



**RIGA
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Contradiction between the Blasphemy Laws in Islamic Nations and the International Human Rights Law

MASTER'S THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my own work and that all references to, or quotations from, the work of others are fully and correctly cited.

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Summary

This thesis explores the contradiction between blasphemy laws and international human rights law. Blasphemy laws, which involve insulting or showing disrespect towards God, have gathered significant controversy due to their tendency to curtail freedom of speech in the interest of protecting religious beliefs. Among the 71 countries that recognize blasphemy laws in their legal systems, Iran, Pakistan, and Turkey were analyzed thoroughly in the thesis. The laws in Iran and Pakistan have severe punishments for blasphemy, while Turkey's laws were less harsh and later repealed due to the concern of violation of human rights. The research explores how freedom of opinion and freedom of expression are interconnected while observing their interaction between blasphemy laws. The findings suggest that freedom of expression is not an absolute right and may be restricted under certain circumstances. However, international law also protects the right to freedom of religion, which should not be subjected to insults or contempt. The thesis further scrutinizes the responsibility to prohibit incitement to discrimination, hostility, and violence under the ICCPR. Based on these considerations, the conclusion of the thesis is that blasphemy laws should not infringe international human rights standards specifically freedom of expression, except when they come under the ambit of Article 20(2) of the ICCPR. However, there is a possibility for blasphemy laws to be modified under Article 19(3) of the ICCPR, provided that they meet the requirements of necessity, proportionality, and prescription by law. This study contributes to a nuanced understanding of the tension between blasphemy laws and international human rights. It highlights the need for careful consideration of both rights in legal and policy decisions, and emphasizes the importance of respecting the rights of individuals to freely express themselves while also recognizing the significance of protecting religious beliefs. Moreover, this research shows that blasphemy laws are not only a legal issue but a social and cultural one. It is necessary to have open and respectful dialogue between different groups with varying beliefs to reduce the prevalence of blasphemy laws in the legal systems around the world. In conclusion, this thesis suggests that there needs to be a balance between protecting religious beliefs international human right law standards. A practical solution would be to amend blasphemy laws while meeting the necessary conditions under international human rights law.

Table of Abbreviations

CERD -The Committee on the Elimination of Racial Discrimination

ECHR- European Convention on Human Rights

ECtHR- European Court of Human Rights

ICCPR - International Covenant on Civil and Political Rights

ICCSE- International Covenant on Economic, Social and Cultural Rights

IGOs – Intergovernmental Organizations

NGOs- Non-Governmental Organizations

UDHR- Universal Declaration of Human Rights

UNHRC- United Nations Human Rights Committee

USCRIF- U.S. Commission on International Religious Freedom

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1. Introduction

Blasphemy is defined as the “irreverence toward a deity or deities and, by extension, the use of profanity”.¹ Though, this is not a definition that is universally agreed upon, as it is too broad and can have different interpretations depending on the context. The blasphemy laws are shaped on penalizing or sanctioning individuals who allegedly offends and profanes religious views, deities, or sacred symbols or insults religious feelings.² These laws are prevalent in countries where religion plays a significant role, aimed at safeguarding the religion from any form of slander or disrespect.³ It is vital to note that blasphemy is not only prevalent in Islamic nations but also in Christian-majority countries like Ireland and Greece, as well as countries with Buddhist and Hindu majorities like Thailand and Nepal.

When it comes to the Islamic nations, blaspheming includes “insulting prophet Muhammad or stating that there won’t be any physical resurrection.” This is applicable for both Muslims and non-Muslims and committing blasphemy can be subjected to punishments including death.⁴ It can be exemplified from the situation in Saudi Arabia. Article 1 of the Basic Law of Governance in Saudi Arabia states that “the Holy Quran and the Sunna (traditions) of the Prophet Muhammad are the constitution of the country”,⁵ under which the blasphemy is considered as capital offence by the supreme law of the country and those who found guilty of blasphemy will be punishable by imprisonment, flogging or death.⁶ Similarly, in Pakistan blaspheming has been codified as an offence in penal code under Section 295 and 298 that prohibits blaspheming against Islam, Muhammad, and the Koran. One of the most notable examples of blasphemy prosecution in Pakistan was *Asia Bibi v The state*⁷ where a Pakistani Christian woman was sentenced to death by a trial court for uttering derogatory comments against Prophet Muhammad in June 2009 and thereby violating Section 295-C of the Pakistan Penal Code. However, in late 2018 she was acquitted by the Supreme Court of Pakistan, but this turned international eyes on blasphemy laws in Islamic nations towards its capability of violating international human rights standards.

1.1. Blasphemy vs. International Human Rights

International human law recognizes the right to freedom of religion and belief, and this is often considered as contradictory with blasphemy laws. To be more precise, it encompasses that any person can hold religious beliefs on their own desired and have the right to critique

¹Encyclopedia Britannica. 2023. <https://www.britannica.com/topic/blasphemy>(accessed on 25th March 2023)

²Human Rights First. 2014. "Compendium Details Blasphemy Laws Challenging Human Rights worldwide." <http://www.humanrightsfirst.org/resource/compendium-blasphemy-law> (accessed on 25th March 2023)

³Gubo D.T. 2015. Blasphemy And Defamation of Religions In a Polarized World : How Religious FundamentalismIs Challenging Fundamental Human Rights . Lanham, Maryland: Lexington Books.

⁴Campo J.E. 2009. Encyclopedia of Islam. Infobase Publishing

⁵The Basic Law – SAMIRAD (Saudi Arabia Market Information Resource).<http://www.saudinf.com/main/c541b.htm>.(accessed on 25th March 2023)

⁶ Penal Code [Pakistan], Act No. XLV, 6 October 1860

⁷*Asia Bibi v. The State* PLD 2019 SC 64

religion. As stated in Article 18 and 19 of the UDHR⁸ everyone has the right to freedom of religion, thought, conscience, opinion, and expression. These rights include the freedom to change one's religion, practice, teach, and observe religious beliefs, as well as the freedom to seek, receive, and disclose information and ideas using any media and across borders. Moreover, the ICCPR's Article 18 and 20(2) safeguard the right to freedom of religion, which can also be construed as contradictory with blasphemy laws.

The legality of blasphemy law has been further contested by UNHRC. It was accepted that prohibiting people from criticizing or disrespecting towards a religion including blaspheming or other beliefs are inconsistent with ICCPR and it is not permissible for punishing individuals who are involving in blasphemy.⁹ Conversely, it was specified that blasphemy laws at national levels can leads to different level of protections to the religions in the meantime enforced in a discriminatory manner.¹⁰ To be more precise, enforcement of blasphemy laws can be abusive and violent that leads to severe infringement of human rights including arbitrary detentions, assaults, mob attacks and murders.¹¹

Mainly, the contradiction between blasphemy laws and international human rights law starts from this point and as it is reflected from most of the scholarly viewpoints, the inconsistency between blasphemy laws and international human rights laws standards has led to violation of the international standards of freedom of expression and freedom of religion or belief.¹²

1.2. Background

Hence, this background rises the key research problem that will be addressed through this research whether blasphemy laws in Islamic nations can violate international human rights law standards.

1.2.1. Significance of the Research

The importance of addressing this research problem can be outlined in three main points. Firstly, blasphemy laws can create a huge impact on the individuals who live in Islamic countries particularly who are in the minority religious or ethnic communities. Therefore, it is vital to create a dialogue about restriction of their freedom of freedom of expression, freedom of religion or belief and upholding their rights. Secondly, the contradictions between blasphemy laws and International human rights laws should be discussed with broader implications as if the Islamic nations were allowed to continue blasphemy laws it would undermine the universality of human right protection. Therefore, it is indeed required for analyze the impact of blasphemy laws on human rights and to discuss insights on how to reconcile right to religious freedom and freedom of expression. Finally, it is important to discuss how these reconciliations to be effectively transfers to policy makers to amend

⁸The Universal Declaration of Human Rights.1948.United Nations General Assembly. 217 A (III)

⁹UN Human Rights Committee. 2011. "General Comment No. 34 Article 19: Freedoms of opinion and expression." General Comment No. 34. UN Human Rights Committee. 2-3.

¹⁰Bielefeldt, H. 2013. Report of the Special Rapporteur on freedom of religion or belief. Human Rights Council.

¹¹Kestenbaum, Fiss J and Getgen J. 2017. "Respecting rights? Measuring world's Blasphemy Laws." United States Commission on International Religious Freedom (USCRIF).

¹² ibid §11

existing laws and adopt new laws to universally protect human rights and promote social justice.

1.2.2. Scope of the research

The scope of the research will be driven on analyzing the existing blasphemy laws in Islamic nations and their compatibility with International Human Rights standards comparatively. In addition to that, the study will focus on historical, cultural, and political factors that have been contributed for the continuance on blasphemy laws and will explore the tensions between freedom of expression and religious freedom in the context of blasphemy laws and their implications for human rights. Finally, the role of International human rights law regime in addressing the contradiction between blasphemy laws and human rights will be assessed.

1.3. Aim and Objectives

The primary objective of this research is to investigate whether there exists a contradiction between blasphemy laws in Islamic nations and international human rights law. In order to achieve this aim, the study will focus on several key objectives.

- Firstly, the research will aim to gain a comprehensive understanding of the blasphemy laws that are currently in place in various Islamic nations of the world.
- Secondly, the study will explore the concept of freedom of expression as it is outlined within the framework of international human rights law. This objective will involve an analysis of the various international treaties and conventions that relate to freedom of expression, as well as an examination of the historical and cultural contexts that have influenced the development of these laws.
- The third objective of the research is to identify any contradictions that may exist between the blasphemy laws in Islamic nations and international human rights law. This will involve a detailed analysis of the key provisions of both sets of laws, as well as an exploration of any instances where these laws may come into conflict with one another.
- The fourth objective of the study is to examine whether a country that implements blasphemy laws possesses the authority to restrict freedom of expression on religious, moral, or philosophical grounds, and whether such limitations can be viewed as a violation of human rights. This objective will entail a thorough evaluation of the legal and ethical consequences of such limitations on freedom of expression, as well as their potential impact on individuals and societies.
- Finally, the research aims to identify the reasons why the rights guaranteed by the ICCPR have not been enforced to date, particularly in Islamic nations that practice blasphemy laws on a large scale. This objective will involve an exploration of the cultural, historical, and political factors that have contributed to the lack of implementation of these rights in certain regions, as well as an analysis of the potential implications for human rights and global peace and stability.

2. Literature Review

2.1 Introduction

Essential human rights and freedoms such as right to express opinions, ideas, and religious beliefs are safeguarded by upheld by human rights law. Thus, human rights law is a fundamental concept in international law and is codified in several international treaties, such as the UDHR, the ICCPR, and the ICESR.¹³ Also, safeguarding human rights is a cornerstone of democratic societies and is essential for the well-being and dignity of every individual.¹⁴

Blasphemy laws tend to prohibit expressions that are deemed disrespectful or insulting to religious doctrines or deities. Blasphemy laws have a long history and are still in force in some countries, where they are used to restrict freedom of expression and impose harsh penalties, including imprisonment and death. The concept of blasphemy laws rests on the assumption that religious beliefs deserve special safeguards and that any form of critique or inquiry into such beliefs must be banned. However, these laws are not consistent with global human rights principles, particularly with regards to the right to free expression and the right to religious freedom.¹⁵

This research aims to assess the contradiction between blasphemy and human rights law by examining the existing literature on human rights law related to blasphemy laws. The purpose of this literature review is to take a though glimpse on the existing literature about these topics. The review will focus on the International human rights law, role of different actors such as religious extremists, governments and religious institutions, and blasphemy laws, their current status in different countries, the impact of blasphemy laws on freedom of expression and religion. By analysing the literature on these topics, this research aims to identify the contradictions between blasphemy laws and human rights law and propose solutions to reconcile these contradictions.

2.2 The International human rights law

The connection of human rights and blasphemy has sparked extensive discussion and disagreement in recent times. The root of this argument lies in the contradiction among the right to freedom of religion and the right to freedom of expression, and the challenge of reconciling these two rights within a diverse society. The extensive and varied literature on human rights law covers numerous topics associated with the safeguarding of human rights. A critical aspect of this literature is the notion that human rights law promotes and defends freedom of expression, opinion, and religion.

Human rights are a set of universal standards that apply to all individuals, regardless of their race, gender, religion, or other characteristics. Blasphemy laws, on the other hand, are laws that prohibit the expression of opinions or beliefs that are deemed to be disrespectful or offensive to

¹³UN General Assembly, ICESCR, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

¹⁴International Covenant on Civil and Political Rights. 1996.UN General Assembly. 71

¹⁵ UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.2011. A/HRC/17/27. <https://undocs.org/A/HRC/17/27> (accessed on 20th March 2023)

religion or religious beliefs. The tension between human rights and blasphemy arises when these two concepts come into conflict.¹⁶

Proponents of blasphemy laws believe that such laws protect religious values and prevent the spread of offensive or insulting views towards a particular religion. Some people argue that blasphemy laws are necessary to protect religious communities from insult, offense or discrimination.¹⁷ They argue that such laws are necessary to maintain social order and to prevent violence, especially in communities with deeply held religious beliefs.¹⁸

Conversely, a rising number of scholarly opinions challenge the validity of blasphemy laws, as they view these laws as being inconsistent with the principles of freedom of expression and religion, particularly for minority religions. Those who are against blasphemy laws contend that these laws are in breach of the right to freedom of expression, which is an essential human right. They argue that individuals have the right to express their views on religion, and that blasphemy laws can be used to suppress legitimate criticism of religion or religious practices. They also argue that blasphemy laws can be used to stifle dissent and to silence minority views.¹⁹

A portion of the literature asserts that blasphemy laws can create an atmosphere of intolerance towards different views and beliefs in society. By making it illegal to criticize or mock religion, blasphemy laws can be used to stifle dissent and to reinforce religious orthodoxy. This can lead to an atmosphere of intolerance towards minority beliefs, as well as towards those who express views that are different from the majority.²⁰

As mentioned above, Critics of blasphemy laws assert that these laws can be used to discriminate against religious minorities, particularly those who hold dissenting views. They argue that such laws can be used to suppress minority religious groups and to reinforce the power of the majority religion. They also argue that blasphemy laws can be used to target individuals who are perceived as being different or as challenging religious orthodoxy.²¹

Moreover, they maintain that these laws can be used to justify violence against individuals accused of blasphemy. They argue that such laws create an environment in which violence against religious minorities is seen as acceptable, and that they can lead to vigilante justice and mob violence. They also argue that blasphemy laws can be used to legitimize state violence against individuals accused of blasphemy.²²

2.3 Role of Different Actors

Blasphemy laws are laws that prohibit speech or actions that insult or offend religious beliefs or practices. These laws can have significant consequences for the individuals accused of

¹⁶Human Rights Watch. 2018. Blasphemy Laws: The Situation Worldwide.

¹⁷Morsink, J. 2010. Blasphemy and Defamation of Religions: A Comparative Analysis of the Protection of Religious Sentiments under International Human Rights Law.

¹⁸Woolley, A.I. 2018. The Role of Blasphemy Laws in Protecting Religious Freedom.

¹⁹International Humanist and Ethical Union.2012. Freedom of Religion and Belief: A World Report.

²⁰ International Humanist and Ethical Union.2019. Freedom of Thought 2019: A Global Report on the Rights, Legal Status, and Discrimination Against Humanists, Atheists, and the Non-religious.

²¹Saeed, A. 2013. "Freedom of Religion, Apostasy and Islam."2018. Human Rights and Islam: An Introduction to Key Debates Between Islamic Law and International Human Rights Law. Edward Elgar Publishing.

²²Bielefeldt, H. 2013. Report of the Special Rapporteur on freedom of religion or belief. Human Rights Council.

blasphemy, including imprisonment or even death. There are different actors involved in the implementation and abuse of blasphemy laws, including religious extremists, governments, and religious institutions with the support of governments. There is a very limited literature about the role of these actors in blasphemy laws. Human Rights Watch and Amnesty International can be denoted as the main international organizations that have conducted research about this matter.

Religious extremists often use blasphemy laws to silence dissent and enforce strict interpretations of religious beliefs.²³ In some countries, extremist groups have taken the law into their own hands and have carried out violent attacks against individuals accused of blasphemy.²⁴

For example, in Pakistan, where blasphemy laws carry the death penalty, religious extremists have used the law to justify violent attacks against religious minorities, including Christians and Ahmadi Muslims.²⁵

Governments can also abuse blasphemy laws to suppress dissent and maintain their power. In some cases, governments have used blasphemy laws to target political opponents or to stifle criticism of their policies.²⁶ For example, in Egypt, authorities have used blasphemy laws to prosecute individuals who criticize the government or its officials. This has led to a crackdown on freedom of expression and an increase in political repression. Human rights organizations have condemned these actions and called for the release of those who have been imprisoned under blasphemy laws.²⁷

Religious institutions with the support of governments can also play a role in the implementation and abuse of blasphemy laws. In some countries, religious leaders have significant political influence and can use this influence to push for the implementation of blasphemy laws. For example, in Iran, the Supreme Leader has called for the implementation of blasphemy laws to protect Islamic values. This has led to the imprisonment and execution of individuals accused of blasphemy. Human rights organizations have called for an end to the use of blasphemy laws in Iran and other countries where they are used to violate human rights.²⁸ The imprisoned individuals have been subjected to torture and mistreatment while in detention, and they have also experienced violations of their safety and security rights, including physical violence and threats of harm.²⁹

The media can also contribute to the abuse of blasphemy laws. In some cases, media outlets have been complicit in spreading false accusations of blasphemy, leading to the persecution of

²³Supriyanto, A. 2014. "Islam, Religious Minorities, and the Challenge of the Blasphemy Laws: A Close Look at the Current Liberal Muslim Discourse. Religious Diversity in the Muslim-majority States in Southeast Asia: Areas of Toleration and Conflict.

²⁴Ahmed, I. 2017. "Blasphemy and Violence in Pakistan: A Historical Perspective. *Modern Asian Studies*." 1749-1775.

²⁵Human Rights Watch. 2021. Pakistan: Release Ahmadi Man Held on Blasphemy Charge. Human Rights Watch.

²⁶Alidadi, K. 2017. "Protecting Blasphemy: The Role of International Law in Preserving Religious Liberty and Human Rights." *Oxford Journal of Law and Religion* 32-52.

²⁷Amnesty International., 2021. Egypt: Renewed Crackdown on Dissent. Amnesty International. 2021. "Indonesia: Scrap blasphemy laws that fuel persecution of religious minorities." Amnesty International. <https://www.amnesty.org/en/documents/asa21/018/2014/en/>. (accessed on 28th March 2023)

²⁸ibid

²⁹ibid§16

innocent individuals. The media has also been used to incite violence and hatred against individuals accused of blasphemy.³⁰

Based on the fact that there is a very limited literature on roles of different actors in blasphemy, the current research aims at filling this gap and provides a comprehensive analysis on this matter, by enumerating and identifying the roles and impacts that religious extremists, governments, religious institutions and media have on the blasphemy law and breach of human rights.

2.4. Blasphemy and the Freedom of Expression

Blasphemy laws have been the center of contention and discussion for many years, with some advocating for their presence as a measure to protect religious beliefs, while others oppose them as they go against the core human rights principles. When viewed through the lens of human rights, blasphemy laws may be considered as troublesome as they create opportunities for maltreatment and bias on multiple fronts.³¹ Religious extremists often get to decide what constitutes blasphemy and what does not, and they tend to favor their own religious beliefs over those of others. This selective approach to freedom of expression leads to discrimination against individuals from minority religions, who may face harassment, violence, or legal sanctions for expressing their beliefs.³²

The safeguarding of religions through the application of blasphemy laws can often be achieved by sacrificing human rights. According to international human rights law, the protection of individual rights, such as the right to freedom of expression, conscience, and religion, among other basic rights, should take precedence over the safeguarding of any particular religion.³³ Some literature explained how blasphemy laws deviate from human rights law because their purpose is not to protect individuals, but rather to protect religions and religious institutions. They cite examples of how blasphemy laws have been used to abuse human rights and restrict freedom of expression and argue that the implementation of blasphemy laws is problematic and leads to human rights abuses and violence. In contrast to human rights, blasphemy laws prioritize the protection of religions and religious institutions over the protection of individuals.³⁴

The implementation of blasphemy laws can lead to serious human rights abuses and violence. In many countries where blasphemy laws exist, individuals have been subject to state sanctions, including imprisonment, fines, or even death, for expressing their beliefs or criticizing religious institutions.³⁵ While some argue that these laws are necessary to protect religious beliefs and institutions, the reality is that they often lead to discrimination, harassment, and violence against individuals from minority religions or those who hold non-religious beliefs.³⁶

³⁰ *ibid* §20

³¹ Nossiter, T. J. 2017. "Blasphemy laws and the threat to human rights: An examination of the relationship between blasphemy laws and freedom of expression." *Human Rights Quarterly* 877-904

³² Poulter S. 2018. "Blasphemy and Freedom of Expression: Comparative, Theoretical and Historical Reflections after the Charlie Hebdo Massacre." Springer.

³³ Weller M. 2012. *Religious offences in international human rights law*. Cambridge University Press.

³⁴ Leonard A Leo, Felice D. Gaer, Elizabeth K. Cassidy. 2011. "Protecting religions from defamation: A threat to universal human rights standards." *Harv. JL & Pub. Pol'y* 769.

³⁵ *ibid* §25

³⁶ *ibid* §26

In order to address this issue, it is important to engage in ongoing dialogue and debate, and to work towards legal frameworks that prioritize the protection of human rights over the protection of specific religious beliefs or institutions.³⁷

3. Research Methodology

3.1. Research Philosophy and Design

This research will follow interpretivism as the philosophy in qualitative research design. Interpretivism was selected as the philosophy for this research as it enabled the researcher to give interpretations on the elements of the study. Thereby it integrates the human interests into the research study. According to Myers's opinion, the common belief of interpretivists is that reality can be only accessed through social constructions such as language, consciousness, common meanings, and instruments.³⁸ It will be more expedient for the researcher as the research problem requires interpretations and clarifications on definitions of laws and concepts related to blasphemy laws and International human rights law. Furthermore, in interpretivists approach it is notable that the researcher plays the role of a social actor and appreciates the differences between various social settings.³⁹ As, Gerald pointed out in his review work, "the great strength of interpretivist work is its focus on the rich, complex, and contingent nature of society".⁴⁰ Similarly, in this research this role is aimed to be followed to assess the different views and beliefs of individuals under their religious, cultural, and social settings. It is significant to note that interpretivism is largely based on qualitative research design. Interpretivism is often used in the qualitative research areas such as cross-cultural differences and issues of ethics.⁴¹ This will be another constructive approach for the researcher to analyze the cultural and ethnic differences and issues involved in this research work.

Qualitative research design is more suitable for the research as it is not involved in any numeric figures but qualitative data and discussion. As well, it is competent of exploring complex social phenomena, such as the blasphemy law and its contradiction with international human rights as it will allow the researcher to understand the nuances and complexities of the social domain and the various factors that shape it. In addition to that, it provides a deep understanding of the perspectives and experiences of the people who are affected by the blasphemy laws in Islamic nations. Moreover, qualitative research can help to identify the social, cultural, and political factors that influence the enforcement and interpretation of blasphemy laws by uncovering the experiences and perspectives of those who have been affected by blasphemy laws.

³⁷ *ibid* §27

³⁸ Myers M.D. 2008. *Qualitative Research in Business & Management*. SAGE Publications.

³⁹ Saunders M. Lewis P. Thornhill A. 2012. *Research Methods for Business Students*. Pearson Education Limited.

⁴⁰ Rosenberg G.N. 1996. "Positivism, Interpretivism, and the Study of Law, Law & Social Inquiry." Spring, 1996 435-455.

⁴¹ Dudovskiy, J. "Interpretivism (interpretivist) Research Philosophy." https://research-methodology.net/research-philosophy/interpretivism/#_ftn1 (accessed on 25th March 2023)

3.1.1. Ethical Considerations

Ethical considerations of this research include considering several aspects in respect for human dignity, rights, privacy, and religious beliefs and spirits of the individuals who are subjected to blasphemy laws in Islamic nations.⁴² Given the cultural and social sensitivities surrounding blasphemy law in Islamic nations, the researcher will approach the topic with sensitivity and respect for the beliefs and values of the people in those nations. In addition to that, the researcher will also ensure that any data collected is handled with sensitivity and respect.

3.1.2. Limitations

The key potential limitation to this study will be the complexity of the topic as it involves complex legal, political, and cultural issues. Consequently, it will become more challenging for the researcher to explore these issues. In addition to that, there is a limitation for accessing data due to legal or cultural barriers. For example, most of the legal documents in Islamic countries containing blasphemy law is in their native languages and it is quite hard to assure about the accuracy of the translations. This can be identified as the language barrier which restricts the access to data. Finally, cultural social sensitiveness is also rises as a limitation in case of this research study.⁴³

3.2. Data Collection

Data collection of the research will be conducted through using primary and secondary sources that are relevant. Primary sources will include the Statutes, International Conventions and Covenants, and relevant case laws. It will guide the researcher to understand the applicable laws and implementation of the laws by the courts in judicial decisions. Apart from that, secondary sources such as books, journal articles, reports and online sources will be used to obtain a comprehensive understanding of the topic by analyzing existing literature under various scholarly viewpoints. Also, it can provide a broader view of the topic and can help to identify gaps in existing knowledge, which can be addressed through further research.⁴⁴ Furthermore, secondary sources may provide historical and contextual information, which can be useful in understanding the development and enforcement of blasphemy laws and their contradictions with international human rights.

3.3. Research approach and data analysis

⁴²Wiles R, Crw G, Pain H. 2011. "Innovation in qualitative research methods: a narrative review." *Qualitative Research* 587-604.

⁴³Quinn, B. 2018. "Blasphemy, terrorism and the limits of free speech." *The Guardian*. <https://www.theguardian.com/commentisfree/2018/jan/07/blasphemy-terrorism-charlie-hebdo-free-speech>. (accessed on 29th March 2023)

⁴⁴Mertens, D. M. 2015. *Research and evaluation in education and psychology: Integrating diversity with quantitative, qualitative, and mixed methods*. Thousand Oaks, CA: SAGE Publications.

Qualitative research typically involves an inductive approach, which allows generating theories and hypotheses based on the data collected. This approach allows the researcher to explore the topic in-depth and generate new insights into the research question. The data collected through primary and secondary sources will be analyzed by using content analysis method. The researcher will critically examine the literature related to blasphemy laws and their contradictions with international human rights and identify common themes in the data.⁴⁵ Consequently, thematic analysis approach will be used to identify and analyze key themes or patterns in the data. Thematic analysis involves identifying patterns or themes in the data and organizing them into categories.⁴⁶

In the discussion section of the results, the researcher will link the findings with the research objectives and provide a comprehensive analysis of the research question. This section will provide insights into the contradictions between blasphemy laws and international human rights, and potential solutions to address these issues. The researcher may also identify gaps in the literature and suggest areas for future research. However, the use of secondary data sources may be limited by their authenticity and reliability. Secondary sources can be biased or contain inaccuracies, which can affect the validity of the research findings. For example, some sources may present a particular perspective on blasphemy laws or international human rights that is not representative of the wider population. Additionally, some sources may be incomplete, which can limit the researcher's ability to draw valid conclusions. To address these limitations, the researcher will critically evaluate the quality of the secondary data sources. On the other hand, secondary sources can provide a broad overview of the topic and highlight key issues that may require further investigation. Additionally, secondary sources can be used to support or challenge existing theories and hypotheses, providing a basis for further research.

4. A critical analysis of Blasphemy laws and International Human Rights

This chapter seeks to provide a critical analysis of blasphemy laws and their compatibility and contradiction with international human rights standards, examining both the legal frameworks and the social and political contexts in which they are applied.

4.1. Broad and vague interpretation of “Blasphemy”

Blasphemy is a term that refers to any speech or action that is considered to be disrespectful or offensive to religious beliefs, practices, or symbols. In Islamic nations, blasphemy laws are often used to protect the honor and dignity of the Prophet Muhammad, as well as other religious figures and symbols. However, the definition of blasphemy is often vague and subjective, which can lead to abuses of power by courts and law enforcement officials. In the early days of Islam, blasphemy was primarily defined as the use of foul language or insults

⁴⁵Bryman, A. 2016. *Social research methods*. Oxford University Press.

⁴⁶Braun V. Clarke V. 2016. "Using thematic analysis in psychology. *Qualitative Research in Psychology*." 77-101.

against God or the Prophet Muhammad. However, over time, the definition expanded to include a range of actions and speech that are deemed to be disrespectful or offensive to religious beliefs. This expansion of the definition has been a contentious issue in many Islamic nations, particularly in cases where individuals have been accused of blasphemy for expressing unfavorable opinions or criticism of Islam or its practices.⁴⁷

Moreover, this imprecise definition has allowed the Islamic nations to interpret blasphemy as an offence in their own terms. It is considered as a crime punished by either imprisonment or death by most Islamic nations.⁴⁸ Even most of the scholarly opinions do not provide a clear and precise definition for the term. This is especially true in countries where the judiciary is not independent and where the state's legal system and religious authorities are intertwined.⁴⁹ This can be further elaborated with the opinions of certain Islamic scholars. Once, the Islamic jurist Yusuf al-Qaradawi has opined that there is no consensus among the Islamic scholars about the punishment for blaspheming. According to him, a person who “spread temptation in Muslim society” by spreading apostasy by way of written or oral words he is conducting blasphemy and al-Qaradawi further elaborated that this is a type of hard apostasy that can be amounted to an act of blasphemy which is directed towards fighting God and the Prophet Mohammed.⁵⁰

Hence, different nations have their own definitions of blasphemy, which may be influenced by their cultural and religious beliefs. This can result in the use of blasphemy laws to suppress dissent and criticism of the government, as well as to limit freedom of expression and religion. For instance, in some Islamic countries, blasphemy laws are used to target individuals who express opinions that are deemed insulting to Islam. In Pakistan, for example, blasphemy laws are used to punish individuals who are accused of insulting the Prophet Muhammad or the Quran. Such accusations are often made against religious minorities, including Christians and Ahmadis, and are used to silence dissent and intimidate minority communities.

4.2. Blasphemy in Different Islamic nations

It is vital to note that Islamic nations have the highest number of blasphemy laws when compared to other countries. According to a report by the USCIRF in 2020,⁵¹ most of the countries with blasphemy laws are located in the Middle East and North Africa, which includes several Islamic nations. From those nations, Iran and Pakistan come to the top of the list. In addition to that, countries like Saudi Arabia, Afghanistan, Egypt, United Arab Emirates, Kuwait, Qatar, Bahrain, Yemen etcetera follow blasphemy laws in various extents.

⁴⁷Abouaoun E. Al-QaraweeH.H.Fegiery M.E. Fadel M.IharchaneO.MaghraouiD.Salamey I and Uddin A.T. 2017. "Islam and Human Rights." Atlantic Council.<http://www.jstor.com/stable/resrep03717.5>. (Accessed on 26th March 2023)

⁴⁸ ibid

⁴⁹ ibid §3

⁵⁰ Ibid §3

⁵¹USCRIF. 2020. USCIRF(USCIRF)<https://www.uscirt.gov/publications/2020-annual-report.blasphemy-laws-boost-relig> (accessed on 26th March 2023)

The main reason for the aforementioned situation is that blasphemy laws are seen as a way to protect the Islamic faith and its values. In many Islamic countries, the majority of the population is Muslim, and the government may see it as their duty to uphold Islamic values. However, it's important to note that not all Islamic nations have blasphemy laws, and there are non-Islamic countries that also have such laws. For example, in Europe, several countries, including Greece, Italy, and Poland, have laws criminalizing blasphemy. This part of the discussion will focus on main three Islamic nations namely Iran, Pakistan and Turkey which will give a comparative understanding about the different approaches of each country and rigorosity of the blasphemy laws.

4.2.1. Iran

It is crucial to keep in mind that Iran's constitution designates the country as an Islamic republic and officially recognizes Twelver Ja'afari Shia Islam as the state's religion when examining the legal framework of Iran in the context of blasphemy laws.⁵² Further to that, Article 3 of the Iranian Constitution⁵³ states that the Islamic roots of the country are inseparable from its legal framework, with the sovereignty of the nation, its independence, freedom, and Islamic democracy being indivisible components that the government must strive to achieve. Article 4 further emphasizes that all the civil and political rights of the people must be based on Islamic principles. This reflects the fact that religion is the basis of the country's legal framework, and the people's rights are protected in accordance with religious standards, which provides strong support for blasphemy laws.

It is important to note that blasphemy is considered a criminal offense and is punishable under the country's penal code in Iran. According to Article 513 of the code, individuals who insult the Islamic sanctities of any of the imams or Her Excellency Sadigeh Tahereh can be sentenced to death if their offense is deemed equivalent to speaking ill to Prophet Muhammad. For offenses that do not rise to the same level, the offender can face imprisonment for a period ranging from one to five years.⁵⁴ Furthermore, it prescribes the death penalty for several offenses including showing enmity towards God, committing corruption on earth which includes apostasy or heresy, and insulting the Prophet or religious sanctities. The application of the death penalty depends on the religion of both the perpetrator and the victim. (Article 286, Article 279, and Article 262) This legal framework has provided a healthier background for the blasphemy laws to grow and strengthened in the country.⁵⁵

One of the major factors to consider the nature of government practices of enforcing blasphemy laws in Iran is that these laws have been disproportionately used against minority communities, particularly against members of the Baha'i faith, which is not recognized as a legitimate religion in Iran. The Baha'i community has faced severe persecution and discrimination in Iran, including being accused of blasphemy for practicing their religion. In

⁵²USA Office of International Religious Freedom. 2019. Report on International Religious Freedom: Iran. <https://www.state.gov/reports/2019-report-on-international-religious-freedom/iran/>(accessed on 26th March 2023)

⁵³Iranian Studies. 2014. The translation of the Constitution of the Islamic Republic of Iran . Iranian Studies.

⁵⁴Iran Human Rights Documentation Center . 2014. "English Translation of Books I & II of the New Islamic Penal Code." Iran Human Rights Documentation Center. 04 14. <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/> (accessed on 27th March 2023)

⁵⁵ ibid §54

1980, all nine members of the National Spiritual Assembly of the Baha'is of Iran were executed on charges of "spreading corruption on earth" and "being enemies of God." Since then, many Baha'is have been arrested, tortured, and executed on similar charges.⁵⁶ Accordingly, the law of Iran considers Baha'i faith as apostasy from Shi'a Islam and promoting their religion is subjected to discriminatory treatments and policies under Iranian government practices.⁵⁷ For example, between 2004-2010, around 99 individuals who were following Baha'i faith were found guilty of various charges. These charges included activities deemed detrimental to national security, teaching contrary to the principles of the Islamic Republic, disseminating anti-government propaganda, collaborating in the formation of illicit groups and organizations, and insulting Islamic institutions regarded as sacred.⁵⁸ It is vital to note that, this does not only infringe their right to religion but also the right to education and employment due to these discriminatory treatments. This point also concerns on the fact that how can blasphemy laws be justified on protecting religious rights of one community by discriminating the right to religion of a minority community.

Even though constitutional protection has been afforded to certain minority communities in Iran there have been certain occasions where Christians and Sunni Muslims, have also been targeted under blasphemy laws in Iran. One example is the case of Youcef Nadarkhani, a Christian pastor who was arrested in 2009 on charges of apostasy and sentenced to death. Nadarkhani's sentence was later commuted to a 10-year prison term, but he was released in 2012 after international pressure and protests.⁵⁹

4.2.2. Pakistan

Blasphemy law in Pakistan is considered as consisted of one of the most ambiguous blasphemy practices.⁶⁰ First and foremost reason behind that consideration is that linguistic ambiguities contained in the provisions of the Penal Code of Pakistan which provides the legal framework for blasphemy law in the country. It denotes blasphemy as an offence which can be punishable by death.⁶¹ In other words, the Pakistani penal code states that anyone who uses spoken or written words, visible representation, or any indirect means to defame the name of the Prophet Muhammad will be punished with imprisonment for life or the death penalty, along with a fine. Definition of this section was once highlighted as arbitrary and vague by Justice Durab Patel in one of his judgments and it was further said that it has introduced a dangerous principle to the law of Pakistan which allow the police to search the houses without a warrant and even kill a person who is accused of blasphemy. He further

⁵⁶UPR Working Group. 2019. "Iran: Failing on All Fronts, Amnesty International Submission for The Un Universal Periodic Review." 34th Session of The UPR Working Group.

⁵⁷Human Rights Watch. 2016. "World Report 2020: Rights Trends in Pakistan"; Amnesty International, "Criminalizing Expression: A Global Trend". 2010. Iran: End Persecution of Baha'is Dozens Detained Without Charge; Leaders Face Charges Carrying Death Penalty. Human Rights Watch, <https://www.hrw.org/news/2010/02/23/iran-end-persecution-bahais>. (accessed on 27th March 2023)

⁵⁸ ibid §3

⁵⁹Amnesty International,. 2021. Iran: End Blasphemy Laws and Protect Freedom of Expression. Amnesty International. 2019. Iran: End persecution of Christians. <https://www.amnesty.org/en/latest/news/2019/11/iran-end-persecution-of-christians/>(accessed on 27th March 2023)

⁶⁰Abbas, SHEMEEM Burney. 2013. Pakistan's Blasphemy Laws : From Islamic Empires to the Taliban. University of Texas Press.

⁶¹Penal Code of Pakistan. 1998.

pointed out a previous case of killing Dr. Farooq Sajjad by entering into his house because of supporting for an amendment in Section 295 B and 295 C.⁶² Furthermore, Section 297 and Section 298 state that entering places of worship without permission and making remarks or gestures that offend religious sentiments will be regarded as blasphemy but can result in imprisonment as punishment.

According to Ashraf, blasphemy accusations in Pakistan, under these provisions are often driven with motivations that are not purely religious but a result of complicated, interconnected social, political and historical processes and in most of the cases it is taken place within the interpersonal interactions between people who already known to each other.⁶³ This can be further illustrated with the incident in Pakistan where preservation of the blasphemy laws and undermining minority non-Muslim communities was emerged as an election campaign for the Islamic parties who were contesting.⁶⁴ It is an important concern how the motivations behind enforcing blasphemy laws can have other purposes such as political motives when the blasphemy law is about protecting the religion from defamation.

It was further highlighted this background has led blasphemy law to become a destructive force in Pakistan.⁶⁵ Also, same as Iran, accusations of blasphemy were repeatedly targeted at the religious minorities in the country. The most relevant example for this is *Asia Bibi v The state* case in which a Pakistani woman from a minority Christian community was accused of uttering blasphemous remarks in front of several labourers in 2009. Accusations were about raising doubts about the divine origins of the Quran and questioning the circumstances surrounding the death of Prophet Muhammad.⁶⁶ In addition to that, as mentioned in the above paragraph restricting non-Muslim minority groups by enforcing blasphemy laws once have become an election campaign in Pakistan which heavily stresses the minority right protection against blasphemy laws. It is being argued that the political will of the disregard the views of the minority communities in Pakistan to ensure the Islamic commitment of the state and its political elites. This background profoundly stresses about the protection of constitutional rights of the religious minorities in Pakistan.⁶⁷

4.2.3. Turkey

Unlike Iran and Pakistan, Turkey had a less stringent penalizing approach for blasphemy. The legal framework of blasphemy laws in Turkey were based on Criminal Code.⁶⁸ The article 213 of the Penal Code states that if a person speaks in a way that insults the religious values of a particular group of people and this speech is likely to disturb public order, they can be punished with imprisonment for a period of six months to one year. Hence the maximum

⁶² ibid §54

⁶³ Ashraf, S. 2021. Finding the Enemy Within: Blasphemy Accusations and Subsequent Violence in Pakistan. ANU Press.

⁶⁴ Ahmed, I. 2021. "Asia Bibi v. The State: the politics and jurisprudence of Pakistan's blasphemy laws." Third World Quarterly 274-291

⁶⁵ ibid §58

⁶⁶ ibid §58

⁶⁷ ibid §58

⁶⁸ TBMM. 2023. Turkish Grand National Assembly (TBMM). <https://www.tbmm.gov.tr/kanunlar/k5237.html>. (accessed on 27th March 2023)

punishment for committing blasphemy was imprisonment which was less rigorous. Also, when it comes to the case laws with regard accusation of blaspheming in Turkey the courts have followed reasonable approaches on the punishments. More to that point, the citizens have the right to petition under ECHR⁶⁹ if they believe their human rights have been violated by Turkish authorities and they have exhausted all domestic legal remedies. For an instance, *Aydın Tatlav v. Turkey*⁷⁰ can be denoted. In this case, a journalist was convicted for blasphemy as he published a book that strongly criticized Islam named a *İslamiyet Gerçeği* (The reality of Islam). His main arguments in the book were about legitimizing social injustices by representing them as the “God’s will”. His punishment for committing blasphemy was one years of imprisonment as ordered by the Turkish Judiciary which was converted into a fine. Later, European Court of Human Rights recognized that the wordings of the author did not contain any direct insulting or abusive language towards Islam, sacred symbols, or its believers. Additionally, court was in the opinion that, criminal conviction against such wording would be amounted to discouragement of the authors and it is violation of Article 10 of the ECHR.⁷¹

The main reason behind selecting Turkey specifically for this discussion is that it has abolished its blasphemy laws in 2018 with the amendment of Article 216, 218 and 219 of the Turkish Penal Code. Turkey has recognized blasphemy laws as a danger to freedom of expression and the right to criticize religion, which raises the question of how this decision can be justified and implemented in other Islamic countries. This fact pinpoints the contradiction between the two contexts which will be further discussed in next parts of the discussion.

4.3. Role and the Functions of Blasphemy Laws

Blasphemy laws are often implemented to protect religious sentiments and to prevent the denigration or insult of religious beliefs. This is particularly true in Islamic nations where blasphemy laws are implemented to protect the sanctity of Islam. The intention behind these laws is to promote religious harmony and to ensure that individuals do not use their freedom of expression to insult or offend religious beliefs. However, in practice, blasphemy laws are often used for other purposes beyond the protection of religion. These laws are sometimes used as a political tool to suppress dissent and criticism against the government or powerful religious groups. This can lead to the targeting of religious minorities or political opponents under the guise of protecting religion.

Moreover, the vagueness and ambiguity of blasphemy laws can be exploited to justify violence against those accused of blasphemy. This can create social tensions and divisions within a society, particularly if different religious or cultural groups have different views on what constitutes blasphemy.

⁶⁹European Convention on Human Rights.1950. Council of Europe. ETS 5

⁷⁰*AydınTatlav v. Turkey*. 2006. 50692/99

⁷¹Council of Europe. 2018. "Council of Europe, Thematic factsheet." Freedom Of Expression and Respect For Religious Beliefs: Striking The Right Balance.

4.3.1. Major actors in Blasphemy

When discussing about the role of the blasphemy laws it is vital to identify the major actors involved in the context and how and to what extent they can contribute to the concept of blasphemy. Similarly, the perspectives and motivations of these actors should be deeply understood in order to identify the complex issues surrounding blasphemy laws.

Accordingly, governments are the key actors who play a significant role in creating and enforcing blasphemy laws. As discussed above in the Islamic nations, blasphemy laws are often enacted through legislation passed by the government. Governments may also be responsible for the enforcement of blasphemy laws, either through the judiciary or law enforcement agencies. Judiciary is also a crucial and critical actor in interpreting and enforcing blasphemy laws. Judiciary may have the power to strike them down or limit the application of more rigorous approaches of blasphemy laws. Hence, it is fair to say that Judiciary in a country or International context play a crucial role regarding determining the scope of the application of blasphemy laws.

Then it is significant to note that, religious groups in the countries can be the major force that can promote blasphemy laws. On one hand, these groups are promoting blasphemy as a serious offense against their beliefs and seek to protect them through legal means. Religious groups can also pressure governments to pass or enforce blasphemy laws, sometimes using violent tactics to achieve their objectives. As an instance, some Islamist groups in Pakistan, such as the Tehreek-e-Labaik Pakistan (TLP), have called for the strict enforcement of blasphemy laws and have used violent tactics to achieve their objectives. Also, after a French magazine published cartoons portraying Prophet Muhammad, the TLP has demanded the removal of the French ambassador from Pakistan.⁷²

On the other hand, not all religious groups support blasphemy laws, and some may oppose them as a violation of freedom of expression and religion.

Moreover, individuals and activists can also create a huge impact on blasphemy, by raising awareness about the impact of blasphemy laws on freedom of expression and religious freedom. Also, activists may advocate for the repeal of blasphemy laws, while legal experts may challenge their application in court. For an example, Tunisian feminist and activist Amina Sboui has called for the abolition of blasphemy laws in Muslim-majority countries, arguing that they are used to silence critics and to perpetuate authoritarianism.⁷³

The media and journalists also play a significant role in the context of blasphemy laws in Islamic nations. They are often the ones who report on cases of alleged blasphemy and provide a platform for debates on the issue. In some cases, media outlets have been accused of promoting blasphemy by publishing or broadcasting content that is considered offensive to religious beliefs. Journalists who report on blasphemy cases may also face legal action

⁷²BBC News. 2018. Tehreek-e-Labaik Pakistan's protests and sit-in demanding the execution of Asia Bibi: Asia Bibi: Who is the Pakistani Christian woman acquitted of blasphemy? 11 02. <https://www.bbc.com/news/world-asia-45970377> (accessed on 28th March 2023)

⁷³Sboui, A. 2016. "Amina Sboui on democracy and blasphemy." The Guardian. <https://www.theguardian.com/commentisfree/2016/mar/08/amina-sboui-democracy-blasphemy-tunisia>. (accessed on 28th March 2023)

themselves. In some countries, such as Pakistan, journalists have been charged with blasphemy for reporting on cases or providing a platform for discussion of blasphemy. On the other hand, the media and journalists can also play a positive role in the debate on blasphemy laws. They can provide a platform for voices that advocate for the abolition of blasphemy laws or for reform of their application. By reporting on cases of alleged blasphemy, they can also shed light on human rights abuses and promote transparency in the legal system.

It is important to note that the role of the media and journalists in blasphemy laws can vary depending on the country and the political context. In some countries, media outlets may be controlled or censored by the government, limiting their ability to report on sensitive topics. In other countries, independent media outlets may face intimidation or violence from religious groups for reporting on blasphemy cases.

Apart from the above actors Inter-Governmental Organizations (IGOs) and Non-Governmental Organizations (NGOs) play a significant role in addressing the challenges posed by blasphemy laws and promoting human rights and freedom of expression. IGOs, such as the United Nations and the Organization for Security and Cooperation in Europe, can monitor the implementation of blasphemy laws and advocate for their reform. These organizations can issue reports, engage in dialogue with governments and other actors, and make recommendations to promote human rights and freedom of expression. The United Nations, for instance, has expressed concerns about the impact of blasphemy laws on human rights and freedom of expression.

The Organization for Security and Cooperation in Europe (OSCE) has underlined the importance of promoting freedom of expression and religious freedom while also respecting the rights of others. The OSCE has called on participating states to ensure that blasphemy laws are not used to suppress legitimate expression, and that individuals accused of blasphemy are afforded due process and fair trial guarantees. NGOs such as Amnesty International and Human Rights Watch may also monitor blasphemy laws and raise awareness about their impact on human rights. These organizations can provide support to individuals who have been accused of blasphemy, document cases of abuse of blasphemy laws, and engage in advocacy efforts to promote the reform of these laws. Religious freedom organizations, such as the United States Commission on International Religious Freedom, may also work towards protecting religious minorities from the misuse of blasphemy laws. These organizations can engage in advocacy efforts to promote religious freedom and highlight the negative impact of blasphemy laws on religious minorities. Hence, IGOs and NGOs play a critical role in addressing the challenges posed by blasphemy laws and promoting human rights and freedom of expression. These organizations can monitor the implementation of blasphemy laws, raise awareness about their impact on human rights, and advocate for their reform. By working together with governments and other actors, these organizations can help promote a more balanced and nuanced approach to blasphemy laws that respects the rights of all individuals.

Finally, it is crucial to emphasize that Human rights, religious studies, and legal experts play a significant role in assessing the impact of blasphemy laws on human rights and freedom of expression. These experts bring a wealth of knowledge and expertise to the discussion and can provide insights into the legal, historical, and cultural context in which blasphemy laws

were enacted. Human rights experts can assess the compliance of blasphemy laws with international human rights standards, identify gaps and challenges in their implementation, and make recommendations for their reform. They can also provide guidance on how to balance the protection of religious beliefs and practices with the respect for human rights, particularly freedom of expression. Religious studies scholars can help to contextualize blasphemy laws within the broader religious, social, and political contexts in which they operate. They can examine the historical and cultural roots of blasphemy, and the diversity of religious beliefs and practices that exist within and across different cultures and societies. By doing so, they can contribute to a more nuanced and informed understanding of the complexities of blasphemy laws and their impact on individuals and communities.

Legal experts and jurists can provide an assessment of the legal framework of blasphemy laws, including their definition, scope, and application. They can evaluate the compatibility of these laws with national constitutions and international human rights law, and recommend alternative measures to protect religious beliefs and practices without unduly restricting freedom of expression. Legal experts can also help to design and implement procedural safeguards that ensure the fair treatment of individuals accused of blasphemy, including access to a fair trial and the right to legal representation.

4.4. Arguments for and against Blasphemy in Islamic nations

It should be emphasized that there are persisting arguments for and against blasphemy laws in Islamic nations. The main argument prevailed among the others is that blasphemy laws are necessary to protect the religious sentiments in Islamic nations. It simply means that protecting the honor and sanctity of the Prophet Muhammad and other religious figures from insult or defamation. It is prevalent in most of the Islamic nations such as Iran, Pakistan, Afghanistan, Qatar, and Yemen for actively protecting their official religion or the state's religion through blasphemy laws.⁷⁴ Some scholars and human rights organizations argue that blasphemy laws can create an atmosphere of intolerance towards different views and beliefs in society. By making it illegal to criticize or mock religion, blasphemy laws can be used to stifle dissent and to reinforce religious orthodoxy, which can lead to an atmosphere of intolerance towards minority beliefs, as well as towards those who express views that are different from the majority. As a result, blasphemy laws can contribute to the suppression of religious diversity, and the promotion of religious orthodoxy. Moreover, blasphemy laws can be selectively enforced against religious minorities, dissidents, and political opponents, leading to discrimination, harassment, and persecution. This can further exacerbate societal tensions and lead to the violation of human rights, including freedom of religion, belief, and expression. This can have negative consequences for the promotion of human rights and the protection of minority beliefs. Blaspheming against Islam is criminalized as well as penalized in these nations. On the other hand, the same point is considered as against for blasphemy laws. To be more precise, blasphemy laws is only purposed to protect the religious sentiments of the official religion of these countries which do not provide protection for the minority religious perspectives. As discussed above, in most of the Islamic nations, religious

⁷⁴ibid § 11

minorities are marginalized for committing blasphemy for following their own religious beliefs.

In addition to protecting the religious sentiments, supporters of blasphemy laws argue that they are necessary to uphold the values and principles of Islam, which they believe are essential to maintaining a moral and just society. According to Islamic scholar Yusuf al-Qaradawi, blasphemy laws are necessary to prevent the spread of false and harmful ideas about Islam, and to maintain the cohesion of Muslim societies.⁷⁵

Conversely, some scholarly opinions reflect that blasphemy is not necessary for upholding Islamic values, as the concept of blasphemy is not mentioned in the Quran. In fact, the Quran emphasizes the importance of respectful and peaceful dialogue, even with those who hold different beliefs. Marrakesh Declaration is the most relevant example which upheld this idea. This declaration was signed by over 200 Islamic scholars and leaders from around the world. This declaration emphasized that "Islam stands for the promotion of freedom, justice, and dignity for all human beings," and called on Muslims to respect diversity and engage in constructive dialogue with people of all faiths further elaborating on the points of recognizing the importance of protecting right to region of minority communities. This was aimed at specifically towards Muslim-majority countries and importance of reinterpretation of Islamic texts to promote religious tolerance and to diminish extremism was highlighted. In addition to that, the need of education was emphasized and the importance of interfaith dialogue was suggested in this declaration.⁷⁶

Another argument that rose for blasphemy laws is that it helps to maintain social order and prevent public disorder or unrest that may result from perceived insults to religious figures or beliefs. To be more precise, this argument is based on the fact that enforcing of blasphemy laws in Islamic nations prevents social unrest or violence that may be caused by offensive or provocative speech or actions. But, there are certain examples that prove the fact that blasphemy laws itself can promote violence. For an example, in 2011 the Governor of Punjab (Pakistan), Salman Taseer, was assassinated by his own security guard for speaking out against the country's blasphemy laws and advocating for the release of Asia Bibi who had been sentenced to death for blasphemy as discussed above. This cannot be considered as law enforcement, and it is completely a violent action beyond the law. Similarly, Critics of blasphemy laws state that they are often enforced in an arbitrary and inconsistent manner, with individuals being accused and punished for blasphemy based on personal or political motivations rather than actual offenses.

Hence, the main argument against blasphemy laws in Islamic nations is that they are not in line with modern legal systems and human rights standards, and do not reflect the fundamental principles of justice and equality necessary for a fair and democratic society.

Therefore, there is a growing need for in-depth discussions regarding the violation of the fundamental right to free speech and expression. It is crucial to find a middle ground between

⁷⁵Al-Qaradawi, Y. 2007. Islamic Awakening between Rejection and Extremism. International Institute of Islamic Thought

⁷⁶Hayward, S. 2016. Understanding and Extending the Marrakesh Declaration in Policy and Practice. United States Institute of Peace.

protecting religious beliefs and promoting freedom of expression, and this topic will be further elaborated on in the following parts of this paper.

4.5. Negative Consequences of Blasphemy

The above discussion proved that negative consequences of blasphemy are derived through the extremist practices of blasphemy laws in Islamic nations. The most potential negative consequence of extreme blasphemy laws is that social tensions and violence. In some Islamic nations, accusations of blasphemy have created social tensions and divisions.

For example, in Pakistan, where blasphemy laws are among the strictest in the world, accusations of blasphemy have led to violence and persecution against religious minorities. In addition to that, strict blasphemy laws can cause self-censorship. Simply, it means that fear of being accused of blasphemy can lead individuals to self-censor. For example, in Saudi Arabia, where blasphemy laws are strictly enforced, many individuals are hesitant to express opinions that may be deemed critical of the government or religious authorities. This can lead to a lack of open debate and dialogue on important social and political issues. Similarly, in some Muslim-majority countries, such as Egypt and Malaysia, social media platforms are often monitored for content that is deemed blasphemous or critical of the government. As a result, many individuals may self-censor or refrain from expressing themselves freely.⁷⁷

Another potential negative consequence that can be derived from strict blasphemy laws is that it can create arbitrary regime of people with extreme beliefs of Islam and eventually leads to terrorism. On the other hand terrorism can be raised from the minority communities who are suppressed from the blasphemy laws in Islamic nations. This point was supported and justified by number of scholars. Once it was argued that the use of blasphemy laws in Pakistan and Indonesia to suppress dissent and criticism has created an environment in which extremism and terrorism can thrive.⁷⁸ It was further noted that blasphemy laws are often vague and subject to abuse, and that they are often used to target religious minorities or political opponents. Hence, it can create resentment and anger among those who feel that their religion or beliefs are being attacked, and that this can lead to radicalization and extremism.⁷⁹ Furthermore, the article written by Quinn reveals that the subsequent terrorist attack occurred after the publication of cartoons depicting the Prophet Muhammad in the French satirical magazine because of blaspheming.⁸⁰

However, it is important to note that certain scholars oppose the view that blaspheming can leads to terrorism. Correspondingly, Bryson argues that while blasphemy may be offensive to some, it is not a legitimate justification for terrorism. The article notes that many factors contribute to terrorism, including political grievances, economic inequality, and social alienation. The article also notes that the relationship between blasphemy and terrorism is complex, and that it is important to avoid oversimplifying the issue. The article argues that

⁷⁷Sheehan M.Citraningrum T. 2015. "Blasphemy laws and the war on terror: The cases of Pakistan and Indonesia." *International Journal of Human Rights* 784-803.

⁷⁸ *ibid* §77

⁷⁹ *ibid* § 77

⁸⁰ *ibid* § 37

while it is important to respect the religious beliefs of others, it is also important to defend free speech and to avoid giving in to threats or intimidation. The article concludes that while blasphemy may be offensive to some, it is not a legitimate justification for violence or terrorism.⁸¹

Therefore, blasphemy laws have been a controversial issue for many years, with different countries having their own laws and definitions. The definition of blasphemy is often vague and broad, which can lead to its abuse by courts and law enforcement officials, particularly in Islamic nations, where blasphemy is interpreted as an offense in their own terms. This has resulted in the suppression of dissent and criticism of the government, as well as the limitation of freedom of expression and religion. Furthermore, different nations have their own definitions of blasphemy, which may be influenced by their cultural and religious beliefs and can be used to target minority communities and silence dissent. The role and functions of blasphemy laws, particularly in Islamic nations, are intended to protect religious sentiments and prevent the denigration of religious beliefs. However, in practice, they are often used as a political tool to suppress dissent and criticism against the government or religious groups. The major actors involved in the creation and enforcement of blasphemy laws include governments, religious groups, judiciary, individuals, activists, media, and international organizations. The different perspectives and motivations of these actors and their impact on the debate on blasphemy laws are also discussed in the chapter. Supporters of blasphemy laws argue that they protect the religious sentiments and honor of the Prophet Muhammad and other religious figures. They also argue that blasphemy laws are necessary to uphold the values and principles of Islam and to maintain social order. However, those who criticize blasphemy laws argue that they lack objectivity, consistency, and violate the fundamental human right of free speech and expression. Additionally, the strict application of these laws can create social tensions, violence, self-censorship, and even lead to terrorism. Therefore, it is imperative to find a balance between protecting religious beliefs and promoting freedom of expression.

Hence, blasphemy laws are complex and controversial. Although blasphemy laws can serve a valid purpose in safeguarding religious sensitivities, they may also be exploited to stifle opposition and critique. It is important that the countries guarantee their blasphemy laws does not inconsistent with international human rights standards, do not target minority groups and restrict freedom of expression. Moreover, nations must promote religious tolerance and comprehension to prevent societal tensions and violence. The next part of the discussion will further elaborate on the contradiction between blasphemy laws and its contradiction between international human rights laws standards.

4.6. Human rights law and blasphemy laws

This part of the discussion will mainly focus on the international human rights law standards that are contradicting with blasphemy laws. Accordingly, freedom of opinion, freedom of

⁸¹Bryson, J. S. 2016. "Does blasphemy cause terrorism?" *The Review of Faith & International Affairs* 28-34.

expression, and freedom to religion belief will be mainly analyzed. Further to that the ways of limitations incurred upon these rights by blasphemy laws will be discussed. Also, this discussion will include an analysis of Articles 19 and 20 of the ICCPR and other regional human rights instruments.

To assess blasphemy laws from the human rights perspective, first we should consider the rights that are related to such laws. As previously mentioned, blasphemy laws entail the prohibition of insulting, showing contempt, or lack of reverence towards God. These laws pertain to freedom of expression, as stated in Article 19(2) and (3) of the ICCPR, as they restrict a specific type of expression that involves insulting a religion. Moreover, they are related to freedom of religion, which is covered in Article 18 of the ICCPR and Article 5(d)(vii) of the CERD, as they prompt an assessment of whether such laws fall under the right to religion or limit other people's right to practice their religion. Additionally, the right to opinion in Article 19(1) of the ICCPR should be considered due to its close association with freedom of expression and freedom of religion. Moreover, because blasphemy laws are of prohibitive character, article 20 of the ICCPR must be considered as well.

4.6.1. Freedom of Opinion and Expression

Freedom of expression and freedom of opinion are in fact two distinct human rights with distinct legal implications. As will be addressed, Article 19 of the ICCPR demonstrated this distinction.

(a) Freedom of Opinion

Freedom of opinion is the right to hold and express one's own beliefs, thoughts, and ideas, without interference or censorship. It protects the individual's innermost thoughts and beliefs and encompasses the right to form and express opinions without fear of punishment or retaliation. This is considered as a fundamental human right that is protected under international human rights laws instruments. Also, this is a core element of democratic societies and that is essential for safeguarding freedom of expression, freedom of thought, conscience, and freedom of religion.

The value of freedom of opinion lies in its ability to promote and protect human rights, foster diversity of thought, encourage critical thinking and debate, and facilitate the exchange of ideas and information. It is crucial for safeguarding other human rights, such as freedom of thought, conscience, and religion. It ensures that individuals have the right to form their own beliefs and opinions without interference or coercion from others. This is important for personal autonomy and self-determination, which are fundamental aspects of human dignity.

Secondly, freedom of opinion fosters diversity of thought by allowing individuals to express their own views and ideas, even if they differ from those of the majority or those in positions of power. This diversity of thought is essential for innovation and progress, as it allows for new ideas and solutions to be proposed and debated. Also, freedom of opinion encourages critical thinking and debate by allowing individuals to express their opinions and engage in dialogue with others. This can lead to a deeper understanding of different perspectives and

can help to challenge and refine one's own beliefs and ideas. It is vital to note that freedom of opinion facilitates the exchange of ideas and information by allowing individuals to access and share information, which is crucial for making informed decisions and participating in democratic processes.

According to the specific terms of article 19, paragraph 1 of the ICCPR, in reservation to this provision won't be permitted as they would be inconsistent with the Covenant's purpose and objective. This is due to the close connection between freedom of opinion and thought, which is protected under article 18. While freedom of opinion is not classified as a non-derogable right under article 4, the Committee has established that certain aspects of the Covenant cannot be legitimately derogated under this provision. Freedom of opinion is one of these elements since it is considered a fundamental right that should not be infringed even during a state of emergency.⁸²

Paragraph 1 of article 19 of the Covenant protects the right to hold opinions without interference, and that this right cannot be restricted or limited in any way. It also highlights that individuals have the right to change their opinions freely and without restriction.

Additionally, no person can be discriminated against based on their actual or perceived opinions, and that all forms of opinion are protected under the Covenant, including those related to politics, science, history, morality, or religion. Furthermore, criminalizing the holding of an opinion is incompatible with paragraph 1, and that harassment, intimidation, or stigmatization of individuals based on their opinions constitutes a violation of the Covenant and the freedom to express one's opinion includes the freedom not to express it, and it is forbidden to try to persuade someone to hold or not hold an opinion.⁸³

With regard to freedom of opinion, it has been stated that states shouldn't attempt to indoctrinate their citizens and shouldn't be permitted to make a distinction between people who hold different opinions.⁸⁴ This idea is rooted in the principle of individual autonomy and the freedom to hold opinions. When the state promotes one-sided information or tries to distinguish between individuals based on their opinions, it can create an environment that limits free and open discourse, and can ultimately undermine the freedom of expression and the ability of individuals to make their own choices.

Furthermore, the freedom to hold opinions encompasses the right to choose not to express them. This type of freedom, referred to as "negative freedom," is a significant component of the right to free expression, but it is frequently disregarded. Governments should ensure that individuals are safeguarded in their right to hold opinions and are not subjected to biased information or discrimination based on their opinions. This can help to create a more open and inclusive society that values individual autonomy and freedom of expression.⁸⁵

Freedom of opinion does not directly contrast with blasphemy laws because in such laws a blasphemous expression is required; however, some countries have laws that criminalize

⁸² *ibid* §9

⁸³ *Ibid* §9

⁸⁴ Bychawska-Siniarska, D. 2017. Protecting the Right to Freedom of Expression under the European Convention on Human Rights a handbook for legal practitioners. Council of Europe

⁸⁵ *ibid*

apostasy, which is the act of renouncing or abandoning a religious faith. Apostasy laws are not necessarily considered blasphemy laws, but they can be used to penalize individuals who fail to act in accordance with religious doctrine or who express opinions that are deemed to be critical or dissenting towards religion. As an example, in the book, “Pakistan's Blasphemy Laws : From Islamic Empires To The Taliban”, the author begins her book by explaining how she was accused of blasphemy due to her opinion that the holy Quran is an outdated book that should be put on the cupboard, ended up a 6-year conviction into prison.⁸⁶ However, as mentioned above the right to upholding an opinion must not end up with such legal consequences.

(b) Freedom of expression

Freedom of expression, on the other hand, is the right to communicate one's opinions, thoughts, and ideas to others, through any medium, including speech, writing, art, or other forms of expression. It protects not only the content of the expression, but also how it is communicated. Freedom of opinion and expression have long been regarded as fundamental aspects of a democratic society, even before the establishment of modern human rights conventions that emerged following the devastation of the Second World War. These freedoms provide individuals with a secure platform to express their diversity and unique perspectives, acting as a vital component in supporting a stable and democratic society. These freedoms are seen as critical to the full realization of an individual's potential, as noted by the Human Rights Committee, and are therefore considered to be a fundamental cornerstone of every democratic society. In essence, these freedoms serve as the lifeblood of democracy.⁸⁷

Since ancient times, even before the formalization of modern human rights, the fundamental human right of freedom of opinion and speech has been recognized. This concept may be traced back to ancient Greece, where philosophers and poets were free to express their views and ideas without fear of repercussions. The Roman Republic also recognized freedom of expression as an important right, which was eventually adopted by other cultures and societies.

Throughout modern history, the significance of freedom of opinion and expression has been highlighted by various philosophers, writers, and intellectuals. John Stuart Mill, for instance, in his work "On Liberty", asserted that free speech was crucial for the advancement of knowledge and pursuit of truth. Likewise, the US Constitution's First Amendment incorporated the right to freedom of speech as a fundamental right, as recognized by the American founding fathers.

In current times, the freedoms of holding opinions and expressing them are acknowledged as basic human rights by international and regional agreements, like Article 19 of UDHR, Article 19 of ICCPR, Article 10 of ECHR, Article 9 of African Charter on Human and Peoples' Rights, Article 13 of American Convention on Human Rights. These liberties are crucial for democratic societies and safeguarding human dignity and individual independence.

⁸⁶ ibid §54

⁸⁷UNHRC. 2021. Report of the Special Rapporteur on Minority Issues'. UN Doc A/HRC/46/57, UNHRC.

They enable people to articulate their thoughts and ideas, to participate in critical thinking and discussions, and to hold those in positions of authority accountable.

As mentioned in *Handyside case*, one of the most important cases regarding the right to freedom of expression, where it was stated that this right is a vital pillar of a democratic society and is crucial for the advancement of individuals and the society as a whole.⁸⁸ The freedom to express oneself or speak freely is a crucial aspect of any democratic society, as it is a fundamental element of an individual's sense of self-worth and integrity. This freedom is seen as a vital component of democratic discussion and creative expression, and serves as an essential tool for holding political representatives and other influential figures accountable. It is accepted that denying the access to information and restricting the ability to express their opinions will be make their utmost fundamental civil and political "rights" null and void.⁸⁹

4.6.2. Key components of the right to freedom of expression

The right to freedom of expression encompasses three distinct elements: the freedom to hold and maintain one's beliefs, the freedom to express and disseminate information and ideas, and the freedom to receive information and ideas from others. These three components of freedom of expression must be protected without interference from government authorities and without regard for national borders. While the right to hold an opinion has been previously discussed, this section will focus on the examination of the other two aspects of freedom of expression.

(a) The freedom to impart information and ideas

In a democratic society the freedom to share information and ideas is considered as a vital element. Precisely, this right even included the right to criticize the government as well as right to conduct free and fair elections. ECtHR has recognized the essential role of freedom of expression in a democratic society and has identified the right to criticize the government as a fundamental aspect of this right. The right to impart information and ideas is not limited to the press, as the public also has a right to exercise this freedom. The freedom to share economic information, or "commercial speech," is also protected under Article 10 of ECHR, but domestic authorities are given a wider range of discretion in this area. Artistic creation and distribution are viewed by the Court as vital for exchanging ideas and opinions and for confronting society with important issues. It has been argued that art not only reflects an artist's personal vision of the world but also helps shape public opinion.⁹⁰

(b) The freedom to receive information and ideas

To have the freedom to access information, one must also have the right to collect and search for information from all legitimate sources. This freedom also includes the ability to watch television programs from other countries.⁹¹ Although the freedom to receive information and

⁸⁸*Handyside v. the United Kingdom*. 1976. 5 (ECHR).

⁸⁹Wilson R.A and Gillett M. 2018. "The Hartford Guidelines on Speech Crimes in International Criminal Law, Peace and Justice Initiative." SSRN 19.

⁹⁰ *ibid* §78

⁹¹*Autronic AG v Switzerland*. 1990. IHRL 98 (ECHR).

ideas primarily concerns the media's ability to share such information and ideas with the public, the Court also recognizes that this freedom entails the public's right to receive sufficient information, particularly on issues that are of public concern.⁹²

The right to receive information is a critical component of freedom of expression, which guarantees an individual's entitlement to obtain and acquire information and ideas from different sources without any form of restriction or suppression. This right is crucial as it enables individuals to form opinions and make informed decisions about important matters that affect their lives, communities, and society as a whole. Furthermore, the right to acquire and receive information is a critical component of freedom of expression and is inextricably tied to press freedom. The media plays an important role in providing the public with accurate and fair information, but this right is not restricted to journalists and media outlets. Individuals have the right to obtain knowledge from a variety of sources, including books, the internet, and other types of media. The European Court of Human Rights has highlighted the importance of information freedom and emphasized that people have the right to be adequately informed on topics of public concern. Hence, governments should not restrict access to information or impede people's ability to obtain and receive information that concerns the public.⁹³

(c) Permissible speech

As will be discussed in subsequent sections, although it is a fundamental human right recognized by international law, the right to freedom of expression is not unrestricted and is subject to limitations. Nonetheless, democratic societies recognize that certain types of expression should not be restricted, in keeping with principles of free speech and the public interest.

According to the ECHR, article 10 protects a variety of forms of expression, not only written or spoken words but also images, actions, cultural heritage, and dress. Symbols like the red star in Hungary or the Easter lily in Northern Ireland are protected, and the form in which ideas are expressed is also safeguarded. Satirical expression receives special protection, given its tendency to provoke and agitate. The law also encompasses the right not to speak, protecting against self-incrimination in criminal proceedings. The right to vote is not protected under Article 10, as it is a responsibility of the state to conduct free and fair elections. The Court has introduced the concept of "European literary heritage," which is subject to protection based on the author's reputation, the date of first publication, the number of languages in which it is published, and other criteria. The Court must also remain aware of the rapid advancements in the means of production, communication, and dissemination of information and ideas.⁹⁴

The United Nations General Assembly passed a resolution emphasizing that restrictions on freedom of expression should not apply to activities such as deliberating on government policies, participating in political discourse, reporting on human rights issues, government

⁹² *ibid* §78

⁹³ *Glawischnig-Piesczek v. Austria* . 2019. No. 32296/19 and *Országos Alkotmánybíróság v. Hungary* . 2009. No. 37374/05

⁹⁴ *ibid* §78

operations, and corruption, participating in peaceful demonstrations or political campaigns aimed at promoting peace or democracy, and expressing opinions or disagreement about religion. In conclusion, it is critical to protect expressions that promote pluralism in society.

4.6.3. Limitations to freedom of opinion and expression

According to paragraph 3 of Article 19 of the ICCPR, the freedoms of opinion and expression come with certain duties and responsibilities. While these freedoms can be limited by law, such limitations must be necessary and only for the purpose of;

- a) respecting the rights and reputations of others,
- b) protecting national security, public order, or public health and morals.

Therefore, freedom of expression is limited by aforementioned two ways. It should be underlined, however, that any constraints imposed by a State on this right should not jeopardize the right itself. The link between the right and its restrictions shall not be reversed, and Article 5, paragraph 1 of the Covenant prohibits any activity or act intended at eliminating or limiting the rights and freedoms recognized in the Covenant beyond what is permissible.

Therefore, restrictions on the right to free speech must adhere to particular requirements, as stated in paragraph 3 of article 19 of the ICCPR. Only on the grounds of preserving morals, public order, national security, or public health may these restrictions be enforced. They must be stipulated by legislation. They must be reasonable and essential, and they cannot be imposed for any other reason—even if doing so would allow for limitations on other Covenant-protected rights. States shall take appropriate measures to protect individuals exercising their right to free expression from attacks intended at silencing them, and paragraph 3 cannot be used to justify suppressing advocacy for multi-party democracy, democratic values, and human rights. Attacks on individuals expressing their right to free expression, such as arbitrary arrest, torture, life threats, and homicide, are incompatible with Article 19. In cases of murder, victims or their representatives should be given proper retribution. Journalists, human rights defenders, judges, and lawyers are frequently targeted by such attacks, and the culprits should be thoroughly investigated and prosecuted.⁹⁵

4.6.4. Requirements for Restrictions on Freedom of Expression

For the limitations on freedom of expression to be considered valid and justifiable, they must meet specific criteria. The ECtHR has established a comprehensive framework that outlines the conditions that must be fulfilled for such restrictions to be permissible. These conditions entail that the restrictions should be legally prescribed, serve a legitimate purpose, and be necessary and proportionate in a democratic society.

1. Prescribed by Law: Any restriction on freedom of expression must be prescribed by law, which means that the restriction must have a basis in domestic law and be accessible and foreseeable to individuals. This principle is intended to prevent arbitrary and ad hoc restrictions on free expression. For example, in the case of *Otegi Mondragon v. Spain*, the

⁹⁵ *ibid* §9

European Court of Human Rights (ECtHR) held that a restriction on an individual's freedom of expression must be based on a clear and accessible legal provision.⁹⁶

2. Pursuing a Legitimate Aim: If any restriction on a freedom of expression to be considered lawful, it must serve a legitimate aim. Such aims may include protecting national security, public safety, public order, and the rights of others. The aim must be important enough to justify the restriction, and the restriction itself must be deemed necessary in a democratic society. The ECtHR has emphasized that restrictions must also be proportionate to the aim pursued, as demonstrated in the case of *Leroy v. France*.⁹⁷
3. Necessity and Proportionality: Any constraint on freedom of expression must be both necessary and reasonable to the goal pursued in order to be considered lawful and justified. This means that the restriction should be the bare minimum required to achieve the valid goal and should not go beyond that. The European Court of Human Rights has highlighted that a restriction should be the least restrictive measure possible to fulfill that requirement. ECtHR held in *Animal Defenders International v. the United Kingdom* that a ban on animal rights activists' advertising was unnecessary and disproportionate.⁹⁸

Therefore, to preserve the right to freedom of expression, any restrictions imposed must be interpreted narrowly. The ECtHR stresses the significance of free expression and asserts that limitations on this right must be necessary and proportionate to the aim pursued.

4.6.5. Prohibited expressions

In line with article 19 of the ICCPR, article 20 prohibits some types of speech. The report by the then Special Rapporteur (Frank La Rue) highlights the importance of distinguishing between three different types of expression: illegal content, harmful but legal content, and content that is neither illegal nor harmful but still raises concerns. The first category includes expression that is prohibited under international law, such as child pornography, and is subject to criminal prosecution. The second category includes expression that is not illegal but may be subject to restrictions or civil lawsuits. The third category includes expression that is neither illegal nor harmful but may still be considered offensive or objectionable.

Each of these categories presents different challenges in terms of legal and technological responses. Illegal content requires strong law enforcement measures and cooperation between countries to combat transnational criminal activities. Harmful but legal content may require measures such as the imposition of age restrictions or the requirement for warning labels to be applied. Content that is not illegal or harmful but still raises concerns requires measures aimed at promoting tolerance, civility, and respect for others, such as education and public awareness campaigns. Finally, the Special Rapporteur highlights in the report the necessity for a nuanced and proportional approach to regulating expression, one that considers the many forms of content and their potential impact on society. It also emphasizes how

⁹⁶*Otegi Mondragon v. Spain* . 2009. App no. 2034/07 (09 15).

⁹⁷*Leroy v. France* . 2008. App no. 36109/03 (10 02).

⁹⁸*Animal Defenders International v. the United Kingdom*. 2013. App no. 48876/08 (04 22).

important it is to strike a balance between the need to uphold fundamental rights like the right to privacy and the right to a fair trial and the need to protect people from harm.⁹⁹

Furthermore, some States Parties have failed to provide adequate information on how they have implemented Article 20 of the Covenant, which requires them to enact laws prohibiting the promotion of war and any advocacy that incites national, racial, or religious hatred, discrimination, hostility, or violence.

The prohibitions mentioned in Article 20 of the Covenant, according to the Human Rights Committee in general remark 11, do not contradict the right to freedom of expression stated in Article 19, but rather stress the special obligations and responsibilities that come with exercising this right. The Committee makes it clear that while Article 20(2) targets any incitement to discrimination, hostility, or violence, regardless of its internal or external goals, Article 20(1) applies to all forms of propaganda that threaten or result in aggression or a breach of peace in violation of the United Nations Charter. Also, the committee has noted that Article 20(1) of the ICCPR does not prohibit the endorsement of the sovereign right of self-defense or the right of peoples to self-determination and independence, which are guaranteed by the UN Charter. For effective implementation of Article 20, states must establish laws that explicitly state that the propaganda and advocacy mentioned in the article contravene public policy and set appropriate penalties for any violations.¹⁰⁰

4.6.6. Freedom of religion

The freedom of religion, or the right to religion, is a human right that is acknowledged in international law. It involves an individual's entitlement to freely select, exercise, and alter their religion or belief, alone or with others, and to demonstrate their religion or belief through worship, observance, practice, and teaching. This right provides protection to individuals from any form of pressure or discrimination by the government, other individuals, or groups that is founded on their religious beliefs or practices. It is recognized in various international and regional human rights instruments, including UDHR (1948), Article 18; ICCPR(1966), Article 18; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981);¹⁰¹ ECHR (1950), Article 9; American Convention on Human Rights (ACHR) (1969),¹⁰² Article 12; African Charter on Human and Peoples' Rights (1981), Article 8.

The right to religious freedom is a broad human right which includes the freedom to hold any belief, whether it be religious or not, as well as the freedom to hold no belief at all. It also involves the freedom to worship, to observe, to practice, and to teach one's beliefs. This right

⁹⁹Kaye, David. 2019. "Promotion and protection of the right to freedom of opinion and expression : note / by the Secretary-General." UN Digital Library. <https://digitallibrary.un.org/record/3833657?ln=en>. (accessed on 29th March 2023)

¹⁰⁰UN Human Rights Committee. 1983. "CCPR General Comment No. 11: Article 20 Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred,." UN Human Rights Committee (HRC). <https://www.refworld.org/docid/453883f811.html> (accessed on 30th of March 2023)

¹⁰¹UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, A/RES/36/55

¹⁰²Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969

protects persons against coercion or discrimination based on their religious views or practices by the state, individuals, or organizations. This provision protects the freedom to have personal beliefs and thoughts, and this cannot be limited even during times of national crisis. It applies not only to established religions with organized practices but also to emerging or minority religions that may face hostility from the majority religious group. The Committee is worried about any discrimination based on religion or belief, especially towards minority religions.

Article 18 makes a distinction between the freedom to have personal beliefs and thoughts, and the freedom to express them publicly. While the former cannot be limited, the latter may face restrictions, but only if they are necessary, reasonable, and do not undermine the fundamental right itself. According to Articles 18.2 and 17, the ICCPR protects people's right to hold beliefs or religion of their choice free of coercion. Furthermore, under Article 19.1 of the ICCPR, every individual's freedom to express themselves freely is guaranteed unequivocally.¹⁰³

According to General Comment 22 of the Human Rights Committee, any display of religion or belief cannot be used as a means of promoting war or inciting discrimination, hostility, or violence based on national, racial, or religious grounds, as stipulated by Article 20. As the Committee noted in General Comment 11, States that have ratified the Covenant must pass laws prohibiting such acts. These laws are critical for safeguarding fundamental human rights, such as freedom of religion or belief, as well as promoting non-discrimination and peaceful coexistence. To effectively prevent and punish such acts, states must put in place and enforce appropriate laws and regulations, while also undertaking awareness-raising and educational initiatives.

Under Article 18.3 of the ICCPR, limitations on the right to publicly express one's religion or belief are permitted only if they are necessary to protect public safety, health, morals, or the rights of others. It is the duty of States parties to ensure that any restrictions imposed do not violate the guarantees provided by the Covenant, especially the right to equality and non-discrimination. Restrictions must be imposed in accordance with the law and should not be enforced in a manner that undermines the rights guaranteed by Article 18.

The third paragraph of Article 18, which deals with constraints on the freedom to display religion or belief, must be severely interpreted. Restrictions are only admissible if they are based on the specifically mentioned grounds, even if they may be acceptable as limitations on other rights guaranteed by the Covenant. These restrictions must be clearly tied to and reasonable to the precise necessity for which they are imposed, and they must not be discriminatory in aim or application. The Committee highlights that the concept of "morals" is derived from diverse social, intellectual, and religious traditions. As a result, restrictions on the right to exhibit religion or belief for the sake of upholding morals must be based on concepts that are not derived solely from a single tradition.¹⁰⁴

According to the Covenant, the recognition of a religion as a state or official religion, or its majority status, does not violate the rights protected under Articles 18 and 27, nor does it lead

¹⁰³ *ibid* §95

¹⁰⁴ *ibid* §95

to discrimination against individuals who practice other religions or hold no religious beliefs. The Covenant also prohibits discriminatory measures against non-believers, such as imposing restrictions on their eligibility for government service or granting economic privileges to followers of the predominant religion. Such measures are inconsistent with the Covenant's prohibition of discrimination based on religion or belief and the right to equal protection under Article 26.

It is noteworthy that, States parties are expected to provide information in their reports about practices that are considered blasphemous according to their laws and jurisprudence. This issue does not express endorsement or disapproval of blasphemy laws. It simply states that States parties should include information about practices considered blasphemous according to their laws and jurisprudence in their reports. The purpose of this requirement is to provide transparency and information on how blasphemy laws are applied in those countries. The Committee on Human Rights has raised concerns regarding blasphemy laws in certain nations, particularly when they are misused to infringe upon the right to freedom of expression or to discriminate against minority religious groups.

When evaluating the right to freedom of religion, it is important to take into account the European Court of Human Rights (ECtHR) and its convention. Article 9 of the European Convention on Human Rights deals with instances where the freedoms of expression and religion come into conflict, and the ECtHR has addressed such situations. The Court has recognized that offensive depictions of religious symbols or objects could potentially infringe upon the rights of believers as outlined in Article 9 of the Constitution. However, such instances are generally evaluated under Article 10 of the Constitution (freedom of expression). The fact that the Court has repeatedly dismissed complaints under Article 9 from people whose religious sensibilities have been offended shows that the right to be free from interference with Article 9-guaranteed rights does not automatically entail a right to take legal action against those who transgress someone's or a group's religious beliefs. This has been raised in case law such as *Choudhury v. the United Kingdom*,¹⁰⁵ which pertained to a complaint regarding the United Kingdom's decision not to pursue criminal charges against the author and publisher of the novel "The Satanic Verses," which some individuals believe to be blasphemous according to Islamic teachings.

In order to evaluate conformity of blasphemy laws with human rights, the related human rights, this chapter covered various human rights, such as the right to freedom of opinion, expression, and religion, and the permissible restrictions and prohibitions to freedom of expression and religion.

Article 18 of the ICCPR safeguards the right to freedom of opinion, which is closely linked to the right to freedom of opinion. While Article 4 of the Covenant does not explicitly mention freedom of speech as a non-derogable right, the Committee has established that it is an essential element that cannot be legitimately limited under Article 4. In every democratic society, the freedom to talk or express oneself without restraint is essential since it contributes significantly to a person's sense of dignity and self-respect. This freedom is regarded as an

¹⁰⁵*Choudry v. United Kingdom*, ECHR, 27949/95

essential element of democratic discourse and artistic expression and acts as a fundamental instrument for holding political leaders and other powerful individuals accountable.

The right to have opinions, convey knowledge and ideas, and receive information and ideas are all part of the freedom to express oneself. It is a fundamental right that must be preserved across borders and without interference from public authorities. It is not, however, an absolute right and can be reduced or restricted in specific circumstances. Nonetheless, democratic cultures value free speech and the public interest, and hence certain forms of communication should not be prohibited. The ECtHR has established a thorough system outlining the prerequisites that need to be met in order for restrictions on freedom of expression to be considered justifiable. These requirements include the restriction being authorized by law, serving a legitimate objective, and being necessary and proportionate in a democratic society.

Article 20 of the ICCPR forbids certain types of expression, in accordance with Article 19 of the ICCPR. The then-Special Rapporteur's report (Frank La Rue) emphasizes the significance of distinguishing between three categories of expression: unlawful content, harmful but legal content, and content that is neither illegal nor harmful but nonetheless raises issues. The right to religious freedom, recognized as a fundamental human right under international law, entails an individual's entitlement to practice their religion or belief alone or in the company of others, to choose and change their religion or belief, and to publicly demonstrate it through worship, observance, teaching, and practice. This right protects individuals from being compelled or discriminated against because of their religious views or practices by the state, other individuals, or groups.

The concept of "defamation of religion" has been a controversial issue in the UNHRC and General Assembly for many years. Some countries, particularly those with conservative religious traditions, have advocated for international legal restrictions on speech that they view as insulting or offensive to religion. However, many human rights organizations and civil society groups have raised concerns that such restrictions could be used to suppress dissent, silence critics, and violate freedom of expression. In response to these concerns, the UNHRC passed Resolution 16/18 in 2011, which shifted the focus from freedom of expression in general to hate speech and incitement of violence, discrimination, and other forms of intolerance (as outlined in Article 20 of the ICCPR).¹⁰⁶ Resolution 16/18 emphasized the importance of promoting tolerance, respect, and understanding among different religions and beliefs, while also recognizing the need to protect freedom of expression. The resolution encouraged states to take measures to combat intolerance, discrimination, and incitement to violence, without infringing on freedom of expression.

This shift in focus has been seen as an important breakthrough by some, as it allows for a more nuanced and balanced approach to the relationship between freedom of expression and the need to protect against hate speech and incitement. However, others have criticized the

¹⁰⁶UNHRC, Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief : resolution / adopted by the Human Rights Council, 12 April 2011, A/HRC/RES/16/18, <https://www.refworld.org/docid/4db960f92.html> (accessed on 30th March 2023)

resolution for not going far enough in protecting freedom of expression and for still leaving open the possibility of restrictions on speech in the name of combating "hate speech."

4.7. The triangle of blasphemy laws, freedom of religion and freedom of expression

As mentioned earlier, international and regional human rights instruments have guaranteed the right to freedom of religion and there is no doubt that this right must be respected by individuals. Below we will go further and assess the elements of this right and the limitations to it.

The freedom of religion is a fundamental human right that includes various elements, as outlined in international human rights law. It encompasses the right to hold and change beliefs, the freedom to practice religion individually or in community with others, the right to express and manifest one's religion, and the right to freedom from coercion. Additionally, parents have the right to secure their children's religious and moral education in accordance with their own convictions. Some argue that the right to freedom of religion should be strengthened since it is broad enough to protect against laws that may be considered blasphemous. However, some critics suggest that religious freedom can conflict with other human rights and should be limited whenever possible. An example of such limitations is the Anti-Discrimination Commission of Queensland advising against faith-based institutions asking prospective staff or students about their religious beliefs, which some argue is an attack on the schools' capacity to maintain a religious identity and ethos. Overall, religious freedom is a crucial human right guaranteed by international and regional human rights treaties.

In order to guarantee the safeguarding of religious freedom, states must reinforce their laws and align them with global human rights legislation; such as the UDHR and the ICCPR, that acknowledges an individual's entitlement to express their religion or belief through worship, instruction, practice, and observance, whether individually or in association with others, in both public and private spaces. Some argue that the current definition of religious freedom, as provided by certain commentators, is too narrow and restrictive.

When two equally valid rights conflict, states need to have a strong account of religious freedom that does not rely on exemptions but is reflected in legislation that sets measures on restrictions and channels for conciliation. It is essential to strike a balance between defending religious freedom and making sure that other human rights are not infringed upon in a multi-faith and multicultural society.¹⁰⁷

The ECtHR's approach to blasphemy cases changed over the course of its case law, as the Court increasingly emphasized the value of defending freedom of expression and demanded compelling arguments to support any limitations on that right. While the earlier cases were

¹⁰⁷UN Press Releases Special Procedures. 2017. "UN expert urges global repeal of blasphemy laws to boost religious freedom, Repeal blasphemy laws." 10 24. U.S. Commission on International Religious Freedom. 2020. Saudi Arabia: 2020 Annual Report. U.S. Commission on International Religious Free. .<https://www.ohchr.org/en/press-releases/2017/10/un-expert-urges-global-repeal>-(accessed on 30th March 2023)

given favor mostly to a broad definition of freedom of religion, the latest cases reveal the precedent moving toward favoring freedom of expression.

As an example, in 1997 in the case of *Wingrove v. the United Kingdom*,¹⁰⁸ the applicant, Wingrove, was convicted of blasphemous libel for producing a film that depicted Jesus and Mary Magdalene engaging in sexual activities. The ECtHR found that the applicant's freedom of expression was interfered with, but the interference was "necessary in a democratic society" and therefore did not violate the ECHR. In this instance, the court was tasked with determining whether the reasons presented by the national authorities for infringing upon the measures taken to protect the applicant's freedom of expression were deemed sufficient in accordance with Article 10, paragraph 2 of the Convention. Insulting religious feelings must be significant and of a high degree of profanity, as described by courts as "contemptuous," "reviling," "scurrilous," and "ludicrous." This standard provides a safeguard against arbitrary decisions. The justification asserted by the national authorities must be evaluated in light of this standard. Although the authorities prohibited the distribution of the film entirely, this decision was understandable because the authorities believed that the distribution of the video would violate the criminal law, and the applicant refused to alter or cut the offensive scenes. Since the authorities concluded that the film was blasphemous, they did not exceed their margin of appreciation.¹⁰⁹

In *Otto-Preminger-Institut v. Austria*,¹¹⁰ the petitioner, a film distributor, was penalized for displaying a film that the Austrian government deemed blasphemous. The European Commission of Human Rights determined that Austrian legislation criminalizing blasphemy violated the right to free expression. In his dissenting opinion, Mr. H.G. Schermers stated, "One is free not to believe in God, but if one does not believe in God, one cannot make a film about Him." A film of this type is either an attempt to deny or criticize other people's beliefs, or it uses other people's beliefs as a motif. This type of film will inevitably have an impact on other people's religious freedom. In every European society, religion does not play the same role. Therefore, different States may or may not guarantee religious freedom protection. A lot should be left up to the national or even local authorities' discretion. The movie has a clear satirical undercurrent. Additionally, satirical art is received differently in different cultures. Satire is a common form of expression in some groups while it is less common in others. Again, satire's acceptance as a defense for otherwise blasphemous comments should be left to member states or local authorities due to its varied effect. The restriction was required, according to the Austrian courts, for the community in question. The facts of this case, in my opinion, properly support this conclusion. As a result, I don't discover any Convention violations.¹¹¹

On the other hand, in *İ.A. v. Turkey*¹¹² the applicant was convicted of blasphemy for writing an article that criticized a religious leader. The ECtHR found that the conviction violated the

¹⁰⁸*Wingrove v. the United Kingdom* 19/1995/525/611 ECHR

¹⁰⁹Human Rights Council. 2019. Fortieth session 25 February–22 March 2019. HRC.

¹¹⁰*Otto-Preminger-Institut v. Austria* 11/1993/406/485 ECHR

¹¹¹Shaheed A. 2019. "Freedom of religion or belief : report of the Special Rapporteur on Freedom of Religion or Belief." UN. Human Rights Council. <https://digitallibrary.un.org/record/3801114?ln=en>. (accessed on 30th March 2023)

¹¹²*İ.A. v. Turkey*[2005] No. 42571/98, ECHR -VIII

applicant's freedom of expression and was not necessary in a democratic society.¹¹³ In its judgment, the ECtHR emphasized the importance of freedom of expression as a fundamental right in a democratic society. The court noted that, while the right to freedom of expression is not an absolute right, any restrictions on this right must be proportionate and necessary in a democratic society. The court further stated that the right to freedom of expression protects not only mainstream opinions but also those that "offend, shock or disturb," as long as they do not incite violence or hatred. The court also recognized the importance of protecting religious feelings, but stated that this protection should not be used to limit freedom of expression. It noted that in a pluralistic society, individuals should be able to express their beliefs and opinions, even if they are contrary to those of the majority or the state. The court concluded that the conviction of *I.A.* for expressing his views in his book violated his right to freedom of expression under Article 10 of the European Convention on Human Rights.

Similarly, in *E.S. v. Austria*,¹¹⁴ the applicant in this case was convicted of disparaging religious doctrines for statements he made during a seminar about Islam. According to the ECtHR, the applicant's conviction constituted a breach of his freedom of expression, as protected under Article 10. The court emphasized that the mere fact that an expression is deemed offensive, disturbing, or shocking to religious sentiments is not a sufficient basis to warrant limitations on freedom of expression.¹¹⁵ In its judgment, the ECtHR emphasized that freedom of expression is a fundamental right and a cornerstone of a democratic society. However, the court also noted that this right is not absolute and that restrictions may be necessary in certain circumstances, such as to protect the rights of others, prevent public disorder or incitement to violence. The court stated that in cases involving criticism of religious beliefs, the state enjoys a certain margin of appreciation in assessing whether such criticism exceeds the limits of a critical assessment of religion and amounts to a gratuitous attack on religious feelings. The court also noted that the protection of religious feelings is a legitimate aim, but it should not be used to restrict or silence debate on matters of public interest or concern.

*Giniewski v. France*¹¹⁶ case is also vital when discussing ECtHR approach in blasphemy and freedom of expression and freedom of religion. The applicant in this case was fined for publishing cartoons that were deemed blasphemous by some Muslims. The ECtHR found that the fine did not violate the applicant's right to freedom of expression under Article 10, as it was aimed at protecting "the rights of others" and maintaining "religious peace." (Ahmed 2019) Furthermore, the court stated that freedom of expression is one of the essential foundations of a democratic society and is applicable not only to "information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb." The court also emphasized that freedom of the press

¹¹³Amnesty International,. 2021. Iran: End Blasphemy Laws and Protect Freedom of Expression. Amnesty International. 2019. Iran: End persecution of Christians. 11 25. <https://www.amnesty.org/en/latest/news/2019/11/iran-end-persecution-of-christians/>. (accessed on 27th of March 2023)

¹¹⁴*E.S. v. Austria* [2018] No. 38450/12

¹¹⁵UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, <https://www.refworld.org/docid/453883fb22.html> (accessed on 30th March 2023)

¹¹⁶*Giniewski v. France* ECHR 64016/00

extends to the right to gather and publish information on matters of public interest, including information related to national defense. While it is crucial to protect and respect the right to freedom of religion, the case law depicts that the values of human rights are mostly weighed to freedom of expression as in many occasions it does not find it appropriate to accept blasphemy laws to protect freedom of religion.

4.8. Blasphemy Laws and article 20 of the ICCPR

As previously stated, General Comment 22 of the Human Rights Committee emphasizes the importance of not viewing any expression of religion or belief as propaganda for war or as inciting discrimination, hostility, or violence, as stipulated by Article 20 of the ICCPR. Furthermore, General Comment 11 argues that signatory countries to the Covenant are required to implement laws prohibiting such conduct in order to promote human rights, particularly the right to freedom of religion or belief, non-discrimination, and peaceful coexistence.¹¹⁷

To effectively prevent and punish actions that violate Article 20 of the ICCPR, countries must enact and enforce laws and regulations and also educate and raise awareness about the harms of such actions. In this regard, the nature of blasphemy laws and their compatibility with Article 20 of the ICCPR requires scrutiny.

Article 20 of the ICCPR explicitly prohibits certain types of expression that constitute incitement to ethnic, religious, or national discrimination or hostility. Article 19, an organization that advocates for freedom of expression and information, has developed a framework to guide courts in determining which types of speech warrant criminal sanctions under Article 20 of the ICCPR, as opposed to those that can be addressed using civil or administrative law.¹¹⁸

This framework consists of several elements that must be considered in a specific order, including the severity of the speech, the intent behind it, the content of the speech, the extent to which it is publicized, the imminence of any harmful action resulting from it, the likelihood or probability of such action occurring, and the context in which the speech was made. By applying these elements in the specified order, courts can clearly differentiate between different forms of speech and determine the appropriate level of punishment.

The safeguarding of human rights, which encompasses the protection of freedom of religion or belief and the prevention of discrimination, requires countries to enact laws that prohibit speech that incites hatred or violence. Blasphemy laws must be scrutinized to determine whether they violate Article 20 of the ICCPR, and courts must use a framework to guide them in determining the appropriate level of sanction for speech that falls under this category.

¹¹⁷ *ibid* §105

¹¹⁸ *ibid* §103

As article 20 of the ICCPR requires to be “incitement” to hostility or discrimination, it is crucial to assess what would be considered as incitement. Incitement as stated can be equivalent to advocacy. However, the level of advocacy in a speech is important in determining whether it constitutes incitement under Article 20. Advocacy is characterized by a “direct call for the audience to take certain actions”. The court should examine whether the speech specifically urges violence, hostility, or discrimination. A clear and unambiguous call to action that is only intended for a particular audience and cannot be interpreted in any other way may indicate the presence of incitement under Article 20.

Blasphemy laws, which are frequently included in penal codes, have been the topic of much discussion and debate, particularly in terms of their conformity with international human rights norms. However, international human rights instruments safeguard freedom of expression as a fundamental right. Therefore, any deviation from the general principle of freedom of expression must abide by the stringent requirements set forth in article 19(3) or 20 of the ICCPR. The criteria for acceptable limitations on free speech, such as preserving public safety, order, or health, are outlined in Article 19(3). Blasphemy laws frequently go beyond these restrictions, making it illegal to express ideas that don't necessarily threaten these interests but rather insult religious sensibilities or beliefs. It is crucial to evaluate whether these laws conflict with Article 20 of the International Covenant on Civil and Political Rights, which prohibits any speech that incites discrimination, hostility, or violence based on religion, among other factors. If it is established that blasphemy laws are incongruent with Article 20, they may be categorized as breaches of international human rights legislation.

Therefore, it is critical to conduct a thorough examination of the scope and impact of blasphemy laws, as well as to ensure that they adhere to the stringent conditions for limitations on freedom of expression stated in international human rights instruments. This involves determining whether criminalizing blasphemous speech is required to defend national security, public order, or public health, as well as whether the laws go above and beyond what is necessary and appropriate to achieve these purposes. Finally, protecting free expression and promoting religious tolerance and variety are critical for ensuring human rights and peaceful coexistence. As mentioned above, the expressions that fall within article 20(2) must be direct call to violence hostility or discrimination. To assess the compatibility of blasphemy laws with article 20(2) of the ICCPR, we will examine some examples of such laws.

Article 513 in the Penal Code of the Islamic Republic of Iran stipulates that if someone insults the Islamic sanctities of any of the imams or Sadigeh Tahereh in a manner that is tantamount to criticizing Prophet Muhammad, they shall be subject to the death penalty.¹¹⁹ However, the language of this article punishes insulting, which is not the same as inciting violence or prejudice. Furthermore, the high sanctions outlined in this article are plainly inappropriate and have a chilling impact on freedom of expression.

¹¹⁹ *ibid* §47

Similarly, the penal code of Pakistan specifies that anyone who defames the Prophet Muhammad's name, whether through spoken or written words, visible depiction, or any other indirect methods, may face life imprisonment or the death penalty, as well as a fine. This level is lower than that of the Iranian penal code and falls well short of international human rights standards.

In addition to that, anyone who publicly insults the religious beliefs of a segment of the community is subject to prison under Article 213 of the Turkish Penal Code if their actions are likely to cause public disturbance. Although this article's language is clearer and less severe than the preceding two examples, it nevertheless falls short of the standard established in Article 20(2) of ICCPR.

Article 98(f) of the Egyptian Criminal Code defines "contempt for any of the revealed religions" as a crime with prison time and fines as possible penalties. This ambiguous and widely written clause has been condemned for breaking international human rights norms because it has been used to target people who hold opposing or critical views on religion.

Article 156(a) of the Indonesian Penal Code states that it is unlawful to "publicly express feelings of hostility, hatred, or contempt against a religion with the purpose of preventing others from adhering to any religion, and from engaging in religious activities." The penalty for breaking this rule is up to five years in prison. This provision has been criticized for being too broad and subjective, and for being used to target religious minorities and dissenting voices.

In the Penal Code of Saudi Arabia, Article 6 criminalizes "ridiculing or insulting the divine self, or its attributes, or its messenger, or its prophets, or its holy books, or its sanctities, or its mosques, or its worshippers, or anything that is held to be sacred by virtue of its religious sanctity". Violations of this provision are punishable by imprisonment and fines. This provision has been criticized for being too vague and broadly-worded, and for being used to silence dissent and suppress religious minorities.¹²⁰

These instances highlight the incompatibility of blasphemy laws with international human rights norms, especially article 20(2) of the ICCPR, as well as their problematic nature. These regulations frequently have a low bar for declaring speech unlawful, which can limit free speech and jeopardize peaceful cooperation.¹²¹ It is crucial to evaluate how blasphemy laws affect fundamental human rights and to make sure that any restrictions on these rights are required and proportionate to achieve a legitimate aim, like preserving public order or national security.

As mentioned earlier, blasphemy laws criminalize speech that is considered insulting or offensive to religious beliefs and practices. Such laws are incompatible with international human rights law as they violate the principles of freedom of expression and can have alarming effect on individuals who wish to express their views on religion or belief.

¹²⁰USA Office of International Religious Freedom. 2019. Report on International Religious Freedom: Iran. <https://www.state.gov/reports/2019-report-on-international-religious-freedom/iran/>. (accessed on 26th March 2023)

¹²¹Pew Research Center. 2016. "Blasphemy and Apostasy Laws. Pew Research Center.

International human rights organizations such as Amnesty International, Human Rights Watch, and the UNHRC have extensively condemned blasphemy laws and urged for their repeal. These organizations have highlighted the importance of protecting freedom of expression and belief.¹²² Furthermore, several countries have taken steps to reform their blasphemy laws or abolish them altogether. For example, in 2018, Ireland repealed its blasphemy law, and in 2020, Greece amended its law to remove the crime of blasphemy.

In conclusion, blasphemy laws are unconstitutional under international human rights law because they stifle free speech and put people at risk of being persecuted for their ideas or viewpoints. For the protection of everyone's right to freedom of expression and belief, countries must modify or remove such laws.

5. Recommendations

This part of the paper will discuss about the conclusive remarks of the discussion of the research paper along with further recommendations for the persisting contradiction between blasphemy laws and international human rights.

5.1. Justifications for repealing blasphemy laws

The primary apprehension regarding the repeal of blasphemy laws stems from their significant impact on the freedom of expression and the right to religion or belief. This was highlighted in the first report presented by the concerned parties to the United Nations General Assembly in New York.¹²³ Ahmed Shaheed, the Special Rapporteur on freedom of religion or belief, has emphasized the importance of states repealing blasphemy laws, citing their negative impact on the right to freedom of religion or belief and the ability to engage in productive conversations regarding religion. He has further highlighted that the ongoing rising trend of religious intolerance is a consequence of limitation of freedom of religion or belief and denials of that freedom. Hence, religious intolerance in world should be addressed and appropriate actions should be taken to close the gap between commitments to combat religious intolerant acts. Further to that, it was noted that extremist interpretations of religious sources can lead to violence. As discussed earlier, extremist groups promoting blasphemy laws in Islamic nations have generated violence specifically against the minority religious and ethnic communities in those countries.¹²⁴

When considering the main reasons behind the intensity towards repealing blasphemy laws, its contradiction with the international human rights prevails as the main justification. Freedom of religion and freedom of expression are interrelated and mutually enforcing in international human rights law, and both are considered as fundamental in a democratic

¹²²Human Rights Watch. 2016. "World Report 2020: Rights Trends in Pakistan"; Amnesty International, "Criminalizing Expression: A Global Trend". 2010. Iran: End Persecution of Baha'is Dozens Detained Without Charge; Leaders Face Charges Carrying Death Penalty. <https://www.hrw.org/news/2010/02/23/iran-end-persecution-bahais>. (accessed on 27th March 2023)

¹²³ ibid 101

¹²⁴ ibid 101

society. However, as discussed previously blasphemy laws not only limit this right but also abuse their power under blasphemy laws by penalizing individuals for blasphemy specifically in Islamic nations. Therefore, freedom of expression overlaps with right to religion in this scenario. The most rigorous aspect is that blasphemy laws in these countries restrict the right to religion of minority religious communities while protecting Islam from blaspheming. Hence, it is significant to note here that it creates a religious intolerance among the communities. On the other hand, it creates a tension between freedom of expressions and freedom of religion as it avoids people from even criticizing the learning of Islam which is a basic aspect of freedom of expression. This mainly due to the vague and broad interpretation of blasphemy under the laws of Islamic nations.

Another main justification raised for supporting the view that blasphemy laws should be repealed in Islamic nations is to avoid minority communities being a target of violent acts from the extremist groups as well as penalizing under the laws. It is important to note that blasphemy laws can be used to target not only minority communities but also dissenting voices and individuals critical of the government or religious institutions. However, in some Islamic nations, blasphemy laws have been used to justify violence against minority communities, particularly non-Muslims. As discussed earlier, in Pakistan, blasphemy laws have been used to target members of minority religious groups, including Christians, Hindus, and Ahmadis, among others. Accusations of blasphemy can lead to violence against the accused, as well as their families and communities. In some cases, mobs have taken matters into their own hands and carried out vigilante justice, sometimes resulting in deaths or injuries.¹²⁵

Moreover, repealing blasphemy laws is considered as important to prevent states from politicizing religion; as such laws can be used to suppress dissent and target minority groups, and can fuel religious intolerance and conflict. In Indonesia, blasphemy laws have been used to target members of minority religious groups, including Ahmadiyah and Shia Muslims, as well as non-Muslims who are accused of insulting Islam. In 2017, the former governor of Jakarta, Basuki Tjahaja Purnama, was sentenced to two years in prison on charges of blasphemy, following allegations that he had insulted the Quran during his re-election campaign.¹²⁶ To prevent the politicization of religion, it is recommended that countries prioritize the international human rights standards as mentioned above, and refrain from implementing or enforcing legislation that curtails these crucial rights. This objective can be accomplished through various means, such as revising or annulling blasphemy laws, safeguarding the rights of minority groups, and fostering interfaith dialogue and acceptance.

5.2. Amending blasphemy laws under a limited approach

This discussion leads to the question of whether blasphemy laws should be reformed or abolished altogether to address their conflict with international human rights laws. The argument presented here advocates for the reform of such laws, rather than their complete repeal, to ensure conformity with international human rights laws and to prevent infringement

¹²⁵ ibid 103

¹²⁶ ibid 22

of fundamental rights such as freedom of expression and freedom of religion or belief. The reasons behind this stance will be examined in the following analysis.

The main justification for amending blasphemy laws rather than repealing is that they can provide some measure of protection against hate speech and incitement to violence, while at the same time respecting freedom of expression. This can be achieved by carefully defining what constitutes blasphemy and setting clear criteria for limitations on speech, as well as by ensuring that penalties for blasphemy are proportionate and not excessively severe.¹²⁷ In addition to that, amending blasphemy laws can be seen as a more practical and balanced approach, as it recognizes the importance of protecting religious beliefs and values while also upholding the fundamental human right of freedom of expression. Simply repealing blasphemy laws could potentially lead to greater tension and conflict between different religious groups, as it may be perceived as disregarding or disrespecting their beliefs. Furthermore, it is possible to strike a balance between protecting religious beliefs and values and upholding freedom of expression. This can be done by ensuring that any limitations on freedom of expression are proportionate, necessary, and prescribed by law, and that they are applied equally to all religions and belief systems.

Moreover, amending blasphemy laws can also help to prevent their misuse for political or sectarian purposes, which can lead to the persecution and discrimination of religious minorities. By ensuring that blasphemy laws are designed in a way that is fair and just, and that they are applied equally to all religions and belief systems, it is possible to prevent them from being used as a tool for discrimination and intolerance.

5.3. Limited approach under Article 19 (3) of ICCPR

However, it is critical that any changes to blasphemy laws are consistent with international human rights standards and do not unnecessarily restrict freedom of expression or religion or belief.

When it comes to the sometimes-conflicting rights of freedom of expression and freedom of religion or belief, international law compels states to take a cautious and balanced approach. This strategy must consider every individual's entitlement to freely express themselves and observe their religion or belief without apprehension of bias or aggression, all while prohibiting any incitement of religious animosity that could lead to discrimination, hostility, or violence.¹²⁸ It is important to highlight that religious or belief freedom includes both vocal and nonverbal expressions, such as worship, observance, practice, and teaching, and that it is critical for individuals to express their views, conscience, religion, or belief in public. This liberty is also essential for parents or legal guardians to nurture their children in accordance with their religious or moral values.

When amending blasphemy laws, this thesis suggests an approach to adopt limitations mentioned under Article 19(3) of the ICCPR. Basically, under this Article freedom of

¹²⁷ *ibid* 9

¹²⁸ Shaheed: f, Farida. 2013. "Report of the Special Rapporteur in the field of cultural rights,." http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-34-Add1_en.pdf. (accessed on 01st of April 2023)

expression is protected, but this freedom is not absolute. The Article also permits specific constraints to be placed on this entitlement, which includes limitations deemed essential for the protection of the rights or reputation of others, preservation of national security or public order, or prevention of hate speech.

It is vital to ensure that the restrictions or limitations on freedom of expression should be proportionate, essential, and mandated by law when modifying blasphemy legislation under Article 19(3) of the ICCPR. This simply means that the limitations must be legally specified, essential to achieve a valid goal, and appropriate to the goal at hand. For example, if a government wishes to change its blasphemy laws in order to safeguard religious minorities from prejudice and intolerance, it could do so by ensuring that the rules apply equally to all religious groups and that blasphemy punishment is appropriate to the harm inflicted. This might include abolishing the death penalty as a punishment for blasphemy, as it is widely regarded as a disproportionate punishment for any offense.

Furthermore, when amending blasphemy laws in Islamic nations it is important to ensure that it is consistent with international human rights law standards specifically with the right to freedom of expression, opinion, and religion, the right to equality, and the right to a fair trial. The UNHRC has also stated that any restrictions on freedom of expression must be consistent with democratic and human rights norms. Blasphemy legislation will thus be compliant with international human rights standards. To be more specific, they must not be used to discriminate against any particular group and must not infringe the fundamental right to free expression.

5.4. Need for a proper interpretation of blasphemy

It was reflected in this research paper that the broad and vague definition of blasphemy has given a discretionary right for Islamic nations to interpret blasphemy on their own terms. Hence, the rigorous nature of blasphemy laws is different from one country to another. This approach should be change and a proper interpretation should be given in the local legislations about blasphemy in these countries. Thereby, adopting blasphemy laws under a limited approach would be easier and it will ensure that they are narrowly tailored and do not overly restrict speech. For example, the laws could be limited to cases where there is a clear and present danger of incitement to violence or discrimination. This would ensure that only the most egregious cases are punished and that individuals are not punished simply for expressing their opinions.

Another important aspect of a limited approach to blasphemy laws is to ensure that they are subject to appropriate procedural safeguards. This means that individuals accused of blasphemy must have access to fair trials and that they are not subject to arbitrary detention or punishment. Additionally, it is important that the burden of proof lies with the prosecution to demonstrate that the speech in question constitutes blasphemy.

6. Conclusion

In conclusion, the contradiction between blasphemy laws and international human rights is a persisting issue, particularly in Islamic nations where blasphemy laws are strictly enforced. The primary reasons for abolishing blasphemy laws are that they restrict individuals' ability to freely practice their religion or belief and impede open discussions about religion.

Blasphemy laws not only limit this right but also abuse their power by penalizing individuals for blasphemy specifically in Islamic nations. Hence, restriction of freedom of religion or belief has resulted in a rise in religious intolerance and violence. Rather than abolishing blasphemy laws altogether, it is proposed that they be revised to align with international human rights law and uphold essential rights like freedom of expression and freedom of religion or belief.

By amending blasphemy laws, it becomes possible to safeguard against hate speech and incitement to violence, while still upholding the right to freedom of expression. This can be achieved by establishing precise parameters for what constitutes blasphemy and defining specific guidelines for restrictions on speech. The key to resolving the conflict between blasphemy laws and international human right law is to strike a balance between safeguarding religious beliefs and values while also preserving freedom of expression.

To achieve this, it is essential to ensure that any constraints on freedom of expression are reasonable, essential, and legally mandated, and that they are applied without bias to all religions and belief systems.

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