



## **Toward a Media Regulatory Reform in Middle East and North Africa: Workshop on Criminal Restrictions on Media Content**

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### **Background Paper: Protection of the Sacred and Blasphemy**

Around the world, religion is a highly sensitive issue. Debates around matters of faith inspire a degree of emotion rarely seen in political or cultural discussions, and believers of every denomination sometimes react with violence to perceived challenges. However, the centrality of religion in many societies means that it is vitally important that this sphere remains free for open and honest debate.

The right to practice one's religion is a human right, protected by Article 18 of the *International Covenant on Civil and Political Rights* (ICCPR). However, the wording of this provision – which includes the rights to “have or adopt a religion or belief of his choice” and to “manifest his religion or belief in worship, observance, practice and teaching” – makes it clear that there can be no enforced dogmas. According to the UN Human Rights Committee's CCPR General Comment No. 22, Article 18 applies to atheistic as well as theistic beliefs. In other words, the right to practice religion includes a right to voice opposition to religious beliefs or even to the institution of religion.

Article 19 of the ICCPR, which protects freedom of expression, further enshrines the right to speak openly on matters of faith. However, this must be weighed against ICCPR Article 20, which requires States to prohibit hate speech.

Together, ICCPR Articles 18, 19 and 20 provide a careful calibration the right to free speech in relation to religious matters. While debates about religion should ideally take place in a respectful manner, freedom of expression protects offensive as well as polite speech. In a democracy, differing ideas should compete through open debate rather than be imposed by fiat. Religious beliefs should not be immunised from criticism, or even ridicule, just because people hold them close to their hearts. This is particularly true where religion impacts on the political sphere. If a party's platform is based on institutionalising religious ideas, it is particularly undemocratic to insulate these ideas from criticism.

A number of established democracies, including Sweden, Spain and the United Kingdom, have repealed their blasphemy laws entirely, while some others have kept them formally on the books. However, democracies rarely enforce blasphemy laws. For example, Norway's blasphemy law was last applied in 1933. New Zealand has a

law prohibiting “blasphemous libel”, but only one prosecution has ever been brought based on this, in 1922 (the defendant was acquitted). In the United States, the Supreme Court has steadfastly struck down legislative attempts to prohibit blasphemy out of concern that there would be a natural tendency to favour one religion over another.

In some older cases the European Court of Human Rights (ECHR) has upheld blasphemy legislation. For example, *Otto-Preminger-Institut v. Austria*, decided in 1994, concerned the seizure of a film portraying the Abrahamic God, Jesus and the Virgin Mary as senile, deranged and lascivious characters. The ECHR upheld the seizure, focusing on the provocative nature of the portraits of leading religious figures.

However, the ECHR has also noted that freedom of religion is primarily a right against the State rather than against private persons and that in a free society believers “must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith”. It is significant cases involving individuals complaining against a failure by the State to protect their religion through blasphemy laws have been unsuccessful before European human rights bodies. In *Choudhury v. United Kingdom*, the complainant unsuccessfully argued that authorities had an obligation to prosecute Salman Rushdie and his publishers since *The Satanic Verses* was insulting to Islam.

Furthermore, more modern authority suggests that blasphemy laws are difficult to justify as a restriction on freedom of expression, while prohibitions on incitement to hatred based on religion are required. Thus, it is acceptable to attack religions, as a belief system or even institutionally, but it is different when the attacks concern the adherents of a religion (i.e. there is a difference between attacking people and attacking ideas). As the UN Human Rights Committee, the body responsible for overseeing implementation of the ICCPR, stated in a General Comment on freedom of expression in 2011:

Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.

The Office of the Special Rapporteur on freedom of religion or belief has expressed concern about blasphemy laws. Among other things, it has noted that in many countries only the main religion is protected (this was the situation in the Choudhury case noted above); that such laws almost always protect religion as opposed to belief, thereby discriminating against atheists and non-theists; and that such laws are often used to repress religious minorities, dissenting believers, atheists and non-theists. She has suggested that a useful alternative to blasphemy laws would be proper implementation of Article 20 of the ICCPR, providing for prohibition of incitement to hatred.