

Defamation of Religion in India: Legal Implications

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Introduction

Meaning and Implications

The term 'defamation of religion' is a relatively new concept in international law and is not defined anywhere in international law. The word 'defamation' is defined in Black's law dictionary as "the act of harming the reputation of another by making a false statement to a third person". Defamation is an intentional false communication that injures another person. It can be said that defamation is applicable against individuals or in some cases groups of individuals rather than against ideas or concepts. It should be an assertion of fact rather than a matter of opinion.¹

The defamation of religion could simply mean the dissemination of expressions by any type of media which "negatively" portrays a whole religion.² This understanding of defamation of religion has led to many issues. It has been argued by many human rights scholars that this new concept of defamation of religion would go against the historic understanding of defamation. American Muslim scholar Liaquat Ali Khan opines:- "Traditionally, defamation applies to reputational injury to individuals. Group defamation is a problematic concept as it can stifle free speech and furnish undeserved protection to decadent customs and practices. The defamation of religions falls even beyond the concept of group defamation, since it may even prohibit the defamation of religious ideas and doctrines." The Special Rapporteur for Freedom of Belief or Religion has said that the issue of defamation is a matter of civil law, not a subject of human rights.

Implications

The introduction of defamation of religion as a concept in international law would mean that international law has to provide for protection against defamation of religion. The concept itself lacks proper recognition in international law. Besides, there are other problems also related to this. Enforcement of legal prohibition on the defamation of religion is also impossible. Firstly, the limitations of defamation of religion differ from jurisdiction to jurisdiction. As a result, it is difficult to form clear and consistent rules for the prohibition of defamation. Also, the idea of defamation of a particular set of beliefs is entirely different from another set of beliefs. And, each set of beliefs has their own improvable truths. This further complicates matters. To make things worse, the claims of one set of beliefs may even be in conflict with other sets of beliefs and can even be defamatory. This would be a great challenge in forming a uniform law on defamation of religion.

Further, it is argued that, the concept of defamation of religion is even against the nature and purpose of international human rights laws because of the following reasons. Firstly, the nature of right to religion or belief in which the concept of defamation of religion claims to have its basis does not include a right to religion or belief that is free from criticism. Secondly, the concept of defamation of religion is against the right to freedom of speech and expression, which is one of the significant human rights in international and domestic laws. Even an argument that freedom of speech and expression is subject to limitations would not stand as hurt feelings cannot be elevated to the level of violation of human rights. Furthermore, this would give more importance to ideas rather than the individual which is against the very foundation of international human rights law.³

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The idea of prohibition on defamation of religion will essentially need a judicial protection in case of its violations. L. Bennet Graham argues about the practical problems regarding this. He says that if a defamation of religion suit is enforced like a traditional defamation suit, a judge will need to accept and recognize a few things. A judge would have to recognize that an idea, philosophy or religion can be defamed in the same way as that of an individual. However, human rights laws have always offered protection to individuals. In the same way, the traditional defamation laws have always been intended to protect the individual from false claims that would affect the individual's reputation. Secondly, even accepting the above issue, he would have to make a subjective decision. To find the truth of the claim can also be difficult. Graham illustrates here that if a Muslim were to make the statement that Jesus was only a prophet, would that statement be considered defamatory to Christianity, which claims that Jesus, was the Son of God? This would force the judge to take sides on a theological debate. The judge can make an objective decision only if the State is willing to make an audacious claim that it has a monopoly on eternal truth. Finally, Graham opines that defamation laws are not meant to protect individuals from offensive statements that are peaceful in nature.⁴

Defamation laws are made to protect the individual from false claims due to which his individual reputation could have been harmed. Religion is more of an ideology and does not have individual reputation. Any interpretation of religion, whether satirical or not, cannot be proved true or false whereas the basis of defamation law is the truth of the defamatory statement. Article 19 of the International Covenant on Civil and Political Rights and other related laws definitely protects defamation of individuals but not ideologies.⁵

The improbability and practical difficulties of a law on defamation of religion has been discussed at length. On the other hand, the twin issues of religious stereotyping and discrimination cannot be overlooked. Discrimination against Muslims is very much prevalent. The terms 'Islamaphobia' and 'Islamic terrorism' which are widely used will prove that. There needs to be a solution to the problem. In this background, Islamic States introduced the concept of religious defamation and its protection. The Islamic States under the banner of Organization of Islamic Conference (OIC) (discussed in a later chapter) took initiatives to bring a defamation of religion law to combat intolerance, discrimination and stereotyping of Muslims. The discrimination of Muslims is not the only issue. There have been attacks on other religious minorities as well. The Jews, the Baha'is, the Buddhists etc. are also attacked and suppressed in various parts of the world. Various religious denominations are discriminated against because they differ from the majority groups. At the global level, these issues need to be tackled. But the question is whether a defamation of religion law will combat and tackle these issues successfully? Bennet Graham rightly mentions defamation of religion law as a problematic solution to a real problem.

Heresy and Blasphemy

Blasphemy is the act of insulting or showing contempt or lack of reverence for God, to religious or holy persons or things, or toward something considered sacred or inviolable. Heresy is any belief or theory that is strongly at variance with established beliefs or customs. Heresy is distinct from both apostasy, which is the explicit renunciation of one's religion, principles or cause, and blasphemy, which is irreverence towards religion.⁶

The concept of defamation of religion was unfamiliar until recent years. However, insult or criticism of religion had received protection in domestic laws. The laws on blasphemy and heresy provided punishment against defamation of religion. Blasphemy laws were prevalent in Western countries and are still part of laws of Muslim countries. In most of these countries,

blasphemy refers to the defamation or insult of the religion which is officially the State religion of that country. Britain, Saudi Arabia and Pakistan are some examples of countries with such laws. In other words, we can say that defamation of religion laws has been derived from domestic blasphemy laws. Pakistan's blasphemy laws are an example. The blasphemy laws of Pakistan have been used to prosecute a number of Pakistanis. Any derogatory remarks on Islam, Holy Quran or Prophet Mohammed are punishable in Pakistan in the name of blasphemy.⁷

The concept of blasphemy and defamation of religion are more or less similar in many aspects. Both give importance to ideas and institutions of religion rather than the right to conscience and expressions of the individuals. Both favour politically powerful forms of religion over minority religions. Both favour religious beliefs than non- religious beliefs. The laws on blasphemy are most common in States where political power is in the hands of a majority religious group. The criticism of the politically dominant religion is considered derogatory according to those laws.

According to J. Frankfurter, "Blasphemy was the chameleon phrase which meant the criticism of whatever ruling authority of the moment established as orthodox religious doctrine."

Prima facie, blasphemy and defamation of religion is a violation of free speech and expression. Due to this reason, it is frequently condemned by human rights activists. On the other hand, it is also against the freedom of religion. As the United Nations Human Rights Committee noted in its General Comment 22 on Article 18 of the ICCPR, "Restrictions [on freedom of religion or belief] may not be imposed for discriminatory purposes or applied in a discriminatory manner." In simple terms, blasphemy or defamation of religion law is a violation of Article 18 of ICCPR. Moreover, Article 18 clearly protects both atheist and non -religious beliefs. Thus a restriction on such beliefs clearly goes against international human rights law.⁸

Fair Criticism and Negative Portrayal

The enactment of legal provisions for preventing defamation of religion would have its own impediments. However, there is a need to differentiate between fair criticism and negative portrayal of religion. The former one is a part of one's freedom of speech and expression while the latter one is a calculated insult of one's religion and belief.

The concept of a law against defamation of religion has been a matter of controversy among the States. One of the main reasons for this controversy is because of the conflict it has with the right to freedom of speech and expression. The freedom of speech and expression includes the right to fair criticism. This fair criticism includes the right to criticise any religion or ideology. However, there is a difference between fair criticism and negative portrayal of a religion. There have been a number of incidents where a targeted religion is negatively portrayed, thereby hurting the sentiments of its followers.

The freedom of conscience and religion has been guaranteed by the ICCPR. The freedom of conscience and religion includes the freedom to believe or not believe in any religion. This includes the freedom to criticize ideas in which we do not believe. The General Comment no.22 of the UN Human Rights Committee observes that freedom of conscience and religion includes the freedom to hold beliefs including atheist and non-atheist beliefs. The Committee notes that freedom of thought, conscience and religion is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others.⁹ A believer of the religion has the freedom to manifest his religion and beliefs. In the same way, a non- believer has the freedom to express his convictions and to manifest his beliefs in public or private.

Mere criticism of a religion is not prohibited per se. This right is a part of freedom of expression. This has been provided in ICCPR.¹⁰ A total prohibition of criticism of religion will have many consequences. Firstly, it will lead to the violation of freedom of speech. Secondly, the sacred texts that are critical of other sacred texts will have to be banned. There will be controversies on what constitutes an established religion. The problem of difference between a religion and ideology will arise. The question will arise as to whether sects which are more like cultural associations more than religions need to be protected or not.¹¹

The right to criticise religion is essential in order to question orthodox ideas, harmful religious practices and superstitions violence incited in the name of religion. Dangerous religious sects need to be denounced. There are many such examples in world history. The enlightenment period is an example of that. The concepts of reason, science and rational thoughts flourished in the society and challenged the ignorance spread by orthodox religions. This has led to the spread of secularism and religion.¹²

In a nutshell, fair criticism of a religion should be allowed. But what amounts to negative portrayal of a particular religion giving rise to violence and hatred should not be allowed. In a pluralistic society, all religions are allowed to co-exist. Therefore, if person tries to intimidate or invoke religious hatred in the society, that should be prohibited. Article 20 of the ICCPR prohibits that. The public ridicule of the other person's faith is to be condemned.

In some countries, even the fair criticism of a particular religion is prohibited because that religion is the majority religion in that State.

Religions are often negatively portrayed by the media and even politicians, in some cases.¹³ According to a report in The Guardian newspaper, published in the UK, the portrayal of Arab and Muslims in the western media is stereotypical and negative.¹⁴ Christopher Bail, an assistant professor of sociology in UNC's College of Arts and Sciences analysed articles from the New York Times, USA Today and the Washington Times, as well as stories from CBS, CNN and Fox's television broadcast and found that negative portrayal of Muslims get more media attention.¹⁵

Instances of Negative Portrayal of Religion

In a famous case, the Indian Supreme court while deciding the maintenance right of an elderly Muslim woman called Shah Banoo Begum, the then Chief Justice of India, cited the commentary of British Orientalist Edward Lane and said "The fatal point of Islam is the degradation of women."¹⁶ Dr Tahir Mahmood, Indian Muslim Law scholar observes in this regard, the statement is a negative portrayal of Islam religion and is unnecessary to deal with the central issue. The right to maintenance for Muslim women was already provided in Section 125 of the Criminal procedure code.

In the infamous Danish cartoon controversy, as a means of bridging cultural barriers in a local setting, the editors of a Danish newspaper, Jyllands-Posten, decided to "assimilate" Muslims in Denmark into Danish culture by integrating them into a long-standing tradition of satire. This task was initiated through an assignment that asked Danish illustrators to portray their interpretation of the Prophet Muhammad. Jyllands-Posten published twelve caricatures of the Prophet. In one of those, Muhammad was portrayed as a turbaned figure with bombs. This negative image of Islam infuriated the Islamic community for the portrayal of Mohammed as a terrorist and also for idolising Mohammed. This is yet another case of negative portrayal of a religion.¹⁷

Similarly, in Iran the Baha'i community is portrayed negatively. Baha'i World News Service reports how Baha'i in Iran are treated as fiendish ghouls. In the West, there are similar negative portrayals of Hinduism and its practices.

The unnecessary negative portrayal of any religion is to be avoided. Fair criticism is acceptable as no ideology can claim the right to be free from criticism.

Stereotyping of Religion

There might be practical difficulties in bringing a total prohibition on defamation of religion due to various problems discussed above. However, the problem of stereotyping of certain religions and its followers is a major problem.

“Stereotype,” usually refers to an overly simplified characterization of a group (e.g., blondes, Lutherans, lesbians).¹⁸ A stereotype is a thought that may be adopted about specific types of individuals or certain ways of doing things. These thoughts or beliefs may or may not accurately reflect reality.¹⁹ The religion itself might be an ideology and it is really difficult to bring a law against its defamation. But, hatred against certain religions and stereotyping the followers of those religions is a serious human rights violation. Everybody has the right to conscience and religion. The peaceful co-existence of all religions is very important in a pluralistic society.

According to the Indian legal scholar, Dr. Tahir Mahmood, stereotyping of religion has become a universal trend. He opines that stereotyping is the both the cause and effect of prejudice and bigotry. The reason for this is often because of inaccurate information. The media and literature are the sources of information for people. And stereotyping often stretches across generations. Stereotyping, surprisingly, is also seen in the globalized world. The stereotyping of religion is often mutual. Religious majorities view the minorities with hatred and the vice versa.²⁰ The ridicule of each other’s religious beliefs has been a trend these days. The tomb worshippers are objecting idol worshippers, monotheists are criticizing polytheists. Caricaturing of each other’s religious practices have become common these days.²¹

Religious stereotyping often originates from a feeling of superiority that followers of one religion feel for the followers of another. It is racism in another form. The claim of monopoly on religious truth and the exclusive privilege of promoting world peace are found in most religions.²² Stereotyping of religions is often done by media and political parties. In the case of the media, they do this because of the sensation and publicity they get for such news. The politicians use this to capture vote banks.

These stereotypes are a matter of false perception also. Christ was born in the Middle East, but Christianity is a foreign religion there.²³ Similarly, Muslims in India are often accused of polygamy whereas few Indian Muslims have more than one wife. The Baha’is in Iran also suffers from stereotyping and from physical and mental violence. There are incidents of Anti-Judaism including the infamous holocaust in Germany. The problem of anti- Semitism has been a big problem throughout the history of the modern world. The most recent arson attack on a Mosque construction site in Tennessee, vandalizing of an Islamic Centre in California, International Burn a Qur’an Day’, the Danish Cartoon controversy are all examples of stereotyping.

After the 2001 attacks, Muslims are suffering from the worst form of religious stereotyping. They are viewed with suspicion may it be in hotels, airports or other public places. According to an Amnesty International Report, where young children’s perceptions about Islam was checked, it was found that two-thirds of children relate Islam and Muslims to war, 11% linked Islam or Muslims to terrorism and 6% made racist comments. 24% of negative responses related to Muslim women, especially those wearing some form of head and/or face covering. These were characterized as stupid or oppressed.²⁴

The stereotyping of Muslim women has become a common trend in the recent times. In a recent article, Gema Martín Muñoz, Professor of Sociology of the Arab and Islamic World at Autonoma University of Madrid wrote: "The media representation of women in Muslim countries, apart from its coverage of unacceptable acts of discrimination, mainly serves to perpetuate a set of cultural expectations that denigrate a vast and diverse cultural world." Alia Hogben, Executive Director of the Canadian Council for Muslim Women, notes this dissemination of misconceptions and misrepresentations about Muslim women leads to the amplification of cultural misunderstanding: "If you go to the corner of a busy Canadian street and ask 'what is your image of a Muslim woman?' I know the answer will be: 'covered up, unthinking, oppressed'. It is a constant barrier that you have to fight through, to come to an understanding of the person."²⁵

We often identify ourselves with our religion. The particular religion is imposed with certain characteristics. This leads to assumptions and prejudices about those religions. However, one has to understand that, there are more similarities than differences in all the religious philosophies. The spirit of all religions is the same.

Footnotes

¹ Report of the UN Special Rapporteur on Freedom of Speech and Expression, A/HRC/2/3, Para 38, available at <http://www2.ohchr.org/english/issues/religion/IV1.htm>

² European centre for law and Justice, "Combating Defamation of Religions", Submission to the UN Office of the High Commissioner of Human Rights available at www.eclj.org

³ Robert C Blitt, Should new bill of rights address emerging human rights norms; the Challenge of defamation of religion? Northwestern Journal of International Human Rights, Vol. 9, No. 1, pp. 1-26, Fall 2010, 26/02/ 2011

⁴ Bennett Graham, Defamation of religions: the end of pluralism? <http://www.law.emory.edu>

⁵ International Human Rights and Ethical Union (Speaking Freely about Religion ; www.iheu.org)

⁶ Webster's dictionary

⁷ Supra n.4

⁸ Supra n.4

⁹ General comment no 22: Article 18 (Freedom of thought, conscience or religion); ICCPR (48th session 1992), U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994)

¹⁰ International Covenant on Civil and Political Rights, 1966, Article 19 (2)& The Constitution of India, Article 19

¹¹ Ben Clarke, Freedom of Speech and Criticism of Religion: What are the Limits? Murdoch University E Law Journal, Vol. 14, NO. 2 (2007), p.96

¹² Ibid.

¹³ Liyakhat Ali Khan, Combating defamation of Religions, www.theamericanmuslim.org, 01/01/2007

¹⁴ Media has anti- Muslim bias, claims report, The Guardian, 14/11/ 2005,

¹⁵ Rivas Jorge, Study Finds Negative Portrayals of Muslims Get More Media Attention, Colourlines, 29 November 2012, <http://colorlines.com/>

¹⁶ Mohd. Ahmed Khan v. Shah Bano Begum And Ors, 1984 SCR (3) 844

¹⁷ Anfal Y Nyhan, Danish Cartoon Controversy, Trinity college Digital Repository, 1 January 2011

¹⁸ U.N. Anti-Blasphemy Resolution Overturned, The Bent Angle, (thebentangle.wordpress.com), 2 September 2011

¹⁹ Wikipedia.org

²⁰ Tahir Mahmood, Religion, Law and Society Across the Globe, 76, (2013 edition)

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Religious education, conflict and diversity: A Exploration of young children's perceptions of Islam, Revell Lynn (2010)

²⁵ <http://www.international.gc.ca/>