute book.

Defamation of Religion

The threat that a universal declaration in favour of something called defamation of religion would be adopted in the United Nations has been present for most of the past decade. Since 2002 a series of resolutions on respect for religion, and against defamation of religion, have been brought forward in various UN forums, generally on behalf of the Organisation of the Islamic Conference. First of all, we need to say that human rights protect human beings: not the ideas that human beings might hold on the origins and subsequent order of the world or any other matter. Yet, these resolutions have usually found majority support: that of 2009 being accepted in the United Nations Human Rights Commission by 23 votes to 11 with 13 abstentions. We should examine what the resolutions mean. A statement by a Pakistani official supporting the 2009 resolution claimed that 'Defamation of religion is a serious affront to human dignity leading to a restriction on the freedom of adherents and incitement to religious violence'.

What this seems to say first is that what we will refer to as criticism, whether reasoned, satirical or contemptuous, of the content of certain beliefs (religion in this case) affronts the dignity of those who believe. Certainly an affront may be felt by a believer encountering some form of criticism. In the defence of such 'affronts', we should say that human progress has been built on the replacement of untenable ideas by more solidly-based versions, even though in the process there is a chance that sound ideas will have been attacked by proponents of the unsound. This is the challenging intellectual environment that freedom of expression seeks to defend. Dignity in the defence of one's views involves the potential for dignified withdrawal from a position that proves indefensible. It certainly calls for tolerance of those who criticise or attack one's views.

The second part of the statement is even more problematic. First it is alleged that affronts to dignity lead to a restriction of freedom. This is incomprehensible. Article Eighteen supports the right to believe and proclaim belief in anything we choose, whether stupid or wise. There is no restriction of freedom contained in criticism: quite the opposite. Criticism offers the freedom to change one's views, or retain them if one so chooses. The suggestion that incitement to religious violence is implicit in criticism of religion is more problematic. This seems to mean that a critical assault on religion might be followed by a physical assault on the adherents of a religion by the supporters of the criticism. Those who drafted and supported the resolutions may be able to cite instances in which it is completely provable that verbal attacks on ideas, as such, incited subsequent physical attacks on people and property. Be that as it may, what is definitely likely is that the adherents of a criticised religion might attack the critics. What is certain is that communal violence based on religious disputes is sadly common in many parts of the world. What needs to be asked is whether freedom of expression should be curtailed in matters of religion because religions harbour so many hotheads and bigots? Frankly, responding to criticism, or even insult, with violence is regressive and cannot form the basis for any interpretation of human rights.

The progress of these resolutions was first stemmed in March 2011, after the murder of Salman Taseer. Pakistan submitted a resolution to the UNHRC without reference to defamation of religion and this received consensus support. (USCIRF, 2011) It seems that maybe some sort of horrible lesson has been learnt from Taseer's fate. The new resolution was concerned with 'combating intolerance, negative

stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence against persons based on religion or belief'. The shift from protecting religious beliefs to protecting those who hold religious beliefs is much more in the spirit of human rights. The new resolution does not seek to restrict peaceful expression, but calls for positive measures, including education and awareness-building. What still concerns some defenders of human rights is that the resolution's reference to 'combating intolerance' and 'negative stereotyping' may yet contain the germ of a protection for the content of beliefs. Intolerance in debate of what one believes to be wrong may be an unattractive attitude, but it does not infringe freedom of expression. Likewise negative stereotyping is hard to define and indeed one can see that it might be possible to argue that someone is being negatively stereotyped on the basis of a negative opinion of the religion he or she professes. However, negative stereotyping is a risk that anyone, including the author of this Spotlight, takes if they engage in controversy. There is a warning here that 'defamation of religions' might not yet have wholly gone away and that the threat it presents to freedom of expression could be reintroduced in a less direct form.

Conclusion

IFLA, certainly since the passing of a Resolution on Freedom of Expression, Censorship and Libraries in 1989, and then through its Freedom of Access to Information and Freedom of Expression (FAIFE) Committee, set up in 1997, has promoted a view of the library as a vehicle for freedom of expression. It is therefore important that FAIFE monitors and speaks out on threats to freedom of expression that might curtail the rights of library users by limiting the scope of the content that can be offered. Blasphemy laws present a real curtailment of content in many parts of the world and the defamation of religions resolutions threatened to smuggle in further restraint. They sought to do this by an unjustifiable adjustment of the protection of the freedoms of individuals and communities to express their ideas and opinions on any topic so as to exempt religious ideas and opinions from such freedom. Although a kind of victory against this seems to have been achieved in March 2011, blasphemy laws, some of them outrageously unjust and oppressive still remain in many countries and need to be opposed as strenuously as possible.

References

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Sturges, P. (2006) 'Limits to freedom of expression? Considerations arising from the Danish cartoons affair', *IFLA Journal* 32 pp.181-188.

USCIRF (2011) USCIRF welcomes the move away from 'defamation of religions' concept. Available at <http://www.uscirf.gov/news-room/press-releases/3570> (Accessed 13.12.2011)

Laws against defamation of religion were far more common worldwide than laws against blasphemy and apostasy. They were most prevalent in Europe, where 36 of the region's 45 countries (80%) had such laws or policies in 2011. In most of these countries, these laws tended to penalize religious hate speech rather than defamation of religion. Anti-blasphemy laws are particularly common in the Middle East and North Africa; 13 of the 20 countries in that region (65%) make blasphemy a crime. In the Asia-Pacific region, nine of the 50 countries (18%) had anti-blasphemy laws in 2011, while in Europe such laws were found in eight out of 45 countries (18%). Thus, laws punishing blasphemy, apostasy, and defamation of religion are ubiquitous and span the political and cultural spectrum (Pew Forum on Religion and Public Life, 2012). In theocracies and authoritarian regimes, blasphemy, apostasy, and defamation laws serve a vital purpose: preventing any criticism of the regime that could imperil its power. Conversely, the growing trend in many Western democracies to ban speech critical of Islam and any other religion is especially disconcerting because these laws are contradictory to the democratic notions of limited government, human rights, and the rule of law. "Blasphemy laws are an anachronism" because of the damage they do to good governance - they are "widely abused. Banning words or arguments which one group finds offensive does not lead to social harmony. On the contrary, it gives everyone an incentive to take offence - a fact that opportunistic politicians with ethnic-based support are quick to exploit".

The problem with the first method is that there are hundreds of religions with all kinds of absurd, irrational and heartfelt issues that would be deemed "blasphemous". If it was possible to enforce it would lead to massive & impractical restrictions on everyone.

"Free Speech and Defamation of Religion: 1. Free Speech Versus Blasphemy Laws" by Vexen Crabtree (2019). 9

Blasphemy was long a common law and statutory offence which defied neat definition - see the Law Commission, "Offences against religion and public worship", working paper 79 (1981), pp 5-6: "there is no one agreed definition of blasphemy and blasphemous libel" but it is often characterised as the defamation of religion. Prosecutions for blasphemy became increasingly rare; the last by the Crown was in 1922 and the only other prosecution before the crime was abolished by section 79 of the Criminal Justice and Immigration Act 2008 was a private prosecution in 1978.

36 Ibid at para 57: "The problem that such defamation claims face, which will usually doom them to failure, is that they raise issues of religious opinion on which people may hold opposing views in good faith. In places with strong religion-based law however, blasphemy laws can be, and are, used against those who don't even subscribe to the beliefs being blasphemed against. The UN officially recognized the human right to blaspheme in General Comment No. 34 in late 2011.

[4]. Contents. 1 Blasphemy in modern law. "Defamation of religion" is often a euphemism for blasphemy bandied about in an attempt to make said blasphemy seem culturally insensitive or otherwise politically incorrect. Origins and legitimate use[edit]. The term is also used (properly, and not euphemistically) for speech which defames (in the ordinary sense of the word) an entire religion or its followers. The best known example of which might be the infamous blood libels of medieval Europe.