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# Blasphemy Laws: A Restriction to Freedom of Speech?

Megha Chawla

## INTRODUCTION

On 16<sup>th</sup> October 2020, a French teacher was beheaded in a north-western suburb of Paris. The victim, a teacher of history and geography, is said to have shown a controversial cartoon of Prophet Muhammad published by Charlie Hebdo. He was being threatened and targeted since 6<sup>th</sup> of October when he showed the cartoons to the class.<sup>1</sup> The depiction of images of Prophet Muhammad and Allah can cause grave offence to the Muslims as it is explicitly forbidden in Islam to do so. The killer, an 18-year-old Abdullah Anzorov, was shot dead by the police.<sup>2</sup>

Emmanuel Macron, the French President called it an “Islamist Terrorist Attack”. He said that the victim was murdered because he taught “the freedom of expression and speech”. He paid tribute to the teacher, by honouring him with “Légion d'Honneur”, France’s highest honour.<sup>3</sup>

The above incident has raised a lot of uproar world-wide, with people standing divided on both sides of the cause. The question which has stirred the globe in two halves is whether it was an act of freedom of speech or blasphemy.

## IMPLICATIONS OF GLOBALIZATION

Globalization is a process which increases the interaction and promotes integration between different regions and populations across the globe. It is a means to speed up exchanges and movement of people, goods, services, technologies, culture and capital all over the planet.<sup>4</sup> It is not a new process. It is a process which has been induced by post industrial revolution of communication and transport. The fast pace growth of population in low economic nations combined with reduction in barriers has led to increased mobility.<sup>5</sup> More and more people in search of better economic options or/and seeking protection from persecution are looking out for asylum. These people seeking asylum brings in a lot of tension in the host country. Generally, it is because the people migrating, come from countries which have lost their globalization process. Moreover, migrated people have different culture background, different mindset and history.

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<sup>1</sup> Available at, <https://www.bbc.com/news/world-europe-54573356> (last visited on 5th November, 2020).

<sup>2</sup> Available at, <https://www.bbc.com/news/world-europe-54639343> (last visited on 5th November, 2020).

<sup>3</sup> *Supra* Note 1.

<sup>4</sup> Available at, <https://youmatter.world/en/definition/definitions-globalization-definition-benefits-effects-examples/> (last accessed on 21st November, 2020).

<sup>5</sup> Available at, <https://www.tandfonline.com/doi/abs/10.1080/014198702200000231?journalCode=rers20> (last accessed on 21st November, 2020).

Advocates all around the world state that migration is good in a modest scale which meets the local or national market labour demands. Excessive migration, in the longer run can create great barriers in the amalgamation of different sets of populations.<sup>6</sup>

Seeking asylum in is a Constitutional Right in France.<sup>7</sup> It is one of the main asylum host countries in Europe. But in recent past, France has had more terrorist attacks than in any other European Country. France has been at the focus of violence majorly due to three reasons, France's history and demographics, its foreign and domestic policies and the approach towards citizenship and immigration. It is the integration of all these factors which have led France being at the focal point of violence.<sup>8</sup>

France is also the sole western country who is pursuing a strong version of *laïcité*. This brand of secularism opposes the wearing of headscarves in schools and full-face covering veils in public. Majority of French nationals supports these steps and call it equality between men and women, but some see this as islamophobia.<sup>9</sup> These communal differences occur because France being a European nation is the second largest recipient of Muslim migrants. Afghanistan (10,270), Albania (9,690), Georgia (6,960), Guinea (6,880) and Côte d'Ivoire (5,375) are the top five nations from which migrants came to France in 2018.<sup>10</sup> These raw figures are no guarantee of Islamic violence, but the combination of the above reasons including the history and demographics increases the pool of available recruits.

## FREEDOM OF SPEECH Vs. BLASPHEMY

Blasphemy refers to an act which is insulting to any deity, god, or anything which is considered to be sacred or inviolable. A blasphemy law generally prohibits blasphemy and provides for its punishment. These laws are used to persecute people whose beliefs do not conform to the beliefs of majority of people or to even suppress criticism against any particular religion.<sup>11</sup> Whereas freedom

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<sup>6</sup> Available at, <https://www.unhcr.org/3fe16d835.pdf> (last accessed on 21st November, 2020).

<sup>7</sup> Available at, [https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank\\_mm/anglais/cst3.pdf](https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/cst3.pdf) (last accessed on 21st November, 2020).

<sup>8</sup> Available at, <https://www.washingtonpost.com/news/monkey-cage/wp/2016/07/18/france-has-had-more-than-its-share-of-terrorist-attacks-these-3-factors-explain-why/> (last accessed on 21st November, 2020).

<sup>9</sup> *Ibid.*

<sup>10</sup> Available at, <https://www.worlddata.info/europe/france/asylum.php> (last accessed on 21st November, 2020).

<sup>11</sup> Available at, <https://www.merriam-webster.com/dictionary/blasphemy> (last visited on 5th November, 2020).



of speech is a principle which provides an individual with the right to voice one's opinion, ideas and beliefs without nay fear, sanctions or censorship.<sup>12</sup>

While freedom of speech vests a right in an individual, blasphemy laws can be said to take away a part of it from that vested right. Though, freedom of speech, or for that context, any right bestowed upon, is not absolute. It always accompanies certain limitations with itself. But whether, blasphemy laws are anti freedom of speech or a reasonable restriction to maintain peace and order is the question.

The tension between the freedom of speech and the desire of many countries to prohibit blasphemy has become an area of dispute between the western and Muslim countries. A number of countries not limited to Muslim nations have laws penalizing blasphemy, this has led to conflicts amongst various religious and cultural groups. Supporters of such laws state that these laws help maintain harmony in the society, while the others criticize it stating that these laws are used as means to supress the faith of minority communities.<sup>13</sup>

The recent controversies, whether it is killing of the French teacher or extra-judicial killing of Tahir Naseem in Pakistan, has ignited sparks at international level, making it a necessity for revisiting blasphemy laws.<sup>14</sup>

India too, is not a stranger to the international controversy, rather a part of it. India penalises blasphemy under Section 295A of Indian Penal Code. It Criminalizes blasphemy by stating it as an act “*deliberate and malicious intention of outraging the religious feelings of any class of citizens of India*”. It clearly is a violation of the Indian Constitutional Provisions of providing Freedom of Speech under Article 19(1)(a). Though, Article 19(2) comes to the protection of this Section, stating it as a law for reasonable restrictions to protect public order and morality.<sup>15</sup>

In various cases the Supreme Court of India has criminalized expressions of individuals, even when there wasn't even an actual breach of public order. This certainly gave a broad meaning to 'public order'. In cases such as that of *Baragur Ramchandrappa Vs. State of Karnataka*<sup>16</sup> and *Ramji Lal Modi Vs. State of UP*<sup>17</sup>, even a remote tendency of a public disorder was considered to be sufficient

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<sup>12</sup> Available at, <https://www.history.com/topics/united-states-constitution/freedom-of-speech> (last visited on 5th November, 2020).

<sup>13</sup> Available at, <https://berkeleycenter.georgetown.edu/resources/blasphemy-and-freedom-of-expression> (last visited on 10th November, 2020).

<sup>14</sup> Available at, <https://lawschoolpolicyreview.com/2020/09/04/criminalizing-blasphemy-and-the-threat-to-free-speech-the-indian-perspective/> (last visited on 10<sup>th</sup> November, 2020).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Baragur Ramchandrappa Vs. State of Karnataka*, Appeal (crl.) 1228 of 1998.

<sup>17</sup> *Ramji Lal Modi Vs. State of UP*, 1957 AIR 620.

to criminalize the speech. Though, in case of *Navej Singh Johar Vs. Union of India*,<sup>18</sup> Supreme Court held that by morality it means constitutional morality and not cultural morality. Unlike cultural morality which changes with changing scenarios and time, the Constitution of India has strong foundations in liberty, dignity, equality and fraternity. But unfortunately, this westernised meaning of morality does not find any space neither in jurisprudence nor in the blasphemy laws.<sup>19</sup>

## SECULARISM IN FRANCE

The Constitution of 1958 states that “*France is an indivisible, secular, democratic and social Republic, guaranteeing that all citizens regardless of their origin, race or religion are treated as equals before the law and respecting all religious beliefs*”. But blasphemy laws existed in Alsace-Moselle, until they were repealed in 2016 by the Senate. Since 1905 the freedom to practice religion has been recognised in France through the law of Separation of Church and State. This law returned all the religions in a private sphere and established secularism in State in public sphere. Now the State of France does not favour any one religion and provides for an atmosphere for co-existence.<sup>20</sup>

Although, France became a total neutral State in 2016 by repealing Blasphemy laws, there were no convictions under ‘blasphemy laws’ for at-least many decades. It was only in 2015, in the wake of Charlie Hebdo massacre, that protests erupted for the abolition of any outstanding ‘blasphemy law’.<sup>21</sup>

In the wake of the incident of the killing of school teacher, pictures of him as well as the cartoons of Charlie Hebdo were projected on two town hall buildings for over four hours as a tribute to the deceased. The Mayor, Carole Delga, while paying tribute to the teacher said that the decision to project the cartoons was to state that there should not be any weakness in the face of enemies of democracy, facing those who transform religion into weapon of war and those who intend to destroy the republic.<sup>22</sup>

Earlier, in January of 2020, the French President stated that ‘blasphemy was no crime’ while defending a school girl, who was threatened and forced out of school after filming an anti-religious

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<sup>18</sup> *Navej Singh Johar Vs. Union of India*, Writ Petition (Crl.) No. 76 of 2016

<sup>19</sup> *Ibid.*

<sup>20</sup> Available at, <https://www.diplomatie.gouv.fr/en/coming-to-france/france-facts/secularism-and-religious-freedom-n-france-63815/article/secularism-and-religious-freedom-in-france#:~:text=Secularism%20Today-Introduction,states%20the%20Constitution%20of%201958>. (last accessed on 11<sup>th</sup> November, 2020).

<sup>21</sup> Available at <https://end-blasphemy-laws.org/countries/europe/france-abolished-its-blasphemy-law-in-2016/> (last accessed on 11<sup>th</sup> November, 2020).

<sup>22</sup> Available at, <https://www.opindia.com/2020/10/charlie-hebdo-cartoon-french-govt-building-viral-video/> (last accessed on 11<sup>th</sup> November, 2020).

video on social media. He took a firm stand on the issue saying that the citizens have the right to blaspheme, to caricature religions, and to criticize.<sup>23</sup>

The recent terror activities have prompted the French Government to ban any radical Islamic organisation that in any way lend their support to terrorists. The State has taken steps to dissolve any such organisation in the country.

There is huge cultural diversity in France, then ever. Which makes it important to have laws on Secularism than there have ever been. It would enable all the citizens to coexist, irrespective of their different beliefs, philosophies, faith and religion. Despite all the differences, secularism enables them to live together, enjoy the freedom to practice any religion, freedom to conscience, freedom to not choose any religion, equal rights and obligations and also republican fraternity.<sup>24</sup>

## BLASPHEMY LAWS AROUND THE WORLD

Blasphemy laws around the globe are used as a means to punish people for their beliefs or activities which do not conform to the beliefs of the majority of the people in the said territory or to discourage any sought of criticism to the religion. According to a survey of Pew Research Centre, around a quarter of the world's total countries had anti blasphemy laws or policies as of in 2014.<sup>25</sup>

While blasphemy laws majorly exist, but they have been under the radar of serious condemnations by the various Human Rights organisations as well as United Nations Human Right Council to repeal such laws. Human right organisations strictly stand by laws which protect individual's freedom and not the laws which overly restrict the freedom of speech. The International Covenant on Civil and Political Rights in Article 20 obliges the nations to take such legislative steps against "*any advocacy of national racial or religious hatred that constitutes incitement to discrimination, hostility or violence.*"<sup>26</sup> However, they also state that such limitations should be carefully circumscribed and not just prohibit blasphemy per se.<sup>27</sup>

While discussing about blasphemy legislations across globe, we can differentiate the nations into five major categories based on the religions. These are: Christian majority nations, Islamic majority

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<sup>23</sup> Available at, <https://www.theguardian.com/world/2020/feb/12/macron-wades-into-french-girls-anti-islam-row-saying-blasphemy-is-no-crime-mila> (last accessed on 11<sup>th</sup> November, 2020).

<sup>24</sup> *Supra* Note 10

<sup>25</sup> Available at, <https://www.pewresearch.org/fact-tank/2016/07/29/which-countries-still-outlaw-apostasy-and-blasphemy/> (last accessed on 12<sup>th</sup> November, 2020).

<sup>26</sup> Available at, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last accessed on 12<sup>th</sup> November, 2020).

<sup>27</sup> Available at, <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (last accessed on 12<sup>th</sup> November, 2020).

nations, Jewish nations, atheist countries and Hindu-Buddhist Majority countries. Distinguishing the nations based on the religions is very important while talking about laws, because the laws usually tilts towards the religion which majorly dominates that specific nation.

Christian nations such as the United States of America, Sweden, Romania, Norway, Netherlands, Malta, Ireland, Iceland, Greece, France, and Canada, either have no laws penalising blasphemy or have repealed them. Other Christian nations such as, Austria, Brazil, Germany, Italy, Malta, Philippines, Nigeria, Russia, South Africa, Switzerland and the United Kingdom still have laws which make blasphemy an offence.<sup>28</sup>

Nations having Muslims as majority, are influenced by Islam, which have led them to make more censorious laws to criminalize blasphemy. The Holy book of Islam, the Quran, admonishes blasphemy but does not specify punishment. Almost all the Islamic countries including Afghanistan, Algeria, Bangladesh, Egypt, Indonesia, Iran, Jordan, Kuwait, Malaysia, Mauritania, Pakistan, Palestine, Qatar, Saudi Arabia, Sudan, Turkey, Yemen and United Arab Emirates have laws punishing blasphemy. There are more people in Pakistan than anywhere else in the world, undergoing conviction for blasphemy.<sup>29</sup> Punishments in the Islamic nations can be quite harsh, ranging from fines, imprisonment to even death sentence by hanging.<sup>30</sup>

Hindu and Buddhist majority countries too, like India, Myanmar, Thailand and Nepal, have legislations abolishing blasphemy. Israel, a Jewish State and China being an atheist nation, both support blasphemy laws.<sup>31</sup>

Hence, nations across the world have different take on blasphemy laws. Some of them have repealed them, some still have them, and some never had any such laws at the first place. There are several reasons behind a nation's respective take on blasphemy. It can be either their cultural restraints, religious sentiments, to avoid riots, or libertarian motto.

## SECULARISM IN INDIA

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<sup>28</sup> Available at, <https://www.loc.gov/law/help/blasphemy/index.php> (last accessed on 12th November, 2020).

<sup>29</sup> *Ibid.*

<sup>30</sup> Available at, <https://www.theweek.co.uk/84420/blasphemy-laws-around-the-world> (last accessed on 16th November, 2020).

<sup>31</sup> *Supra Note 17.*

According to the Constitution of India, it is a secular country. The word secular was added to the preamble by the 42<sup>nd</sup> Amendment in the year 1976.<sup>32</sup> The Supreme Court though, in the case of *S.R. Bommai vs. Union of India*<sup>33</sup> stated that India was secular since the formation of Republic in 1947. The judgment laid out that there is a separation between the State and religion.<sup>34</sup>

But, the idea of secularism is different in west than in India. In the west, secularism mainly means three major things, which are, equal citizenship to all irrespective of religion, freedom of religion and separation of the State and religion.<sup>35</sup> While in contrast, in India, separation does not mean a thorough separation of State and religion. Though, there is a certain separation between the two, but it cannot be termed as absolute. In India, secularism means more of equal treatment to all religions and not religion neutrality.

The Indian Constitution allows extensive State interference in the matters of religion. Personal matters such as marriage, inheritance, divorce, alimony, are governed by Indian laws. Many Wakf Councils and Hindu temples are administered and financed by Indian Government.<sup>36</sup>

Secularism in India is different from how it is practiced in west. Thus, it is a controversial topic. Supporters state that existing secularism respects minorities and pluralism while critics state that the Indian form of secularism is pseudo secularism.<sup>37</sup>

Secularism in India cannot be termed as separation of the State from the religion. Rather, it means that the State interferes or participates in the affairs of all the religions in a neutral manner. The vast differences in the concept of secularism between India and the west and also because of a non-uniform treatment of religions existing in India which has led a number of scholars, to state that India is not a secular country. Secularism in India is a strategy for political goals.<sup>38</sup> There have been numerous attempts to bring Uniform Civil Code, so as to fully realize India as a secular State. But the overlap between the State and religion is a big hurdle.

Secularism in India is also widely different from French concept of Secularism. While the French concept demands absolute absence of government from religious institutions, but in contrary,

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<sup>32</sup> Available at,

<https://web.archive.org/web/20150328040620/http://indiacode.nic.in/coiweb/amend/amend42.htm> (last accessed on 17<sup>th</sup> November 2020).

<sup>33</sup> *S.R. Bommai vs. Union of India* AIR 1918, 1994, SCC(3)1.

<sup>34</sup> Available at, <https://indiankanoon.org/doc/60799/> (last accessed on 17<sup>th</sup> November, 2020).

<sup>35</sup> Smith, Donald Eugene *India as a Secular State* Princeton University Press, 2011.

<sup>36</sup> *Ibid.*

<sup>37</sup> Available at, <https://www.cambridge.org/core/journals/review-of-politics/article/indian-secularism-and-its-critics-some-reflections/879302746280C897BBA0BF8664015205> (last accessed on 17<sup>th</sup> November, 2020).

<sup>38</sup> Available at, <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/secularism-in-the-indian-context/54DC764998B762B94326B7F8035ECB85> (last accessed on 17<sup>th</sup> November

Indian government financially supports religious institutions and also accepts religious laws over parliamentary laws.<sup>39</sup> Sadanand Dhume, while writing for Wall Street Journal, has called Indian Secularism a failure.<sup>40</sup> Hence, secularism in India is still a distant dream.

## HATE SPEECH AND BLASPHEMY

It is a misconception that hate speech and blasphemy are synonyms.<sup>41</sup> There is a vital need to distinguish between the two. While hate speech refers to any abusive or threatening writing or speech towards a particular person or group expressing prejudices based upon religion, race or sexual orientation,<sup>42</sup> blasphemy refers to an action or offence of speaking sacrilegiously about god or sacred things.<sup>43</sup> Hate speech can be regulated and laws can prohibit verbal attacks on a group of real living people. But blasphemy cannot be regulated, it just restricts constructive criticism, challenges to ideas, concepts and beliefs which are prone to misuse and are very fluid.<sup>44</sup>

Speaking against blasphemy laws is not equivalent to being against regulations and protecting people from conflicts. But the challenge here lies is that, empirically blasphemy laws are used to fulfil political motives. However good the reason may be, blasphemy laws can never help to protect ideas, concepts and beliefs as they are too abstract to be codified and be protected. On the other hand, we can provide certain legal certainties in regulating hate speech and protecting people in that regard. But the motto behind these laws should be quite clear, protecting people and group of people and not protecting ideas or concepts.<sup>45</sup>

We need set standards of distinction between the two so that religious people do not think that we are adopting any sought of double standards. We should object to hazy, grey laws which create more conflict than prevent them. We need to have compassion for culture and religion of our

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<sup>39</sup> Elizabeth Hurd, *The Politics of Secularism in International Relations*, Princeton University Press, 2008.

<sup>40</sup> Available at,

[https://www.wsj.com/articles/SB10001424052748704365204575317833268479268?mod=WSJ\\_Opinion\\_LEFTTo\\_pBucket](https://www.wsj.com/articles/SB10001424052748704365204575317833268479268?mod=WSJ_Opinion_LEFTTo_pBucket) (last accessed at 18<sup>th</sup> November, 2020).

<sup>41</sup> Available at, <http://www.legalserviceindia.com/legal/article-2792-blasphemy-and-hate-speech-as-synonyms-a-misconception.html> (last accessed at 19<sup>th</sup> November, 2020).

<sup>42</sup> Available at,

<https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf> (last accessed on 19<sup>th</sup> November, 2020).

<sup>43</sup> Available at, <https://www.merriam-webster.com/dictionary/blasphemy> (last accessed on 19<sup>th</sup> November, 2020).

<sup>44</sup> Available at, <https://www.thejakartapost.com/news/2015/03/19/your-letters-hate-speech-vs-blasphemy.html#:~:text=Hate%20speech%20can%20be%20regulated,fluid%20and%20prone%20to%20misuse.> (last accessed on 19<sup>th</sup> November, 2020).

<sup>45</sup> *Ibid.*

society, but the problem with blasphemy laws is the criminalization of anything which may be even slightly problematic or highly subjective towards a religion.<sup>46</sup>

## CONCLUSION

Secularism is facing new hurdles in the recent past. There has been rise in cases of separatist claims and using secularism to stigmatize the population. Secularism is not an opinion amongst others, but it is a right to have an opinion. It's not a belief, rather it is a principle, which authorises all beliefs, provides them respect and equal rights. Because of this, it is neither pro nor anti-religion. Therefore, adherence to any sought of belief is purely a freedom of conscience for every person.<sup>47</sup>

The world is coming together as a unit because of globalization. The countries are more interconnected and interlinked than ever before. Every nation, though at different pace, is developing into being more radical, technologically advanced and liberal. As much as there is a need for individual's personal rights, freedom and liberties, there is also a need to be more tolerant towards every other individual, their views, beliefs, interests and culture, except anything which goes against human rights.<sup>48</sup> Violence in the name of religion is condemned and should not occur. The solution to such incidents is to respect the laws and rules of the particular nation in which you reside. For instance, if you live in a nation which allows blasphemy, you should respect and abide by that law. Similarly, if you live in a nation which penalizes blasphemy, one should abide by that law. Because nevertheless, a democrat nation more or less, makes laws for the best interest of its citizens.

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<sup>46</sup> *Ibid.*

<sup>47</sup> *Supra Note 20.*

<sup>48</sup> Available at, <https://www.un.org/en/universal-declaration-human-rights/> (last accessed on 23<sup>rd</sup> November, 2020).