



On the limits of Free Speech: Is there a 'Right to Offend'?

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Abstract

This article is an attempt to highlight the main differences in perspectives between the Western liberal legal systems and the Islamic tradition, on the issue of freedom of expression and its limits. It follows the heated controversies over the issue ignited in the aftermath of the artistic and journalistic productions in western countries deemed offensive to the religion of Islam and its prophet Mohamed PBUH. The main focus is on the liberal concept of ' the right to offend' and how it is approached in the Islamic context.

ملخص: يسلط هذا المقال الضوء على أهم التباينات في تصور مفهوم حرية التعبير وحدوده بين المنظور الغربي الليبرالي والمنظور الاسلامي.

يأتي ذلك في أعقاب الجدل الكبير حول نشر أعمال فنية و صحفية اعتبرت مسيئة لدين الاسلام و رسوله محمد صلى الله عليه و سلم ,ينصب تركيز المقال على المفهوم الليبرالي ' الحق في الإساءة ' وكيف ينظر اليه في السياق الاسلامي.

Introduction

Over the last few years, controversies over the production of the offensive, anti-Islamic film *Innocence of Muslims*, the Danish cartoons of the Prophet Mohamed (PBUH) and the attacks on the French magazine *Charlie Hebdo* ignited a heated global debate among experts in the fields of law, human rights, religion, and the media. The main focus of this debate has been on the limits of freedom of speech especially when it may clash with others' religious sensitivities.

Many human rights experts and lawyers in the West reasserted their advocacy of the right to offend considering it as a key pillar of liberal democracy and that the fundamental human right of free speech means nothing without the right to offend. For them the right to produce such kind of films and cartoons, though others may find offensive, is protected by free expression laws. On the other side of the controversy, some argue that people also have the right not to be offended and when the offence may lead to insecurity, social disharmony or discrimination of others on the base of their religion , the limits of this right ought to be reexamined .

Between 1999 and 2010, the 57-member Organization of Islamic Cooperation (OIC) made tireless efforts through the United Nations Human Rights Council and the General Assembly, to pass a UN resolution prohibiting “defamation of religion”. The resolution was consistently opposed by Western governments and human rights groups considering it an attempt to introduce an international blasphemy law. In Western legal systems only persons can be ‘defamed’ but not religion which is rather perceived as an idea.

These Western objections to the original OIC resolution caused further polarization and resulted in dropping the concept of “defamation” and issuing a new UN Human Rights Council resolution 16/18 “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief, ”in 2011. This article sheds light on the years-long controversies over the tension between religious sensitivities, particularly Islamic ones, and the right to offend, that culminated in the UN resolution 16 /18 . It highlights the main differences in perspectives between Western secular legal systems and those in Islamic countries.

The strong reactions by Muslims that have always emerged in the aftermath of any new offensive journalistic or artistic production in the West under the pretext of freedom of speech revealed divergent perspectives on the meaning of freedom of speech and the concept of ‘ rights’ between the Muslim and Western ‘worlds’ . This has created a necessity to understand the principles upon which stands each of the seemingly clashing approaches to freedom of expression, rights, religion, and blasphemy.

Law experts , governments, and human rights groups in Europe and the United States considered publications like those of Charlie Hebdo and the Danish cartoons legitimate whatever the harm it could generate and the unrest that it may be trigger . The right to offend, they would argue, lies at the heart of the liberal principles of freedom of expression. Without this right , the whole concept of free speech would be meaningless. This right is protected by freedom of speech laws in most Western countries.

Legal systems of many Islamic countries, on the contrary, prohibit offences against religions and prophets. Freedom of expression is, therefore, not absolute. Laws in these countries place limits on freedom of expression and do not acknowledge the right to offend especially when the offence targets religious sensitivities.

At the international legal system, there appeared a need to address this dilemma by introducing new laws to tackle the problem of the clashing views on the limits of free expression and the right to offend. The initiative was taken by a group of Muslim states within the Organization of Islamic countries .Through years , these states campaigned to pass a new resolution prohibiting defamation of religion.

The resolution was rejected by Western states and the OIC was accused of trying to pass a universal blasphemy law. The deep disagreements between OIC member states and western countries led to many modifications on the initial resolution that resulted in the UNHRC resolution 16/18 after over a decade of campaigning and debating.

Background

The oldest big controversy was perhaps sparked by the publication in Britain of Salman Rushdie's novel *The Satanic Verses* in 1988. The publication of this novel ignited a decades-long anger among Muslims both in Muslim-majority countries and in Western countries in addition to the famous *fatwa* by Khomeini ordering the killing of Rushdie. The perception in the West of the Muslim reaction was one of surprise and lack of understanding the stance of Muslims.

Some in the West backed that reaction to the alleged Muslim ignorance of the concept of free speech and the existing British laws

on freedom of expression . This appeared in the demands by Muslims in Britain to ban the book because it ridicules Islam.

Despite the long and strong campaign by Muslim states, groups ,and communities to ban the novel, the fact that no single Western country did prohibit the publication of *the Satanic Verses* tells many things. It made it clear that there is a real problem that should be seriously addressed. It is worth mentioning that India for example banned the import of the book in the same year of its first publication (October 1988).Countries like Venezuela, Singapore, Kenya and Thailand also banned the book.

The satanic verses controversy attracted the attention of academics and law makers in the West to the fact that the Western conception of freedom of speech which had been held to be universal is different to others' particularly in Islamic countries. It was in the aftermath of this issue that the question of whether Islam is compatible with Western values of democracy, secularism and freedom of expression was brought to the public attention.

Some went further considering that the Rushdie Affair has divided "Muslim from Westerners along the fault line of culture"⁽¹⁾

Saying that blasphemy laws are strange to Britain is not exact .Till 2008, Britain had little-used laws that prohibited blasphemy against Christianity. In an amendment to the Criminal Justice and Immigration Bill, the offences of blasphemy and blasphemous libel, which made it illegal to insult Christianity were abolished .⁽²⁾

The last successful prosecution for blasphemy was in 1977, when the publisher of *Gay News*, Denis Lemon, was given a suspended sentence for printing a poem about a Roman centurion's love for Jesus.⁽³⁾

While there had been a consensus among law experts and religious figures on the discriminatory nature of the British blasphemy laws, their demands as regard these laws were totally opposing. Religious figures including the Archbishop of Canterbury, Robert Runcie recommended the expansion of the Blasphemy Act to cover other religions, including Islam⁽⁴⁾ . On the other side, liberal thinkers and law experts considered that these laws were contrary to the principle of free speech and to human rights laws adopted by the UK.

Despite the claim that the offences of blasphemy laws in Western countries are outdated, the fact they have been very common for centuries can in no way be denied. Blasphemy laws are part of the Western Christian Tradition.

The renewal of the controversy in the 21st century

A series of controversies over the limits of free speech and the immunity of religions have been sparked by publications in the West deemed offensive to the religion of Islam and its tenets. Most known among these include the production of the film *Innocence of Muslims* in the USA which was uploaded to *Youtube* in 2012 sparking heated debates about freedom of speech and Internet censorship.

On September 30 2005, Series of cartoons, some depicting the Prophet Mohammed (PBUH) as a terrorist with a bomb, were published by Danish newspaper *Jyllands-Posten*. Protests against these offensive cartoons spread all along the Muslim world.

In January 7 2015, Charlie Hebdo's Paris offices were attacked by armed gunmen, killing 12, after publishing issue featuring Michel Houellebecq's novel *Submission* – a fictional vision of France under Islamic rule in 2022 described as 'Islamophobic' by critics.

While controversies over such events have caused further polarization between the Muslim and the Western worlds,, they have also opened up potential opportunities for each side to understand the other's values and the foundations of their convictions and sensitivities.

The OIC's Campaign

For a long period of time the tense debate between those who believe in the Western secular perception of freedom of expression including the right to offend others' religious sensitivities on one side and those who do not recognize that free expression must include the right to offend on the other side, have been a core element of the Islam-West dialogue. This is because most of the big controversies leading to this debate had been sparked by derogatory portrayals of Islam and its prophet (PBUH) .

Starting in 1999 and lasting for more than a decade, member states of the OIC initiated a global debate at the UN Human Rights Council claiming the need for a new resolution that would address the increase

in the tendency to defame the religion of Islam and its followers and other religions as well.

The first proposed resolution by the OIC was the 1999 “Combating Defamation of Religions». The resolution deplored “the use of print, audio-visual and electronic media, including the Internet, and of any other means to incite acts of violence, xenophobia or related intolerance and discrimination towards Islam or any religions”. The resolution went further calling on all the UN member states “to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from the defamation of any religion”.⁽⁵⁾ The initiative was harshly attacked by many in Europe and the United States considering it an attempt to pass a universal blasphemy law.

The Western secular discourse on freedom of speech asserts that the right to produce cartoons like those of Charlie Hebdo or the Danish magazine, even if it is deemed offensive, is non-negotiable. Religious freedom, according to the secular tradition, is understood as “the right of persons rather than religions per se” ⁽⁶⁾. According to this view, only persons can be defamed but not religions. On this basis, the very concept of ‘defamation of religion’ was rejected by western countries and law experts. The resolution was, therefore, constantly opposed by Western governments including the United States and Britain.

Liberal principles assert that the right to free speech means nothing without the right to offend and that incitement to violence should be the only legal limits placed on free speech. Considering incitement to violence as the only legal limits placed to free speech means that offending one’s religion, his beliefs, or whatever he perceives as sacred should be acknowledged as a human right.

Strong resistance to the OIC proposed resolution was justified by its opponents by the claim that defamation of religion “does not accord with international standards regarding defamation, which refer to the protection of reputation of individuals.” ⁽⁷⁾

The International Federation for Human Rights (FIDH) said :“Open, public debate of ideas (including on religions or beliefs) can include criticism of religion; it cannot be equated with advocacy of religious hatred that constitutes incitement to discrimination, hostility

or violence. All religions and beliefs can be subject to criticism, and none is 'shielded' by international law." ⁽⁸⁾

The UNHRC Resolution 16/18

After a decade-long campaign by members of the OIC, the OIC took the initiative again proposing an eight-point clarification, at the 15th session of UN Human Rights Council in Geneva in September 2010. The OIC member states, the US, the EU member states and other partners worked out a new resolution, the HRC Resolution 16/18 "Combating religious intolerance and negative stereotypes, stigmatization, discrimination, and incitement to violence, and violence against individuals based on religion or belief". The resolution which is widely regarded as a landmark achievement of the HRC's first decade was adopted by consensus. ⁽⁹⁾

The resolution sets out an action plan for States to:

- (1) Create collaborative networks to build mutual understanding, promoting dialogue and inspiring constructive action in various fields;
- (2) Create a mechanism within Governments to identify and address potential areas of tension between members of different religious communities, and assisting with conflict prevention and mediation;
- (3) Train Government officials in effective outreach strategies;
- (4) Encourage efforts of leaders to discuss within their communities the causes of discrimination, and evolve strategies to counter them;
- (5) Speak out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence;
- (6) Adopt measures to criminalise incitement to imminent violence based on religion or belief;
- (7) Combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, including through education and awareness-building;
- (8) Recognise that the open, constructive and respectful debate of ideas plays a positive role in combating religious hatred, incitement and violence.(article 19)

Resolution 16/18 is said to have "reconciled increasingly polarised views on the best way to tackle intolerance and discrimination on the basis of religion or belief, and replaced divisive calls at the HRC (and

the Commission before it) for States to combat ‘defamation of religions’ ” (10)

Conclusion

The reactions by Muslims, including, violent ones, triggered by the derogatory representations of Islam, its prophet, and its tenets and the demands by Muslim bodies and states alike to produce international laws that can limit attacks on Islam, Muslims and other religions, opened the eyes of law experts in the West as well as in Muslim-majority countries to the divergence in viewpoints regarding a legal issue of vital importance to the international community.

The fact that the debate is opened and the differences in standpoints addressed should be seen as a very positive step forward. It allowed for better understanding of the differences in values and legal systems in Muslim countries and Western ones.

The attacks on the initiatives of the OIC to pass a UN resolution protecting religions and the claim that Western liberal vision of the principles of free speech and the ‘right to offend’ are universal in nature revealed the decades-long dogmatism in the West is still there .

Whenever Western secular values of free speech, which entails the right to vilify and ridicule other religions, clash with other’s sensitivities, Western law experts resort to the claim that their principles of free speech are universal. This originates partly in ignorance of the cultural foundation of the legal systems in Muslim countries. What should be done when somebody argues that it is his right to offend while another argues it is his right not to be offended? Compromise may be the answer because dogmatism would in no way help.

In a multicultural world, opening more opportunities for dialogue and trying to understand others’ sensitivities is the key to build common legal platforms to consolidate existing international laws in order to address the current dilemmas and deal with hate speech, violence and discrimination on the base of religion.



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