

The legal conflict of free speech and capital punishment: apostasy and blasphemy

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Abstract

This study examines the global tension between freedom of expression and blasphemy laws. While social media fuels debates on secular values and religious sensitivities, restrictive laws in nearly 70 countries criminalize blasphemy and apostasy, with penalties including imprisonment and death. International efforts, led by the UN, call for abolishing such penalties for non-violent offenses, yet seven countries still enforce the death penalty for blasphemy. Europe has largely decriminalized blasphemy, with nations like Ireland and England repealing such laws, though some states retain penalties for offending religious sentiments. These laws often politicize faith, suppress dissent, and target minorities, violating human rights. The study concludes that abolishing blasphemy laws is vital to protecting freedom of expression and fostering global tolerance.

Keywords

freedom of expression • religion • violence • death penalty

INTRODUCTION

Where is the line between freedom of expression, the right to blaspheme God and hurting the feelings of believers? New and heated debates about secular values and the ability of believers to defend their values are taking hold on social networks. Social networks are the platform for diverse and often contradictory opinions, tens of thousands of hate messages and death threats, comparable to a real digital lynching. Secular states do not restrict the right to express one's attitude towards religion without offending someone personally and without targeting those who peacefully practise their religion. Violence is directed both against believers and in the name of religion. Sir Salman Rushdie, one of the most well-known victims of religious denial, explains his views on religion and violence in the name of religion in an interview with the BBC Newshour on 13 July 2023: You have to distinguish between people's private faith, which is none of our business, and the politicisation of any religion. America has a very militant version of Christianity at the moment, which was largely responsible for the whole abortion debate. I am not a religious person. I never was, and I came from a family that was not particularly religious and we were fine. It is not a thing I need for myself, but if there are people who need it, it is their business, not mine, until it becomes politicised. When it becomes politicised, it becomes

everybody's business, like all political things. I think we just need to be clear.

RESEARCH RESULTS AND DISCUSSION

States have a duty to protect the freedom of religion or belief but must also safeguard the right to freedom of expression. With blasphemy laws being broadly interpreted and severe criminal penalties applied for religious expression, there are increasing restrictions on freedom of expression. Government agencies and non-state actors have introduced new regulations and other measures that negatively impact the freedom of religion or belief globally.

A report by UN expert Ahmed Shahid shows that nearly 70 countries worldwide have laws against blasphemy, and 30 countries enforce regulations that punish apostasy (renouncing or converting to another religion). In some countries, apostasy carries the death penalty. For example, the expert cited the case of Palestinian poet Ashraf Fayyad, who was sentenced to death for apostasy in Saudi Arabia in 2015. This sentence was later commuted to eight years' imprisonment and 800 lashes following an appeal. Fayyad was accused of promoting atheism in his poetry.

International consensus is increasingly shifting toward the view that the death penalty should not be imposed for non-violent or victimless crimes, as such punishment is

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disproportionate to the offence. In March 2021, more than 50 countries endorsed Australia's initiative, signing a joint statement calling on 'States where the death penalty for blasphemy and apostasy is still enforced to eliminate the likelihood that such a penalty is provided for in law, applied, imposed, or carried out in practice', and urging the release of individuals on death row or imprisoned for these offences (Australian Government Department of Foreign Affairs and Trade, 2021).

In his annual report on the death penalty in August 2020, the UN Secretary-General reaffirmed that the death penalty 'should not, in particular, be applied as a sanction for non-violent conduct such as apostasy, blasphemy, adultery, and same-sex relations' (United Nations General Assembly Human Rights Council, 2020). He reiterated this stance in September 2021, emphasising his opposition to the death penalty in all circumstances and urging states to 'adopt a moratorium on executions' (United Nations Secretary-General, 2021).

Currently, six countries impose the death penalty for apostasy: Malaysia, the Maldives, Qatar, Somalia, the United Arab Emirates and Yemen, whereas seven countries apply the death penalty for both apostasy and blasphemy: Afghanistan, Brunei, Iran, Mauritania, Nigeria, Pakistan and Saudi Arabia. Sudan was the last country to abolish the death penalty for apostasy in July 2020 (Humanists UK, 2020).

Experts and human rights advocates highlight that in 32 of the 70 countries with criminal penalties for blasphemy, Islam is the predominant religion. Moreover, in nearly half of the 49 countries where Muslims are the majority, there are penalties for apostasy. The UN General Assembly's resolution on extrajudicial or arbitrary executions urges states to 'ensure the effective protection of the right to life of all persons and to conduct prompt, exhaustive, and impartial investigations, where required by obligations under international law, into all killings, including those targeting particular groups, such as [...] killings of persons belonging to national, ethnic, religious, or linguistic minorities' (United Nations General Assembly, 2020). The resolution calls for decisive actions by states to abolish the death penalty and extrajudicial killings by both state and non-state actors for non-violent 'crimes', such as apostasy and blasphemy. There is deep concern over acts amounting to extrajudicial or arbitrary executions committed against individuals exercising their rights to peaceful assembly, freedom of expression and freedom of religion or belief, as these are contrary to human rights.

Human rights defenders worldwide recognise that maintaining the death penalty for non-violent acts, such as apostasy or blasphemy, encourages states and non-state actors to carry out extrajudicial killings against individuals who change their religion or express particular religious beliefs. It is affirmed that the death penalty can never be justly applied as a sanction for non-violent acts like apostasy or blasphemy.

Currently, seven countries enforce the death penalty as the maximum penalty for violating blasphemy laws: Nigeria, Pakistan, Iran, Afghanistan, Somalia, Mauritania and Saudi Arabia (End Blasphemy Laws, 2020).

So-called blasphemy laws, which restrict anti-religious speech and actions that religions consider inappropriate, are also in force in several European countries. Convictions, let alone actual prison sentences, under such laws are rare in modern European democracies. Article 9 of the Council of Europe's 'Convention for the Protection of Human Rights and Fundamental Freedoms' (binding on 47 countries) states: 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and to manifest his religion or belief, either alone or in community with others, in worship, observance, practice, observance and teaching.'

The freedom to manifest one's religion or belief may be restricted only to the extent necessary in a democratic society, in accordance with the procedures established by law, to safeguard public security, preserve public order, protect health or morals, or protect the rights and freedoms of others'. (European Court of Human Rights, 1950)

Article 724 of the Italian Criminal Code (Codice penale) still prohibits blasphemy 'sensu stricto' (Altalex, 2014)—as 'insulting and cruel words against a god'. Book Three of the Code, 'Specific offences', Section 1, 'Police fines' states: 'Article 724. Blasphemy and cruel demonstrations against the dead.'

Anyone who publicly blasphemes against the divinity with abusive or insulting words (1) shall be liable to an administrative fine of between 51 and 309 euros. The same sanction shall apply to anyone who holds a public demonstration of cruelty against the deceased'.

The Italian Constitutional Court, in its judgment no. 440 of 18 October 1995, declared the part of the said Article 'or symbols or persons venerated in the State religion' unconstitutional.

Until 1995, it was only Catholicism, which previously had the status of a state religion in Italy. The title of Chapter 1 of Section IV 'Crimes against religious sentiments and against the pity of the dead' of Book Two of the Criminal Code, 'Specific crimes', was changed from 'Crimes against state religion and against authorised cults' to the current 'Crimes against religious denominations' by Article 10(2) of the Law of 24 February 2006 [12]. The new title was changed from 'Crimes against state religion and against authorised cults' to the current 'Crimes against religious denominations' by Article 10(2) of the Law of 24 February 2006.

In 1999, the possible prison sentence for blasphemy was replaced by a fine. However, the arsenal of Italian legislation is not limited to this. In addition to the fine for blasphemy, the Criminal Code also provides for more severe penalties for 'insulting a religious denomination' by insulting its adherents under Article 403:

'Crimes against a religious denomination by defaming people. Anyone who publicly insults a religious denomination by despising those who profess it shall be liable to a fine of between €1,000 and €5,000. Anyone who insults a religious denomination by insulting a minister of religion shall be liable to a fine of between €2,000 and €6,000'.

or insulting or damaging objects of worship Article 404:

'Insults against a religious denomination by despising or damaging things.

Anyone who, in a place intended for worship or in a public place or place open to the public, insults a religious denomination by abusive expressions, denigrates things which are objects of worship, are consecrated for worship or are expressly intended for worship or an act performed by a minister of religion in a private place in the exercise of a religious function, shall be liable to a fine of between 1,000 and 5,000 euros. Whoever publicly and intentionally destroys, scatters, damages, renders useless or smears things which are objects of worship or are consecrated for worship or are expressly intended for worship shall be punished by imprisonment for a term not exceeding two years. (Insulting a religious denomination by despising or defacing things).

Anyone who, in a place of worship or in a public place or place open to the public, insults a religious denomination by using insulting language, denigrates things which are the object of worship, are consecrated for worship or are clearly intended for worship or an act performed by a minister of religion in a private place in the exercise of a religious function, shall be liable to a fine of between 1,000 and 5,000 euros'.

In Ireland, the criminalisation of blasphemy was introduced in 1937 in the Constitution of the new Irish Republic, at a time when the Catholic Church was very influential in the country: 'The publication or utterance of any blasphemous, scurrilous or obscene remark is an offence punishable by law'. In 2015, the Irish police launched an investigation after a viewer complained about comments made by British actor and director Stephen Fry on Irish public television RTE. Asked what he would say to God if he had the chance to meet him, Stephen Fry replied: 'I would say to him: 'Bone cancer in children, what does that mean? How dare you create a world where there is so much suffering (...)?' The investigation was dropped when the police concluded that too few people felt offended by the remarks (Le Monde, 2018).

In a referendum on 26 October 2018, 69% of Irish voters voted to remove Article 40.6.1, which criminalised contempt of religion, from the Basic Law. Prior to the referendum, the Catholic Church in Ireland also acknowledged that the legislation was 'largely outdated' and that similar provisions were used 'to justify violence and oppression against minorities in other parts of the world'. However, another view should also be taken into account: 31% voted in favour of

maintaining the offence of blasphemy (End Blasphemy Laws, 2021).

In England and Wales, blasphemy laws were repealed in 2008. In Scotland, the Hate Crime and Public Order Act 2021, passed in March 2021, effectively signalled the abolition of the 'blasphemy' law. Northern Ireland remains the only state in the union to retain a 'blasphemy' provision (Légifrance, 1972). In Greece, persecution has been rare in the last 10 years. Blasphemy charges have been brought to 'protect' the Orthodox Church. The Greek Constitution, which begins with a reference to the Holy Trinity, calls the 'religion of the Eastern Orthodox Church of Christ' the 'dominant religion' in the country, with pastors receiving a salary from the state budget. In 2014, Greek resident Philip Loizos was sentenced to 10 months in prison for mocking the Holy Highlander Elder Paisios, canonised by the Church in early 2015 and considered a prophet, on the social networking site 'Facebook'.

France does not have a 'right to blaspheme', but blasphemy has not been a crime since 1881, when a law on freedom of the press was passed. For many years, the regional exception to the regulation was Alsace and Moselle, which were German territories when the law was passed in 1881. An article in the local criminal code punishing blasphemy existed until 2017. Although *de facto* the article was outdated, it had not been applied for decades. On 1 July 1972, a law was adopted making incitement to hatred on grounds of origin or membership of a particular ethnic group, nation, race or religion, or non-membership of a particular ethnic group, nation, race or religion punishable (Pleven, 1993).

It is often referred to as the 'Pleven Law' [16], named after the French Minister of Justice at the time. It is included in the law of 29 July 1881 on freedom of the press. The adoption of the law was the culmination of efforts made by several parliamentarians and members of the anti-racist association MRAP (Movement against Racism, Anti-Semitism and Peace). The Pleven Law has caused difficulties in the interpretation of certain offences. The question arises: Should an insult to a religion as such and its symbols be considered an insult to the adherents of that religion? The 2007 court case against the satirical weekly Charlie Hebdo, brought by Islamic organisations, is relevant here. It should be noted that the trial took place eight years before the 7 January 2015 attack by radical Islamists on Charlie Hebdo's editorial offices, in which the authors of the cartoons about the Prophet Mohammed were killed. The Paris court ruled that newspaper drawings of the Prophet Muhammad were a legitimate part of the public debate on radical Islam and that in a secular society, respect for beliefs goes hand in hand with the freedom to criticise any religion and to depict stories and objects of religious veneration. The Court thus confirmed that in France it is allowed to insult a deity or a religion, but it is forbidden to insult people personally (European Court of Human Rights, 1950).

Although here too the lines are blurred, there is no definitive clarity. In its decision in the Charlie Hebdo case, the Paris court said that one of the drawings of the Prophet Mohammed wearing a turban in the shape of a bomb, taken 'in isolation', 'offends all adherents of Islam' by equating all Muslims with 'adherents of the doctrine of terror'. 'Charlie Hebdo was not penalised for this drawing, given the context and circumstances of the publication.

Christophe Deluard, Secretary General of Reporters Without Borders (RSF), stressed that 'the drawing of mullahs is not prohibited by international law or by French law. The reaction of the Iranian authorities 'shows that they alone control everything that is written in newspapers'.

One of the characteristics of the close relationship between life today is the change in the laws of the small country of Iceland (Pirate Party, 2006). A bill was introduced in Parliament to repeal Iceland's 'no blasphemy' law. The proposal emerged in the wake of the attack on the Charlie Hebdo editorial offices in Paris in 2015. The bill was introduced by the Pirate Party in the Icelandic Parliament (European Court of Human Rights, 2018).

Following a positive vote in Parliament. 'The Icelandic Parliament comes with an important message: freedom will not give in to bloody attacks'. The 'no blasphemy' law had been in force in Iceland since 1940, with violations punishable by a fine or three months' imprisonment.

CONCLUSIONS

The debate continues, and I think it will not end in the foreseeable future, on how to reconcile the demands of believers on public authorities to prevent infringement of religion with the freedom of expression provided for in Article 10 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms: (1) Everyone has the right to hold opinions freely. This right includes freedom of opinion and the right to receive and impart information and ideas without interference by public authorities and regardless of frontiers. This Article does not challenge the right of States to require the licensing of radio broadcasts, television broadcasts and the exhibition of films.

(2) Since the exercise of these freedoms is subject to duties and responsibilities, it may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society to protect the interests of national security, territorial integrity or public safety, to prevent disorder or crime, to protect health or morals, to protect the reputation or rights of others, to prevent the disclosure of confidential information or to preserve the authority and impartiality of the courts.

On 25 October 2018, the European Court of Human Rights (ECtHR) [20] ruled that the principle of freedom of expression cannot justify insults against the Prophet Muhammad and that the fine imposed on an Austrian citizen for accusing a central figure of Islam of paedophilia did not violate her right to freedom of expression (European Court of Human Rights, 2018).

In October and November 2009, Ms E.S., an Austrian national, gave two seminars on 'Basic information about Islam' (Grundlagen des Islams) at the Bildungsinstitut der Freiheitlichen Partei Österreichs, an educational institute of the right-wing Freedom Party. The seminars were not only open to Freedom Party members or invited guests but were also publicly advertised on the Freedom Party's website.

Two of the seminars were held on 15 October and 12 November 2009, with around 30 participants each. One of the participants was a journalist working for a weekly magazine. Speaking about one of the Prophet Muhammad's wives, Aisha, who was allegedly only 9 years old at the actual start of their marriage, E.S. called the Prophet a paedophile.

A preliminary investigation was launched against E.S. following a complaint by the magazine. Initially, the Vienna Public Prosecutor's Office charged E.S. under Article 283 of the Criminal Code for incitement to hatred. The District Court acquitted E.S. on a number of allegations that were originally included in the indictment under Article 283 of the Criminal Code.

E.S. was convicted of disparaging religious doctrines (Herabwürdigung religiöser Lehren) under Article 188 of the Criminal Code. In February 2011, the Vienna District Court found E.S. guilty of disparaging religious doctrines and ordered her to pay a fine of €480 in a criminal case. The Vienna Court of Appeal dismissed Ms E.S.'s appeal to the ECtHR, arguing that the Austrian courts had violated Article 10 of the European Convention on Human Rights on freedom of expression.

The ECtHR ruled: 'The ECtHR unanimously held that Article 10 of the European Convention on Human Rights (on freedom of expression) was not violated in the case of E.S. v Austria. The Austrian court carefully analysed the "broad context" of E.S.'s statements and "balanced her right to freedom of expression with the right of other citizens to protect their religious feelings," thus avoiding conflicts on religious grounds. The local courts put forward relevant and sufficient arguments, considering the controversial statements to be outside the permissible bounds of objective disputes and finding them to be aggressive attacks on the prophet of Islam that could threaten the religious order'. (European Court of Human Rights, 2018)

The urgency of the problem in 2023 was demonstrated by the protests in Sweden during which the Koran, the foundation of the Muslim religion, was burned. The events led to an escalation in inter-state relations, with attacks on Swedish

embassies in Iraq and Turkey. The decisions taken by the Swedish courts and police to coordinate or ban public protests are also controversial.

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