



*Protecting Beliefs or Believers?: Blasphemy Law in Asian Countries*

**Gilang Lukman (Ritsumeikan University, Department of International Relations)**



# Protecting Beliefs or Believers?: Blasphemy Law in Asian Countries

## Introduction

On October 2016, 44-years-old Meliana swept her tears in agony as she listened to the sentence of her criminal proceedings in the High Court of Medan, Indonesia. A Buddhist housewife, she was sentenced to spend 18 months in prison for uttering a remark that offended Islam, as she remarked that the sound of adhan—the public call for Muslims to pray—produced by the stereo of her neighboring Mosque was “too loud” while subsequently asking one of her Muslim friend to lower its volume (Gunawan, 2018). The judge decided that Meliana had transgressed the law due to her offensive comment towards one of the six official religions in Indonesia, albeit the fact that comment was conveyed secretly to her personal acquaintance and not in public. Meliana’s tribulations did not end there; her husband lost her job as result of social seclusion and her house was vandalized by displeased mobs (Soeriaatmadja, 2018). Evidently, her case is but one piece of the bleak image of the Indonesian enforcement of its Penal Code, whose Article 156 A outlaws public expressions that “have the character of being at enmity with, abusing or staining a religion”. The Article is the pillar of the country’s *Undang-Undang Penistaan Agama* or the Religious Defamation Act, which in legal scholarship falls under the category of blasphemy law.

Based upon the Greek word *blasphemia* meaning “slander” or “reviling”, blasphemy laws refer to the national legal provisions prohibiting the utterance or expression of speech which has the effect of profaning beliefs that are held sacred, usually that of religions to which a substantial number of the population adhere. Blasphemy fits into the broader issue on religious offence which, according to a cross-country study by the Council of Europe’s *European Commission for Democracy through Law*, can be divided into three categories: (1) blasphemy, (2) insult and (3) incitement to religious hatred (Kananovich, 2015, p. 383). Of the three, the prohibition on blasphemy is deemed by legalists as the most controversial. The problem, so the legalists argue, lies in the objective of blasphemy laws that is to protect the *belief*, a set of conception and ideas, of religious adherents rather than their physical and emotional *integrity*. Under a legal-positivist framework, measuring an

offense against the former, abstract and transcendent as it were, is much harder to conduct than the latter. Oster (2016) summarizes the sheer challenge of such a task, stating that “[a]uthorities would be tasked with the burden of deciding, first, what actually constitutes a religion; second, which aspects of the religion—gods, symbols, sacred figures—should be protected; and third, what qualifies as a ‘defamation’ of that religion” (p. 148). In other words, the absence of a clear indicator on the kind of expression that is tantamount to blasphemy renders the law vulnerable to misuse. Arbitrary detention, in this scenario, is not an unlikely outcome.

The growing number of trials around the world pertaining to religious offences in recent years has increased public and academic interest towards blasphemy laws. Indeed, Indonesia is not alone in restricting religiously offensive expressions. Still fresh too in our memory is the major uproar that erupted in Pakistan following the issuance of a death sentence to two Christian Pakistanis whose website was judged to have vilified the image of Prophet Mohammed (Siddique & Hayat, 2008). Meanwhile in 2015, a New Zealander in Myanmar was convicted and sentenced to 30 months in prison for portraying Buddha in a disrespectful manner in his online advertisement (Moe & Ramzy, 2015). Upon hearing the story of the three aforementioned blasphemy cases, few would disagree that the sheer gravity of the issue of blasphemy is too profound to be ignored.

As per 2014, approximately 50 countries and territories criminalized blasphemy in their legal system, with the types of punishment ranging from fine penalty, imprisonment to death sentence (Theodorou, 2016). While the countries enforcing blasphemy laws reflect a diverse cultural and religious background—ranging from Catholic Ireland, Protestant Denmark, Orthodox Russia, Buddhist Myanmar, Hindu India, Confucian Singapore, Sunni Egypt to Shia Iran—it is evident that the bulk of these countries, close to half of them, are located in the Asian continent.<sup>1)</sup> According to a report by Global Legal Research Institute (2017), these Asian countries, especially the ones with Muslim-majority population, are the place where blasphemy laws are more likely to be “actively enforced” (p. 2) in contrast to other regions where the laws formally exist yet are dormant in practice.

Together with the nations of the Third World, Asian countries have generally been in agreement in defending the practice of outlawing blasphemous expressions in various international platforms, primarily the United Nations. In 2009, the UN General Assembly

---

<sup>1)</sup> The paper employs the geographical, rather than the socio-cultural, concept of Asia to decide which countries are considered Asian and, accordingly, falls into the scope of our analysis. The somewhat contested and fluid notion of Asia and the underlying premises that set the stage for its advent are discussed in Acharya’s (2010) *The Idea of Asia*.

## **Protecting Beliefs or Believers?: Blasphemy Law in Asian Countries**

passed Resolution 64/156 entitled “Combating Defamation of Religions” which emphasized “the need to combat defamation of religions, and incitement to religious hatred in general”. It also called states to take measures in protecting religious “symbol”, a term that the resolution—problematically—did not delve further to define. The draft of the resolution was adopted with the majority Asian countries voted overwhelmingly in favor and only a small percentage abstaining; South Korea is by far the sole Asian country to have voted against blasphemy-related UN resolutions.

Within the framework of the United Nations, countries that are members of the Organization of Islamic Cooperation (OIC) have had a particularly leading role in advocating the international prohibition against blasphemy. As the Organization’s sole representative in the UN Human Right Council during the 2009 debate, Pakistani Permanent Representative to the United Nations Zamir Akram reiterated the position of the Muslim world with regards to blasphemy laws, stating that “deliberate attempts to discriminate, defame, denigrate and vilify” religions do not fall under the freedom of expression as guaranteed in international human rights treaties (Nebehay, 2012). The fact that the loudest voice in favor of blasphemy laws in these forums seems to have been produced by Muslim countries paints an image of a contest between religious sanctity and freedom of expression of which “Islam” and “the West” are two main opposing players. The sheer amount of publications discussing this (supposed) civilizational clash provides ample evidence of this image’s popularity (Kalanges, 2012; Manea, 2016; Said, 1979; Siddique & Hayat, 2008; Varagur, 2017). Indeed, few attempts have been made to challenge the notion that the debate regarding blasphemy laws constitutes an exclusively “Islam vs. the West” affair and, subsequently, broaden the discussion by incorporating a more expansive regional approach—one that puts several countries of different cultural and religious background yet of the same geographical frontier as the object of analysis. This paper maintains, as it would be argued later, that Asia is not only the regional entity that is most befitting for such a novel approach, but also the most potentially intriguing.

The lack of studies on Asian blasphemy laws is understandable for at least two reasons. The first is the sheer size of the continent and the tremendous diversity that lies within it. Indeed, it would prove difficult to draw parallels between nations as culturally and geographically distant as Brunei-Sri Lanka, Mongolia-Bahrain or Japan-Nepal. Whether a certain “Asian common ground” can be derived from a cross-cultural study of the aforementioned countries remains a question to be answered. Secondly, the popularity of the so-called “Asian value” argument, which reached its heyday in the 1990s, has been, since

the Asian Financial Crisis, in a state of increasing demise (Donnelly, 1999; Hoon, 2004; Thompson, 2004). The Asian assertion that communal interest should be prioritized over individual rights would no longer enjoy as much acknowledgement as it was before. Likewise, the idea that there actually exist a position towards human rights that is particularly Asian in nature—one that is held by the countries of Asia by virtue of being “culturally Asian” (Hewison, 1999, p. 230), rather than out of mere coincidence for being geographically located in Asia—has become increasingly difficult to maintain, more so in the current climate where universal UN-centered human rights regime enjoys an ever-growing international support.

Be that as it may, this paper is of the opinion that conducting an Asian contextualization of blasphemy laws still bears promising merits. The fact remains evident, as it has been elaborated earlier, that Asia hosts the majority of countries that still enforce blasphemy laws and that these countries represent various religious traditions. For these two reasons, it would be naïvé to assume that, firstly, the congregation of blasphemy-outlawing countries in Asia is a pure geographical coincidence undeserving of further academic scrutiny and that, secondly, the crusade against blasphemy constitutes an exclusively Islamic affair. This paper seeks to address these inaccurate assumptions. It aims at analyzing the nature and variance of blasphemy law implementation in Asian countries, locating its drawbacks and, ultimately, formulating policy recommendations to rectify aspects assessed to be problematic.

To perform the task outlined above, this paper is organized into two main sections. In the first section, a case study is conducted to analyze the factors that give rise to, and the methods of enforcing, blasphemy laws in Asian countries. To cope with the broadness of the topic, the case study clustered Asian countries into two major religious traditions, namely the Abrahamic tradition, which consists of Judaism, Christianity and Islam, and the Dharmic tradition, comprising Hinduism and Buddhism. Six countries are selected to represent the diversity of the Asian religious tradition. With regards to Islam, the paper selects Indonesia and Pakistan. Pakistan is chosen in light of the very high frequency of blasphemy law invocation and severity of punishment as compared to other Asian countries, while Indonesia due to its status as the most populous Muslim-majority country and as a representation of the Southeast Asian Islam, deemed by scholars to be more moderate than its South Asian and West Asian counterparts (Houben, 2003; Rabasa, 2005). With regards to Christianity, the case study chooses the Philippines and Russia to cover both the Catholic and Orthodox tradition of the religion respectively. Finally, a case study is conducted regarding India, as the biggest and most populous Hindu-majority country, and Myanmar, whose blasphemy law

is arguably the strictest among Buddhist-majority countries. From these case studies, the paper would distill the common features that are deemed as problematic among critiques of blasphemy laws on the grounds of freedom of expression. The paper closes with a set of stimulants for future attempts at formulating concrete policy recommendations.

## **Abrahamic tradition**

Widely celebrated as the first person who codified the Jewish law, the great Moses Maimonides of Egypt (1135–1204) formulated thirteen tenets of Judaism that every adherent of the faith is required to embrace. Of these, the belief on the complete divinity and inviolability of the Torah, the Holy Book from which the Jewish people derive truth, is central. As Maimonides once wrote in his seminal work *The Guide for The Perplexed*, “[t]ruth does not become more true by virtue of the fact that the entire world agrees with it, nor less so even if the whole world disagrees with it”. Indeed, his contention that “truths are Jewish only” (Seeskin, 2013, para. 16) has been an important hallmark of traditional Jewish thinking. This particular Jewish doctrine that Maimonides summarized can also be found within the Christian and Islamic tradition. Also termed as the theological *claim for exclusive truth* (Frank, 2016), it encapsulates the idea that their respective religion is the one true faith and, by extension, that other forms of belief are regarded as false; “the Abrahamic religions”, noted Padukone and Christopher (2012), “see other paths as inferior”. Given the exclusivist position embedded in these three traditions, it is unsurprising that the act of forbidding blasphemy has been a historically Abrahamic phenomenon; the oldest practices of forbidding religious defamations—in its written legal form—can be traced back to as far as 16th century Christian England (Hare, 2017).

Traditionally, the creation of blasphemy laws was motivated by the perceived religious duty to ensure that incorrect beliefs, heresies and sacrilegious statements did not roam freely, out of the fear that their spread may harm the purity of the correct belief and the moral embodiment upon which it is based. The present practice of blasphemy laws among countries of Abrahamic tradition, however, lacks such crusade-like objectives of its predecessor. With the sole exception of theocratic states, such as Saudi Arabia, Iran and the Holy See, and Islamic democracies, such as Pakistan, virtually all of Abrahamic countries justify the maintenance of their blasphemy laws through the concept of public order; the ultimate objective in other words is to protect societal unity, not religion as such (Crouch,

2012; Jones, 1980; Sandberg & Doe, 2008). How this narrative manifests in practice is discussed in the four following country studies, namely Indonesia, Pakistan, Russia and the Philippines.

With 88 percent of its 260 million population professing Islam, Indonesia is indisputably the biggest Muslim-majority country in the world. This Southeast Asian country recognizes six religions that are officially administered by the state through its Ministry of Religious Affairs, namely Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism (Fenton, 2016). Adherents of these official religions are privileged, in the sense that only their religious festivals are made national holidays, their marriage legally recognized and, specific to our topic, their beliefs protected by the law from blasphemous remarks. The Indonesian blasphemy law found its origin in a 1965 Presidential Decree that added Article 156 A prohibiting religiously offensive expressions, with a maximum punishment of 5 years in prison, in the country's Penal Code (Crouch, 2012). A study by Setara Institute on the Indonesian blasphemy law found that out of the 97 blasphemy lawsuits between 1965 and 2017, 88 cases were filed after the 1998 downfall of the dictatorial President Soeharto (Putsanra, 2018). This is rather surprising, as the rise of democracy in the country seems to have triggered, instead of mitigated, the proliferation of blasphemy lawsuits. The Institute also found that most of the reported cases that were eventually sent to jail were those that are preceded by mass protest and coercion.

By and large, the reasoning behind the Indonesian blasphemy is the preservation of public order. Evidence of this reasoning can be found in the Constitution as well as in several case laws. Article 28 J (2) of the Constitution stipulates that:

In exercising his/her rights and freedoms, every person shall have the *duty to accept the restrictions established by law* for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands *based upon considerations of morality, religious values, security and public order* in a democratic society [emphasis added].

This provision gives ground for the Indonesian Constitutional Court to reject several attempts at nullifying the blasphemy law through judicial review. The most recent of such attempt was in 2009, where the Court decided in overwhelming majority—with only one dissenting opinion by Justice Maria Farida, the only female and Christian judge—that the



## Protecting Beliefs or Believers?: Blasphemy Law in Asian Countries

blasphemy law is indeed constitutional and that it does not infringe the right of religious freedom and freedom of expression pursuant to Article 28 E and 29 of the Constitution (Crouch, 2012).

Unlike the Indonesian blasphemy law which, in theory, is designed to neutrally protect the six official religions without giving preferential treatment to one over the other, its Pakistani counterpart is rather explicit in stating that the blasphemy law is meant *solely* to protect Islam. Although the Article 19 of the Pakistani Constitution provides the right of freedom of expression to all its citizens, this freedom can be restricted on the grounds of preserving “the glory of Islam” as well as “public order, decency or morality”. Furthermore, Article 31 of the Constitution clarifies that the state has the duty to maintain an individual and collective Islamic way of life among its citizens.

Pakistan, similar to Indonesia, has also witnessed an increasing trend of reports of blasphemy cases (Varagur, 2017). The Pakistani penal code provides a rather meticulous listing on the kinds of religious offences punishable by the law and the type of penalty attributed to each (Forte, 1994). For example, the direct and indirect insult against Prophet Muhammad—orally, visually, or otherwise—is punishable by death, while damaging a printed copy of the Quran has the maximum punishment of life imprisonment, pursuant to Article 295-B and 295-C of the Code respectively. It is noteworthy to point out that the *intention to profane* matters not in deciding whether or not someone is punishable under the blasphemy law; in fact, merely being an adherent of a sect that is considered heretical can lead to punishment in this country, with the legal persecution against Muslims following the Ahmadi sect being the most notable example.

Of the six selected case studies, Pakistan is the strictest in enforcing their blasphemy law. Since the late 1980s with the introduction of various amendments of the provisions regarding blasphemy in the Pakistani Penal Code, 633 Muslims, 494 Ahmadis, 187 Christians and 21 Hindus have been accused with blasphemy charges. No less than 53 of the accused in the same period became the victims of mob killing (International Commission of Jurists, 2015). One of such cases is the killing of a university student named Mashal Khan over allegations, later discredited, of posting blasphemous content on social media. (Varagur, 2017). Despite the prevalence of such extrajudicial street justice, the efforts by the Pakistani government to reform the blasphemy law and to guarantee greater safety against its misuse have remained minimum.

Evidently, the degree of frequency of blasphemy charges and the severity of the punishment thereof in Muslim-majority Asian countries, as our Indonesian and Pakistani case

study have exemplified, is far greater than that of their Christian counterpart. In the Russian Federation, the epicenter of Orthodox Christianity, adherents of religion are protected by federal law from intentional public acts and expressions that may hurt their religious feeling or object of worship (Kananovich, 2015). The prohibition against such offensive expressions were legally codified as recently as 2013, imposing offenders with the maximum punishment of three years in prison and fine up to 500,000 rubles. Additional prohibition was also made against public desecration of holy objects, punishable with 200,000 rubles of fine at maximum.

Triggering the end of the century-long vacuum of blasphemy law in Russia was a news-breaking incident in 2012 called the Pussy Riot Case. The case refers to a vulgar act by a girl-band named Pussy Riot whose three members staged a singing performance conveying messages of political criticism directed against the mutual support between President Putin and the Orthodox Church. The performance sparked wide controversy as it was done inside the holiest Orthodox Christian site in Russia, the Moscow Cathedral of Christ the Savior. The members were arrested for orchestrating an act of “hooliganism motivated by religious hatred” and were eventually sentenced to prison; two members had spent 21 months in prison before receiving amnesty and the other one 7 months before her imprisonment was suspended (Voorhoof, 2018). As a blasphemy law did not exist in Russia at that time, the Pussy Riot members were charged for violating Article 213 of the Criminal Code which prohibits hooligan acts, defined as “gross violation of the public order manifested in patent contempt of society”. The tremendous uproar that erupted following the incident further amounted the pressure towards the government to take actions, which eventually led the Duma to pass the blasphemy law the next year.

While one may agree that the Pussy Riot performance had indeed gone too far and that their imprisonment was hence justified, one need not necessarily support the Russian criminalization of blasphemy, as several events following the 2013 adoption of the blasphemy law seems to indicate that the law is very vulnerable to the abuse of power. In 2016, 38-years-old Viktor Krasnov was reportedly detained by the Russian police for posting remarks that promoted atheist views online. His statement that “there is no God” was charged to have offended “the sentiments of the Orthodox believers” (Fenton, 2016, para. 4). Furthermore, the absence of the definition of religious feelings in the law may render acts considered sinful, such as homosexual relationship, tantamount to blasphemy (Kuznetsov, 2014), which is particularly concerning given the increasingly homophobic climate inside the country (Essig, 2014; Kon, 2010).

## Protecting Beliefs or Believers?: Blasphemy Law in Asian Countries

The salience of Christianity in politics and social life, as our study on Russia has indicated, can also be found in the Philippines; although the constitution of both countries strictly mandated the separation of church and state, conservative Christian values such as the reprehension against abortion, divorce and homosexuality still have strong political resonance there. The issue of blasphemy is no exception. Hailed as the most populous Christian country in Asia, the Philippines have outlawed blasphemy long since the Spanish colonial era when Catholicism was still officially the state religion. Then, blasphemy was tightly connected with the concept of *lèse majesté*, as the sovereign of Philippines, the Spanish king, was seen as the personification of divine rule on earth and hence “to defame the King or his subalterns is to defame God’s temporal embodiment” (Hilbay, 2013, para. 4). According to Article 133 of the Penal Code, which governed over the issue of “offending religious feelings”, the act of blasphemy can lead to maximum 6 months of suffrage suspension and 28 months of imprisonment. Interestingly, the Article specifically gives scope to only punish blasphemy done “in a place devoted to religious worship or during the celebration of any religious ceremony”. Offences that take place elsewhere, legalists argued, are beyond the reach of the Article (Sasot, 2018).

As the Philippines have reached their independence from Spain and since the theocratic government system has been replaced with a democratic one, there exist strong calls to rectify the country’s blasphemy law. Despite the fear of the law’s frequent misuse, there has only been one case since the independence where a citizen is convicted due to blasphemy, namely the 2010 Celdran case. Carlos Celdran is an ardent cultural activist known for his critical view towards the Catholic Church. On September 2010, Celdran staged a protest during an ecumenical service inside the Manila Cathedral as an expression of his critique towards the Church’s opposition against the proposed Reproductive Health Bill that would legalize family planning (Robles, 2012; Sauler & Arceo-Dumlao, 2013). Celdran was convicted not solely by virtue of his offensive protest but because he conducted his protest in a place of worship and that his action, moreover, disrupted an ongoing prayer. Several attendees during the service also talked of how Celdran’s action left a “traumatic” experience, equivalent to psychological damage (Escalona & Caguioa, 2013, p. 406). In as much as Celdran has the right to criticize the Church, some argued that “there are proper fora to express such opinions—the Manila Cathedral not being one” (p. 402).

## **Dharmic tradition**

Although we have talked about how blasphemy is an originally Abrahamic conception, it does not follow that countries belonging to the other religious traditions do not impose blasphemy laws. This, too, applies to the countries of the Dharmic tradition. As a preliminary introduction, these Dharmic countries are statistically less likely to blasphemy law than their Abrahamic counterparts; and even if they do, the adoption of the law is typically much more recent. Furthermore, the law rarely if ever sprang domestically as a collective movement aimed at preserving the sanctity of religion. More often, blasphemy law is rather *imported* from outside, usually by the Western colonizer who reigned over their region prior to their independence. This is particularly true with regards to our selected case studies, namely India and Myanmar, both of which were formerly ruled under the British Raj; the British administrator created the law with the objective of preventing religious frictions among their colonial subjects, for the preservation of internal stability was much needed to further their grip over the colonial territory and the resources that lied within it (Aswad, Hussain, & Suleman, 2014).

The prohibition against blasphemy in both India and Myanmar stems from the same section in the former Penal Code of British India—a region that also comprised modern-day Pakistan, Bangladesh and Sri Lanka—that is Article 295 A (Sathisan, Ambast, & Omer, 2015). The Article punishes “deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs” with imprisonment, fine penalty or both. This centuries-old provision have remained in effect in India, despite the fact that the Indian judiciary has repeatedly stressed the “inclusive and plural nature of Hinduism”, in contrast to the exclusivist Christian value of the British Crown, which makes the prohibition of blasphemy in a Hindu-Indian setting conceptually “incoherent” (Bhatia, 2016, para. 2).

Just as the Indonesian case, there have also been attempts to question the constitutionality of the Indian blasphemy law in the Supreme Court, especially whether the current practice of the law is compatible with the stipulation of Article 19 of the Constitution on the freedom of speech and the 8 types of legitimate speech restriction outlined therein. Characterized as an institution that “very evidently privileged social order over civil liberties” (Bhatia, 2016, para. 8), the Supreme Court has had the traditional stance of defending blasphemy laws in the interest of preserving public order. Although in recent years, the Supreme Court has issued decisions which seems to uplift the threshold of the

## Protecting Beliefs or Believers?: Blasphemy Law in Asian Countries

offences that are punishable by the blasphemy law. For example in the 1957 *Ramji Lal Modi vs State of UP* case, the court decided that the law only punished “intentional insults” (para. 13), while later on in the 2015 *Shreya Singhal vs Union of India* case the scope was further narrowed to “incitement of violence” (para. 19).

Interestingly, for a country with a population and territorial size as massive as India, the reports of blasphemy cases in the country is relatively low; needless to mention, the frequency is nowhere close to its Pakistani neighbor. Head of Amnesty International India Aakar Patel (2012) attributed the trend to the higher level of tolerance within the Indian society as well as the pragmatism of its law-enforcing institutions. The challenge that the Indian government ought to immediately address is perhaps not so much the issue of reforming the law, but the tackling of blasphemy-related incidents *outside* of the legal framework. The unresolved killing of rationalist Narendra Dabholkar, who was shot dead on August 2013 following his campaign against frauds in the form of superstitious Hindu practices (Rahman, 2013), shows just how much the Indian citizens are still away from being able to convey expressions towards religion without the worry of violent repercussion.

Much like India, blasphemy law is an originally foreign concept in Myanmar. There is no direct concept of blasphemy that fits its conventional Abrahamic understanding in Buddhist scriptures, which, Jerryson (2016) maintained, explains why the subject has been virtually dismissed in Buddhist scholarship. Nonetheless, blasphemy law finds a comfort niche in Myanmar’s authoritarian setting as it adds another tool to justify government’s censorship of dissenting opinion. In 1961, the controversial “State Religion Promotion Act” was adopted in the Burmese parliament which officially designated as Buddhism as the religion of the state (Min, 2015). Despite the abrogation of the Act following a coup d’état in 1962, remnants of its Buddhist-centric ideas persist in Article 351 of the Constitution which acknowledges the “special position of Buddhism” as the religion most professed by the population. Although the language of the Burmese blasphemy law is religion-neutral, its implementation tends to disproportionately protect Buddhism while offenses towards minority religions are largely dismissed (Sathisan, Ambast, & Omer, 2015). Among these cases are the two year imprisonment of prominent politician Htin Lin Oo due to his public criticism against several Buddhist organizations in 2015 (Jerryson, 2016) and the conviction of three bar managers in Yangon who portrayed Buddha wearing headphones in the advertisement of their establishment (Moe & Ramzy, 2015). These two cases are only indicative of the instances which were revealed in public and resolved judicially. Given the dire condition of democracy, media openness and the rule of law in country, it is likely that there are still

many instances of street justice an arbitrary arrest against alleged blasphemers in Myanmar waiting to be revealed.

## **Towards a Middle Ground**

Having analyzed our six case studies, we can conclude that blasphemy-outlawing Asian countries have a diverse motivation and method of implementing its laws. It is also evident that the type of offences punishable by the law and the degree of severity of their penalty differ from one country to another. Despite this variance, our selected countries seem to have a common ground in their resistance towards an imposition of a UN-based human rights regime, based primarily on Western liberal values. This anti-Western sentiment may have stemmed from bitter colonial experience, for the case of Indonesia, India, Myanmar, the Philippines and Pakistan, as well as, for the case of Russia, historically contingent geo-political and cultural rivalry. However, the prospect of bridging the divide between the Asian and UN-centered position on the issue of blasphemy seems to have bloomed since the past decade or so.

Two important developments are contributive to this optimistic trend. The first is the issuance of General Comment 34 by the Human Rights Committee in clarifying Article 19 of the International Covenant on Civil and Political Rights (henceforward, “the Covenant”). Point 48 of the document maintains that “[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant”. This provision provides an unprecedented legal pressure towards blasphemy-outlawing countries who are parties to the Covenant to comply with the UN-centered human rights regime which puts priority to individual rights over collective interest. The second was the adoption of the UN General Assembly Resolution 16/18 in 2011. The Resolution is groundbreaking in that it resolves the long-rift between Western countries and Third World Nations over the issue of blasphemy by shifting the focus of legal protection from beliefs to believers; in other words, one would only be punished for expressing hateful speech that has a direct harm to a believer, instead merely expressing opinions deemed offensive by a certain belief. Members of the OIC, who had traditionally been adamant in defending their blasphemy laws, were quite surprisingly supportive of the Resolution. There has also been a changing discourse in the proponent camp, from the support to criminalize blasphemy to one against the incitement of religious hatred (Butt,

## Protecting Beliefs or Believers?: Blasphemy Law in Asian Countries

2016).

These developments are quickly interpreted by several human rights organizations as an international “green-light” to *completely* erase blasphemy laws once and for all. Several campaigns for the abolishment of blasphemy law have sprung in recent years, such as the “End Blasphemy Law” campaign co-organized by the International Coalition Against Blasphemy Laws and the International Humanist and Ethical Union. This view is also popular within the circle of scholars in the discipline of human rights law. For example, Kovacs (2015) maintained that according to international law “there is no right not to be insulted or offended by speech that is shocking or disturbing” (p. 4), while Leirvik (2011) remarked that legislations aimed at protecting the sanctity of the divine is widely considered as “pre-modern” (p. 96). On the same note, Oster (2016) suggested that “the notion of ‘defamation of religions’ as such must be rejected” (p. 146).

At a glance, the scholarly argumentations in support of abolishing blasphemy laws appear compelling. However, further scrutiny on their position may lead us to a different conclusion. For a starter, a closer reading of the General Comment 34 reveals that the Committee does not mandate the abolishment of blasphemy laws per se. It clarifies that there are still exceptions to the right of freedom of expression and that the countries which fulfilled the requirements set by the Convention—whose threshold was further interpreted by the Committee to become stricter—may impose restrictions, including in the form of blasphemy laws. Furthermore, while the adoption of Resolution 16/18 was a historical achievement, it was far from being ideal. States who have voted in favor of the Resolution performed slowly in translating its content into actual domestic policies; not more than twenty-four of these states that had submitted the reports on their progress on implementing the Resolution (Baumgart-Ochse, 2015). Of equal importance, we must also take note of the fact that the majority of the quoted scholarly opinions show strong leaning to liberal democratic values, which is much embedded in modern Western culture. It is time to acknowledge that there are other strands of democracy, one which may not fully adhere to the liberal school, claimed as universal and normative by its proponents, but are no less legitimate and functional. As soundly phrased by Subramaniam (2000, p. 30),

The universalist position that western liberal democracy is compatible with Asian cultures leads easily to what one scholar calls “wishful thinking” about democracy. The moral force of universalist critiques of Asian values is greatest when the arguments are explicitly framed in terms of democracy versus authoritarianism. However, more relevant is the universalists’ implicit claim for

the universality of liberal democracy, a variant of democratic political systems that includes western liberal values. *Far from being universal, those values are unique to the historical, political, social, and cultural experiences of western Europe* [emphasis added].

In light of this apparent chasm, the paper is fully supportive towards the establishment and the promotion of a middle ground. On one hand, it opines that the demands towards Asian countries to *immediately* abolish blasphemy laws, here and now, is too far-fetched. Indeed, even the Western civilization took centuries of gradual transformation during the so-called Enlightenment period before introducing a change as radical as erasing, or otherwise lessening, the importance of upholding the sanctity of religion in public discourse. Such a change, shall it be desirable in a future Asia, is also something that a government policy alone cannot partake; the profundity of the change is one that must be coupled by a long-term education and social reforms. On the other hand, the paper does not want to fall into the trap of cultural relativism by assuming that the culture is something that is stagnant. The culture of Asia—and so do other cultures elsewhere—do and can change. Criticism against the Asian practice of blasphemy laws should hence be treated not as a civilizational attack, but rather as an impetus to diligently locate the drawbacks of the current condition and, subsequently, exert efforts to find a middle ground, without sacrificing the core principles that the concerned society deems fundamental.

How this middle ground manifests in concrete policy recommendations is a valuable topic deserving of further study. In the following, the paper will outline several points of suggestions that would hopefully stimulate such a future study. As a starting point, we must recognize that Asian countries have different level of problems with regards to their blasphemy law and hence assistance towards them must be tailored according to their need. For example, some countries are still in the need of assistance in upholding the rule of law in order to cope with the prevalence of extrajudicial killing related to blasphemy; others, meanwhile, may have reached an optimal level of law-enforcement and hence efforts should be more directed to ensure that the law being enforced are fair and proportional. Equally important, a set of criteria should be formulated to make sure that the implementation of blasphemy laws is free from misuse. These may include the improvement on the aspect of clarity, predictability, and consistency of the law. Our case study on the Philippines provides an example where the aspect of clarity is upheld: only an offence that occurred inside a place of worship and not elsewhere is punishable by the law. No less salient is the issue of



## **Protecting Beliefs or Believers?: Blasphemy Law in Asian Countries**

non-discrimination, that is, the equal enforcement of the law to the adherents of all religion without favoring one over the other, which is a principal requirement in international human rights instrument towards the restriction of certain rights. A very important topic is also the issue of how to decide whether a religious offence should or should not be punished. On this, the so-called “Rabat Threshold Test” that is outlined by UN Human Rights Council is a noteworthy reference. The Threshold Test recommends states to assess six points—context, speaker, intent, content and form, publicity and likelihood of instigating disorder—before deciding whether or not an offensive expression is punishable by the law. If the offence does pass the test, then the last step is to make sure that punishment is proportional to the offence—that the assigned penalty does not go beyond the set objectives of the law.

### **Conclusion**

Religion is an important, almost inseparable feature to a large number of countries in the Asian continent. This is reflected, among other things, in the prevalence of blasphemy laws in the continent, which has sparked a lot of controversy in recent years. The paper has attempted to explore the religious, social and legal dimension that revolves around the implementation of blasphemy law in selected Asian countries. It is evident that an ongoing conflict persists between their practice of prohibiting blasphemy and increased international pressure, championed by proponents of liberal-Western values, to abolish their blasphemy law. In response, the paper is in favor of a middle ground and it offers a careful discussion on points that must be considered in formulating concrete policies towards such a middle ground. These policies may indeed take a considerable duration of time to formulate, as the historical experience of the Western Enlightenment period has exemplified. Nevertheless, there is no doubt that it is a duration that the Asian nations should deem worthy to invest in.

## Bibliography

- Acharya, A. (2010). The Idea of Asia. *Asia Policy*, 9, 32-39.
- Baumgart-Ochse, C. (2015). *Which gets protection - belief or believer? The organisation of Islamic cooperation and the campaign against the 'Defamation of Religions' (PRIF Reports, 136)*. Frankfurt am Main: Hessische Stiftung Friedensund Konfliktforschung.
- Bhatia, G. (2016, March 19). *'Blasphemy' law and the Constitution*. Retrieved February 21, 2019, from Livemint: <https://www.livemint.com/Sundayapp/TFCMsqPVQ8rK6dJj2E2kSN/Blasphemy-law-and-the-Constitution.html>
- Butt, M. S. (2016, April 6). *The Istanbul Process - more timely than ever*. Retrieved February 13, 2019, from Global Policy: <https://www.globalpolicyjournal.com/blog/06/04/2016/istanbul-process-more-timely-than-ever>
- Crouch, M. A. (2012). Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law. *Asian Journal of Comparative Law*, 7 (1), 1-46.
- Donnelly, J. (1999). Human Rights and Asian Values: A Defense of “Western” Universalism. In J. Donnelly (Ed.), *Universal Human Rights in Theory and Practice*. Ithaca: Cornell University Press.
- Escalona, P. A., & Caguioa, L. M. (2013). The Crime of Offending Religious Feelings and Carlos Celdran. *Ateneo Law Journal*, 58 (400), 400-424.
- Essig, L. (2014). 'Bury Their Hearts': Some Thoughts on the Specter of Homosexuality Haunting Russia,. *QED: A Journal in GLBTQ Worldmaking*, 1 (3), 39-58.
- FIDH. (2015). *Demystifying Human Rights Protection in Asia: Background Paper*. Retrieved February 24, 2019, from <https://www.fidh.org/IMG/pdf/asie669anglaisbassdef.pdf>
- Fenton, A. J. (2016). Faith, Intolerance, Violence and Bigotry: Legal and Constitutional Issues of Freedom of Religion in Indonesia. *Journal of Indonesian Islam*, 10 (2), 181-212.
- Fenton, S. (2016, March 3). *Russian man faces prison for denying existence of God in online message*. Retrieved February 27, 2019, from Independent: <https://www.independent.co.uk/news/world/europe/russian-man-faces-prison-under-anti>

## Protecting Beliefs or Believers?: Blasphemy Law in Asian Countries

- blasphemy-laws-for-denying-existence-of-god-in-online-message-a6909516.html
- Forte, D. F. (1994). Apostasy and Blasphemy in Pakistan, 10 Conn. J. Int'l L. 27 (1994) . *Connecticut Journal of International Law* , 27 (10), 27-68.
- Frank, T. (2016). Scripture and Community. In M. Jalil, N. Hosansky, & P. Numrich (Eds.), *The Abrahamic Encounter* (pp. 43-52). Eugene: Wipn & Stock.
- Gunawan, A. (2018, August 21). *Buddhist woman imprisoned for complaining about mosque's speaker*. Retrieved February 13, 2019, from The Jakarta Post: <https://www.thejakartapost.com/news/2018/08/21/breaking-buddhist-woman-imprisoned-for-complaining-about-mosques-speaker.html>
- Hare, I. (2017). The Theory and Practice of Blasphemy in the Common Law. In J. Temperman, & A. Koltay (Eds.), *Blasphemy and Freedom of Expression* (pp. 576-594). Cambridge: Cambridge University Press.
- Hewison, K. (1999). Political Sphere in Southeast Asia: "Asian-style" and Other Democracies. *Democratization*, 6 (1), 224-245.
- Hilbay, F. T. (2013, January 31). *Offending religious feelings*. Retrieved February 28, 2019, from Inquirer.net: <https://opinion.inquirer.net/45975/offending-religious-feelings>
- Hoon, C. Y. (2004). Revisiting the 'Asian Values' Argument Used by Asian Political Leaders and Its Validity. *Indonesian Quarterly*, 32 (2), 154-174.
- Houben, V. J. (2003). Southeast Asia and Islam. *The Annals of the American Academy of Political and Social Science*, 588 (1), 149-170.
- International Commission of Jurists. (2015). *On Trial: The Implementation of Pakistan's Blasphemy Laws*. Geneva: International Commission of Jurists.
- Jerryson, M. (2016). Introduction: Buddhism, Blasphemy and Violence. *Journal of Religion and Violence*, 4 (2), 119-127.
- Jones, P. (1980). Blasphemy, Offensiveness and Law. *British Journal of Political Science*, 10 (2), 129-148.
- Kalanges, K. (2012). *Religious Liberty in Western and Islamic Law: Toward a World Legal Tradition*. New York: Oxford University Press.
- Kananovich, V. (2015). "Execute Not Pardon": The Pussy.Riot Case, Political Speech, and Blasphemy in Russian Law. *Communication Law and Policy*, 20 (4), 343-422.

- Kon, I. (2010). Homophobia as a Litmus Test of Russian Democracy. *Russian Social Science Review*, 51 (3), 16-37.
- Kovacs, K. (2015). Do we really need blasphemy laws to protect religious faiths? *14th meeting of the Joint Council on Constitutional Justice: Mini-Conference on "Blasphemy and Other Limitations to the Freedom of Expression"* (pp. 1-5). Strasbourg: European Commission for Democracy through Law.
- Kuznetsov, D. (2014). Freedoms Collide: Freedom of Expression and Freedom of Religion in Russia in Comparative Perspective. *Russian Law Journal* , 2 (2), 75-100.
- Leirvik, O. (2011). Blasphemy, Offence, and Hate Speech: Response to Henk Vroom. In B. N, & T. R, *Religion in the Public Sphere - Proceedings of the 2010 Conference of the European Society for Philosophy of Religion* (pp. 95-106).
- Manea, E. (2016). In the Name of Culture and Religion: The Political Function of Blasphemy in Islamic States. *Islam and Christian-Muslim Relations*, 27 (1), 117-127.
- Min, A. K. (2015, September 1). *Nationalists mark anniversary of divisive state religion bill*. Retrieved February 28, 2019, from Myanmar Times: <https://www.mmtimes.com/national-news/16243-nationalists-mark-anniversary-of-divisive-state-religion-bill.html>
- Moe, W., & Ramzy, A. (2015, March 17). *Myanmar Sentences 3 to Prison for Depicting Buddha Wearing Headphones*. Retrieved February 25, 2019, from The New York Times: <https://www.nytimes.com/2015/03/18/world/asia/myanmar-sentences-3-to-prison-for-defaming-buddhism.html>
- Nebehay, S. (2012, September 26). *World Muslim group demands laws against "Islamophobia"*. Retrieved February 26, 2019, from <https://www.reuters.com/article/us-protests-un/world-muslim-group-demands-laws-against-islamophobia-idUSBRE88O13S20120925>
- Oster, J. (2016). Religiously Offensive Speech: a Doctrinal Inquiry. *Review of International Law & Politics*, 12 (2), 139-178.
- Padukone, N., & Christopher, C. (2012, March 7). *Do Abrahamic Faiths Have a Monopoly on Truth?* Retrieved February 18, 2019, from Huffington Post:

## Protecting Beliefs or Believers?: Blasphemy Law in Asian Countries

- [https://www.huffingtonpost.com/neil-padukone/abrahamic-monopoly-on-truth\\_b\\_1635011.html](https://www.huffingtonpost.com/neil-padukone/abrahamic-monopoly-on-truth_b_1635011.html)
- Patel, A. (2012, August 25). *Blasphemy law in India*. Retrieved February 28, 2019, from The Express Tribune: <https://tribune.com.pk/story/426131/blasphemy-law-in-india/>
- Pillay, A. G. (2010). The intersection between freedom of expression and freedom of belief: the position of the United Nations. In Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society* (pp. 97-103). Strasbourg: Council of Europe Publishing.
- Putsanra, D. V. (2018, September 21). *Setara: Jumlah Kasus Penistaan Agama Membengkak Usai Reformasi*. Retrieved January 16, 2019, from Tirto: <https://tirto.id/setara-jumlah-kasus-penistaan-agama-membengkak-usai-reformasi-c1J6>
- Rabasa, A. (2005). Islamic Education in Southeast Asia. *Current trends in Islamist ideology*, 2, 97-108.
- Rahman, M. (2013, August 20). *Indian anti-superstition activist Narendra Dabholkar shot dead*. Retrieved February 28, 2019, from The Guardian: <https://www.theguardian.com/world/2013/aug/20/anti-superstition-narendra-dabholkar-shot-dead>
- Robles, A. C. (2012, November 22). *Bishops versus majority*. Retrieved February 28, 2019, from Development and Cooperation: <https://www.dandc.eu/en/article/catholic-church-opposes-reproductive-health-bill-philippines>
- Said, A. A. (1979). Precept and Practice of Human Rights in Islam. *Universal Human Rights*, 1 (1), 63-79.
- Sandberg, R., & Doe, N. (2008). The Strange Death of Blasphemy. *The Modern Law Review*, 71 (6), 971-986.
- Sasot, S. R. (2018, July 3). *On offending religious beliefs*. Retrieved February 28, 2019, from The Manila Times: <https://www.manilatimes.net/on-offending-religious-beliefs/415455/>
- Sathisan, V., Ambast, S., & Omer, R. (2015, July 21). *Blasphemy statutes deny human rights*. Retrieved February 28, 2019, from Myanmar Times: <https://www.mmtimes.com/opinion/15579-blasphemy-statutes-deny-human-rights.html>

- Sauler, E., & Arceo-Dumlao, T. (2013, January 29). *Celdran found guilty in 'Damaso'*. Retrieved February 28, 2019, from Inquirer.net: <https://newsinfo.inquirer.net/348713/celdran-found-guilty-in-damaso>
- Seeskin K (2013) Maimonides. In: E. N. Zalta (Ed.) *The Stanford Encyclopedia of Philosophy*. Retrieved February 26, 2019, from: <http://plato.stanford.edu/entries/maimonides/>
- Siddique, O., & Hayat, Z. (2008). Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan—Controversial Origins, Design Defects, and Free Speech Implications . *Minnesota Journal of International Law* , 17 (2), 303-385.
- Soeriaatmadja, W. (2018, August 23). *Criticism mounts in Indonesia against jailing of woman for complaining about volume of mosque speaker*. Retrieved February 25, 2019, from The Strait Times: <https://www.straitstimes.com/asia/se-asia/criticism-mounts-in-indonesia-against-jailing-of-woman-for-complaining-about-volume-of>
- Subramaniam, S. (2000). The Asian Values Debate: Implications for the Spread of Liberal Democracy. *Asian Affairs: An American Review*, 27 (1), 19-35.
- Thompson, M. R. (2004). Pacific Asia after 'Asian Values': Authoritarianism, Democracy, and 'Good Governance' . *Third World Quarterly*, 25 (6), 1079-1095.
- Tibi, B. (1994). Islamic Law/Shari'a, Human Rights, Universal Morality and International Relations. *Human Rights Quarterly*, 16 (2), 277-299.
- Varagur, K. (2017, May 25). *The Islamic World Has a Blasphemy Problem*. Retrieved January 13, 2019, from Foreign Policy: <https://foreignpolicy.com/2017/05/25/the-islamic-world-has-a-blasphemy-problem/>
- Voorhoof, D. (2018, September 11). *Pussy Riot, the right to protest and to criticise the President, and the Patriarch: Mariya Alekhina and Others v. Russia*. Retrieved February 27, 2019, from Strasbourg Observer: <https://strasbourgobservers.com/2018/09/11/pussy-riot-the-right-to-protest-and-to-criticise-the-president-and-the-patriarch-mariya-alekhina-and-others-v-russia/>