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LAWS: A COMPARATIVE STUDY

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INTRODUCTION

Blasphemy laws have existed in a variety of forms for centuries; however within the last thirty years blasphemy has rapidly gained contemporary significance. Artistic expression aimed at religion, particularly in the cases of Salman Rushdie, Piss Christ, the Jyllands-Posten Muhammad cartoons controversy and more recently *the innocents of Muslims* youtube affair, have demonstrated the tense inter-religious relationships within and between states and have forced states to re-evaluate their religious and legislative positions. These affairs have pervaded western society, altering their perception of freedom of speech and expression, particularly regarding personal and artistic expression. Countries with deep historical roots in religion such as Britain and the United States, and those with extreme religious convictions such as Pakistan and Egypt, have been forced to confront the prevailing issues associated with religion and tolerance towards religious groups. These societies have found themselves in a liberal conflict between rights and freedoms of individuals, and the role of the state in guaranteeing those rights.

Modern day dilemmas surrounding religion and religious censorship rest heavily on the role religion plays in a given society and the extent to which it dictates the state's functions. Moreover, the contemporary and prevailing belief paradigm is no longer grounded in providence but instead adopts a rationalist or humanist approach with overtones of a liberal nature, which may encompass some religious undertones.² Nonetheless, faith continues to exist as an important referential framework, however it no longer operates in isolation. Instead it is increasingly subject to pluralism and multi-faith theology.³

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² Mary Allard, Staurt Hannabus, 'Issues of Religious Censorship' (1994), 43, *Library Review*, 8, 14-30.

³ Ibid.

Religion seemed to have survived the post-enlightenment period of the late 19th century. However, religious support dwindled throughout the tumultuous 20th century with the growth of secularism and the reinforcement of individualism and humanist materialism. This period saw the re-definition of human rights and responsibilities and emphasised a somewhat commercial mentality towards morality and moral values. Despite this development of individualism and moral relativism religion continues to permeate the fabric of society, and despite the increasingly secular nature of states, religious sentiments appear as alive and perennial in controversies related to humanity as ever.⁴

This paper will compare blasphemy laws, with particular focus on the states of Pakistan and the United States. Furthermore, it will reflect on the extent to which blasphemy is changing or has changed over time and in what ways it has changed. This paper will firstly address the definition of blasphemy and the degree to which the scope of blasphemy law has changed over time. The paper will move to the dichotomy between blasphemy and freedom of expression and free speech, and will conclude with an analysis of the role of the United Nations and blasphemy law in the international sphere.

WHAT IS BLASPHEMY – CHANGING SCOPE OF BLASPHEMY LAW

Blasphemy is invariably difficult to define, especially given its malleable nature. Blasphemy is subject to religious, political and cultural manipulation and the scope of the term affects its application. A superficial definition would suggest blasphemy is an irreverence towards a deity or deities and, by extension, the use of profanity against a religious figure or symbols of religious significance.⁵ Nonetheless, a more extensive assessment would suggest that blasphemy has adopted a more culturally

⁴ Ibid.

⁵ "blasphemy." *Encyclopædia Britannica*. Encyclopædia Britannica Online Academic Edition. Encyclopædia Britannica Inc., 2012. Web. 03 Dec. 2012. <<http://www.britannica.com/EBchecked/topic/69015/blasphemy>>.

specific definition and encompasses a complex range of expressions that offend more than merely a deity but also the cultural make-up of a society.

The complexities surrounding the definition of blasphemy are compounded by the forms of speech that may constitute such an irreverence, these forms of speech must be segmented in order to appreciate their relationship with one another and their impact on the freedom of expression. These include blasphemy, giving offence, an incitement to hatred or violence on grounds of religion and defamation of religion. The act of blasphemy, as previously mentioned, relates to a discourse which potentially insults religion itself, giving offences involves an element of intention to inflict distress on believers of a religion, incitement to hatred or violence on grounds of religion is better known as hate speech, and defamation of religion is a collaboration of the above acts with an element of falsity attached.⁶ These acts are inherently confusing, imprecise and often overlap, which makes them dangerous territories for individual rights to freedom of expression, on the one hand, and the protection of the right to religion on the other. While all of these acts encompass some aspect of religion they do not all constitute violations of one's right to religion. Blasphemy, for instance, has a scatological meaning, but also a sacrilegious, disrespectful and sinful aspect as to religion, and is perceived more offensive than the other forms of speech listed.⁷ The giving of offence, on the other hand, has arguably more to do with the taking of offence by sensitive people⁸. Conversely, hate speech, whilst often disrespectful and abhorrent, alongside defamation of religion can be perceived as extreme forms of expression protected by Articles 19 of the Universal Declaration of Human Rights (UDHR)⁹ and Article 19 of the International Covenant on Civil and Political Rights (ICCPR)¹⁰.

⁶Paul Sturge, 'The Problem of Blasphemy and Defamation of Religion Laws'(2006), 32(3), *IFLA Journal*, 1-5.

⁷ Ibid.

⁸Paul Sturges, 'Limits to Freedom of Expression? Considerations arising from the Danish cartoons affair'(2006), 32(3), *IFLA Journal*, 181-188.

Blasphemy's significance and importance throughout history has waxed and waned, and the problems associated with defining its meaning and scope make studying its role in religious history problematic. The challenges with defining the term today are the theoretical paradigms that dictate how the modern world seeks to treat blasphemy.¹¹ Moreover, given that blasphemy has remained a linguistic tool, used primarily to distinguish beliefs, the act of blaspheming has been subject to a multitude of interpretations. Blasphemy has progressed from being represented as merely an act of transgression, to being labeled an act of speech that is criminal in nature, requiring prosecution, and more recently an artistic expression of divine judgment.¹²

The above variations in the interpretation and application of blasphemy law are reflective of the law's transformation throughout history. It can be said that blasphemy has transformed through three historical stages; blasphemy was firstly a sin against the divine and a direct verbal insult to the deity, this period of pure divinity was proceeded by a period whereby blasphemy was a political transgression against the divine king and not the divine god. Such opposition against the state constituted treason and was punishable by death. The third period developed with the modern secular state, where the notion of blasphemy as a form of disrespect was considered an affront to the rights of one's neighbor as opposed to God. This approach led to the notion of blasphemy as a communal offence rather than a personal or political one.¹³ These transformations over time demonstrate how blasphemy has moved from protecting the rights of the religion to protecting those who believe in the particular religion.

Due to the definitions of blasphemy differing, as do the responses. Accordingly, blasphemy is punishable by law in a variety of forms in many societies depending on the extent to which religion plays a role in the operation of the State. Today, the more active anti-blasphemy activists are Islamic states. However, that is not to

¹¹David Nash, 'Introduction: Blasphemy'(12/2008), 32, *Journal of Religious History*, 4, 393-397.

¹²Ibid.

¹³Graeme Wood, 'Blasphemy: Beyond the Mohammed-video riots, two clashing visions of rights', *Boston Press*, 30/9/2012.

suggest that Christians, Buddhists and Hindus have not vigorously defended the sanctity of their religious deities and symbols against insult. Interestingly, Islam does not have a specific law equivalent to blasphemy enshrined in the Qur'an. The closest reference to blasphemy is the condemnation or reviling the sacred, although this is markedly different to the way blasphemy is received and interpreted in post-enlightenment countries.¹⁴ Therefore, the responses taken by Islamic communities have more to do with creating a homogenous society, bound by their religious beliefs, and arguably less to do with religion itself. The risk in adopting an approach of this kind is that it leaves little scope for dissent by religious minorities and potentially facilitates persecution.¹⁵ Moreover, anti-incitement laws are more readily invoked in Islamic states than in Europe because not causing offence is widely perceived to be a pillar of how Islamic societies function.¹⁶ Consequently, when provocation occurs, whether intentional or otherwise, the state responds swiftly because although these states may not specifically have blasphemy laws they do have laws prohibiting insulting the feelings of others. These states demonstrate how culturally specific blasphemy laws, or similar forms of prohibition on speech regarding religion, have become and how relevant they are for the cultural make-up of a given society.

One such state is the Islamic Republic of Pakistan, where the preferred religion is Islam, which is representative of the 97% of Muslims that live in the country. Therefore, because Islam transcends into the public sphere, charges of blasphemy are taken very seriously, and in many cases result in convictions without the right of a trial or the freedom to question and defend the charges against oneself. Pakistan's blasphemy laws are rooted in British law, a colonial remnant. Yet, modern day blasphemy laws in Pakistan have become infamous since their radicalisation in the 1980s under the dictator General Zia ul Haq. What remains of these radicalised laws are found in sections 295(a)-(c) and 298 of the Pakistani Penal Code. Section 295a

¹⁴ Ali Khan Mahmudabad, 'Pakistan and Indonesia's blasphemy laws have no basis in the Qur'an', *The Guardian*, 1/11/2012.

¹⁵ Ibid.

¹⁶ Michael De Dora, policy director of the Center for Inquiry in Graeme Wood, 'Blasphemy: Beyond the Mohammed-video riots, two clashing visions of rights', *Boston Press*, 30/9/2012

prohibits the 'outraging of religious feelings', section 295b forbids defiling the Qu'ran and section 295c prohibits 'defaming' Muhammad. All of these acts are punishable with death and in some case life imprisonment. These laws have increasingly been used to marginalise minority groups, persecute dissidents and encourage religious intolerance. Human rights activists and Pakistan's liberal sections have worked tirelessly to amend the laws, arguing they have little to do with blasphemy and more to do with settling petty disputes and personal vendettas.¹⁷ These concerns surrounding the arbitrary abuse of Pakistan's blasphemy laws have been dragged into the political mainstream as a result of several infamous incidents; including the case of Rimsha Masih, an 11 year old, down-syndrome, Christian girl who was prosecuted for allegedly defiling the Qu'ran, the case of Asia Bibi, a Christian woman who allegedly made derogatory comments about Mohammed, and infamously the assassination of Salman Taseer, a politician in Pakistan who sought to reform the repressive blasphemy laws.

Despite these evident deficiencies within the law, the likelihood of reforming or repealing those sections of the penal code seems non-existent. President Zardari's PPP coalition government refuses to accept arguments for repeal or reformation, the government stated that the '*only parties who are interested in such a change are the small, liberal minority classes and the meddling west.*'¹⁸ This sentiment demonstrates the mentality surrounding blasphemy in Pakistan and validates the arbitrary nature of the law. Furthermore, the president has defended the laws, claiming they represent the religious, cultural and moral framework of Pakistan.

DICHOTOMY: BLASPHEMY AND FREE SPEECH

The contemporary debates surrounding blasphemy are representative of a clash between worldviews and more importantly a clash in understanding of competing human rights. These debates are taking place at grass-roots government levels,

¹⁷Anonymous, 'Contemptuous: The blasphemy law in Pakistan' (9/8/2012), 404 *The Economist*, 8801, p. 39.

¹⁸*Ibid.*

where the disputes are between defending freedom of speech and protecting religious rights, and more recently at the international level, where there are calls for international prohibition on the freedom of blasphemy. The competing views regarding blasphemy are instated on the one hand by the right to blaspheme, as propagated by the United States and other western states, and the counterclaim by Islamic states, such as Pakistan and Egypt, of a right not to be subject to blasphemy. It is between these conflicting arguments where the central dividing points lie with respect to the clash between the Islamic and the non-Islamic worlds.¹⁹ Arguably, the debate also centers on the extent to which the state is willing to accept religion as a private matter rather than a public one. Predominantly Christian societies have come to an understanding that blasphemy is a private matter, albeit the centuries of banning, burning and condemning heretics and blasphemers and more recently suppressing blasphemous art.²⁰ Conversely, the Islamic world has yet to adopt such an approach, and instead have framed blasphemy as an offence of a public nature.

Human rights treaties and declarations identify freedom of speech and expression as an inalienable, indivisible and universal right. However, on the same basis these treaties and declarations ensure states protect and safeguard the rights of citizens against acts that potentially violate their similarly inalienable, indivisible and universal right to religion. Islamic and secular states have cause to prohibit and censor expression that constitutes religiously motivated hatred. Therefore, whilst blasphemy may seem archaic and unnecessary in the western world, it remains a central component to the active debate regarding two fundamental human rights – to speak and think freely, and the right to protect one's society from violence on the basis of religion.²¹ In order to appreciate the complexity of these competing rights it is imperative to understand what exactly international treaties protect, with respect to those specific rights, and what are the limitations of those rights. The UDHR protects the freedom of religion in Article 18. It recognizes that there is a right to have religious convictions and similarly not to hold religious beliefs. More

¹⁹Graeme Wood, 'Blasphemy: Beyond the Mohammed-video riots, two clashing visions of rights', *Boston Press*, 30/9/2012.

²⁰Ibid.

²¹Ibid.

importantly there is an inherent right to hold an opinion without interference. The opposing right, the freedom of expression, is enumerated in Article 19 UDHR and Article 19 ICCPR. This right is firstly a right to freely hold an opinion, which is a private right, and a right to freedom of expression, which is a public right. Given the conflicting nature of these two rights the appropriate resort would be to ask what limitations on freedom of expression exist to ensure the one right does not impeach on the other.

The limitations on freedom of expression are enumerated in Article 29 UDHR in terms of 'duties to the community' and their scope is constrained in general terms by considerations that include respect for the rights of others. Article 29 lists duties to the community (art. 29(1)), cites limitations as permissible insofar as they are determined by law solely for the purpose of securing due recognition for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of a democratic society (art. 29(2)), and ensures these rights and freedoms are not exercised contrary to the purposes and principles of the United Nations (Art. 29(3)). Art. 29 is essentially a question of proportionality: the responsibility of determining the equilibrium rests with the legislators and the judiciary. This question of proportionality and the subsequent application of those limitations depend on the ratio between the rights of the communicator to express their beliefs and the level of responsibility upon them not to offend.²² Where the form of expression is aimed at political bodies or those in power the limitations seem redundant, but in cases where the expression is directed at the beliefs of a particular religious group, such as in the case of hate speech, then limitations may be necessary to protect the inherent dignity of those groups. This is because hate speech undermines the 'equal and inalienable rights' that belong to all human beings as set out in the preamble to the UDHR and potentially violates their specific rights as set out in the UDHR. Speech or expressions that incite hatred and threaten the rights of religious groups are criminal offences in secular and non-secular states alike.

²²Paul Sturges, 'Limits to Freedom of Expression? Considerations arising from the Danish cartoons affair'(2006), 32(3), *IFLA Journal*, 181-188.

The above limitations beg the question: do *Piss Christ*, the Danish cartoons or the *innocence of Muslims* video go too far? Do these acts constitute hate speech and thus undermine the equal and inalienable rights of others? The answer to these questions depends on the extent to which society should balance public interest, morals and order, on the one hand, with free speech within the broader concerns of their multicultural, multi-faith, pluralist societies on the other.²³ Consequently, the relevance of blasphemy hinges on the level of importance the particular image or symbol being attacked plays, or the degree to which it is an important component of one's belief, as well as for those who object on grounds of propriety or taste.²⁴ Thus, the notion of 'going too far' should depend on broader community values as opposed to the degree of offence a particular sect takes.

THE UNITED NATIONS - BLASPHEMY LAW IN THE INTERNATIONAL SPHERE

Recent attempts by the Organization of Islamic Communities (OIC) to bring blasphemy back on the United Nations agenda has brought to light this divide in world views regarding what constitutes freedom of speech and expression, how much freedom to express oneself is present and what powers the state has to quell or limit such expression and based upon what grounds. The spectrum of support is fairly broad, sowing concern amongst free speech activists that such a persistent push may lead to the criminalisation of blasphemy worldwide.

On the one end of the spectrum is the OIC, a human rights commission advocating Islamic rights, and the 'Islamic world', who have vowed to defend the right to religion by limiting freedom of speech and expression where it seeks to 'incite violence' against a religious group. Ekmeleddin Ihsanoglu, secretary general of the OIC, reiterated the OIC's underlying concerns that '*growing intolerance towards Muslims had to be checked*' and called for '*an international code of conduct for media and social media to disallow the dissemination of incitement*

²³ Ibid.

²⁴ Ibid.

*material.*²⁵ Moreover, in response to growing ‘western’ concern for freedom of speech, Ihsanoglu said that the western world should ‘come out of hiding from behind the excuse of freedom of expression...the deliberate, motivated and systematic abuse of this freedom is a danger to global security and stability’.²⁶

On the other end of the spectrum are the United States, other ‘western democracies’ and numerous human rights groups, all of whom argue such a ban on blasphemy would only encourage repressive regimes to use blasphemy laws to imprison or execute dissidents. The underlying concern of these parties is that ‘*human rights are not about protecting religions; human rights are to protect humans,*’ and if the United Nations accepts a push in this direction ‘*who is going to be the decision-maker on deciding what blasphemy is?*²⁷’ The United States have received unprecedented support from human rights activists who strongly defend the freedom of expression and argue that an international anti-blasphemy law ‘*seeks to divide the international community, rather than building consensus on ways to promote fundamental freedoms.*²⁸’ Moreover, ‘*religious intolerance is best fought through efforts to encourage respect for every individuals human rights, not through national or international anti-blasphemy laws.*²⁹’ Furthermore, western countries have persistently argued that repressive measures limiting freedom of speech would run counter to the U.N’s core human rights declarations and particularly the freedom of expression.³⁰ Human rights activists similarly argue that blasphemy laws are already being used in predominantly Islamic states, such as Pakistan, to persecute non-Muslims. Therefore, to permit the international criminalisation of blasphemy would only legitimise such behavior and ‘*endorse, on an international scale, the religious intolerance seen in Pakistan and in other Islamic countries*’.³¹

²⁵ Robert Evans, ‘Islamic states to reopen quest for global blasphemy law’, *Reuters*, 19/9/2012.

²⁶ *ibid*

²⁷ Courtney C. Radsch, program manager for the Global Freedom of Expression Campaign at Freedom House, a Washington-based nonprofit group in Hannah Allam, ‘Limits on speech to get U.N. Hearing’, *The Spokesman-Review*, 23/9/2012

²⁸ Susan Brooks Thistlethwaite, ‘Shouting fire in a crowded world: What blasphemy law debate can mask’, *The National*, 24/9/2012.

²⁹ *Ibid*.

³⁰ *Ibid*.

³¹ World Council of Churches, ‘WCC Public hearing debates ‘misuse of blasphemy laws’ in Pakistan’, *WCC News*, 4/11/2012.

The United States, as the strongest advocates of freedom of speech, have vehemently defended their Constitution's protection of the freedom of expression. The US courts have interpreted the first amendment strictly in order to protect even the grossest abuses of religion and religiously motivated speech.³² The First Amendment is a classic statement of the freedom of expression, which protects individual rights and provides inherent protection against the violation of one's rights by the State. In light of their strict interpretation of the First Amendment, the US has opposed the absolute prohibition of blasphemy because such a prohibition would '*inevitably lead to the arrest and persecution of religious minorities, including children, in order to "protect sensibilities" of religious majorities. What it shows is that anti- blasphemy laws have nothing to do with "respect" or "sensitivity" to religious sentiments but are all about authority, control and social domination.*'³³

In the annual address to the United Nations General Assembly President Obama defiantly defended the United States Constitution and the freedom of speech. Obama defended the freedom by saying '*we do not ban blasphemy against our most sacred beliefs. Americans have fought and died around the globe to protect the right of all people to express their views, even views that we profoundly disagree with. We do not do so because we support hateful speech, but because our founders understood that without such protections, the capacity of each individual to express their own views and practice their own faith may be threatened. We do so because in a diverse society, efforts to restrict speech can quickly become a tool to silence critics and oppress minorities.*

³⁴

The United Nations, however, has taken an approach that moves closer to the side of prohibition of blasphemy. U.N Secretary-General Ban Ki-Moon shocked, and to some extent disappointed, the 'western world' and free-speech activists by suggesting states should be encouraged to limit freedom of speech when it is 'used

³²Graeme Wood, 'Blasphemy: Beyond the Mohammed-video riots, two clashing visions of rights', *Boston Press*, 30/9/2012.

³³Hussein Ibish, 'The reality of Anti- Blasphemy Laws', *The Daily Beast*, 3/10/2012.

³⁴The New York Times, 'Obama speech to the United Nations General Assembly – text', 25/9/2012.

*to provoke or humiliate'.³⁵ Ki-moon said, "we are living through a period of unease. We are also seeing incidents of intolerance and hatred that are then exploited by others,"³⁶ Ban told the General Assembly that "voices of moderation and calm need to make themselves heard at this time. We all need to speak up in favor of mutual respect and understanding of the values and beliefs of others."³⁷ European states have contributed to this debate with vastly different approaches to blasphemy and freedom of speech. France, for example, sways closer to the side of the United States and the 'western democracies'. In recent weeks, in the wake of the *Innocence of Muslims* video, the French government, whilst deplored the insensitive nature of the video, blatantly refused to deny its citizens their freedom of expression as a means of protecting religious sentiments. France went so far as to permit a magazine to publish Mohammed as a naked, cowering man in order to underscore the point that even the most offensive and vile representations or expressions should be protected.³⁸ However, other states within Europe have moved closer to the end of prohibiting blasphemy. Greece, for example, has strict blasphemy laws regarding art that offends religious beliefs. Similarly, Russia recently imprisoned three members of the feminist punk group Pussy Riot for acts of '*hooliganism motived by religious hatred*'.³⁹*

On the radical end of the spectrum are Pakistan, Egypt and the Arab League. Pakistan and Egypt are, arguably, two countries where blasphemy laws are the most draconian and where widespread violence is occurring, and in Pakistan's case, being encouraged by the State, in the name of Islam. Egypt, for example, in response to the '*Innocence of Muslims*' video, went so far as to take legal action against the Egyptian American film-maker of the video and detained without charge an Egyptian atheist accused of posting the video online.⁴⁰ Furthermore, the ultraconservative

³⁵ Department of Public Information, 'Moderate Voices Must Speak Up For Others', *Secretary General* SG/SM/14517/GA/11287, 18/9/2012 at <http://www.un.org/News/Press/docs/2012/sgsm14517.doc.htm>

³⁶ Ibid.

³⁷ Ibid.

³⁸ Hannah Allam, 'Limits on speech to get U.N. Hearing', *The Spokesman-Review*, 23/9/2012.

³⁹ Sophia Kishkovsky, 'Pussy Riot Found Guilty of 'Hooliganism' and 'Religious Hatred'', *Religion News Services* (17/8/2012).

⁴⁰ Hannah Allam, 'Limits on speech to get U.N. Hearing', *The Spokesman-Review*, 23/9/2012.

Islamist Nour Party filed a request for the Egyptian state prosecutor to revoke the citizenship of any Egyptian national who insults Islam or the Prophet.⁴¹ These broad approaches to blasphemy law demonstrate that '*there are Muslim, Christian and non-denominational countries that have blasphemy laws of varying degrees'....'it is not about the religion of the country - it is about the broader institutions of democracy and the rule of law*'.⁴² Both states have strongly supported the OIC's bid for an international blasphemy law, despite President Zardari's government coming under attack by human rights groups, and the west, for permitting their blasphemy laws to become a tool of repression used by bigots waging vendettas against minorities.⁴³

The OIC has supported measures to protect Islamic interests around the world; it has proposed resolutions for criminalising the defamation of religion since 1999. However, in 2011 the United States and numerous free-speech activists and human rights groups persuaded many countries to abandon the blasphemy law in favour of a new 'combating tolerance' resolution. Turkey now heads the OIC and naturally raised the issue at the U.N. Turkey's prime minister said that '*freedom of thought and belief ends where the freedom of thought and belief of others starts*'.⁴⁴ Furthermore, he claimed recent rises in Islamophobia constitute '*crimes against humanity*' and therefore require '*international legal regulation against attacks on what people deem sacred*'.⁴⁵ Turkey introduced a new bill proposed by the OIC that sought to '*fully recognize freedom of expression whilst respecting all prophets, regardless of which religion they belong to*'.⁴⁶ However, the OIC has introduced religious defamation resolutions at the General Assembly every year since 2005 with little to no success. It appears that "*each year, more and more countries are recognizing that laws allegedly protecting religions from defamation or criticism*

⁴¹ Ibid.

⁴² Courtney Radsch in Hannah Allam, 'Limits on speech to get U.N. Hearing', *The Spokesman-Review*, 23/9/2012.

⁴³ Toronto Star, 'Blasphemy law', *Toronto Star Newspaper*, (19/2/1995).

⁴⁴ Drazen Remikovic, 'Turkey's Erdogan wants to prohibit religious insults', *Southeast European Time*, 24/09/2012.

⁴⁵ Erdogan speech in Hannah Allam, 'Limits on speech to get U.N. Hearing', *The Spokesman-Review*, 23/9/2012.

⁴⁶ Andrew Harrod, 'World leaders rally for blasphemy laws', *daily mailer*, 24/9/2012.

*actually increase intolerance and human rights violations, instead of reducing these problems*⁴⁷. In an attempt to win support for their proposed bill the OIC inserted Judeophobia and Christianophobia, which is a markedly different approach to the previous versions that only cited Islam. More importantly provocative terms such as 'defamation' were replaced with 'vilification' and 'combating intolerance'. Needless to say there was little support for the proposed bill, instead the United States backed a United Nations Resolution against religious intolerance. United Nations Resolution 16/18 passed with considerably more support and seeks to '*condemn the stereotyping, negative profiling and stigmatization of people based on their religion.*' The UN Human Rights Council Resolution 16/18 focuses on two elements; prohibiting discrimination based on religion and education for the wider community and government officials on religious tolerance. This shift from protecting religious beliefs to protecting those who hold religious beliefs is more apt to the spirit of human rights. Resolution 16/18 does not seek to restrict peaceful expression; instead it applies positive measures of education and awareness to ensure tolerance.

CONCLUSION

In conclusion it appears evident that blasphemy laws have undoubtedly changed over time, their scope, application and the degree of protection offered have shifted in the post-enlightenment, predominantly secular and increasingly global world in which we live. The responses towards blasphemy, or in many cases against blasphemy, have demonstrated the cultural and religious divides that exist within our pluralist states and highlights the tensions between diverse and multi-faith communities. Ultimately the debate is one of competing rights, the right of freedom of speech and expression against the right to religion. This debate is by no means new; instead it has adopted a new dimension, one that is not simply about religion. The conflicts surrounding recent artistic expressions 'defaming', 'insulting' or otherwise belittling religious sentiments have more to do with politics and power struggles within the Islamic world and between the Islamic world and the non-

⁴⁷USCIRF chairman Leonard Leo said Wednesday in Patrick Goodenough, 'U.N Passes Religious 'Defamation' Resolution Sponsored by Islamic Nations but Support Dwindles', *CNS News*, 22/12/2010.

Islamic world, then they do with religion itself.⁴⁸ Moreover, blasphemy laws have become a deeply seeded tradition in many states and represent the beliefs of the majority and the state's culture. Therefore, blasphemy laws have a tendency to protect religion as a means of protecting the deep-rooted values of a given society. Furthermore, many religious traditions have integrated blasphemy laws, or codes similar in nature, within their faith. This is not necessarily the issue. The concern is when these codes are used by states and embedded in domestic legislation as a means of silencing political dissidents, solidifying power or to discriminate against minority groups. This is not to suggest that respect for religion is unnecessary, instead it implies that respect needs to be broadened.⁴⁹ The problem with blasphemy laws, as they currently exist and as they have been framed by OIC states, is that they fail to foster respect and tolerance for religion; the reverse appears to be the case.⁵⁰ Additionally, because these laws appeal to extra-legal and extra-constitutional sentiments they have become political tools, both in application and result, and have lent themselves to abusive and discriminatory functions.⁵¹ In order to achieve an equilibrium between freedom of expression and religion there must be laws that protect more than the freedom of religious expression, but also rights broadly interpreted as civic and economic.⁵²

Thus, there is a common misconception regarding free speech, particularly that it only lends itself to those who choose to make negative contributions to public discourse regarding religion. What needs to be facilitated is genuine and positive discourse, devoid of violence. Freedom of speech and expression should validly be limited in situations where its message specifically intends to incite hatred or violence. States should ensure their judiciary is able to determine where that line has

⁴⁸ Nina Shea, human rights lawyer and author of 'Silenced: How Apostasy and Blasphemy Codes are Choking Freedom Worldwide' in Mathre Brown, 'Experts say blasphemy laws are undercurrent of unrest in Middle East', *Desert News*, 27/9/2012.

⁴⁹ Susan Brooks Thistlethwaite, 'Shouting fire in a crowded world: What blasphemy law debate can mask', *The National*, 24/9/2012.

⁵⁰ Susan Brooks Thistlethwaite, 'Shouting fire in a crowded world: What blasphemy law debate can mask', *The National*, 24/9/2012.

⁵¹ Hussein Ibish, 'The reality of Anti- Blasphemy Laws', *The Daily Beast*, 3/10/2012.

⁵² Susan Brooks Thistlethwaite, 'Shouting fire in a crowded world: What blasphemy law debate can mask', *The National*, 24/9/2012.

been crossed. Consequently, as opposed to allowing society, as in the cases of Pakistan and Egypt, to take the law into their own hands, the state should be encouraging positive dialogue through the freedom of speech in an attempt to establish laws that broadly cover intolerance, negative stereotyping, stigmatisation of, and discrimination, incitement to violence, and violence against persons based on religion or belief.