

## Blasphemy laws briefing

Blasphemy laws can cause violations of freedom of thought or expression when they are used to punish individuals who objectively critique religious. This is an area of legitimate concern, and many blasphemy laws contain elements which are ostensibly problematic in this regard.

However, blasphemy laws can cover a much wider range of offences, including defiling places of worship and interfering with dead bodies.<sup>1</sup> These particular prohibitions stem from the Indian Penal Code (1860) and, via subsequent, similar codes introduced in a number of British colonies, continue to be in force today after independence, e.g. in Burma (Myanmar). As noted by Esmaeili, Marboe, and Rehman: “The original intent of the British instigated anti-blasphemy law as contained in the Indian Penal Code (1860) had been the maintenance of public order in a multireligious and religiously sensitive society.”<sup>2</sup> So some blasphemy laws aim to do little more than codify hate crimes against religious groups.

Any discussion of the blasphemy laws needs to take into account that any call for a blanket repeal of blasphemy laws would have the unintended consequence of removing protections, such as prohibiting the vandalism of places of worship, which have nothing to do with freedom of thought or expression. It is therefore important from the outset to establish exactly where the problems lie with blasphemy laws.

### Intentionality

The Indian Penal Code (1860) stresses intentionality, and this was echoed in many of the codes that followed it in other parts of the British Empire (e.g. the “*intent* to insult the religion of any class” or “Deliberate and malicious acts *intended* to outrage religious feelings of any class by insulting its religion or religious beliefs”). No one should be convicted of such offences unless it can be clearly established that they intended to cause insult, etc. Arguably, this broadly places such offences on a similar footing to hate crimes in the UK whereby offences “*motivated* by hostility based on... religion” are criminalised.

Writing in *The New Humanist*, Beena Sarwar points out that when Article 295C of Pakistan’s Blasphemy Laws was crafted under General Zia ul-Haq in the late 1970s it “critically omitted the word ‘intent’”. The lack of any reference to intent means it “remov[es] the prosecution’s burden to prove the perpetrator had intended to blaspheme”.<sup>3</sup> Similar problems bedevil legislation in other countries, including section 9, clause 158 of Nepal’s 2017 “Bill designed to amend and integrate prevalent laws relating to Criminal Offense”.<sup>4</sup> The absence of intent in laws penalising actions which cause grave offence to religious or belief groups is potentially very dangerous.

The 2017 USCIRF (United States Commission on International Religious Freedom) examination of the world’s blasphemy laws found that “Most blasphemy laws studied were vaguely worded, *as many failed to specify intent as part of the violation.*”<sup>5</sup>

---

<sup>1</sup> Disturbing religious assemblies and trespassing on burial sites were also included. See the Indian Penal Code (1860), Government of India Ministry of Home Affairs, 295A, 296 and 297, [https://mha.gov.in/sites/default/files/IPC1860\\_0.pdf](https://mha.gov.in/sites/default/files/IPC1860_0.pdf) [Accessed 24<sup>th</sup> August 2022].

<sup>2</sup> Hossein Esmaeili, Irmgard Marboe, and Javaid Rehman, *The Rule of Law, Freedom of Expression and Islamic Law* (London, Bloomsbury: 2020) p. 151.

<sup>3</sup> Beena Sarwar, “Malicious intent”, *New Humanist*, 2<sup>nd</sup> November 2012 <https://newhumanist.org.uk/articles/2888/malicious-intent> [Accessed 30<sup>th</sup> August 2022].

<sup>4</sup> “Nobody should hurt the religious sentiment of any caste, ethnic community or class by writing, through voice/talk or by a shape or symbol or in any other such manner.”

<sup>5</sup> Joelle Fiss and Jocelyn Getgen Kestenbaum, *Respecting Rights? Measuring the World’s Blasphemy Laws* (Washington DC: USCIRF, 2017), p. 1. Italics mine, both here and throughout this section.

## Abuse of the laws

Blasphemy laws can be cynically used to settle personal scores,<sup>6</sup> or misused for personal gain. For example, in Pakistan Ghafur Masih was arrested in 2009 after he was accused of burning a *Qu'ran* and sentenced to life in prison in 2010. He was released in 2020. Masih's family maintained that his neighbour, Hajji Liaquat Ali, tricked him into burning the *Qu'ran* because Ali wanted to gain Masih's storefront real estate.<sup>7</sup>

Extremists can call for mob action when the legal process does not go their way. In Pakistan, Islamist movement Tehreek-e-Labbaik organised mass protests when Asia Bibi was finally acquitted, and there were calls to kill Shagufta Kausar and her husband Shafqat Emmanuel Masih after they were acquitted.<sup>8</sup> USCIRF found that:

Blasphemy allegations and enforcement often are coupled with extrajudicial violence, imminent threats to violence or even intimidation tactics, including mob presence... extrajudicial violence aimed at upholding blasphemy laws legitimizes the laws. Consequently, private, non-state actor violence, and state acquiescence to such violence, is integral to understanding the consequences of criminal blasphemy laws in country-specific contexts.<sup>9</sup>

Moreover, according to USCIRF (from 2014-18) mob violence accompanied state enforcement in 78 cases against alleged blasphemers: Pakistan topped the list with 24 incidents, followed by Egypt (12) and Nigeria (11).<sup>10</sup>

Aid to the Church in Need (ACN) contacts in Pakistan have stressed the distinction between the blasphemy laws themselves, and the abuse of them. They would never call for the end of the blasphemy laws, as that risks sparking mob violence it is not something the Pakistan government would countenance. However, it is more likely that the Pakistan government could be persuaded that the use of the blasphemy to settle personal scores and vendettas can be eradicated.

## An Overview of problematic legislation

ACN notes that the blasphemy laws can be areas of legitimate fear, and flags up two countries where aspects of legislation raise particular concerns:

### Pakistan

- 295C of the Pakistan penal code mandates the death penalty for, "Use of derogatory remarks, spoken, written, directly or indirectly, etc. defiles the name of Muhammad or other Prophet(s) of 1986". 295A of the penal code mandates up to 10-years imprisonment, or fine, or both for "deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs". The most famous case of the blasphemy laws was Asia Bibi, when she was the first woman to be sentenced to death for blasphemy in Pakistan in 2010. She was acquitted in 2018 by the Supreme Court of Pakistan, on the grounds of insufficient evidence.<sup>11</sup>

---

<sup>6</sup> "Updated Report: The Voiceless Victims of Pakistan's Blasphemy Laws", *International Christian Concern*, 19<sup>th</sup> February 2021, <https://www.persecution.org/2021/02/19/voiceless-victims-pakistan-blasphemy-laws/> [Accessed 24<sup>th</sup> August 2022]

<sup>7</sup> "Imran Ghafur Masih", *Church in Chains*, 16<sup>th</sup> December 2020, <https://www.churchinchains.ie/prisoner-profiles/imran-ghafur-masih/> [Accessed 24<sup>th</sup> August 2022].

<sup>8</sup> John Pontifex, "Pakistan extremists accused of inciting millions to hunt down Shagufta and Shafqat", *ACN (UK) News*, 11<sup>th</sup> July 2021 <https://acnuk.org/news/pakistan-extremists-accused-of-inciting-millions-to-hunt-down-shagufta-and-shafqat/> [Accessed 30<sup>th</sup> August 2022]

<sup>9</sup> *Violating Rights: Enforcing the World's Blasphemy Laws* (Washington DC: USCIRF, 2019), p. 16.

<sup>10</sup> *Ibid.*, p. 25.

<sup>11</sup> John Pontifex, "Asia Bibi flies to freedom", *ACN (UK) News*, 8<sup>th</sup> May 2019, <https://acnuk.org/news/pakistan-asia-bibi-flies-to-freedom/> [Accessed 1<sup>st</sup> September 2022]

- As noted above with the case of Ghafur Masih, in Pakistan, the laws are misused for personal gain.

### **Nigeria**

- Mubarak Bala, a Nigerian Humanist, was sentenced to 24 years imprisonment due to his Facebook post that was accused of being blasphemous. A high court in the northern state of Kano sentenced him after he pleaded guilty to all 18 charges and asked for leniency.<sup>12</sup>
- However, Mr Bala was actually penalised under sections 114 and 210 of Kano State's penal code, which aims to implement parts of *Shari'a* legislation into the civil code, and mirrors the penal codes in other *Shari'a* states.<sup>13</sup> The real problem in Nigeria is the penal codes in the northern states. Therefore, it is on these laws that attention should be focused, rather than on the federal blasphemy laws.

### **Conclusion**

Blasphemy laws are too often used as a means to silence debate, settle personal scores and sideline religious minorities. Yet, to address these problems targeted solutions are required, which look at the real root causes of these problems. To simply call for the repeal of all blasphemy laws, whether in the Commonwealth or elsewhere seems an overreaction, particularly as many blasphemy laws cover a variety of things. It would be hard to argue that the blasphemy law preventing necrophilia in India, for example, should be scrapped. ACN's view is the abuse of blasphemy laws in Commonwealth countries should be stopped, not the blasphemy laws themselves. But where necessary laws should be reformed to ensure that intentionality is a key part of any blasphemy law, or other law codifying hate crimes against religious or belief groups.

### **Recommendations**

- Through the FCDO and other diplomatic channels, push for intentionality to be enshrined in any blasphemy law or other law codifying hate crimes against religious or belief groups.
- Encourage and support states in any initiatives to prevent abuse of blasphemy laws.

*Fionn Shiner and Dr John Newton  
Aid to the Church in Need (UK)*

---

<sup>12</sup> Ishaq Khalid, "Nigeria atheist Mubarak Bala jailed for blaspheming Islam", *BBC News*, 5<sup>th</sup> April 2022, <https://www.bbc.co.uk/news/world-africa-60997606> [Accessed 24<sup>th</sup> August 2022].

<sup>13</sup> "Cases of concern: Mubarak Bala", *Humanists International*, 1<sup>st</sup> July 2022, <https://humanists.international/case-of-concern/mubarak-bala/> [Accessed 24<sup>th</sup> August 2022].