

DESECRATING

EXPRESSION



AN ACCOUNT OF  
FREEDOM OF EXPRESSION  
AND RELIGION IN ASIA



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A REPORT BY  
BYTES FOR ALL, PAKISTAN  
AND  
THE ASIAN FORUM FOR  
HUMAN RIGHTS & DEVELOPMENT



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## 1. ABOUT THE REPORT

The rights to freedom of expression and religion are often portrayed as being in opposition with each other. This notion is particularly strong in Asia, where multiple religions and cultures coexist. Drawing from global discourse around laws and human rights on the intersection between the right to freedom of expression and the right to freedom of religion, this report reflects on ground realities in Asia. Based on the regional trends recorded from experiences in nine states in Asia – Bangladesh, India, Indonesia, Malaysia, Maldives, Myanmar, Pakistan, Sri Lanka and Vietnam – recommendations are made to ensure the better protection of these rights.

This is a joint initiative by Bytes for All Pakistan and the Asian Forum for Human Rights and Development. Discussions and debates at the Jakarta Regional Consultation on Expression, Opinion and Religious Freedoms have helped guide this report.

**Andrew Puddephatt**, GLOBAL PARTNERS DIGITAL

The Asia region faces a number of challenges in the promotion and protection of freedom of expression. In particular, people across the region increasingly find themselves under attack for expressing their religious belief – or non-belief. Although most governments in the region formally express support for the right to free expression, in practice many minority religious groups or those whose religious belief are not that of the majority find themselves under attack, including violence.

Acceptance of different religious beliefs is crucial to achieving respect and protection of all religions. Every belief finds itself in a minority in one country or another and the freedom to practice one's religion is contingent on the willingness to respect the rights of others to practice their own. This applies equally to those who have no religious belief or choose to be silent about their beliefs. For any freedom of belief to be properly enjoyed by all, tolerance and acceptance is essential. In different settings Muslims, Christians, Hindus, Buddhists and atheists find themselves under attack, often from religions that seek protection when they are in a minority.

And freedom of expression lies at the heart of religious tolerance. Unless one is free to discuss your belief, share it with others like yourself, or simply express truthfully your own opinion, then it cannot be said that you truly know yourself or your belief. Human beings are social animals, they discover their own views and shape them in interchange with others. Without the freedom to do so – and in accordance with the restrictions prescribed by international law preventing the incitement of hatred and violence – the practice of religious belief can become a means to silence the beliefs of others.

This report outlines the international human rights standards and processes related the protection of freedom of expression and religious belief, and discusses regional trends and challenges. The nine country case studies include the stories of many people across the region struggling to defend freedom of expression and promote an understanding of free expression that this is consistent with the expression of religious views. Some of the stories are horrifying – people are being killed for what they believe and say while exercising their rights to express that belief. It also provides an overview of the relevant laws and standards which impinge on people's rights in each of these countries. It is a challenge to governments in the region to recognise their responsibility to protect the rights of their own citizens. The Jakarta Declaration set out in this report is a stirring declaration of the responsibilities, not just of governments but of all the relevant actors. It set out a clear path to the essential task of protecting rights to free expression in the region and ultimately, to the protection of religious belief itself.



## THE RABAT PLAN OF ACTION: 3 YEARS LATER

**Dr. Agnes Callamard**, COLUMBIA UNIVERSITY

Dr. Callamard, one of the international experts involved in drafting the Rabat Plan of Action, recalled the international context at the time of its adoption in 2012, and in particular the many instances of violence in reaction to speech perceived as offensive to religious feelings.

This violence was also reflected at the Human Rights Council, which saw decade-long normative conflicts over the adoption of international norms on defamation of religion. The adoption of the Rabat Plan of Action testified to the commitment of a range of political and civil society actors to pave a sound normative, legal and policy approach to addressing Incitement Speeches.

Since 2012, the nature, scale and extent of the challenges have dramatically transformed. What constituted localized, small or larger, armed violence and escalating political violence in 2012 has morphed into full-blown warfare, most often regional or international in nature and involving many parties.

Hate and Incitement speech are now sitting at the confluence of three thunderous streams: religion, “terrorism” and national security. These flows have grown in force and volume, powered off by a number of speakers and speeches seeking to justify, glorify and incite to terrorism, and/or religious violence.

The world is very restless. This is tumult or restiveness that eludes both categorization and geography. For instance, the killings of journalists are no longer country specific or territorially contained. The execution of Charlie Hebdo journalists in Paris in January 2015 demonstrates the globalized reach of the threats. Well-established democracies or democracies in the making compete with war ravaged locations for the tragic record of the deadliest places for the information providers.

The restiveness of the world is played out not only at political, economic or military levels, but also at the ideological, normative level. And there too, the data indicate that we are confronting a multiplication in the number of normative battlegrounds and norms entrepreneurs.

Dr. Callamard suggests it is thus legitimate to ask ourselves: how meaningful is the Rabat Plan of Action given the worsening of the overall political and military environment? To answer this question, she first returned to the Plan and recalls that it includes a set of findings and

recommendations to Governments regarding the legislative, judicial and policy framework most adapted to addressing effectively hate speeches amounting to incitement under article 20 of the ICCPR.

The Rabat Plan of Action tells us that not all Hate Speeches are the same and that there is one kind in particular that the International Community should be particularly mindful of – The speech that incite others to commit violence or discrimination, as per article 20 of the ICCPR.

The Plan goes on to recommend that governments focus on Incitement Speech first and foremost – they are a permissible limit to freedom of expression; they may be criminalised and in any case legislated against.

The Rabat Plan further recommends that to be effective, the Incitement Speech legislation must be clear, focused; it should not be overbroad; judges should be competent, armed with the best tools to assess threshold and impact of these Speech; there should be fair and public hearings ran competent, independent and impartial tribunals established by law.

The Rabat Plan of action also includes a 6-part test to assist judges in determining whether speech may meet the threshold of article 20 of the ICCPR. This test includes questions related to the context, the influence of the speaker, the content of the speech, and the means of communication, as well as regarding the intent of the speaker and the likelihood the audience will act on the call.

The Rabat Plan also recommends that blasphemy laws – amongst the most abused in the world, along with defamation – be repealed.

Dr. Callamard insists that these recommendations remain more meaningful than ever, in view of the international, political and legal environment. Her analysis of freedom of expression jurisprudence around the world since 2014, for Columbia University, demonstrates that national security largely dominates the judicial agenda, that military law is creeping into legal procedures and that there are many irregularities in application of judicial standards and fair trials procedures were reported. As importantly, there is little to no reliance on article 20 of the ICCPR or on relevant prior domestic interpretations of incitement. It means the threshold employed in the identified cases varies considerably from the normative “incitement” threshold. In addition, or consequently, trials for blasphemy have continued unabated, including resulting in death penalty or summary executions. These are coming on top of legislative and policy initiatives seeking to curtail on-line expression, including by requiring that Internet platforms and social media perform the role of the censors.

Dr. Callamard recommends that continuing to advocate smartly and effectively for a better understanding of freedom of expression and incitement speech while experiencing and exploring different ways of countering incitement and its impact for human rights. Dr. Callamard suggests

that a crucial intervention for government remains more than ever education for tolerance, civic behavior, respect of others; as is the strengthening of all the mechanisms against discrimination

The one critique Dr. Callamard thinks may be addressed to the Rabat Plan of Action is that it placed too much trust and confidence in Governments and in their willingness and ability to address the incredible complex problems of incitement to violence and hatred, including on religious grounds. Instead, she believes that the objectives of the Rabat Plan of Action require a renewed and stronger focus on actors of the civil society, religious leaders and their communities, and the private sector, particularly the Internet and social Media companies that may have become easy scapegoats.

These, in her opinion, should be all involved in a RABAT PLUS. The interventions should be diverse, reflective of every actor's strengths. But ultimately, these should all tend towards one direction: engaging in the battle of ideas, to denounce fundamentalist, extremist or radical thinking, provide alternative and progressive interpretation, and address squarely and without fear the topics "extremists" monopolize.

Dr. Callamard concludes that the Rabat Plan of Action, including Rabat Plus - involving civil society, the private sector and religious and other leaders - is not just relevant. It is crucial in offering a framework of action and intervention that is not guided by elections and power but by principles of dignity and non-discrimination, values and impact.

Freedoms and human rights of people are increasingly being violated in different countries and regions in the Asia-Pacific Regions. The violations of human rights and the denial of freedom and rights of minority and marginalised communities pose the single biggest threat to democracy and symptomatic of shrinking of democratic spaces in the region as well. At the root of many kinds of discrimination is the identity based on religion or certain belief. When freedoms from fear and want and freedoms of belief and association get violated systematically by the state and non-state actors, the very idea of rule of law get compromised, leading to the impunity for those violating the human rights of expression and belief of minority communities.

While most of the countries in the region witness unprecedented level of economic growth, there is also an increase in multiple forms of inequality in the region. Economic inequality, social inequality, and political inequality are closely linked to and mutually reinforced in many countries of the region. And most of the people who are poor and marginalised often come from religious and ethnic minorities and historically marginalised groups such as Dalits, indigenous people, and tribal communities. Multiple forms of inequality and marginalisation based on religion or other forms of identity often create breeding violence, undermining social cohesion and peace. Practitioners of the politics of exclusion, discrimination, and violence often target religious minorities, who are already poor and marginalised.

In many countries in the region, there are discriminatory laws that further marginalise religious minorities. However, the biggest threat also comes from extremely violent fanatic groups and practitioners of systematic violence and pogroms against religious minorities; and they act with a sense of impunity. This report gives information on how the freedom and human rights of religious minorities are systematically violated both by the state and non-state actors in nine countries of the region. The religious minorities, particularly in most of the South Asian countries, are increasingly made to feel insecure and further marginalised in multiple ways.

This report is an effort to document the rich discussion and debates in the Regional Consultation on Expression, Opinion and Religious Freedoms held in Jakarta in 2015. The report on the one hand gives the perspectives that link between the human rights to expression and belief and also in relation to the right to freedom of association. The report also gives a detailed contextual analysis of the nine countries in the Asia-Pacific Region. The Regional Consultation in Jakarta, jointly organised by FORUM-ASIA and Bytes for All, was a part of our effort to strengthen human rights initiatives at the national and international levels to ensure the right to freedom of expression, right to freedom of religion or belief, and right to freedom of association in various countries of the region.

FORUM-ASIA, the Asian Forum for Human Rights and Development, is the most well-established membership based human rights and development organisation in the Asia-Pacific Region. We believe in working together in solidarity with other human rights organisations. The changing times and increasing violation of human rights and freedoms require a more coherent and concerted effort by human rights organisations across the countries and region. It is indeed important to work at the grassroots, national, and international levels to protect the rights of religious minorities under high level of threat from fanatic and militant groups as well as the state machinery.

We believe in working closely with our members at the grassroots and national levels and we also work at the national and international levels in partnership and alliance with other human rights organisations and networks. Hence, we would like to express our solidarity and gratitude to Bytes for All, for collaborating with the FORUM-ASIA, to jointly organise the Regional Consultation.

On behalf of FORUM-ASIA, I would also express deep appreciation to my colleagues, who helped organise the regional consultation and for bringing out the report. I hope that this report will enable all of us, the human rights community in the Asia-Pacific, to further strengthen our evidence-based advocacy for human rights, justice and democratic governance in the region.

“Shutting down free expression on account of religion or religious sentiment has far reaching and real consequences for everyone. It impacts the environment for citizens to voice their opinions and participate in democratic processes. These restrictions particularly affect human rights defenders and the media, inhibiting their ability to carry out their legitimate engagements.

From the brutal murders of bloggers in Bangladesh to the killings of journalists in Pakistan; from the discriminatory laws in Malaysia to the draconian state intrusion into the lives of citizens by the Vietnamese government; from the increasing religious intolerance in India to violence against minorities in Sri Lanka and Myanmar – Asian countries have shown poor levels of tolerance and respect for freedoms. Free speech and freedom of religion are both essential for a free and democratic society. Unfortunately, this frightening trend of curbs against dissent is escalating across Asia, as this report reveals.

In the name of protecting religion and the sanctity thereof, there has been a rampant increase in violence against courageous citizens across Asia over the last five years - journalists, activists, sexual and religious minorities, lawyers and politicians, all have been persecuted and continue to be at risk. Moreover, the intersection of online and offline violence is one of the most glaring and life-threatening hazards that civil society and media practitioners have to navigate in today’s Asia. Across the region, persecution of minority groups or dissident voices varies from one country to another. Pakistan, with its sectarian intolerance, targets minority Muslim sects like Ahmadis and Christians and Hindus through discriminatory laws, violent extremists and militants. India, through sheer faith-based intolerance that enjoys legal cover, discriminates against Muslim and Christian minorities. The extremist nationalist Buddhists of Sri Lanka and Myanmar are oppressing minority groups such as Muslims, Hindus and Christians. In Bangladesh, religious extremists are discriminating between atheist and Christian. In Malaysia, atheist and non-Muslim minorities are censoring themselves in the face of pro-Islam legislations, and in Indonesia, in addition to the blasphemy law, the Muslim majority has immense privilege over non-Muslim and Muslim minority sects.

The right to freedom of religion is intrinsically linked to freedom of opinion and expression, freedom of association and assembly, as well as other human rights and fundamental freedoms. These rights, individually and collectively, guarantee and contribute to the building of peaceful, inclusive, pluralistic, tolerant, progressive and democratic societies. The reason the Asian region is confronted with a steep challenge in this regard is due to restrictions placed on freedom of expression for the sake of protecting religious sentiments.



This report is an endeavor to document and highlight the pattern of Asian states as far as suppressing the rights to free speech and religion through violently politicized religion are concerned. The otherisation of minorities is legitimized by states and those that dare to raise a voice against the injustices of their respective establishments.

A mapping exercise was undertaken to identify the key challenges, laws and legal policies guaranteeing and impacting freedom of expression in its intersection with religion in Malaysia, Vietnam, Myanmar, Indonesia, Sri Lanka, Bangladesh, India and Pakistan. Significant cases as well as the victims and perpetrators of violations were also identified. This was done through a series of interviews and questionnaires given to human rights defenders working on these issues in the region, as well as secondary data acquired from well-researched and reported cases.

Some of the key trends noticeable in the region include the growing use of blasphemy and anti-hate speech legislations to shut down legitimate expression on issues pertaining to or on the pretext of religion. Consequences to individuals exercising such expression range from intimidation, harassment to physical threats, exile and fatality. Women and LGBT groups or persons are particularly targeted on the pretext of religion, as well as moral, cultural and social prescriptions. These realities hold true for online as well as offline expression.

At-risk groups or victims of violations include: persons exercising and defending freedom of expression and religion; minorities; women; sexual orientation and gender identity (SOGI) persons and SOGI rights advocates; media; journalists; opposition parties; artists; authors; youth groups; atheists; moderate and liberal voices; persons not professing the state religion; migrant workers; Internet users; lawyers; academics; and human rights defenders.

Violations are largely perpetrated by: state authorities and security forces; political parties in power; political parties with an extremist agenda or intolerant views; religious bodies; extremist groups; media; organized crime groups; militant outfits and citizens themselves.

In recent years, freedom of expression in the context of religion has been the specific focus of reform efforts, resulting in the development and adoption of instruments such as the 2012 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and UN Human Rights Council (UNHRC) Resolution 16/18 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, first adopted in 2011. Both the Rabat Plan and Resolution 16/18 were endorsed by all the governments in the region.

The UN Special Rapporteur on Freedom of Religion or Belief, in his recent report to the UNHRC, has looked specifically at the intersection of the right to freedom of expression and freedom of

religion. The report explains in detail the connections between and the mutually-reinforcing nature of both rights. Significantly, the Special Rapporteur has recognized individuals and not religions or belief systems as right-holders per se. He has also reiterated the need for restrictions to meet international standards, specifically calling on states to repeal blasphemy laws.

Laws relating to religion are used widely across the region to control and punish dissent. Regulations and restrictions on expression relating to religion takes many shapes. Typically, most states in the region have provisions on insulting religion, outraging religious feelings and sentiments. States also have provisions to prevent hate and incitement on the basis of religion. Legislation pertaining to hurting religious sentiments or blasphemy, as well as anti-hate speech legislation, poses a serious threat when applied to restrict freedom of legitimate expression and leaves persons accused of such acts largely vulnerable to attacks by non-state actors.

Based on the observations, recommendations are made to government and state mechanisms, political parties, media, civil society, academia, religious bodies, the private sector and international mechanisms. The most pressing recommendations relate to the urgent need to repeal blasphemy laws, ensure that national jurisprudence meets international standards and the protection of individuals exercising their right or freedom of expression relating to religion or religious issues. States party to international mechanisms have been called upon to implement recommendations made by the Special Rapporteur on Freedom of Religion or Belief in the report presented to the 31st Session of the UNHRC, as well as those provided for in the Rabat Action Plan. Finally, a call is made for the follow-up to review the implementation of Resolution 16/18 and the Rabat Action Plan by states to strengthen guarantees, address violations and include issues relating to gender and the Internet. Discourse on gender rights, security and free expression must also include a physical expression. It is recommended that the religious bodies realize that ensuring Freedom of Expression (FoE) for all is an integral part of Freedom of Religion (FoR), and that FoE or FoR cannot be selectively applied to specific groups, since that becomes an obstacle for the collective and secure democratic growth of a society. Governments need to end the culture of impunity. For a pluralistic Asia that embraces its vast diversity, FoE and FoR are two of the most valuable freedoms to ensure.



## 2. INTRODUCTION AND INTERNATIONAL STANDARDS

Asia is the most populated region in the world. It is rich in cultures, languages, races, religions and a diversity of people. However, it also faces numerous challenges relating to the fulfilment of human rights and development requirements. Due to an array of complex issues, ranging from corrupt governments to socio-economic disparities and disharmony among diverse cultures, religions and tribal customs across different countries; the region on the whole has remained imbalanced with regards to the elimination of rights violations and the guaranteeing of freedoms. Regrettably, at times, regional diversity has been used to create divisions, promote discrimination, perpetrate oppression, and impose severe restrictions on fundamental human rights. Violations of freedom of expression in the name of the sanctity and protection of religion are on the rise across the region, despite an increase in digital and electronic connectivity.

The rights to freedom of expression and freedom of religion are internationally recognised and guaranteed rights that are crucial for any democratic society. These independent, yet interrelated rights have come under violent attack over the past decade, particularly where and when they intersect. Individuals' freedom of religion and faith-based practices are targeted by denying the right to freely express opinions on religious matters. Members of religious communities have come under threat from growing faith-based intolerance. Many individuals have been deprived of their rights to life, liberty, security and privacy; not just because of their religious beliefs, but also for voicing their opinions on matters related to religion. Individuals have been subjected to arbitrary arrest, detention and torture and are denied basic guarantees to a fair trial. States across Asia have sought to protect religion by enacting legislations pre-empting criticism or adverse comments, which furthers intolerance, while little is done to protect people from violence and persecution.

An unchecked increase in religious hate speech is leading to violence and discrimination. Domestic legislation dealing with hate speech runs the risk of being used arbitrarily or selectively due to loose interpretations, emanating from the ambiguous language used in their provisions.

Similarly other rights, such as the freedoms of assembly and association, are compromised on the grounds of religion or religious sensitivities. Human rights defenders working on these rights are finding it increasingly difficult to carry out their legitimate work because of restrictions, threats, and violent attacks.



## INTERNATIONAL PROTECTION OF THE RIGHTS TO FREEDOM OF EXPRESSION AND FREEDOM OF RELIGION

The rights to freedom of expression and freedom of religion are well-established in international law. State signatories to international human rights treaties under the International Bill of Rights are required to: protect fundamental rights and prohibit discrimination on the grounds of belief or opinion. Specifically, Article 19 of the Universal Declaration of Human Rights (UDHR) as well as the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to hold opinions without interference and guarantees everyone the right to FoE and the right to receive and impart information. Any limitations placed on this right must meet the standards required and justified by provisions in Article 19(3) of the ICCPR. Article 18 of the ICCPR also guarantees freedom of thought, conscience and religion. Article 20 of the ICCPR declares that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Similarly, relevant provisions of the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Prevention and Punishment of the Crime of Genocide, and the Convention relating to the Status of Refugees prevent discrimination on the grounds of belief or opinion.

Standards for protection of these rights can also be drawn from relevant general comments, resolutions, and reports of the UN Human Rights Council, including General Comment No. 34 of the Committee on Civil and Political Rights (CCPR) on freedoms of opinion and expression, General Comment No. 22 of the Human Rights Committee protecting the freedom to manifest religion or belief in worship, UN Human Rights Council resolution 22/20 on freedom of religion or belief, UN Human Rights Council resolution 17/19 on human rights, sexual orientation and gender identity, and UN Human Rights Council resolution 16/18, which sets out a programme to combat intolerance, incitement to violence, stereotyping, stigmatisation of and discrimination against people because of their religion or belief. These rights are applicable to both offline and online spaces, as was reaffirmed in the UN Human Rights Council resolution 20/8 in 2012.

The UN Special Rapporteur on freedom of Religion or Belief, in his recent report to the UNHRC, has specifically looked at the intersection of the rights to freedom of expression and religion.<sup>1</sup> The report explains in detail the interconnected and mutually-reinforcing nature of the two rights. The Special Rapporteur has recognised individuals as the right holders, not religions or belief systems *per se*. He has also reiterated the need for restrictions to meet international standards.

<sup>1</sup> Please see United Nations, Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, (23 December, 2015) A/HRC/31/18 available at [http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18\\_en.pdf](http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18_en.pdf)

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has also remarked in his report presented on June 17, 2016, to the UNHRC that fundamentalism, including religious fundamentalism, is negatively impacting the rights to freedom of assembly and association.<sup>2</sup>

## INTERSECTION BETWEEN THE RIGHTS TO FREEDOM OF EXPRESSION AND FREEDOM OF RELIGION

The rights to Freedom of Religion or Belief are intrinsically linked to freedom of opinion and expression, freedom of association and assembly, as well as to other human rights and fundamental freedoms. These rights individually and collectively guarantee and contribute to the building of peaceful, inclusive pluralistic, tolerant, progressive and democratic societies.

General Comment No. 22 of the Human Rights Committee (CCPR) specifies that “the right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) [...] is far-reaching and profound; it encompasses freedom of thought on all matters, personal convictions and the commitment to religion or belief, whether manifested individually or in a community with others. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.”<sup>3</sup> General Comment No. 10 of CCPR<sup>4</sup> clarifies that any restrictions on freedom of expression must be justified under Article 19(3) of the ICCPR and “may not put in jeopardy the right itself”. These restrictions are also required to be necessary and proportional to the aim it seeks to achieve.

The rights to FoE and FoR include the right to hold opinions on religious matters. Individuals have the right to comment on their own religion as well as those of others. Freedom of expression includes the right to be controversial, insulting or offensive, even when such speech targets or offends ideas that are devoutly held beliefs for others. Expression of religious, non-religious and irreligious belief, or of an opinion concerning a religion or belief, is a legitimate exercise of freedom of expression and is, as such, protected by the guarantees in Article 19 of the ICCPR and related documents.

While incitement of religious hatred is a legitimate restriction to FoE, it must be proportionate to

<sup>2</sup> Please see UN Special Rapporteur Maina Kiai’s report to the Human Rights Council, June 2016, A/HRC/32/36 available at <http://freeassembly.net/reports/fundamentalism/> Factsheet: Fundamentalism’s impact on FoAA rights available at <http://freeassembly.net/wp-content/uploads/2016/06/Fundamentalism-factsheet-final.pdf>

<sup>3</sup> See Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994) available at <http://hrlibrary.umn.edu/gencomm/hrcom22.htm>

<sup>4</sup> See United Nations, Office for High Commissioner for Human Rights, General Comment No. 10: Freedom of expression (Art. 19): 29/06/1983. CCPR General Comment No. 10. (General Comments) available at <http://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo10.pdf>

the aim and meet the standards prescribed for hate speech in international documents including the ICCPR. In determining whether a particular instance of speech qualifies as hate speech, intent to cause harm must be clear; the content delivered must be harsh and likely to cause harm; there must be clear indication of how specific harm has been caused and is likely to incite further harm; there must also be imminence and the context of it all must justify action or restriction. It must also be noted that placing restrictions on freedom of expression and opinion based on notions of protecting nationalism, religious sentiments and cultural ideologies do not qualify as legitimate restrictions under international law.

The EU Guidelines on the promotion and protection of freedom of religion or belief, which provides valuable insight on the subject, explains that “freedom of religion or belief and the freedom of expression are interdependent, interrelated and mutually reinforcing rights, protecting all persons – not religions or beliefs in themselves – and protecting also the right to express opinions on any or all religions and beliefs. Censorship and restrictions on the publication and distribution of literature or of websites related to religion or belief are common violations of both of these freedoms, and impair the ability of individuals and communities to practice their religion or belief. Limitations to the right to express opinions on religion or belief are a source of great vulnerability for people belonging to religious or belief minorities - but also affect majorities, not least persons holding non-traditional religious views. Taken together, freedom of religion or belief and freedom of expression play an important role in the fight against all forms of intolerance and discrimination based on religion or belief.”<sup>5</sup>This is applicable to all peoples, individuals, groups and communities exercising the right to freedom of expression in online and offline spaces.

The rights to freedoms of expression and religion are independent and interrelated and mutually reinforcing rights. Their coexistence and perceived conflict does not imply that these rights should be seen in a restrictive manner, or as being opposed to each other. They lend support to the fundamental notion and principle of the universality and inter-dependence of human rights for all. The right to freedom of religion or belief needs other human rights to be fully exercised, including the right to freedom of assembly, association or the right to freedom of expression. Freedom of expression is a core and enabling right which empowers other rights and their enforcement and as such is to be seen as an essential part of freedom of religion.

## BLASPHEMY AND DEFAMATION OF RELIGION

Across the Asian region, growing discourse on defamation of religion and blasphemy laws to combat dissent and criticism of religions or beliefs is proving to be a serious threat to the fundamental exercise of FoE. Laws to punish blasphemy or hurt to religious sentiments has a

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5 EU Guidelines on the promotion and protection of freedom of religion or belief, 2014 available at <http://www.eidhr.eu/library>

stifling effect on dissent and FoE, prohibiting a free exchange of ideas and views on political, social, legal and academic issues that may touch upon religion.

The right to FoE can legitimately be restricted for advocacy that incites violence or discrimination against individuals on the basis of their religion. However, the increasing use of defamation of religion as an argument or basis for restricting expression is a dangerous trend. Defamation of religion is regarded as an act that may offend the dignity or sanctity of religion, while in practice it is used to silence any expression of dissent against any religion or belief. Expression may offend people or hurt their religious feelings, but as long as it does not directly result in a violation of rights, including the right to Freedom of Religion, there are no grounds for legitimate restriction under Article 19 of the ICCPR.

Governments, institutions and individuals supporting prohibitions based on defamation of religion defend their position on the basis of protecting the right to freedom of religion and to fight incitement of discrimination, hostility, and violence. Former UN Special Rapporteurs Ms. Asma Jahangir<sup>6</sup> and Mr. Doudou Diene<sup>7</sup> explain that “freedom of religion primarily confers a right to act in accordance with one’s religion but does not bestow a right for believers to have their religion itself protected from all adverse comment.”<sup>8</sup>

The report goes on to state that *“the right to freedom of religion or belief protects primarily the individual and, to some extent, the collective rights of the community concerned but it does not protect religions or beliefs per se. While the exercise of freedom of expression could in concrete cases potentially affect the right to freedom of religion of certain identified individuals, it is conceptually inaccurate to present this phenomenon in abstract as a conflict between the right to freedom of religion or belief and the right to freedom of opinion or expression.”*<sup>9</sup>

As noted in numerous reports by the UN Special Rapporteur on freedom of religion, international human rights law protects individuals, not religion or belief itself. The right to freedom of religion or belief, as enshrined in the relevant international standards, does not include the right to have a religion or a belief that is free from criticism or ridicule. It would, therefore, be farfetched to claim that criticism of religion per se would in itself amount to inciting violence against believers and call for sanctions. At the international level, the decreasing support for resolutions relating to defamation of religion at the United Nations is indicative of the growing resistance against the legitimisation or legalisation of defamation of religion as a restriction of expression.<sup>10</sup>

6 UN Special Rapporteur on Extrajudicial Executions from 1998 to 2004, and the UN Special Rapporteur on Freedom of Religion and Belief from 2004 to 2010

7 UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in 2002—2008

8 See Report of the Special Rapporteur to the sixty-first session of the Commission on Human Rights (E/CN.4/2005/61) available at [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=10540](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=10540) and the annex of her report to the sixty-second session of the Commission on Human Rights (E/CN.4/2006/5) available at [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=11560](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=11560)

9 idbi

10 See International Service for Human Rights, Support for ‘defamation of religion’ continues to decline; draft resolution passes by only 12 votes, available at <http://archive.is/2hiaK>

Laws and policies that institutionalise the prohibition of such expression are frequently abused. They do not only stifle dissent, discourse and debate, they are also used to harass rivals, legitimise violence, intimidate persons and permit intolerance. As suggested by the UN Special Rapporteurs, instead of trying to shield religions against criticism or ridicule, states should focus their attention on the protection of believers and non-believers against discrimination and violence. In protecting freedom of religion, states' obligations are not limited to abstaining from committing direct violations of rights, their obligations also extend to ensuring the free exercise of freedom of expression relating to matters touching upon religion and belief. In this regard, efforts to introduce defamation of religion as legitimate prohibition before international institutions is cause for concern and must be looked at within the framework of existing guarantees in the ICCPR.

## PERMISSIBLE LIMITS

In restricting expression with regard to situations where certain forms of expression confront religions or beliefs or members of religious or belief communities, it is essential to make a careful distinction between: forms of expression that constitute an offence under international law; those that are not criminally punishable but may justify a civil suit; and ones that do not give rise to criminal or civil sanctions but still raise a concern in terms of tolerance, civility and respect for the religion or belief of others.<sup>11</sup>

The distinction between blasphemy and incitement to hatred and violence finds support in international law. While blasphemy provisions deal with expression that are directed at, critical of, insulting, or offensive to expression against religious doctrines, figures, deities, practices or belief, hate speech, while incitement deals with expressions and acts that explicitly encourage and call for hostility and violence.

Article 19 of the ICCPR guarantees FoE, but also provides grounds on which restrictions may be imposed. The exercise of the rights provided for in Article 19 can be subject to restrictions provided for by the law when: necessary for respect of the rights or reputations of others; and for the protection of national security or of public order, or of public health or morals. However, as explained in General Comment No. 34 of the CCPR, these restrictions must be justified under Article 19(3) of the ICCPR and “may not put in jeopardy the right itself.”<sup>12</sup>

Another crucial provision to bear in mind is Article 20 of the ICCPR<sup>13</sup>, which prohibits any

<sup>11</sup> Please see Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, A/HRC/2/3, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/139/90/PDF/G0613990.pdf?OpenElement>

<sup>12</sup> See United Nations, Human Rights, General Comment No. 34 on Article 19 of the ICCPR, New guidance to states on what freedoms opinion and expression mean in practice available at <http://bangkok.ohchr.org/programme/documents/general-comment-34.aspx>

<sup>13</sup> See United Nations, Human Rights, International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23

advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Such restriction is to be exercised only as prescribed by law and must be necessary and proportionate to the aim it seeks to achieve. Restriction on freedom of expression must pursue a legitimate aim; the restriction must be imposed by a democratic law and be necessary and proportionate.

In determining if a particular piece of speech qualifies as hate speech, clear intent to cause harm must be established. The content must be harsh and realistically likely to cause harm. While taking action, states must decide on each case objectively, based on the context in which the speech was made, and must have clear indication of how specific harm has been caused and is likely to incite further harm. States must also be satisfied with the imminence of harm and not merely on the nature of the speech or mere possibility of the speech causing harm. In any case, placing restrictions on freedom of expression touching upon religion should not qualify for legitimacy under national security, public order or towards guarding notions of patriotism, religious sentiments and cultural ideologies.

## INTERNATIONAL PROCESSES

The standoff between different groups, especially the Organisation of Islamic Cooperation (OIC) and opposing groups, in relation to resolutions that touch upon defamation of religion since the early 2000s has resulted in an agreeable text, found in the United Nations Human Rights Council resolution 16/18 in March 2011, entitled “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against persons based on religion or belief”<sup>14</sup>.

Resolution 16/18, which was adopted through consensus, encourages the creation of collaborative networks and calls for creating an appropriate mechanism within the government to identify and address potential areas of tension between members of different religious communities, and assisting with conflict prevention and mediation. The resolution also recognises the need for states to train government officials in effective outreach strategies, encourages leaders to discuss within their communities causes of discrimination, and work towards evolving policies to counter discrimination. It places the onus on governments and leaders to speak out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. Education and awareness-building as well as the pressing need to create and nurture open, constructive and respectful debate of ideas was emphasised. To this end, it called for the strengthening of international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace.

March 1976, in accordance with Article 49 available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>14</sup> See United Nations, Human Rights, resolution 16/18, Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, A/HRC/RES/16/18 (12 April, 2011, adopted by United Nations General Assembly on 24 March, 2011) available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18_en.pdf)

The resolution drew upon the call made by the OIC Secretary-General at the 15th session of the Human Rights Council for adopting measures to criminalise incitement to imminent violence based on religion or belief.

From resolution 16/18, a series of intergovernmental meetings were launched in 2011 with the aim of supporting the implementation of the resolution. These were called the Istanbul Process for Promoting the Implementation of UN Human Rights Council Resolution 16/18 on Combating Intolerance, Discrimination and Incitement to Hatred and/or Violence on the Basis of Religion or Belief.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) came out with the Rabat Plan of Action,<sup>15</sup> which contains the results of a series of regional workshops organized in 2011 and 2012, with the broad participation of international experts, civil society organisations, government representatives, as well as international and regional organisations.

The Rabat Plan of Action has identified many challenges in the exercise of freedom of expression when limited by arguments of religion and religious sentiments. Specifically, it draws attention to the adverse use of concepts of national unity or national identity used as restrictions for political or electoral purposes and calls for the immediate decriminalisation of blasphemy.

Based on these international documents and the Rabat Action Plan the following can be used as initial indicators to evaluate the environment for freedom of expression in States when restricted by religion or religious sentiments:

- 1.** Is the freedom of expression regarded as an enabling and core right for the enjoyment of other human and fundamental rights in society and legal documents?
- 2.** Is it generally accepted that the freedom of expression is necessary for the full enjoyment of freedom of religion and to enable constructive dialogue?
- 3.** Are restrictions placed on the freedom of expression by hate speech legislations drafted in vague or overly broad terms?
- 4.** Do hate speech restrictions meet necessary standards including: being provided by law; being narrowly defined to serve a legitimate interest; and being necessary in a democratic society to protect that legitimate interest?
- 5.** Are restrictions placed on freedom of expression in the context of religion respond to a pressing social need; are the least intrusive measures available; are they not overly broad, in that they do not restrict speech in a wide or untargeted way; and are they proportionate in the

<sup>15</sup> Please see Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence<sup>1</sup> - Conclusions and recommendations emanating from the four regional expert workshops organised by OHCHR, in 2011, and adopted by experts in Rabat, Morocco on 5 October 2012. Outcome document available at [http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf)



sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to the sanctions they authorise?

- 6.** Does the State have blasphemy laws which carry criminal sanctions?
- 7.** Do these blasphemy laws favour one religion or particular religions over others?
- 8.** Are religious minorities and dissenters the primary targets of such laws?
- 9.** Are key terms, like hatred, discrimination, violence, hostility and so forth, well defined in the legislations relating to hate speech?
- 10.** Does the judiciary's use of the three-part test for restrictions of freedom of expression – legality, proportionality and necessity – also apply to cases of incitement to hatred?
- 11.** Do political and religious leaders speak out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech?
- 12.** Do policy measures exist for intercultural dialogue, and education for pluralism and diversity, including gender sensitivity on matters relating to free expression of opinions relating to religion?
- 13.** Are specific measures and policies adopted for minorities and indigenous people to exercise their freedom of expression?
- 14.** Does the State facilitate the registration and functioning of minority media organisations?
- 15.** Are the security forces, including the police, trained specifically on dealing with incitement to hatred?
- 16.** Does the State collect systematic data on instances of incitement to hatred and attacks on free expression on the basis of religion?

### 3. REGIONAL TRENDS AND CHALLENGES

The Asian region is facing serious challenges with a rise in the use of religion and religious sentiment to legitimise restrictions on freedom of expression. To better understand this, a mapping exercise was undertaken to identify the key challenges, laws and legal policies guaranteeing and impacting freedom of expression in its intersection with religion in Asia. Significant cases, victims and perpetrators of violations were also identified. This was done through interviews and questionnaires to human rights defenders in the region who are working on these issues.

Based on preliminary research, nine Asian countries were chosen. Bangladesh, India, Indonesia, Malaysia, Maldives, Myanmar, Pakistan, Sri Lanka and Vietnam together represent a large proportion of the Asian population, and provide insights into various challenges and facets of the issue at hand.

In the mapping, which was the culmination of questionnaire responses, interviews and discussions at the Regional Consultation on Expression, Opinion and Religious Freedoms,<sup>1</sup> regional trends have been identified to indicate some of the challenges faced and the general climate around freedom of expression in Asia.

The dependence on, and nexus of, political parties with religion and religious groups is a common and pressing factor which prevents states and governments from addressing freedom of expression violations related to religion. The legalisation and legitimating of ‘defamation of religion’ as a basis for restricting and punishing expression, often resulting in violent attacks on any discussions on religion, is on the rise. At the domestic level, these attacks are getting more aggressive, while internationally the support for restrictions on the basis of ‘defamation of religion’ is dwindling. Governments and political parties are increasingly using protection of religion against any criticism as a significant aspect of their campaigns towards garnering a support base and to project themselves as defenders of religion. This state-based support and appeasement of the religious right has contributed to the branding of secular voices as irreligious, enemies of religion or as atheists.

Implementation of laws on apostasy and blasphemy has been selective and arbitrary in the region. There are few, if any, checks on how they are used. These laws are often used to curtail dissent, especially against human rights defenders such as lawyers, civil society activists, writers or journalists, as well as political opponents. Blasphemy laws and provisions have transcended traditional penal

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1. Please see Expression, Opinion and Religious Freedom in Asia available at <http://www.freedomofexpression.asia/>



legislations and have been integrated in other forms of legislation touching upon the right to freedom of assembly, association, communication and others.

An alarming trend across the region is the use of force and violence in the form of physical attacks. This includes the killing of bloggers, journalists, lawyers, academics and others for their views on secularism or on matters that touch upon religion or religious figures. Individuals who question religion or persecution on the grounds of religion are increasingly demonised by right wing factions present among the clergy, politicians, academia, lawyers and media. States have failed to provide adequate security for those under threat, as state authorities are apprehensive about being viewed or tainted along with those critical of religion or to be branded as failing to protect religion. In certain countries there are ongoing campaigns to project all bloggers as anti-state or anti-religion, and governments have failed to provide adequate protection in life-threatening circumstances. In several countries, human rights defenders, including experts, civil society organisations, lawyers and journalists coming out in support of those accused of blasphemy also face surveillance, threats or violent attacks.

Bans on books, artistic, and satirical works are frequent and common in the region. Many writers, journalists, academics and bloggers have been forced into exile for their works or speech that touches upon religious freedom. Even when books have not been officially banned, religious groups objecting to these works force publishers to pull publications for fear of repercussions. This has caused a steep increase in invulnerability, and self-censorship among artists, journalists and writers.

Hate speech often goes unchecked and may even receive tacit support from state agencies. The six-part test for hate speech proposed in the report of the Special Rapporteur on hate speech and incitement to hatred<sup>2</sup> has not been internalised by States and judiciaries. Although many States have introduced legislation to address hate speech, they are either abused or not implemented. Provisions on hate speech often contain vague language without clear definitions of terminologies, leaving them open to interpretation by different authorities. This is particularly problematic for individuals facing blasphemy charges along with allegations of hate speech, as they find it difficult to access justice or have a fair trial.

Objections by extremist religious groups and militant outfits seem to be forming a basis for action to be taken against individuals exercising their freedom of expression. Judicial and investigation mechanisms have repeatedly failed to identify perpetrators or bring them to justice. While States claim that they do not violate international standards, there is little effort made at ensuring that laws (both central and provincial) align with said international standards. Similarly, States, when unable to ensure that laws are in compliance with international standards, fail to curb vigilante justice groups, creating a vacuum for rule of law, and a lack of justice for defenders

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<sup>2</sup> See Report of the Special Rapporteur to the General Assembly on hate speech and incitement to hatred A/67/357 available at <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>

of freedom of expression and freedom of religion.

Those who exercise their freedom of expression and freedom of religion are forced into exile, either out of fear or due to actual attacks. Human rights defenders and civil society groups are often branded as anti-nationalist and atheist, putting them in grave danger. Young people and women are, in particular, attacked based on narrow cultural expectations that are fused with religious norms.

Religion, morality, culture, social propriety and decency are used interchangeably and in concurrence to justify restrictions in the region. These are particularly used in relation to attacks on women and advocates of sexual and reproductive rights. Similarly, persons belonging to Sexual Orientation and Gender Identity (SOGI) communities and advocates for SOGI rights are also targeted.

Restrictions on freedom of expression on religious matters puts the right to freedom of religion and belief in jeopardy as minority religious groups are unable or are denied equality before the law. The rights of minorities to religion are therefore compromised when their freedom of expression is denied.

The contributing factors aiding such violations include involvement of governments in the patronage of certain religious and belief systems over others. Limitations created in the garb of prohibiting insults to religious feelings do not qualify as legitimate restrictions under the ICCPR, but still continue to be promoted. Therefore, repeated defence by States and state authorities for the need to address defamation of religion creates an environment of fear and self-censorship. The emergence and strengthening of religious nationalism or of national identities associated with religion across the region can trigger violence, especially against minorities.

Many States in the region recognise or prioritize one religion over others in their constitution and institutional structures, which perpetrates systematic discrimination, leading to violence. This is particularly so when national identity cards and other documents indicate the religion of the holder.

Impunity by States, when state authorities are perpetrators themselves, or fail to bring others to justice results in a low reliance on justice systems. The practice of governments legitimising violence over a period of time creates an institutionalised system that counters dissent. Strong socio-political and legal influence of religious groups and extremist factions on the state, along with propagation and promotion of religion within the state structure prevents or impedes secular training of security agencies and judicial mechanisms.

Where disharmony exists among religious groups, either in general or as part of a historic or political context in the particular State, violations of freedom of expression and freedom of

religion become more apparent. These conflicts, when unaddressed or not reconciled, lead to a cycle of violence and violations.

Laws and legal policies relating to limits on freedom of expression when intersecting with religion are a particular area of concern. Laws on blasphemy, particularly, are very worrisome, as victims rarely get access to fair trials and are often exposed to mob violence. Human rights defenders and lawyers are finding it difficult to advocate for changes in laws and defend victims.

Online spaces have come under severe attack and hate speech online in relation to religion remains unaddressed. Women and SOGI groups experience gendered violations of freedom of expression and religion often based on cultural and social norms and expectations. Similarly, the targeting of women and SOGI groups online is also heightened on account of religious prescription, expectations and sensitivities.

Groups at risk or victims of violations in their exercise of freedom of expression on account of religion or religious sensitivities include: persons exercising and defending freedom of expression and religion; minorities; women; SOGI persons and SOGI rights advocates; media; journalists; opposition parties; artists; authors; youth groups; atheists; moderate and liberal voices; persons not belonging to state religions; migrant workers; Internet users; lawyers; academics; and human rights defenders.

Largely, violations are perpetrated by: state authorities and security forces; political parties in power; political parties with extremist agendas or intolerant views; religious bodies; extremist groups; media; organised crime groups; and citizens themselves.

## KEY CHALLENGES

Bangladesh has experienced severe political breakdown over the last few years, the effect of which has been an increasingly hostile environment for free expression. Bloggers and academics have particularly come under attack for their views on political issues and religious extremism. Many bloggers have been arrested for their posts and over the last two years several bloggers have been brutally killed for their views on religion.

Bloggers and secular voices are branded as anti-state, atheists or anti-religion which makes them vulnerable to attacks by non-state actors, such as religious extremists. This makes it very difficult for bloggers to express diverse views without being intimidated or harassed.

A list of names of bloggers in the country was leaked to the public, which led to not just exposing their anonymous covers but harassment and murders. Families and friends of both the bloggers and academics, and these communities on the whole have been intimidated due to continuous attacks.

Journalists are threatened and attacked by different organised crime groups, political party activists, and religious groups. Extremist factions of religious organisations have emerged as an increasing threat to the safety of journalists and online activists, and as a force against tolerance, pluralism, gender equality, non-violence and diversity. Some journalists have expressed that they are forced to engage in self-censorship when reporting on sensitive topics like the military, judiciary and religion.

There have been multiple cases where newspapers and journalists have been charged under the defamation law. The allocation of broadcast spectrum for television channels is often seen to be a way to exert control and a form of censorship.

The executive and judiciary have engaged in: content blocking; restricting access to the Internet; compromising the right to privacy; failing to check hate speech; permitting surveillance; and intimidation of individuals who take to the Internet to voice critical opinions. There are



also barriers to freedom of expression and right to information in Bangladesh, especially on matters relating to religious views, both moderate and extreme. This is now harsher with the amendments to the Information and Communication Technology Act<sup>3</sup> introduced in 2013 which criminalises several forms of expression.

Another challenge pertains to the lack of recognition of the status and rights of indigenous persons. It was reported that tribal groups are unable to exercise their freedom of expression on religious matters and on issues relating to their beliefs.

The deep connection between certain political parties and religious groups has resulted in religion playing a central role in politics. This has caused much manipulation within the political sphere, and those exercising their freedom of expression and religion are attacked by multiple actors, including the security apparatus with no protection from the State.

#### LAWS GUARANTEEING FREEDOM OF EXPRESSION AND RELIGION

Although Bangladesh was declared a secular State in 1972, subsequent amendments to the Constitution of Bangladesh,<sup>4</sup> such as Article 2A, declare Islam as the State religion and provide equal status and rights to other religions.

Article 12 and Article 41 of the Constitution provide for secularism and freedom of religion. Article 39 guarantees freedom of thought and conscience and speech.

#### LAWS IMPACTING FREEDOM OF EXPRESSION AND RELIGION

Sections 295, 295A and 298 of the Penal Code of Bangladesh<sup>5</sup> impose punitive measures for making derogatory comments against one's religious belief. Section 57 of the Information and Communication Technology Act includes hurting religious belief as basis for criminal action. Provisions of the Anti-Terrorism Act<sup>6</sup> subsequent to amendments in 2013 are also a threat to freedom of expression in the context of religion, as persons can be targeted for expressing views that are seen as anti-state.

The National Broadcast Policy, 2014<sup>7</sup> is used to censor media and journalists in their coverage of

3 See available at [http://www.ictd.gov.bd/site/view/legislative\\_information/Acts](http://www.ictd.gov.bd/site/view/legislative_information/Acts)

4 See The application of international human rights law in Islamic states." Human Rights Quarterly (1990): 202-230. Donna E. Arzt, available at [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=367](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367)

5 See Decriminalisation of consensual same-sex sexual acts in the South Asian Commonwealth: struggles in contexts, Sumit Baudh. LGTBL.indd available at

6 See Bangladesh: New Amendment to Anti-Terrorism Act Gags Freedom of Expression." Worldwide Movement for Human Rights (2013) available at <https://www.fidh.org/en/region/asia/bangladesh/bangladesh-new-amendment-to-anti-terrorism-act-gags-freedom-of-expression-13457>

7 See National Broadcast Policy 2014 Gazette Issued, Dhaka Tribune. Mohosinul Karim. 7 Aug. 2014. available at <http://archive.dhakatribune.com/bangladesh/2014/aug/07/national-broadcast-policy-2014-gazette-issued>

religion related issues, and also violates the freedom of expression of these entities themselves.

## SIGNIFICANT CASES

Between 2014 and 2016 over 10 bloggers and an LGBT rights activist have been killed for their online commentary.<sup>8</sup> In 2015, four writers and bloggers, Faisal Arefin Dipon, Avijit Roy, Oyasiqur

Rahman and Ananta Bijoy, were killed for their views on Islam and other religions. Many kill lists have appeared with more names of bloggers on them. Some bloggers have gone into hiding and others have left the country fearing for their own and their families' safety. In 2013, many bloggers were killed, including Ahmed Rajib Haider. In the same year Asif Mohiuddin survived an attempt on his life.

In 2013, bloggers and members of civil society participating in the Shahbag movement were subjected to serious attacks by the State and non-state actors and were arrested. The arrested citizens had raised their voice on political actions of the State and criticised persecution on grounds of religion.

In late 2013, in response to the mentioned agitation, Bangladeshi government constituted a committee to track bloggers and Facebook users making derogatory statements about the Prophet Mohammed of Islam. Following this, an extremist group put together a list of the name of bloggers who wrote on religion. This list of 84 names has been made public, putting the lives of those individuals in jeopardy. Over seven individuals from this list have been killed.

In April 2013, four bloggers, Rasel Parvez, Mashiur Rahman, Asif Mahiuddin and Subrata Adhikari, were arrested on charges of making derogatory comments against Islam. They have been released on bail since. In the same month, the state telecommunications commission removed the majority of posts from two blog sites, citing defamation of Islam.

In April 2013, the editor of the Amar Desh newspaper, which had opposed the ruling government, was arrested on charges that included printing false information in order to incite religious tension.

Three private television channels, Channel One, Diganta TV, and Islamic TV, were shut down by the Government. Diganta TV and Islamic TV were closed in March 2013 for broadcasting the crackdown of law-enforcement agencies against demonstrators at Motijheel in Dhaka.

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<sup>8</sup> See Global Voices · Bloggers Under Fire: The Fatal Consequences of Free Thinking in Bangladesh." Global Voices Overall RSS 20 available at <https://globalvoices.org/specialcoverage/bloggers-under-fire-the-fatal-consequences-of-free-thinking-in-bangladesh/>



In 2014, former ICT Minister Abdul Latif Siddique was charged under section 298 of the Penal Code for allegedly making comments against the annual Muslim pilgrimage (Hajj) in an informal meeting outside Bangladesh.

## VICTIMS AND VULNERABLE TARGETS

Bloggers, women, religious, ethnic and sexual minorities, non-believers or atheists, secular voices, moderates and liberals, human rights defenders, journalists and media personnel along with political activists are among the vulnerable targets for attacks and violations of freedom of expression on the basis of religious sentiments.

## PERPETRATORS

Extremist militant groups, religious bodies, political parties (ruling and opposition) and their activists, state security apparatus including army, police and Rapid Action Battalion (RAB) were cited as known perpetrators of violations and violence.

B . INDIA

## CHALLENGES TO FREEDOM OF EXPRESSION AND RELIGION

Increasing use of religion as a political tool, especially during election periods, has resulted in the heightening of tensions and crackdowns on freedom of expression in India. Religious right wing groups and extremist groups yield influence in political and policy making processes, which contributes to violations committed by them going unchecked.

Crackdowns on online expression, especially using provisions from the Information Technology Act,<sup>9</sup> have become a common feature. These provisions are being used to curtail dissent and criticism, especially against those in power.

Hate speech against religious minorities and progressive voices are allowed and encouraged by the state and political authorities, which further compromise citizens' security and cause violations of freedom of expression.

Fusion of religious values with moral, cultural and social expectations has become a serious issue, particularly for women and persons with differing sexual orientation or gender identity, exposing them to additional attacks. Human rights defenders working on freedom of expression and religion issues or accountability for perpetrators of violence against minorities are targeted and harassed through various means.

<sup>9</sup> See Open proxy: a road block for phishing investigations. *i-Manager's Journal on Information Technology*, S Purkait (2012) available at <https://scholar.google.com/citations?user=kL6pRDUAAAAJ&hl=da>

Human rights defenders working on freedom of expression causes and advocating against impunity on religious violence have been branded as anti-state, making them vulnerable to attacks. Satirical work and artistic freedoms have faced severe attacks. Any religious group objecting to such work is sufficient to create panic and invocation of criminal charges.

Religious values of the majority are thrust upon non-conformists and minorities through legalisation of such prescriptions. Women are particularly discriminated in places of worship and some places prohibit access to women entirely or during the menstrual period.<sup>10</sup>

## LAWS GUARANTEEING FREEDOM OF EXPRESSION AND RELIGION

The Preamble of the Constitution of India<sup>11</sup> explicitly recognises the secular nature of the State. It also resolves to secure liberty of thought, belief and expression for all Indian citizens. Article 19(1) (a) guarantees freedom of expression. Articles 25, 26 and 28 guarantee freedom of religion and conscience.

## LAWS IMPACTING FREEDOM OF EXPRESSION AND RELIGION

Article 19 (2) of the Indian Constitution prescribes limitations on the exercise of freedom of expression. Similarly, Articles 25 and 26 also prescribe limitations on freedom of religion.

Sections 153a, 153b and 505 of the Indian Penal Code (IPC)<sup>12</sup> and Section 295 of the Code of Criminal Procedure<sup>13</sup> deal with hate speech. These provisions have been criticised for being ineffective and have been abused to target certain individuals.

Section 292 of the Penal Code deals with the prohibition of publications which are deemed obscene. This provision has become problematic given the increasing influence of religious views to determine what is obscene. The Criminal Procedure Code in Section 95 empowers state governments to seize and prohibit publications that appear to violate any of the six provisions of the Indian Penal Code mentioned in the section.

Section 295A of the Indian Penal Code penalizes those who insult religion or religious freedoms. Section 298 deals with uttering words that may wound religious feelings.

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10 See <https://www.theguardian.com/global-development/2016/jan/13/menstruation-temples-mosques-india-ban-women>

11 See Constitution of India -- with All the Amendments. Legislative Department, Ministry of Law and Justice available at <http://indiacode.nic.in/coiweb/welcome.html>

12 See About India Code Updated Acts. India Code Legislative Department available at <http://indiacode.nic.in/>

13 Ibid.

Further provisions, related to sedition in Section 124A and defamation in Section 499 of the Penal Code, create a challenging environment for freedom of expression.

Provisions of the Information Technology Act<sup>14</sup> allow for arrests and removal of content violating prescriptions in the sections.

## SIGNIFICANT CASES

A ban on beef consumption was imposed, as beef is considered hurtful to sentiments of Hinduism, the majoritarian religion of the State. Persons voicing their dissent against such prohibitions came under severe criticism, harassment and threat.

In 2015 and 2016 movies and artistic work such as PK, Angry Indian Goddesses and Aligarh were subject to criticism, censorship and footage cuts on the basis of religious and moral sentiments. A case was filed against the producer, director and lead actor of PK, and Aligarh was put under a tentative ban in the Aligarh district. Artists coming out against growing intolerance also had criminal complaints filed against them. In 2010, a ten day ban was imposed on a show on American channel Comedy Central based on charges of obscenity.

In 2015 Shireen Dalvi , editor of an Urdu newspaper was hounded by Muslim extremist groups and clerics for reprinting an old cover of the French magazine Charlie Hebdo, and publishing the story of the terrorist attack on the magazine that killed twelve staffers in Paris. Multiple cases were filed against Dalvi. She had to relocate to escape attacks. Dalvi was rendered unemployed with two children to raise.<sup>15</sup>

In 2015, a satirical work, AIB Knockout by the comedy collective All India Bakchod (AIB) came under attack for insulting Christianity in their jokes on Jesus Christ and for portraying priests as molesters. Multiple cases were filed against the group and its members, forcing them to apologise. State officials pushed for removing their content from online spaces .

In 2014, two women were arrested for a Facebook post criticising the shutdown in Mumbai for the funeral of Bal Thackeray, chief of Shiv Sena, a far-right extremist regional political party.

In 2014 Wendy Doniger's book, The Hindus: An Alternative History was removed from bookstores and the publishing house pulled out after protests by religious groups. Another book by the author was also put on hold from republishing. Similarly, Mathorubagan, a book by

<sup>14</sup> See Information Technology Act, Government of India, Ministry of Electronics and Information Technology available at <http://deity.gov.in/content/information-technology-act>

<sup>15</sup> See Six Months since She Published Charlie Hebdo Cover, Urdu Editor Struggles for Work and Money. *Scroll.in*. 15 July 2015 available at <http://scroll.in/article/739406/six-months-since-she-published-charlie-hebdo-cover-urdu-editor-struggles-for-work-and-money>

Perumal Murugan evoked protests by religious groups. The authorities failed to provide adequate protection and the author thus announced a symbolic funeral of him as an author and has refused to write any further. Kanchalliah, a writer faces criminal charges for an article on his views on Hindu gods in Hyderabad.

In May 2015, Indian Institute for Technology Madras, an educational institution, de-recognized Ambedkar Periyar Student Circle for its views on the government and reservation policies. For a long time, the student body has also voiced their opinions on religion and caste discrimination.

In 2014, a Muslim youth was killed by a mob for posting a comment on Facebook that a few Hindu groups and persons found offensive.

Over the last five years, leading human rights defender Teesta Setalvad and the organisation she works for have come under repeated attacks for pursuing a case against impunity for victims of religious persecution and riots in Gujarat.

Incidents of moral policing have also been reported in the last few years. On many occasions couples seen celebrating Valentine's Day have been attacked and harassed by extremist groups and the police. Engaging in such moral policing led to a widespread "Kiss of Love" campaign, and many protesters were arrested.

Places of worship, such as the Sabarimala temple and Shani Shingnapur, prohibit entry of women and the Charminar prohibits entry of single women. Advocate Naushad Ahmed Khan fighting a case against such prohibitions had to seek security on account of threats received in 2016. Women during their menstrual period are generally prohibited entry to most temples.

## VICTIMS AND VULNERABLE TARGETS

Women, minorities and minority religious institutions, journalists, human rights defenders advocating for accountability for violations of freedom of religion and expression, artists and authors, youth not conforming to orthodox societal prescriptions, SOGI persons and advocacy groups are primary targets for rights violations.

## PERPETRATORS

Religious extremist forces and institutions, politicians and their supporters, security personnel, media persons and education institutions are some of the obvious perpetrators of freedom of expression and freedom to religious rights violations.

## CHALLENGES TO FREEDOM OF EXPRESSION AND RELIGION

Pancasila is the official State policy in Indonesia, and includes a reference to faith in one and only one god. This policy is often used to curb and punish religious expression. Besides what may officially or legally qualify as blasphemous, any expression that extremist religious groups object to comes under attack.

Religions that the State does not officially recognise are unprotected and come under attack. This also means that the State only endorses monotheist views.

Atheism is regarded as an attack on Pancasila, and the 2010 Constitutional review which upheld the validity of blasphemy laws confirms this. The same applies to local religions and indigenous forms of worship. Fatwas issued by the Indonesian Ulema Council (MUI), which is a body affiliated with the government, often forms the basis for attacks on individuals and encourage mob violence.

The media and citizen journalists feel forced to engage in self-censorship for fear of reprisals when discussing freedom of expression and religion issues. If arrested on blasphemy charges, the accused is usually detained throughout the pre-trial phase and access to justice becomes problematic.

Provincial or state level laws are often in contradiction with national and international guarantees in relation to freedom of expression and religion.

## LAWS GUARANTEEING FREEDOM OF EXPRESSION AND RELIGION

The Preamble and Article 29(1) of the Constitution of Indonesia<sup>16</sup> explain the belief of the State in one and only one god. Religion is also regarded as one of the five pillars of the State known as Pancasila. However, the Ministry for Religious Affairs (MORA) recognises six religions, Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism.

Article 28E (1), Article 28I(1) and Article 29(2) guarantee freedom of religion. Article 28, Article 28E(2) and Article 28E(3) guarantee freedom of belief and expression.

Similarly, the Human Rights Law No 39/1999<sup>17</sup> guarantees these rights. Articles 4 and Article

<sup>16</sup> See Indonesia Republic of Indonesia / Republik Indonesia. Guide to Law Online: Indonesia available at <https://www.loc.gov/law/help/guide/nations/indonesia.php>

<sup>17</sup> See UU RI No. 31/1999 ERADICATION OF THE CRIMINAL ACT OF CORRUPTION. Law no. 31 of 1999 on Corruption Eradication.pdf available at <http://www.flevin.com/id/lgso/translations/Laws/Law%20No.%2031%20of%20>

22 deal with freedom of thought, conscience and religion. Articles 23 and Article 25 guarantees freedom of expression.

## LAWS IMPACTING FREEDOM OF EXPRESSION AND RELIGION

Article 28(j) of the Constitution lists respecting religious views as grounds for limitation of constitutionally-guaranteed human rights. Article 36 of the 1998 Decree of the People's Consultative Assembly on Human Rights mentions "moral consideration, security and public order in a democratic society" as factors that may limit individual rights and freedom. 1999 Law on Human Rights<sup>18</sup>, in Article 73, recognises prohibitions based on morals or moral decency, public order and national interest. Article 23 incorporates "religious values" as an additional limit.

Articles 154, 155 and 156(A) of the Penal Code<sup>19</sup> criminalise blasphemy and also provides for monetary sanctions. Article 157(1) of the Penal Code prohibits acts that cause hostility, hate or contempt. Article 177 of the Penal Code specifically penalises ridiculing the minister of a religion and jeering at objects of worship. This is supported by other laws such as the Law for the Prevention of the Defamation of Religion and Elucidation of the Defamation of Religion Law (No. 1/PNPS/1965 on Prevention of Misuse and/or Defamation of Religion.<sup>20</sup>

The Law on Civil Administration, 2003 recognises six religions and has been used as the basis for crackdown on other groups. Article 30E (3) of the Law on State Prosecutors, 2004<sup>21</sup> makes it the responsibility of the office to monitor beliefs that are dangerous to society and are defamation of religion. A Joint Ministerial Decree in 2008 prohibits Ahmaddiya Muslims, a minority sect of Islam, from worshipping in public with criminal and monetary sanctions.

The Law on Societal Organisations (No. 17/2013) in Articles 5 (c), 21 (c) and 59 prohibits organisations from working against the Pancasila or to hold, develop, and disseminate atheism or other such beliefs.

The Law on Electronic Information and Transactions, 2008<sup>22</sup> prohibits the misuse of technology which may be seen against religious values and Article 28(2) forbids inciting hate or hostility. The Law on Film, 2009<sup>23</sup> in Article 5 recognises religious values as a valid restriction. The law

[1999%20on%20Corruption%20Eradication.pdf](#)

18 See Asia Pacific Forum of National Human Rights Institutions available at <http://www.asiapacificforum.net/members/full-members/indonesia/downloads/legal-framework/indonesiaact.pdf>

19 See Indonesian Penal Code. I.1\_Criminal\_Code.pdf available at [http://www.unodc.org/res/cld/document/idn/indonesian\\_penal\\_code\\_html/I.1\\_Criminal\\_Code.pdf](http://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf)

20 Available at <http://www.kemenag.go.id/file/dokumen/UU1PNPS65.pdf>

21 Available at <http://www.lgsonline.com/pages/g/lgsimp353/node/lgs4a1d783104616>

22 See LAW OF THE REPUBLIC OF INDONESIA No. 11 OF 2008. Law No. 11 of 2008 on Electronic Information and Transactions available at [http://www.flevin.com/id/lgso/translations/JICA%20Mirror/english/4846\\_UU\\_11\\_2008\\_e.html](http://www.flevin.com/id/lgso/translations/JICA%20Mirror/english/4846_UU_11_2008_e.html)

23 Available at <https://masyarakatfilmindonesia.files.wordpress.com/2009/09/ruu-perfilman-final->

prohibits hate, hostility and defamation of religion.

## SIGNIFICANT CASES

A case of blasphemy was filed against the chief editor of the Jakarta Post for a caricature relating to terrorist group ISIS which was published in July 2014.

The music group Dewa has come under attack by Muslim and Hindu groups for their art work on the cover of CDs and other posters.

In 2012, Tajul Muluk, a Shia religious leader of a village in Sampang, Madura, East Java was arrested. He was found guilty of defamation of religion in accordance with Article 156A of the Penal Code for teaching unorthodox interpretations of Islam to his students. The High Court while increasing his sentence used the attacks made against his family as a justification on the basis of “maintaining public order”. Shias are followers of Shi’ism, the second largest sect of Muslims after Sunnis.

In 2007 the Indonesian Students Service, a Protestant organisation came under attack for a video where ten members were arrested for insulting Islam. In 2009, Bakri Abdullah, a 70-year-old man was arrested on blasphemy charges for claiming to be a prophet of Islam.

In 2011 a District Court was stormed by a mob when a Christian accused of blasphemy was sentenced. The mob regarded the punishment as too lenient.

In 2010, Abraham Felix, a minor girl was arrested and then sentenced over a blog deemed as insulting the Koran.

## VICTIMS AND VULNERABLE TARGETS

Religious minorities such as Ahmadiyyas, Shias and Bahais, civil society groups such as the Liberal Islam Network (JIL), media, journalists and bloggers, atheists, persons belonging to non-recognised beliefs are among those who are threatened and attacked for exercising their freedom of expression on account of religious sentiments.

## PERPETRATORS

Extremist outfits and clergies associated with them, political parties and their supporters, and the security forces are among those who are seen as perpetrators of violations.

## CHALLENGES TO FREEDOM OF EXPRESSION AND RELIGION

Restrictions on and harassment of journalists and media houses covering stories related to religion are common in Malaysia. Books are banned and artistic forms of expression censored when discussing liberal approaches and practices of religion, as they are deemed hurtful to religious sentiments.

Sedition charges and threats of prosecution are used against individuals whose comments on religion or religious issues run contrary to majority views. Opposition political party members and supporters are targeted for their views on religion related issues.

Followers of the Ahmadi and Shia sects of Islam are unable to pray in public or associate among themselves freely. Similarly, inter-faith meetings are often attacked or disrupted.

Content on websites is filtered and removed if deemed to be hurtful to religious sentiments. Civil society organisations also face censorship, and are harassed for work that may contradict majority religious views.

Another significant challenge is the use of provincial laws penalising apostasy and conversion, even though clear regulations do not exist at the national level.

## LAWS THAT GUARANTEE FREEDOM OF EXPRESSION AND RELIGION

Article 3 of the Federal Constitution of Malaysia<sup>24</sup> recognises Islam as the state religion of the federation.

Articles 3 and 11 of the Constitution guarantee freedom of religion. Article 11(4), however, restricts the propagation of any religion among those following Islam. Article 10 provides for freedom of expression.

## LAWS THAT IMPACT FREEDOM OF EXPRESSION AND RELIGION

Sections 298 and 298(A) of the Penal Code of Malaysia<sup>25</sup> deal with offences against religion, and penalise hurting religious sentiments and causing hatred. Recent amendments to the Sedition Act<sup>26</sup> have brought religion within the purview of sedition, and thus, comments or acts seen as

<sup>24</sup> See The Federal Constitution of Malaysia, available at <https://www.scribd.com/doc/49248227/The-Federal-Constitution-Of-Malaysia>

<sup>25</sup> See Penal Code Act No (574). Criminal and penal law, Malaysia. NATLEX Database of National Labour, Social Security and Related Human Rights Legislation available at [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=61339&p\\_country=MYS&p\\_count=199](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=61339&p_country=MYS&p_count=199)

<sup>26</sup> Available at <http://www.agc.gov.my/Akta/Vol.%201/Act%2015.pdf>



critical of religion may attract sedition charges. As such, this act has been used to silence dissent and clamp down on political opposition and civil society. The Internal Security Act 1960<sup>27</sup> is also used to detain people under such circumstances.

Section 7(1) of the Printing Presses And Publications Act 1984,<sup>28</sup> and the Publication Prohibition Order,<sup>29</sup> Film Censorship Act<sup>30</sup> and the Communications and Multimedia Act<sup>31</sup> are some of the laws used to control, censor or punish discussions critical of religion in the media.

Schedule 9 List II<sup>32</sup> of the State List under Federal Constitution on Malaysia criminalises actions against the ‘precepts of Islam’. Thus, numerous provincial laws, such as the Syariah Criminal Offences Act (SCOA) 1997,<sup>33</sup> also restrict freedom of expression by prohibiting and punishing apostasy.

## SIGNIFICANT CASES

In 2015 a court ruling prohibited the use of the term “Allah” by non-Muslims. Bibles printed in Malay, referring to God as Allah, were seized. In 2014, two Molotov cocktails were thrown into a church compound in Penang, a day after banners that read “Allah is Great” and “Jesus is the son of Allah” were put up by unknown individuals in five churches in Penang, including the one that was attacked. Both these incidences are thought to be related to the larger controversy surrounding the use of the term “Allah” by Malaysian Christians.

Authorities have banned books by Faisal Tehrani, Sisters in Islam, Irshad Manji, Karen Armstrong and others who offered differing views on Islam or religion. In 2012, a bookstore called Borders was raided, and copies of Irshad Manji’s, ‘Allah, Love and Liberty’ were confiscated. Borders’ manager, Nik Raina, was then charged for selling the banned books.

In September 2015, the Federal Court ruled that a state legislative assembly can impose limitations on freedom of speech to protect the sanctity of Islam in the case of ZI Publications

27 See Internal Security Act, 1960 (No. 82 of 1960). Freedom of association, collective bargaining and industrial relations. NATLEX Database of National Labour, Social Security and Related Human Rights Legislation available at [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=48007&p\\_country=MYS&p\\_count=199](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=48007&p_country=MYS&p_count=199)

28 See ACT 301 Printing Press and Publications Act 1984. Laws of Malaysia, online version of updated text of reprint, available at <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20301%20-%20Printing%20Presses%20And%20Publications%20Act%201984.pdf>

29 See Military gazettes prohibition order on publication of two books. Borneo Post Online (June 12, 2014) <http://www.theborneopost.com/2014/06/12/ministry-gazettes-prohibition-order-on-publication-of-two-books/>

30 See Film Censorship Act 2002. Malaysian Legislation, available at [http://www.commonlii.org/my/legis/consol\\_act/fca2002173/](http://www.commonlii.org/my/legis/consol_act/fca2002173/)

31 See Act 588 COMMUNICATIONS AND MULTIMEDIA ACT 1998. Laws of Malaysia, reprint, available at [https://www.unodc.org/res/cld/document/mys/communications\\_and\\_multimedia\\_act\\_html/Malaysia\\_Communications\\_and\\_Multimedia\\_Act\\_1998.pdf](https://www.unodc.org/res/cld/document/mys/communications_and_multimedia_act_html/Malaysia_Communications_and_Multimedia_Act_1998.pdf)

32 See NINTH SCHEDULE LEGISLATIVE LISTS. Constitution of Malaysia 1957, available at <http://www.commonlii.org/my/legis/const/1957/24.html>

33 See Syariah Criminal Offences (Federal Territories) Act 1997 - Act 559. Available at [http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng\\_act\\_lib.nsf/858a0729306dc24748257651000e16c5/bced11b697691518c8256826002aaa20?OpenDocument](http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/858a0729306dc24748257651000e16c5/bced11b697691518c8256826002aaa20?OpenDocument)

SdnBhd vs. Selangor Legislative Assembly. Director of ZI Publications Mohd. Ezra was charged for his involvement in the publication of Irshad Manji's book 'Allah, Love and Liberty'.

In March 2015, the editors and publisher of The Malaysian Insider were arrested and investigated using the Sedition Act over an article on the introduction of Hudood Law in Kelantan. Earlier Teresa Kok, a Member of Parliament belonging to an opposition party, was arrested on allegations that she had made remarks insulting Islam. She was released shortly after, however, her suit for unconstitutional arrest was dismissed. Arrest and charges of sedition were also made against Eric Paulsen, a lawyer, for a Tweet on Friday sermons.

Dr. Kassim Ahmad, an 81-year-old academic and activist, was arrested by the Federal Territory Islamic Religious Department (JAWI) in March 2014 under Section 7 of the Syariah Criminal Offences Act (SCOA) 1997<sup>34</sup> for allegedly making statements that might mislead Muslims. The second offence he was accused of, under Section 9 of the same act, was violating a fatwa and acting in contempt of religious authorities.

In March 2015 a female presenter was investigated for an online video for BFM, a radio station which questioned the relevance of implementing the religious penal law better known as the Hudood Law in Kelantan. She received death and rape threats which were not addressed, and she instead had to apologise and clarify that her comments concerned politics and not religion.

In March 2014, 114 people, including women and children, allegedly Shia Muslims, were arrested in Perak and detained under the Syariah Criminal Procedure Enactment, 2004<sup>35</sup> for attending an event that celebrated the birth of Siti Zainab, the daughter of Islam's fourth caliph, Ali.

In July 2014, the Selangor Islamic Religious Council (MAIS) gazetted a fatwa declaring SIS Forum (Malaysia), otherwise known as the Muslim women's rights group Sisters in Islam (SIS), and any other similar "individuals, organisations or institutions" as deviant. The fatwa called for any publications deemed "liberal and plural" to be banned and seized. In addition, it called for any form of social media that went against the "ajaran Islam dan hukum Syarak" to be blocked by the Malaysian Communications and Multimedia Commission (MCMC).

## VICTIMS AND VULNERABLE TARGETS

Activists, especially women's rights NGOs and women human rights defenders are targeted, and minorities, including Ahmadis, Syiahs, Malay-speaking Christian communities & indigenous people, migrant workers, Internet users, SOGI individuals & groups, media and journalists, artists and writers, opposition political parties, activists and youth leaders are vulnerable to violations.

<sup>34</sup> See Appeals Court Rules Prosecution on Kassim Ahmad Null and Void. *Astro Awani* 21 Dec. 2015. Available at <http://english.astroawani.com/malaysia-news/appeals-court-rules-prosecution-kassim-ahmad-null-and-void-86071>

<sup>35</sup> See Malaysia - Human Rights Report, Suaram, 2014. Available at [http://www.suaram.net/?page\\_id=7234](http://www.suaram.net/?page_id=7234)

## PERPETRATORS

State agencies - including regulatory and religious bodies, security forces, political parties and their supporters, state-sanctioned or supported organisations, sections of the media and religious bodies are among prominent sources of perpetration and violations of freedom of expression and religion.

## E. MALDIVES

### CHALLENGES TO FREEDOM OF EXPRESSION AND RELIGION

Islam is the only religion recognised by the state; no other religions are acknowledged in the Maldives. In addition, any comments that are seen as harmful to religion can result in fines, jail time, or expulsion.

Those who advocate moderate views or tolerance are branded un-Islamic and subjected to threats and attacks. Gangs and political parties have deep connections that are used to quiet dissent on matters related to religion. Self-censorship has become the norm for writers and bloggers.

### LAWS THAT GUARANTEE FREEDOM OF EXPRESSION AND RELIGION

Article 2 of the Constitution of Maldives<sup>36</sup> recognises the Republic as based on the tenets of Islam. According to Article 10(A), the religion of the state is Islam. Article 10(B) requires that no law contrary to Islam be enacted in the Maldives. Article 9(D) prohibits a non-Muslim from becoming a citizen.

Article 27 of the Constitution guarantees freedom of expression provided it is not contrary to the tenets of Islam. Article 28 guarantees freedom of the media and Article 29, freedom of information.

### LAWS THAT IMPACT FREEDOM OF EXPRESSION AND RELIGION

Provisions of the Protection of Religious Unity among Maldivians Act<sup>37</sup> are particularly used to shut down any discussions on religious matters. People who make statements that harm religious unity are subject to two to five years in prison or deportation for foreigners.

<sup>36</sup> See Functional Translation of the Constitution of the Republic of Maldives 2008. Ministry of Legal Reform Information and Arts, available at <http://www.majlis.gov.mv/en/wp-content/uploads/Constitution-english.pdf>

<sup>37</sup> See The Institute on Religion and Public Policy Debate: Religious Freedom in the Republic of Maldives available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/MV/IRPP\\_InstituteonReligionandPublicPolicy.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/MV/IRPP_InstituteonReligionandPublicPolicy.pdf)

In September 2014 the government introduced the Regulation on Authorisation of Literary and Artistic Works Published in the Maldives<sup>38</sup> that could “standardise all literature, poetry, prose, film and photography publicised and published in the Maldives in accordance with laws and regulations of the Maldives and its societal etiquette”, and to “reduce adverse effects on society that could be caused”. The government responded to the uproar of free speech campaigners by claiming that it will amend the regulation in order to protect intellectual creators.

In August 2016 parliament passed the Defamation Bill, which criminalises defamatory speech, remarks, writings and actions that include gestures deemed to be against “any tenet of Islam” in the Muslim-majority country.<sup>39</sup>

## SIGNIFICANT CASES

In 2010, Mohamed Nazim was arrested for renouncing his faith at a public meeting and, as a result, had to retract his statement. He has faced harassment from various sections.

In late 2012, the State of the Maldives investigated Minivan News, an online news outlet, for a reader comment on its website that offended Islam. Minivan removed the comment.

In 2014, Ahmed Rilwan Abdullah, a Minivan journalist, disappeared. He had been receiving threats for his critical reporting on Islamist groups and some politicians. He was also branded un-Islamic. It is suspected that a gang was involved in his disappearance. Similarly, Shammooon Jaleel, a writer and social media activist, was threatened for his views on extremist groups and their possible involvement in criminal activity, and had to flee the country. In 2012, Dr. Afrasheem Ali, former member of the Maldivian parliament was killed after expressing his views on religion on a television show.

In 2014, Hamza Mohamed, moderator of “Colourless”, a Facebook page promoting secularism and tolerance, was abducted by gang members. Hamza was later rescued. In 2015, Yameen Rasheed, a blogger was arrested for participating in a protest and has been receiving threats to stop his un-Islamic ways.

## VICTIMS AND VULNERABLE TARGETS

Any person not overtly seen as complying with Islam, progressive Muslims that advocate for religious tolerance, print and online media, NGOs, writers, bloggers, social media activists, political parties, women and SOGI groups, along with migrant workers, find it challenging to exercise their freedom of expression on account of religious sensitivities.

<sup>38</sup> Unofficial translation available at [minivannewsarchive.com](http://minivannewsarchive.com)

<sup>39</sup> See Maldives approves defamation law, criticised by UN., UN. Reuters (August, 2016) <http://in.reuters.com/article/maldives-rights-defamation-idINKCN10K22F>

## PERPETRATORS

Government officials including those belonging to ministries and departments related to religion, particularly the Ministry of Islamic Affairs and the Ministry of Education, security forces, religious extremist groups, political parties and their supporters, along with gangs are the primary forces of violations of freedom of expression and religion.

## F. MYANMAR

### CHALLENGES TO FREEDOM OF EXPRESSION AND RELIGION

The recognition or special mention of Buddhism in the Constitution of Myanmar<sup>40</sup> leaves other groups with a sense of lesser significance, creating a situation where Buddhism is regarded as the de facto religion of the State. On the other hand, many minority Buddhist sects are not recognised by the state appointed Ma-Ha-Na, and are targeted in the exercise of freedom of expression.

Hate speech is rampant against minorities, with some groups being branded illegal immigrants and anti-Buddhists. Publications and speeches perpetrating hate are unchecked. Particularly, the denial of nationality to the Rohingya people, leaving them stateless and without the ability to voice themselves, puts them at an added disadvantage when exercising their rights.

The space for atheists and non-believers to express themselves or to hold discussions on belief systems outside the five recognised religions is shrinking. They are becoming targets for attack. With growing religious nationalism it is difficult for minorities, especially Muslims, to find a space in public or in the media to express their views or to explain their living conditions. Additionally, penal and other legal provisions on insulting religion are only used to protect the majority religion, and against minorities and liberal voices.

Freedom of assembly is heavily compromised. For any form of protest the civil society is required to request permission to hold events, thereby limiting space for freedom of expression on issues pertaining to religion. Similarly, members of minority religious associations have been targeted and attacked.

### LAWS THAT GUARANTEE FREEDOM OF EXPRESSION AND RELIGION

Article 361 of the Constitution of Myanmar recognises the special position of Buddhism as the faith professed by the great majority of the Union. Article 362 recognises Christianity, Islam,

<sup>40</sup> Please see Constitution of the Republic of the Union of Myanmar (2008), NATLEX Database of national labour, social security and related human rights legislation available at [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=79572&p\\_classification=01.01](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=79572&p_classification=01.01)

Hinduism and Animism as the other religions existing in the Union.

Articles 34 and 354(D) of the Constitution guarantee the right to religion, while Article 360 prescribes additional limits on the exercise of Article 34 and provides the State with the mandate to regulate this right for the purpose of public welfare and reform. Article 363 states that the Union may assist and protect the religions it recognises. Article 354(A) guarantees freedom of expression and publication of opinion and convictions.

## LAWS THAT IMPACT FREEDOM OF EXPRESSION AND RELIGION

Article 364 of the Constitution forbids the use of religion for political purposes, and declares any act done or likely to promote enmity on the basis of religion against the Constitution. Section 295(A) of the Penal Code<sup>41</sup> criminalises deliberate and malicious acts intended to outrage religious feeling of any class by insulting its religion or beliefs. And section 298 deals with uttering words to wound religious feelings.

Section 8 and 9 of the Law Relating to the Sangha Organisation<sup>42</sup> prohibits the forming of new Buddhist sects. Section 10 specifically prohibits expression which may disintegrate the recognised sects and Sections 12 and 13 penalise those engaging in such acts of forming new sects or expressing views. The 1983 Law Safeguarding Decisions Made in Cases of Disputes Over Religious Discipline is also used in this regard.

Section 14 of the Draft Religious Conversion Bill<sup>43</sup> prohibits conversion intended to insult any religion. This provision may be used to prevent persons who wish to convert on the basis of their critical views on any religion.

The Law Relating to Forming of Organisations<sup>44</sup> is used to curtail formation of organisations that profess unrecognised beliefs. Article 12(E) of the Freedom of Peaceful Assembly law<sup>45</sup> stipulates that protesters cannot say things that could damage “race, religion, or human dignity.”

41 See Myanmar Penal Code, available at [http://www.burmalibrary.org/docs6/MYANMAR\\_PENAL\\_CODE-corr.1.pdf](http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf)

42 See The State Law and Order Restoration Council, The Law Relating to the Sanghá Organization (The State Law and Order Restoration Council Law No. 20/90), The 14th Waxing Day of Tazaungnon. 1352 M.E. (31st October, 1990), available [http://www.burmalibrary.org/docs15/1990-SLORC\\_Law1990-20-Law\\_Relating\\_to\\_the\\_Sangha\\_Organization-en.pdf](http://www.burmalibrary.org/docs15/1990-SLORC_Law1990-20-Law_Relating_to_the_Sangha_Organization-en.pdf)

43 See Burmese Govt Publishes Draft of Religious Conversion Bill. The Irrawaddy. (May 27, 2014), available at <http://www.irrawaddy.com/burma/burmese-govt-publishes-draft-religious-conversion-bill.html>

44 Please see Laws, decrees, bills and regulations relating to association and assembly (texts), Online Burma/Myanmar Library, available at <http://www.burmalibrary.org/show.php?cat=1773>

45 See “They Can Arrest You at Any Time”, The Criminalization of Peaceful Expression in Burma. (June 29, 2016), available at <https://www.hrw.org/report/2016/06/29/they-can-arrest-you-at-any-time/criminalization-peaceful-expression-burma>

## SIGNIFICANT CASES

The Buddha Bar Case in March 2015 resulted in the conviction of the bar managers and owner for using images of Buddha to promote a party. In the same year, writer and National League for Democracy member Htin Lin Oo was convicted for “insulting religion” under articles 295 and 298 of the Penal Code in the Chaung-U Township Court in Sagaing Region, after he criticised the use of Buddhism as a tool for discrimination in a speech at a literary event.

In October 2014, five media workers belonging to the Bi Midday Sun newspaper, an organisation run by Muslims, were sentenced to two years in prison for spreading false information. Since 2013 police have been conducting raids in areas or camps where Rohingyas live, seizing their laptops and phones in an attempt to prevent information flow.

In 2012, ten members of the Tablighi Jamaat, a Muslim missionary organisation, were killed by a Buddhist mob. A July 2014 Facebook post by a monk, Wirathu, alleging that a Buddhist woman had been raped by Muslims resulted in rioters destroying mosques. One Muslim died in the attacks.

The Ma-Ha-Na has ordered the destruction of materials relating to the teachings of sects outside the nine recognised sects and has resulted in the intimidation of those practicing or espousing these views. In 2010, the Moe Pyar leader U Nyana was sentenced to imprisonment for forming and following a new sect of Buddhism and other related charges.

## VICTIMS AND VULNERABLE TARGETS

Minority Buddhist sects, monks and other religious leaders who speak out on political issues, minorities - more specifically Muslims such as Rohingyas and Kamans, Christians in Kachin and Chin States especially, individuals practicing Animism, opposition supporters who advocate for religious tolerance, media, journalists and writers are among the groups that find themselves constantly compromised in their exercise of freedom of expression.

## PERPETRATORS

Religious groups, such as the extremist nationalist group Patriotic Association of Myanmar (PAM) or Ma-Ba-Tha, 969 Buddhist Nationalists and radical Buddhist Monks, the government through its policy of generally suppressing expression and using religion for political ends, the general public belonging to the majority religion, security forces and some media groups figure among the obvious list of perpetrators of such violations.

## CHALLENGES TO FREEDOM OF EXPRESSION AND RELIGION

Among the Muslims, Ahmadis are the most discriminated in Pakistan, facing institutionalised legal and socio-political hurdles. Rising sectarian violence has resulted in minority Muslim sects being targeted for their exercise of freedom of expression. In 1974, Ahmadis were declared non-Muslims by the then Parliament, therefore, according to the constitution Ahmadis are not Muslim.

Shia Muslims are the worst hit by faith-based violence through targeted terrorist attacks and murders. The tradition of hate speech inciting violence against Shias by sectarian groups is a decades old practice.

Persons belonging to different religious minorities, primarily Christians, Hindus and Ahmadis, as well as followers of different sects of majoritarian Sunni Islam, and the Shia sect are targeted through blasphemy laws. While a large number of those charged under these laws are Muslims, the number of those accused from minority communities is alarmingly high given their demographic proportions.

In most cases those accused of blasphemy are not afforded fair trial, and even if acquitted they come under threat from extra judicial sectors. The individual themselves, their families and sometimes the entire community come under violent attack.

Human rights defenders including, judges, lawyers, activists and journalists defending victims of violations are violently targeted. The perpetrators mostly remain unpunished and allowed to operate with impunity. Judges presiding over cases relating to allegations of blasphemy also receive death threats.

It has become a challenge for academics, lawyers and politicians to debate or introduce changes in laws, when these touch upon religious issues. Fatwas are issued by clerics against those debating religion. These often call for violence and mob 'justice'. Sometimes they even announce monetary rewards for attacking individuals. Such attacks result in large scale displacement of people, affecting their livelihood and right to life and liberty.

The rights to freedom of assembly and association of human rights defenders, as well as minority groups or sects, such as the Ahmadis are also violated. Due to threats of violence, brutal attacks by terrorist outfits and extremist groups, journalists and media houses are forced to self-censor on issues relating to religion or religious sentiments. Unequal space and access to media,



including electronic media for minorities is apparent. The perspective of religious minorities is not represented in the mainstream media.

Social media and other web pages are often blocked and filtered on grounds of them hurting religious sentiments. The Internet is highly regulated, though hate speech and threats, especially against women go unchecked. Online violence and offline acts of bloodied attacks are interrelated in Pakistan.

Though apostasy and conversion are not considered a crime, a belief, inspired by religion that killing an apostate is the duty of a follower makes irreligious and atheist persons vulnerable to attacks. A high number of persons fleeing the state on account of attacks on the basis of religion or for expressing their opinion is noted.

Fusion of a national security discourse with protection of religious identity is further shrinking space for dissent. Persons advocating for free space for discussion are termed 'anti-national'. State security and terrorism related laws are also used to shut down dissent.

#### LAWS GUARANTEEING FREEDOM OF EXPRESSION AND RELIGION

Article 2 of the Constitution of Pakistan<sup>46</sup> recognises Islam as the official state religion. Article 20 guarantees freedom of religion for all, including sects. And Article 22 states that no person shall be forced to receive religious educational instruction other than their own, and shall have the right to impart educational instruction to their own community.

Article 19 guarantees freedom of expression with restrictions included in the interest of the glory of Islam.

#### LAWS IMPACTING FREEDOM OF EXPRESSION AND RELIGION

The 1974 amendment to the constitution resulted in Articles 106 and 260, which excluded Ahmadis (also known as Qadianis), terming them non-Muslims.

The Pakistan Penal Code<sup>47</sup> in Section 295 sets out offences against religion. Section 295(A) penalises acts done to outrage religious feelings. Sections 295(B) and 295(C) have severe provisions for blasphemy, defilement of the Quran or insulting Prophet Muhammad, including life imprisonment and death penalty. And Section 298 specifically deals with words uttered that wound religious feelings. Section 298(A) penalises any insults to any wife or family member of

<sup>46</sup> The constitution of Islamic Republic of Pakistan, National Assembly of Pakistan, available at [http://www.na.gov.pk/uploads/documents/1333523681\\_951.pdf](http://www.na.gov.pk/uploads/documents/1333523681_951.pdf)

<sup>47</sup> See Pakistan Penal Code (Act XLV of 1860) Act XLV of 1860 October 6th, 1860, available at <http://www.fmu.gov.pk/docs/laws/Pakistan%20Penal%20Code.pdf>

Prophet Muhammad. Sections 298(B) and 298(C) target Ahmadis, and other groups penalising them for posing as Muslims or for preaching or propagating their faith.

Section 153(A) of the Penal Code deals with incitement of disharmony or enmity. And Section 505 (2) prohibits publications of such nature.

The Prevention of Electronic Crimes Bill, 2015<sup>48</sup> was adopted by the senate earlier and now has been passed by Pakistan's National Assembly. Despite undergoing amendments by the opposition, civil society activists and media are sceptical about the threats to human rights and freedoms this bill poses. It is soon to be turned into a law. In Section 32 encryption of information is prohibited, making it impossible for persons to use anonymity. The Bill in Section 34 also prohibits insult to Islam and gives law enforcement authority to completely shut down content they interpret as insulting to the majoritarian religion of the country.

The Telegraph and Publication Act,<sup>49</sup> along with many regulations are used to target books and other writings. The Pakistan Electronic Media Regulatory is also reported to control media and journalists in covering news and discussions relating to religion.

The Protection of Pakistan ordinance<sup>50</sup> was enacted to tackle terrorism, and the National Action Plan on security has provisions which can be used to detain and prohibit expression touching on religious issues.

## SIGNIFICANT CASES

In 2014, a judgment of the Supreme Court of Pakistan relating to the rights of minorities, took note of growing religious intolerance and hate speech, and issued multiple directions to the State for ensuring religious tolerance.

Rashid Rehman, a lawyer who was defending a blasphemy accused was killed in 2014. Sabeen Mahmud, activist and founder of a café that encouraged community interaction was gunned down in Karachi in April 2015. In January 2011, the then Governor of Punjab province, Salmaan Taseer was gunned down by his official guard due to his public advocacy about a Christian woman jailed on blasphemy charges. Federal Minister for Religious Minorities Shahbaz Bhatti, a Christian, was killed by militants in March 2011. Both politicians were vocal defenders of religious

<sup>48</sup> See The Prevention of Electronic Crimes Bill, 2015, Dawn (August, 2016) Raza Khan, available at <http://www.dawn.com/news/1276662>

<sup>49</sup> See THE TELEGRAPH ACT, 1885 (Act No. XIII of 1885), available at <http://www.fia.gov.pk/en/law/Offences/26.pdf>

<sup>50</sup> See Protecting Who? Express Tribune (2014) Saroop Ijaz, available at <http://tribune.com.pk/story/694742/protecting-who/>

tolerance and critical of oppressive blasphemy laws.

In 2015 Bernadette Dean, a Christian academic and researcher was forced to flee the country on account of her research and advocacy for the reform of textbooks – current school curricula includes hate material against religious minorities of the country. Dean had been receiving death threats.

In 2016, Khurram Zaki, a Shia rights activist and blogger was shot dead in Karachi.

In 2016, a religious organization, Shohda Foundation, requested a court in Islamabad to have an atheist female blogger charged with blasphemy.

In 2014 Junaid Hafeez, a university lecturer, was arrested on blasphemy charges. His first lawyer, Rashid Rehman was shot dead in 2014 as previously noted. His next lawyer, Shahbaz Gurmani was also attacked by religious extremists. In the same year three members of the Ahmadi community -- a senior female citizen and two girls from the same family -- were killed in an arson attack over a scuffle relating to an allegedly blasphemous Facebook post by an Ahmadi youth. An impoverished Christian couple, labourers by profession, were burnt to death on allegations of blasphemy in 2014.

In 2012, a Shia watchdog website, that published data about Shia killings in the country, and the official Ahmadi community's website were banned, and remain so till date. However, many websites and social media accounts and pages operated by religious extremist groups and militant outfits are easily accessible.

YouTube was banned in Pakistan for three years as a result of a video that was seen as insulting religion across the country. Through court orders Facebook has been blocked many times in response to campaigns and pages that were seen as insulting Islam. Twitter was blocked once on similar grounds. YouTube was permitted in Pakistan again in 2016, but under many conditions. Much of its content remains regulated.

Religious literature – books, magazines, proselytising literature and community newspapers – of Muslim and non-Muslim religious minorities, mostly Shias, Ahmadis and Christians is banned by the Pakistani Government under the garb of controlling hate speech. Over 80 publications by the Ahmadi community alone, including women's and children's magazines are banned. However, the targeted communities term the said policies discriminatory and a violation of their freedom to practice religion.

In 2015 Geo TV channel presenter and actress, Veena Malik was charged with blasphemy for a show that was seen as a re-enacting of the marriage scene of the Prophet Muhammad's daughter.

## VICTIMS AND VULNERABLE TARGETS

Members of religious minorities and Muslim minority sects; atheists; secular majoritarian Muslims; sexual minorities; indigenous persons and ethnic groups; economic and socially marginalised groups, differently-abled persons particularly those with mental ailments and difficulties; human rights defenders including members of civil society organisations working on various issues and more seriously women human rights defenders; politicians; lawyers; academics and journalists are all affected by violations pertaining to religion.

## PERPETRATORS

Religious clerics and extremist groups such as the AalimiMajlis-e-Khatme-Nabuwat;Jamaat-ud-Dawa and Sunni-Tehreek; Sunni Ittehad Council;the state and security agencies; political parties and religious parties such as Jamaat-e-Islami and Ahl-e-Sunnat-Wal-Jamaatwhich has a distinct sectarian agenda;government regulatory bodies such as the Pakistan Telecommunication Authority and Pakistan Electronic Media Regulatory Authority; mainstream media(especially TV anchors perpetrating hate and violence); militant outfits including all factions of Tehreek-e-Taliban Pakistan also known as thePakistani Taliban;Lashkar-e-Jhangvi; Lashkar-e-Islam; andJaish-e-Muhammad are among obvious perpetrators of freedom of expression and religion violations. Shohda Foundation, associated with the hardline Red Mosque in Islamabad targetssecular journalists and outspoken social media commentators.

H. SRI LANKA

## CHALLENGES TO FREEDOM OF EXPRESSION AND RELIGION

Extremist Buddhist factions and nationalist hard-liners wield socio-political influence in Sri Lanka, thereby dictating state policies on various matters. Hate speech, online and offline results in violence against minorities. Hate content against persecuted religious minorities is distributed openly through social media, public meetings and media, often times also in local languages. On the other hand, penal laws and court orders are used to block and filter content and dissent online.

Protests held by hard-liners have called for violence against minorities and the state has not taken any action against those making such statements or to effectively secure the groups against whom such speech is made.

The state has recently approved amendments to itspenal code banning hate speech. This has, however caused worries about whether the provisions may be used to curb criticism or expression rather than hate speech.

Penal and other provisions are selectively and arbitrarily used to target minorities when dealing with hate speech. Minorities at large face harassment by officials especially when they exercise their right to religion. Their livelihoods are affected by violence.

Journalists, writers and media personnel are harassed or even detained for their comments on religion or religion-related issues. The government has banned media from reporting on violence against religious minorities.

Any discussion or dissent over religion is easily linked to the long drawn civil war between the ethnic groups, and results in the branding of persons expressing views on religion as anti-national or sympathizers of terrorism.

The right to freedom of association and assembly of minority groups is also violated. They are not able to carry out protests, hold meetings or acquire incorporation. Often times their meetings and rallies are attacked by religious hardliners. They are not able to freely propagate their religion or faith though freedom of religion is guaranteed in the country's constitution.

#### LAWS GUARANTEEING FREEDOM OF EXPRESSION AND RELIGION

Article 9 of the Constitution of Sri Lanka<sup>51</sup> requires the state to give Buddhism the foremost place. Articles 10 and 14(1)(E) guarantee freedom of religion. Article 14(1)(A) guarantees freedom of expression. Article 15 stipulates restrictions on the exercise of these rights.

#### LAWS IMPACTING FREEDOM OF EXPRESSION AND RELIGION

The Penal Code of Sri Lanka<sup>52</sup> in Chapter XV provides for offences relating to religion in sections 290, 290(A), 291, 291(A), 291(B) and 292. Section 291(A) addresses any expression that wounds religious feelings.

Section 81 of the Criminal Procedure Code<sup>53</sup>, which deals with maintaining peace, has also been used to target expression on the basis of religion. Section 3(1) of the International Covenant on Civil and Political Rights (ICCPR) Act, 2007<sup>54</sup> prohibits propaganda for war or advocacy for hatred.

51 See Constitution of the Democratic Socialist Republic of Sri Lanka. Laws of Sri Lanka, available at <http://www.srilankalaw.lk/constitution-of-the-democratic-socialist-republic-of-sri-lanka.html>

52 See Penal Code Ordinance. Laws of Sri Lanka, available at <http://srilankalaw.lk/Volume-VI/penal-code-ordinance.html>

53 See Code of Criminal Procedure Act (No. 15 of 1979) - Sect 81, Security for keeping the peace in other cases. Sri Lanka Consolidated Acts, available at [http://www.commonlii.org/lk/legis/num\\_act/cocpa15o1979276/s81.html](http://www.commonlii.org/lk/legis/num_act/cocpa15o1979276/s81.html)

54 International Covenant On Civil and Political Rights (ICCPR) Act, 2007. Law of Sri Lanka, available at <http://www.srilankalaw.lk/Volume-IV/international-covenant-on-civil-and-political-rights-iccpr-act.html>

The Prevention of Terrorism Act<sup>55</sup> which seeks to protect minority religious and ethnic groups has been used to crackdown on expression on the pretext of protection. Particularly Section 2(1)(H) relates to causing religious disharmony and hostility and Section 14 (2) with approval for publications. These are used in tandem with Public Security Ordinance<sup>56</sup> and other such national security laws and regulations.

The Press Council Law<sup>57</sup> in Section 15 targets the publication of materials, including those that insult a religion or its founder, deities and so on. This and other regulations are applied along with the Profane Publications Act<sup>58</sup>.

The Public Performances Ordinance<sup>59</sup> provides the minister in charge of defence with the power to make rules to regulate public performances in Section 3 and a Certifying Authority in Section 6. These have been used to curb performances that are deemed as offensive to religions.

## SIGNIFICANT CASES

The Supreme Court of Sri Lanka in 2003, while determining the validity of a private bill proposing curbs on propagation of religion, held that the constitution does not guarantee the right to propagate religion, even though Article 10 and 14 guarantee the freedom of religion. In 2014, a British national was deported for sporting a tattoo of Buddha. Those who engage in artwork of images of Buddha are restricted.

Civil society organisations report that some media outlets, while practising self-censorship refuse to carry statements or reports relating to religious attacks or religious harmony for fear of repercussions.

In 2012, writer Sharmila Seyyid had to leave the country after violent threats from Muslim groups relating to her writings and poems that challenged the traditional role of Muslim women. She and her family have been under constant threat and in 2015 these attacks intensified, particularly online.

In 2010, Sarah Melanie Perera was arrested for her book speaking about her conversion to Islam.

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55 See Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, South Asia Terrorism Portal, available at [http://www.satp.org/satporgtp/countries/shrilanka/document/actsandordinance/prevention\\_of\\_terrorism.htm](http://www.satp.org/satporgtp/countries/shrilanka/document/actsandordinance/prevention_of_terrorism.htm)

56 See Public Security Ordinance, Laws of Sri Lanka available at <http://www.srilankalaw.lk/Volume-VI/public-security-ordinance.html>

57 See Sri Lanka Press Council Law, Laws of Sri Lanka available at <http://www.srilankalaw.lk/Volume-VII/sri-lanka-press-council-law.html>

58 See Profane Publications Act (No. 41 of 1958) - Sect 2, Sri Lanka Consolidated Acts [http://www.commonlii.org/lk/legis/num\\_act/ppa41o1958264/s2.html](http://www.commonlii.org/lk/legis/num_act/ppa41o1958264/s2.html)

59 See Public Performances Ordinance, Laws of Sri Lanka, available at <http://www.srilankalaw.lk/Volume-VI/public-performances-ordinance.html>

## VICTIMS AND VULNERABLE TARGETS

The entire communities of Muslims and Hindus; Christian groups; places of worship of minorities; persons at meetings of religious minorities; moderates in all communities including Buddhism; clergy of minority religions; lawyers advocating for religious freedoms; politicians belonging to minority communities; human rights defenders; writers; women and SOGI communities are primary targets for violations.

## PERPETRATORS

Non-state actors such as the Sinhalese nationalist and violent extremist Buddhist organizations BoduBalaSena, Sinhala Ravaya, and RavanaBalaya; sections of the government such as the Ministry of Buddha Sasana and local authorities; state-owned media; political parties and workers; security forces and extremist religious groups and clergy are among the prominent perpetrators of violations.

## I. VIETNAM

### CHALLENGES TO FREEDOM OF EXPRESSION AND RELIGION

Vietnam is an atheist state so all religious groups must register and align themselves with the ruling Communist Party of Vietnam (CPV). Continuous arbitrary arrest and imprisonment of those exercising their freedom of speech, both offline and online in the context of religion persists in the country.

All religious groups must be approved by the state and are supervised by the government. Churches that do not follow the line of the government are denied registration and are thus illegal organisations. People who belong to unrecognised religious groups are not permitted to speak publicly about their beliefs, they are also not allowed to associate themselves. The subsequent crackdown has resulted in many fleeing the country and seeking refuge elsewhere. All media channels are state-owned or state-approved. Religious matters are mostly described in a way favourable to the state, preventing diverse opinions. Government-run Religious Publishing House is the only publisher of religious books; all content must be government-approved.

### LAWS GUARANTEEING FREEDOM OF EXPRESSION AND RELIGION

Article 24 of Constitution of Vietnam<sup>60</sup> provides that all citizens shall enjoy freedom of belief and of religion. Article 50 guarantees the freedom of expression.

<sup>60</sup> Please see The Constitution of the Socialist Republic of Vietnam, available at [http://www.constitutionnet.org/files/tranlation\\_of\\_vietnams\\_new\\_constitution\\_enuk\\_2.pdf](http://www.constitutionnet.org/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf)

## LAWS IMPACTING FREEDOM OF EXPRESSION AND RELIGION

Article 14(2) of Constitution explains that human rights can be limited in the case of “social order and safety, social morality and community well-being” being under threat.

The 2004 Ordinance on Religion and Belief/Decree 92 (revision)<sup>61</sup> states that “abuse” of freedom of religion is illegal and religious activities can be suspended if they “negatively affect cultural traditions”.

Articles 79, 88, and 258 of Penal Code<sup>62</sup> are used to prosecute dissidents and people expressing “anti-state” opinions.

Decree 72<sup>63</sup> legalises internet censorship, and prohibits any publication that could harm national security. Decree 174<sup>64</sup> penalises users that disseminate “anti-state propaganda” or “reactionary ideologies” online.

## SIGNIFICANT CASES

In 2007 Father Ly, a Christian leader and priest was sentenced to eight years in prison for his work on human rights and the promotion of democracy. Nguyen Cong Chinh, a pastor, was sentenced to 11 years in prison in 2011 for criticising the government. Another pastor Nguyen Chinh was arrested the same year for allegedly conducting political activities inside his church. He had been interviewed by foreign media about political and religious issues, and he too was sentenced to 11 years in prison.

In 2012 Le Quoc Quan, a human rights lawyer and blogger on Catholic issues, was sentenced to 30 months in prison. After he was released, he was attacked by unknown assailants and was barred from practicing as a lawyer.

Bia Son, a group of Buddhists wanted to convert an eco-resort into a religious centre. Twenty-two members were sentenced to prison terms in 2013 under Article 79 of the penal code. Lang Mai Buddhists were banned in 2009 after their Zen Master called on the government to release political prisoners and establish an independent Buddhist church.

<sup>61</sup> Please see Vietnamese legal documents on belief and religion, The government committee for religious affairs, available at [http://religion.vn/Uploads/resources/admin/files/Sach%20tieng%20Anh%20k%20\(10-5-2013\\_%20Final\).pdf](http://religion.vn/Uploads/resources/admin/files/Sach%20tieng%20Anh%20k%20(10-5-2013_%20Final).pdf)

<sup>62</sup> See PENAL CODE (No. 15/1999/QH10) , THE NATIONAL ASSEMBLY No: 15/1999/QH10, available at [http://un-act.org/wp-content/uploads/2015/11/Vietnam-Penal-Code.1999.en\\_.pdf](http://un-act.org/wp-content/uploads/2015/11/Vietnam-Penal-Code.1999.en_.pdf) and World report Vietnam, Events of 2013, Human Rights Watch, available at <https://www.hrw.org/world-report/2014/country-chapters/vietnam>

<sup>63</sup> See This is why Vietnam wants to ban social media sharing of News, Tech in Asia. (August 2, 2013) available at <https://www.techinasia.com/vietnam-bans-social-news-sharing>

<sup>64</sup> See Vietnam introduces two new internet fines: a \$5,000 fine for social media and \$5,000 fine for e-commerce, Tech in Asia. (November 28, 2013) available at <https://www.techinasia.com/internet-fines-vietnam>



In September 2014 police shot at, beat, and injured participants in a prayer vigil urging two Catholic political prisoners to be released. In the same year three human rights defenders, advocating for freedom of religion received prison sentences.

Three-hundred-and-fifty Montagnard Christians who live in the Central Highlands - have been sentenced to prison for attending public protests calling for religious freedom and deregistration of churches. The government claims they are a separatist and a rebel organisation.

#### VICTIMS AND VULNERABLE TARGETS

Human rights defenders; political dissidents; bloggers and activists; religious groups; places of worship; religious organisations or associations; ethnic minorities; religious clergy or leaders; lawyers, writers and journalists are among those who are unable to express themselves freely on account of restrictions placed against religion.

#### PERPETRATORS

The state and its intelligence agencies, the ruling Communist party and its supporters and the security forces are seen as the primary perpetrators of violations.

## 5. LAWS AND FREEDOM OF EXPRESSION AND RELIGION

Laws relating to religion are used widely across the region to control and punish dissent. Regulations and restrictions on expression relating to religion take many shapes. Typically, most states in the region have provisions on insulting religion, outraging religious feelings and sentiments. States also have provisions to prevent hate and incitement on the basis of religion.

Most of these provisions are provided for in comprehensive penal legislations. However, other laws relating to publications, media, Internet and associations also have provisions and prohibitions relating to religion in some countries.

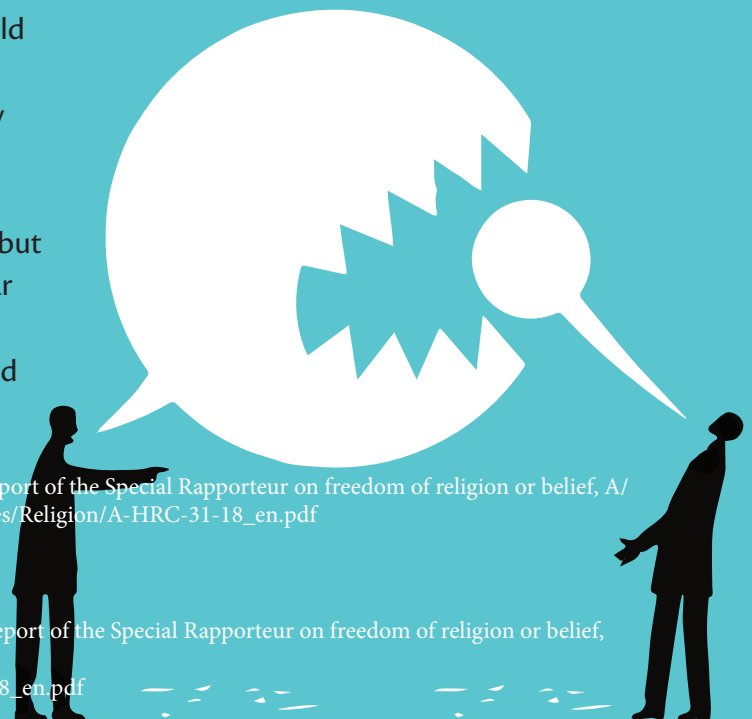
Blasphemy, the act of supposedly insulting or speaking sacrilegiously about religion or sacred entities, is one of the most feared crimes among the public as it is often accompanied by public outrage and violence. Laws prohibiting blasphemy stem from the assertion that the individual's rights and freedoms are subservient to that of the sanctity of religion and the sentiments of religious persons. This is contrary to the international human rights framework. The right to religion protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.<sup>65</sup> Freedom of religion primarily confers a right to act in accordance with one's religion, but does not bestow the right for believers to have their religion itself protected from all adverse comment.<sup>66</sup>

The UN Special Rapporteur on freedom of religion or belief in his latest report<sup>67</sup> specifies that “rights holders in the framework of human rights can only be human beings, as individuals and in community with others. This logic fully applies also to the right to freedom of religion or belief. While human beings — and indeed all of them — should receive recognition and legal protection in their freedom to believe and practise in the ways they see appropriate, blasphemy laws typically single out certain religions for special protection, thus not only encroaching on freedom of expression but also on freedom of religion or belief, in particular of members of religious minorities, converts, critics, atheists, agnostics, internal dissidents and others.”

65 Please see United Nations, Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, A/HRC/31/18, available at [http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18\\_en.pdf](http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18_en.pdf)

66 Ibid.

67 Please see United Nations, Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, A/HRC/31/18, available at: [http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18\\_en.pdf](http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18_en.pdf)



The right to freedom of religion or belief primarily protects the individual and, to some extent, the collective rights of the community concerned, but it does not protect religious or belief systems per se. The right to freedom of religion or belief, as enshrined in relevant international standards, does not include the right to have a religion or a belief that is free from criticism or ridicule.<sup>68</sup> It would therefore be far-fetched to claim that criticism of religion per se would in itself amount to inciting violence against believers, and therefore, sanctions and prohibitions must be instituted to prevent any dissent. The UN Special Rapporteur on freedom of religion or belief has also pointed out that “the employment of criminal sanctions against expressions which do not advocate for violence or discrimination but which are deemed ‘blasphemous’ cannot play a productive role in such endeavours, and such criminal sanctions, wherever they exist, are incompatible with the provisions of freedom of religion or belief and freedom of expression.”<sup>69</sup>

Laws that criminalise blasphemy or speech on the basis of religion invariably restrict expression in the larger context. These laws are selectively applied and used as a tool to persecute, intimidate, torment and punish persons and communities, particularly minorities, for holding non-majoritarian views. The rigorous protection of religions as such may create an atmosphere of intolerance and can give rise to fear or even provoke the chances of a backlash. As a limit to freedom of expression and information, it can also limit scholarship on religious issues and may asphyxiate honest debate or research.<sup>70</sup>

These laws ultimately prove to be an impediment to the freedom of expression as well as freedom of religion itself. Many experts across the globe have been united in their call for decriminalising such offences and have called for removal of death penalty, physical punishment or deprivation of liberty as penalties for blasphemy.

Besides being opposed to the fundamental concept of freedom, blasphemy laws typically give rise to further rights violations and do nothing to protect fundamental human rights. As noted in the Rabat Plan of Action these laws garner an environment of fear and insecurity resulting in stifling free exchange of views and ideas. As noted by the UN Special Rapporteur on religion or belief, all human beings “should receive recognition and legal protection in their freedom to believe and practice in the ways they see appropriate, blasphemy laws typically single out certain religions for special protection, thus not only encroaching on freedom of expression but also on freedom of religion or belief, in particular of members of religious minorities, converts, critics, atheists, agnostics, internal dissidents and others.”<sup>71</sup> The phenomenon of blasphemy laws being in favour of a particular religion or religions, emphasizing superiority over others, is evident in countries with official state religions. Pakistan, Indonesia, Malaysia and Myanmar are among a

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68 Ibid.

69 Ibid.

71 Please see United Nations, Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, A/HRC/31/18, available at [http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18\\_en.pdf](http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18_en.pdf)

long list of states where blasphemy provisions pose a grave threat to freedom of expression of the minorities.

As recorded in General Comment No. 34 of the CCPR, “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. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”<sup>72</sup>

Blasphemy provisions are often abused by governments, individuals, religious extremists and institutions to attack individuals, minorities and political opponents. Besides the right to free expression, blasphemy laws affect a whole other host of rights, including the rights of others to religion, guarantees against arbitrary detention, torture, ill-treatment as well as the right to life, liberty and privacy.<sup>73</sup>

Archaic provisions relating to blasphemy have the chilling effect of stifling political, social, legal, academic and religious discussion and shuts down dissent. The political ideology of governments influences the extent and frequency of use of blasphemy provisions, which shows the failure of the rule of law. These laws are also used by individuals to resolve private and political disputes. Governments and security agencies have largely proven to be unable to protect persons accused of blasphemy as often times they are subjected to mob violence, throwing their life and that of their family and community at risk.

Minorities, journalists, bloggers, teachers, students, writers, poets, religious converts, lawyers and Internet users are among those mostly at risk of being targeted under these laws for their views on religious, social or political issues. Those accused of blasphemy are at risk before, during, and after their trials. Often times the mere allegation of blasphemy, especially arising from religious figures, is sufficient to bring on large scale violence.

In November 2014, a young Christian couple was torched to death after a local cleric alleged that they had committed blasphemy by desecrating the Quran.<sup>74</sup>

<sup>72</sup> See General Comment No. 34, Article 19, Freedom of opinion and expression, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>73</sup> Please see The impact of blasphemy law on human rights, Freedom House Special Report available at [https://freedomhouse.org/sites/default/files/PolicingBelief\\_Pakistan.pdf](https://freedomhouse.org/sites/default/files/PolicingBelief_Pakistan.pdf)

<sup>74</sup> Please see Anatomy of a lynching. Al Jazeera America (20 June 2015) Asad Hashim available at <http://america.aljazeera.com/articles/2015/6/20/blasphemy-in-pakistan-anatomy-of-a-lynching.html>

Bail is often denied to those accused of blasphemy and they are usually detained during the entirety of their trial. Legal proceedings can take years and in some cases decades, during which period the accused stay in detention and are denied basic rights including the right to a fair trial and proper legal representation. Many have also reported that they are harassed, tortured, mistreated and abused in prisons. During detention, many of those accused of blasphemy have been killed as well. In November 2014, Tufail Haider, who belonged to the Shia sect, was hacked to death with an axe during incarceration by a police officer.<sup>75</sup> In the same year, Pastor Zafar Bhatti was shot dead in prison, and Muhammad Asghar was badly wounded with bullets fired by a policeman in Pakistan.<sup>76</sup> Even if they are released on bail or acquitted of charges, victims still face grave threats from extremist factions and are ostracised. In January 2015, Abid Mehmood was released on bail and shot dead a few days by masked men in Pakistan.<sup>77</sup> Mahmood was alleged to have claimed 'prophethood' Therefore victims are forced to flee the country or are marked for life and go into exile.

Judges presiding over cases relating to blasphemy have also reported that they have received death threats. The judge who convicted Malik Mumtaz Qadri for the murder of the former governor of Punjab was forced to flee Pakistan at one point as he received death threats in 2011.<sup>78</sup> This phenomenon of judges being threatened was also noted by the UN Special Rapporteur on the independence of the judiciary during a country visit to Pakistan.<sup>79</sup> The Special Rapporteur expressed concern that judicial independence was under threat in blasphemy cases as judges were coerced or pressured to decide against the accused and had grown very afraid of public sentiment. This compromises the right to a fair trial for the accused as well as the rule of law. Similarly, lawyers also find it difficult to defend victims of blasphemy accusation. Mr. Rashid Rehman was killed for defending a professor accused of blasphemy in Pakistan in 2014. Similarly, Mr. Saiful Malook, who defended Asia Bibi, a Christian woman accused of blasphemy, has reported many threats from different sections of society in Pakistan.<sup>80</sup>

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75 See [Policeman uses axe to kill blasphemy accused: Officials](http://tribune.com.pk/story/786605/police-beat-man-to-death-with-axes/). AFP (14, November 2014) available at <http://tribune.com.pk/story/786605/police-beat-man-to-death-with-axes/>

76 See [Policeman wounds British man jailed for blasphemy in Rawalpindi](http://www.dawn.com/news/1134272), Reuters (14 September , 2014) available at <http://www.dawn.com/news/1134272>

77 See [A Blasphemy Accused Shot Dead By Unknown Men After A Few Days Of Release From Prison](http://www.christiansinpakistan.com/a-blasphemy-accused-shot-dead-by-unknown-men-after-a-few-days-of-release-from-prison/), Christian Post (January, 2015) available at <http://www.christiansinpakistan.com/a-blasphemy-accused-shot-dead-by-unknown-men-after-a-few-days-of-release-from-prison/>

78 Please see [Pakistan judge Pervez Ali Shah 'flees death threats'](http://www.bbc.com/news/world-south-asia-15445317), BBC. (2011), available at <http://www.bbc.com/news/world-south-asia-15445317>

79 See [United Nations, Human Rights Office, Annual reports - Special Rapporteur on the Independence of Judges and Lawyers](http://www.ohchr.org/EN/Issues/Judiciary/Pages/Annual.aspx), available at <http://www.ohchr.org/EN/Issues/Judiciary/Pages/Annual.aspx>

80 See [Pakistan's blasphemy laws snare minorities activists](http://america.aljazeera.com/articles/2015/3/5/pakistans-blasphemy-law-snare-minorities-activists.html), Al Jazeera America (2015), Asad Hashim, available at <http://america.aljazeera.com/articles/2015/3/5/pakistans-blasphemy-law-snare-minorities-activists.html>

Internet and communication technologies (ICT) have become an integral part of our lives and several aspects of our daily functioning largely intersect with online spaces. Online platforms and more particularly social media have provided an alternative medium for not only expression of opinion but development of discourse that may otherwise be difficult to find in traditional offline platforms. Similarly, the internet has also created a space for expression related to or touching upon issues that deal with or pertain to religion.

The UN Human Rights Council in resolution 20/8 has affirmed that “the same rights that people have offline must also be protected online, in particular freedom of expression”. This has been reiterated in the recent resolution 26/13<sup>81</sup> on the promotion, protection and enjoyment of human rights on the Internet. Therefore, the principles and standards relating to the rights to freedom of expression and religion as well as the intersection of these two rights are equally applicable to online spaces.

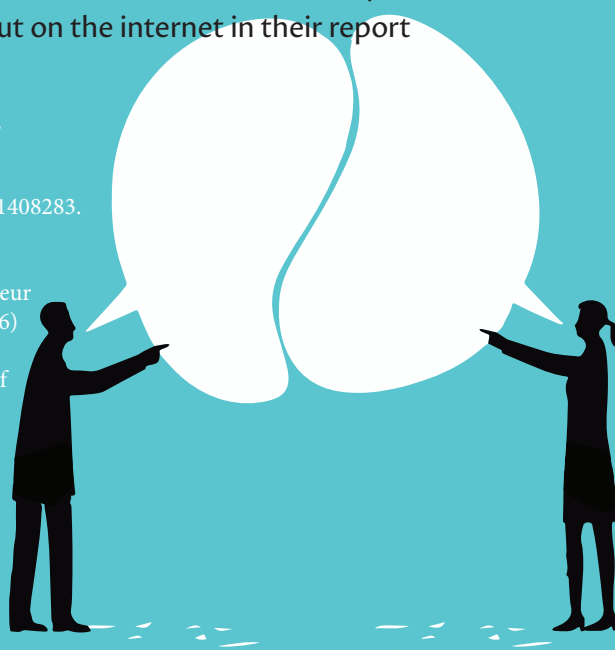
Increasingly, people have taken to the internet to voice their opinions on matters relating to religion which has also been followed by state action. Unfortunately, international documents dealing with standards and protection of the rights to freedom of expression and religion have failed to address the challenges faced by users online in the exercise of these rights. The report of the UN Special Rapporteur on freedom of religion or belief addressing the intersection of these rights<sup>82</sup> as well as the Rabat action plan have not looked at the particularities and violations of freedom of expression online in the context or on the pretext of religion.

Online spaces are reflective of and are a continuum of offline realities. This, unfortunately holds true of human rights violations as well. State policies relating to censorship and criminalisation of expression have been adopted for online spaces as well, therefore, taking away the opportunities presented by the new medium. Bytes for All, Pakistan has undertaken a detailed analysis of how freedom of expression in the context of religion spans out on the internet in their report

81 Please see United Nations, Human Rights Council, resolution 26/13, The promotion, protection and enjoyment of human rights on the Internet, A/HRC/RES/26/13 (14 July, 2014, adopted by UN General Assembly on 26 June, 2014) available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/83/PDF/G1408283.pdf?OpenElement>

82 See United Nations, Human Rights Council, Report of Special Rapporteur on freedom of religion or belief on his visit to Bangladesh, (22 January, 2016) A/HRC/31/18 available at: <http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18-Add2.pdf>

83 See Debating Faith in Cyberspace, Bytes for All, Pakistan available at: [content.bytesforall.pk/node/180](http://content.bytesforall.pk/node/180)



‘Debating Faith in Cyberspace’.

Information and content in several Asian states remain heavily regulated. Legislative and executive action are often used to block and remove content and seldom are judicial recourse available. Online communication and content that is deemed to be obscene, indecent, false, menacing or offensive especially on religious or social issues are often blocked or removed.

Many websites of religious and ethnic minorities such as the Shia and the Ahmadi communities have been banned by the government in Pakistan in the last couple of years. One example is the banning of a watchdog website that was monitoring the killing of Shia Muslims. Similarly, the State is also clamping down on free expression of sexual minorities — a website discussing LGBT and SOGI issues has been blocked SINCE WHEN? on the grounds of it being ‘Un-Islamic’.

In early 2016, the government of Pakistan ordered the blocking of over 400,000 sites supposedly carrying pornographic content. This resulted in sites that did not host such content also being blocked. The Communications and Information Ministry in Indonesia is currently considering a draft bill to ban websites that host content relating to LGBT and SOGI issues on account of religious sensitivity.<sup>84</sup> Such removal of websites and pages of these groups severely impinges on their freedom of religion, expression, assembly and association online.

States have also resorted to blocking of content on the grounds that sites host material that may be deemed offensive to religion. YouTube was blocked in Pakistan for about three years following outbreak of large scale violence relating to a movie that was hosted on its page and was regarded as offensive. Though the ban on YouTube has been lifted, the content currently available is heavily regulated and the processes for such regulations are unclear.<sup>85</sup> In India, an order was issued under the Information Technology (Procedure and Safeguards for Blocking Access of Information by Public) Rules in 2015 to block websites promoting religious intolerance which also lead to many popular sites hosting other content being blocked.<sup>86</sup> These blanket bans impinge on the right to information and expression of the people. Standards applicable to censorship offline are not followed in such cases and unilateral acts of state authorities render a severe blow to meaningful engagement and public participation in crucial issues relating to religion or religious practices.

Given the space afforded by new media on the internet, many activists and citizen journalists resort to expression online. Backlash from non-state actors to such expression remains another grave challenge. The most disturbing account of this is the situation of bloggers in Bangladesh. This presents a case of serious offline consequences to violations online. Since 2014, over 10 bloggers and LGBT rights activists have been killed in Bangladesh for their views on religion or for

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<sup>84</sup> Government drafts ban on LGBT websites, The Jakarta Post (March, 2016) available at <http://www.thejakartapost.com/news/2016/03/05/government-drafts-ban-lgbt-websites.html>

<sup>85</sup> See Calls for clarity on terms of lifting of YouTube ban available at <https://content.bytesforall.pk/node/188>

<sup>86</sup> See Government Orders Blocking Websites Inciting Religious Intolerance. (July 26, 2015) NDTV.com available at <http://www.ndtv.com/india-news/government-orders-blocking-websites-inciting-religious-intolerance-1200730>

their work which is perceived as being opposed to the majority religion.<sup>87</sup> Several other bloggers have been forced to leave the country including Mahmudul Haque Munshi as they face the real danger of losing their life or their families at risk.<sup>88</sup> Despite many of these bloggers resorting to anonymity, their identities were leaked to the public which resulted in them being targeted by extremist factions. The government of Bangladesh in this case failed to protect the victims or prevent attacks on them. Several of these killings were based on a list of names of 84 people submitted to a special government committee in 2013 by a group of conservative Muslim clerics who accused the Bangladeshi blogger community of “atheism” and “writing against Islam.” The State, by promoting the notion of defence against insult to religion, has emboldened non-state actors to resort to violence against those propounding views not agreeable to the majority.

Similarly, blasphemy charges remain the greatest threat to free expression in online spaces despite oft repeated calls by the international community to repeal these provisions. States use blasphemy provisions in penal and other legislations used for offline expression in online spaces as well. For instance, Usman Liaqat, a Christian citizen, was arrested for allegedly posting content on Facebook that was regarded as ‘blasphemous’ by state authorities in Pakistan using the penal law and constitutional provisions. In Indonesia, a professor has been charged with blasphemy for a Facebook post that he had allegedly made earlier.<sup>89</sup> Similarly another professor in Pakistan is currently imprisoned for a post on Facebook that is deemed blasphemous.<sup>90</sup> In Malaysia, arrest and charges of sedition were also made against Eric Paulsen, a lawyer, for a tweet on Friday sermons.<sup>91</sup>

States have also enacted information and communication technology laws that contain provisions on religion. Legislations pertaining to ICT in Bangladesh and India contain specific provisions for dealing with content that may be seen as hurting religious sentiments. Similar legislations have been passed by the parliament Pakistan in the form of the Prevention of Electronic Crimes Bill (PECB) which in Section 9 states that anyone who “prepares or disseminates information, through any information system or device” with the intent to “glorify an offence or the person accused or convicted of a crime and support terrorism or activities of proscribed organizations” and “advance religious, ethnic or sectarian hatred” shall be punished with imprisonment up to five years, a fine up to ten million rupees (around 95,000 USD) – or both. The bill makes journalists, whistle-blowers and activists more vulnerable. It declares unlawful any on-line content that threatens “the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, public order, decency or morality”.<sup>92</sup>

87 See Bangladeshi bloggers: What we want the world to know. (April 29, 2016) CNN.com available at <http://edition.cnn.com/2016/04/28/opinions/bangladeshi-bloggers-opinion/>

88 Why I Went Into Exile: A Bangladeshi Blogger Tells His Story (26 January, 2016) Global Voices Advox available at <https://advox.globalvoices.org/2016/01/26/why-i-went-into-exile-a-bangladeshi-blogger-tells-his-story/>

89 See Police Question Ade Armando over Blasphemy Charge, (23 June, 2016) TEMPO.CO available at <http://en.tempo.co/read/news/2016/06/23/055782464/Police-Question-Ade-Armando-over-Blasphemy-Charge>

90 See How your social media activity can land you in jail for blasphemy (19 December, 2015) Sadia Khatri. Dawn.com available at <http://www.dawn.com/news/1227196>

91 See CASE HISTORY: ERIC PAULSEN. Frontline Defenders, available at <https://www.frontlinedefenders.org/en/case/case-history-eric-paulsen>

92 See Cyber Crime Bill Passed by NA: 13 Reasons Pakistanis should be worried <http://www.dawn.com/news/1276662>



States and civil society have to be careful with this alarming trend of crackdown on expression in online spaces as increasingly people move into this space for exercising their right to freedom of expression and a whole host of other rights. Such censorship may also lead to surveillance and privacy violations of individuals exercising their rights and will ultimately prevent them from public participation in democratic processes. Another worrying issue is in relation to the understanding of justice mechanisms on the principles of restrictions in online spaces. If the argument is deemed justifiable under national and international laws, this will also have an impact on the jurisprudence evolving on the subject in the region.

The following recommendations are based on discussions had in 2015 during the Regional Consultation on Opinion, Expression and Religious Freedoms, and interviews with experts. They are aimed at different stakeholders to: improve the environment of the Freedom of Expression (FoE), and to remove restrictions placed on FoE on the basis of religion or religious sensitivities.

## I. GOVERNMENTS

- Recognise the intrinsic value of FoE in the context of religion for building a pluralistic society based on democratic norms.
- Ensure the protection of FoE in the context of religion for all individuals at all times.
- Implement the recommendations made by the Special Rapporteur on freedom of religion or belief in the report presented to the 31st Session of the UN Human Rights Council as well as those provided for in the Rabat Action Plan
- Train security forces at the national and state level on issues related to freedom of expression and religion.
- Bring perpetrators of violations of freedom of expression and religion to justice and end the culture of impunity.
- Prevent hate speech and promote an environment of tolerance. Ensure that persons who have suffered damage as a result of incitement to hatred have a right to an effective remedy, including a civil or non-judicial remedy for damages.
- Ensure that state authorities, including state-owned media and telecom regulators, state-run educational institutions and religion-related agencies do not promote hate or censor individuals in their exercise of freedom of expression and religion.
- Monitor court, prosecutorial, and police conduct to make sure the rule of just law is observed, and that extrajudicial actions in the name of protecting religion do not go unchecked.
- Implement laws, and accompanying policy measures, which meet international standards relating to freedom of expression and religion in a non-discriminatory manner, especially in relation to women and SOGI people.
- Protect artistic, cultural and intellectual expression, and prevent arbitrary curbs or attacks through judicial or extrajudicial means.
- Refrain from using education and educational institutions as a tool for perpetrating hate and intolerance; prohibit hate speech content in school curricula; and include human rights messages in textbooks to contribute towards fostering an enabling environment for the

exercise of freedom of expression and religion.

- Ensure that state agencies, regulators and ministries that govern freedom of expression and religion uphold national guarantees and international standards on FoE, especially on the Internet.
- Become parties to international instruments that touch on issues of freedom of expression and religion, including the ICCPR; remove any reservations placed on Articles 18, 19 and 20 of the ICCPR; and ensure the implementation and adherence to these standards in domestic laws.

## II. LEGISLATURES AND POLITICAL PARTIES

- Ensure legal guarantees for FoE through any medium, including constitutional and other documents, is in accordance with international human rights law.
- Ensure that core instruments, such as constitutions, ensure equal status to religions and FoE under all circumstances.
- Revise all laws touching upon freedom of expression and religion to ensure they meet international standards for freedoms and permissible restrictions.
- Ensure that all legislation and their provisions on religious issues are clear, and are all-inclusive, carefully crafted and implemented in a non-biased manner.
- Recognise that criminal sanctions related to forms of expression should be seen as last resort measures only to be applied in strictly justifiable situations and in accordance with international standards. Civil sanctions and remedies should be given preference, including pecuniary and non-pecuniary damages, along with the right of correction and the right of reply. Administrative sanctions and remedies should also be considered, including those put in force by various professional and regulatory bodies.
- Repeal:
  - all laws that support the idea of ‘defamation of religion’, including blasphemy laws and anti-apostasy laws.
  - all laws that criminalise free expression of sexuality; including sodomy laws, adultery laws, laws on dress codes.
  - all provisions which criminalise, and allow for detention or physical punishment for the above.
- Understand that implementation of unjust laws against hate speech can lead to the imminent threat of violence against vulnerable individuals or groups.
- Revise existing anti-discrimination and criminal legislation to meet universally accepted, human rights based standards and only utilise it, in a non-selective and transparent manner,

to counter hate speech when it is leading to the imminent threat of violence.

- Review hate speech laws, to ensure that:
  - they meet international standards prescribed under Article 20 of the ICCPR;
  - these provisions are only applied when absolutely necessary in a non-selective manner;
  - these provisions are not used in an arbitrary manner or abused to crackdown on dissent or the exercise of freedom of expression and religion.
- Empower religious minorities' parliamentarians to raise issues relating to freedom of expression and religion in the parliament and other forums.
- Adopt and enforce ethical guidelines in relation to the conduct of the representatives of political parties, particularly with respect to public speech.
- Encourage and ensure that politicians and leadership figures in political parties refrain from making statements that promote or condone intolerance, and make certain that they use their position of influence to promote dialogue and, when necessary, challenge and condemn discriminatory speech, acts and statements.

### III. JUDICIARY AND LEGAL COMMUNITY

- Ensure effective legal remedies, including the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, for victims of violations of FoE on the basis of religion.
- Ensure that perpetrators of violations and violence against FoE in the context of religion are brought to justice in accordance with the law.
- Put in place adequate measures to guarantee the safety of persons accused of offences relating to FoE on religion.
- Ensure that provisions relating to hate speech are interpreted and applied in accordance with international standards in a narrow and non-biased manner keeping in mind the context in which such speech was made.
- Develop uniform jurisprudence on matters relating to hate speech and FoE in the context of religion across jurisdictions in the state to meet international standards
- Initiate and support legal reform of laws relating to free expression and religion, either through strategic litigation or through suo moto processes.
- Recognise defamation as a civil matter, and refrain from handing down penal punishments for the exercise of free speech.
- Ensure that any limitations placed on FoE in the context of religion are legitimate, necessary, proportional, and meet international standards.

- Promote the engagement of National Human Rights Institutions to address issues relating to FoE in the context of religion.
- Due attention should be given to minorities and vulnerable groups by providing legal and other types of assistance for their members in their exercise of FoE, and to counter allegations of violations on account of religion.

#### IV. MEDIA

- Recognise that hate speech can lead to the curtailing of human rights, and therefore counter it by incorporating into mainstream journalism trainings on the following:
  - understanding of various forms of hate speech, such as offensive, insulting, and violent hate speech, as well as differentiating between violent hate speech and FoE.
  - reporting in a sensitive manner on issues relating to communal and religious violence, as well as accusations of blasphemy.
  - contextual understanding, especially when related to women and religion.
  - gender awareness training on gender and sexual rights, particularly in reporting on violence against women, and attacks on the SOGI community in relation to issues that touch upon religion, and to avoid moralistic discourses.
- Utilise journalist unions, or create them if none exist, to network and mobilise the media to address issues, such as threats against those who exercise their FoE on issues pertaining to religion, in particular female journalists and bloggers.
- Create and strengthen mechanisms to ensure the protection of female journalists, to encourage more women to become reporters, to ensure that women's voices, which are generally missing in the discourse on religion, are encouraged and included.
- Ensure training of editorial staff, and other journalists, on hate speech, and refrain from perpetrating hate against any individual or community.
- Develop self-regulatory principles for dealing with hate speech while covering issues relating to religion.
- Ensure equal space for all views relating to religion and dissent through objective reporting.
- Bring to the attention of the public acts and speech that promote discrimination and hate in a factual and sensitive manner.
- Avoid unnecessary references to the name, race, religion, gender and other group characteristics of people that are being reported on that may promote intolerance while reporting on instances of violations or alleged violations.
- Be aware of the harm caused by discrimination and negative stereotyping, and refrain from

engaging in or promoting such discrimination or hate.

## V CIVIL SOCIETY

- Uphold pluralism and FoE, including on issues relating to religion, and help ensure an enabling environment for the exercise of these rights for all individuals at all times.
- Promote intercultural understanding, the significance of dissenting voices, and support the ability of members of different communities and marginalised groups, to voice their perspectives and concerns on matters relating to religion.
- Advocate and work towards reforms in laws and institutions in justice delivery for matters pertaining to FoE in the context of religion.
- Collectively document instances of various forms of hate speech and success stories to combat these, for research and evidence building to contribute to policy change.
- Continue to collaboratively monitor hate speech trends and violations of FoE on religion to develop strategies for countering hate speech and restrictions.
- Engage with opinion makers that have leverage over broad public opinion to counter hate speech, including potentially religious communities and political leaders.
- Engage with communities to build capacity to resist, rather than react to hate speech, and take measures to inoculate the audience of hate speech towards the same.
- Push for educational reforms to root out discriminatory content that enables a culture of intolerance.
- Develop and encourage discourse on FoE to be expanded beyond speech to include the physical manifestations of gender expression and sexual expression.
- Use the Internet to create counter cultures, broaden discourse on sexual rights and SOGI rights, and their connections to FoE and freedom of religion.
- Include observations on the state of FoE in the context of religion in stakeholder and shadow reports submitted during the Universal Periodic Review and other UN mechanisms.
- Create spaces for constructive dialogue between mainstream media and bloggers, to ensure that both support each other when either one is targeted.
- Provide support for media organisations to train staff on hate speech, and create online resources to help them access relevant information.
- Provide digital literacy training for religious minority groups to promote their visibility and voices online.
- Participate and provide digital security training to human rights defenders, bloggers and media personnel working on or covering issues pertaining to freedom of expression and

religion.

- Develop regional and international networks for collaborative campaigning for the promotion and protection of FoE, including in the context of religion.

## VI. PRIVATE SECTOR

- Companies providing Internet infrastructure and services should uphold the UN Guiding Principles on Business and Human Rights requiring them to respect human rights in their activities.
- Internet intermediaries should be accountable to their responsibilities under international human rights law to ensure their Community Standards and Terms of Service do not support or promote the denial of sexual and bodily rights under the guise of morality or cultural relativist arguments, particularly of women and SOGI people.
- Internet intermediaries also need to be more transparent in what information they share with governments and law enforcement; and how they respond to requests to take down content defined as hate speech online.
- Internet intermediaries should be responsible in compiling requests for take downs and censorship of material, and make public such information when takedowns are enforced or absolutely necessary.
- They should be encouraged to develop mechanisms to consult with users, CSOs and experts to find effective responses to hate speech while ensuring advancement of freedom of expression including on religion.

## VII. RELIGIOUS BODIES

- Recognise that accepting the rights of all to FoE is the only guarantee of security for one's own religious belief across all platforms of expression.
- Recognise the right to FoE as an enabling and integral right to freedom of religion, and the functioning of religious bodies on offline and online mediums.
- Discourage, refrain from and object to all forms of hate speech against any individual, individuals or communities.

## VIII. ACADEMIA AND EDUCATIONAL INSTITUTIONS

- Educational institutions across the board must remove any content in their textbooks and curricula that promotes discrimination, differentiation, intolerance or hate against any community or individuals on the basis of religion.
- The academia, including education institutions, must promote free discussion and debate on issues relating to religion, demand their right to fearlessly engage in discourse relating to

religion, and exercise their own right to FoE.

- Academia and education activists must lobby for informed policy for increased human rights literacy in textbooks, primarily at school level.

## IX. INTERNATIONAL AND REGIONAL MECHANISMS/BODIES

- Increase focus on, and resources to, human rights issues and violations at the intersection of freedom of expression and religion.
- Relevant UN Special Procedures mandate holders (in particular, but not exclusively, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the UN Special Rapporteur on freedom of religion or belief; the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the UN Special Rapporteur on the situation of human rights defenders) should:
  - Highlight the issue of FoE in the context of religion by including violations and trends in their thematic reports and statements;
  - Highlight cases of state and public persecution or victimisation, specifically when due to the practice of FoE in the context of religion, in communications to governments;
  - Strengthen their cooperation on, and jointly address the issue of FoE in the context of religion, through, among others, joint statements; and
  - Prioritise and address the situation around journalists and bloggers targeted for freedom of religious expression during their country visits.
- Follow up and review the implementation of Resolution 16/18 and the Rabat Action Plan by States to strengthen guarantees and address violations and to include issues relating to gender and the internet.
- Develop specific indicators for States in relation to their duty to protect FoE in the context of religion.
- The Office of the High Commissioner for Human Rights (OHCHR) should continue and improve its focus on the protection of FoE and freedom of religion, the prevention of hatred, discrimination, and related topics.
- Various entities of the UN including OHCHR, treaty bodies, Special Rapporteurs and other experts should enhance their cooperation in order to maximise synergies and stimulate joint action.



JAKARTA RECOMMENDATIONS ON FREEDOM OF EXPRESSION IN THE  
CONTEXT OF RELIGION

5 JUNE 2015

## 1. INTRODUCTION

Freedom of expression and freedom of religion are internationally guaranteed, interrelated and interdependent rights to be enjoyed by all individuals without any form of discrimination. Both have come under attack in recent years, while incidents of sectarian and religious violence are on the increase. States across Asia have enacted legislation on hate speech, incitement, ‘blasphemy’ and ‘defamation of religion’, in the name of ‘protecting religion or religious sensitivities’, which have curtailed legitimate expression protected under international law, including religious expression, and institutionalized discrimination against specific religions, faith and believers. These laws and policies have been ineffective at addressing and responding to the increasing number of incidents of sectarian violence and incitement to hatred, and at protecting people from violence and discrimination when they have exercised their right to freedom of expression. Indeed, in too many instances, laws enacted to protect ‘religious sensitivities’ have been abused to target the very people who are seeking to defend fundamental freedom or to exercise their rights to freedom of expression or religion.

## 2. REGIONAL TRENDS AND CHALLENGES

2.1 Violations of freedom of expression in the context of religion are on the rise in South and Southeast Asia. These include violations of: freedom of expression in the name of ‘protecting religion and religious sensitivities’; expression of religious freedom and of the expression of belief (or nonbelief); expression of sexual and gender identity to purportedly ‘protect religious sensitivities’; and the incitement to hatred on the basis of religion, resulting in violence and discrimination on the basis of religion, faith or belief and against individuals speaking up for freedom of expression or freedom of religion, belief and faith. These have led to violation of

93 [The Jakarta Recommendations are the outcome of discussions at a regional consultation on “Expression, Opinion and Religious Freedoms in Asia”, held in Jakarta, Indonesia on 3-5 June 2015. Over 140 people, comprised of experts, including the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, as well as human rights defenders and civil society activists from across Asia, participated in the regional consultation.](#)

other rights, including right to privacy, right against arbitrary detention, right to fair trial, right to livelihood, right to freedoms of assembly and association. Even online spaces, previously seen as open mediums for free expression in the context of religion, are increasingly becoming subject to rights violations. Violations targeted against individuals and groups for exercising their rights of freedom of expression in the context of religion are becoming increasingly commonplace online.

2.2 Links between States and religion, and between political parties and religious movements, have emerged as an impediment for the exercise of freedom of expression. In particular, State authorities are reluctant to bring those responsible for abuses of freedom of expression and religion (including attacks and killings), to justice for fear of being portrayed as irreligious and losing political support from some of their constituencies, including religious or nationalist groups. In many cases, States have tacitly supported the actions of non-state actors, including extremist factions, which have oftentimes resulted in the exacerbation of rights violations, including violence, in the name of ‘religion’ and ‘religious sensitivities’.

2.3 Constitutional and legal provisions purportedly aimed at ‘protecting religion and religious sensitivities’, such as ‘defamation of religion’, ‘blasphemy’ and apostasy, along with laws on hate speech, anti-terrorism and national security have resulted in greater illegitimate restrictions on freedom of expression, too often targeting the very people who are seeking to protect freedom of expression and religion and to respond to incitement to hatred and sectarian violence. Restrictions are also placed on literary and artistic work, including satirical forms of expression, involving religious sensitivities and on the visual representation of women’s bodies and sexuality, in the name of ‘religious modesty’, further hindering communication and the free exchange of ideas.

2.4 Persons accused under these laws are rarely afforded fair trial standards and often times are victims of vigilante violence. Perpetrators of such violence are seldom brought to justice and impunity prevails. Persons exercising freedom of expression in the context of religion, and those who defend them, are also subject to attacks. The fusion of socio-cultural expectations with religious norms particularly poses a serious threat to women, LGBT persons and young people in their exercise of freedom of expression.

3.1 International human rights standards clearly protect human rights and fundamental freedoms including the right to hold opinions and practice religion. State signatories to international human rights conventions in the International Bill of Rights are required to protect fundamental rights and to prohibit discrimination on the grounds of belief or opinion. In particular, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees everyone the right to hold opinions without interference, the right to freedom of expression and the right to receive and impart information; Article 18 of the ICCPR guarantees freedom of thought, conscience and religion; and Article 20 of the ICCPR declares that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

3.2 There are also relevant provisions of the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention relating to the Status of Refugees that prevent discrimination on the grounds of belief or opinion.

3.3 In recent years, freedom of expression in the context of religion has been the object of specific focus, resulting in the development and adoption of key norms, including the 2012 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and the UN Human Rights Council resolution 16/18 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, first adopted in 2011. Both the Rabat Plan of Action and Resolution 16/18 were endorsed by the governments in the region.

4.1 Given the problems identified in sections 1 and 2 and the state responsibilities set out in section 3, the Jakarta Regional Consultation on “Expression, Opinion and Religious Freedoms in Asia” makes the following recommendations.

4.1.1 Governments and State Institutions should:

Ensure the protection of freedom of expression in the context of religion for all individuals and all communities at all times, by recognizing that freedom of expression is essential to sustaining a pluralistic society and by respecting all religious belief and opinions, creating an enabling environment for the exercise of freedom of expression in the context of religion, implementing laws, and accompanying policy measures relating to freedom of expression in the context of religion in a non-discriminatory manner especially in relation to women & LGBT people.

**On Legal Reforms:**

Ensure that core legal instruments such as the constitutions provide for equal status to all religions and beliefs, protect freedom of expression online and offline, in accordance with international human rights norms and standards;

Repeal laws at the national and subnational levels that criminalize ‘defamation of religion’, ‘insult to religion’, ‘blasphemy’, apostasy, as per the Rabat Plan of Action;

Repeal laws at the national and subnational levels that criminalize the expression of sexuality as well as laws imposing dress codes, including in the name of religion;

Revise and strengthen existing anti-discrimination legislation to meet universal standards towards substantive equality across all groups, communities, men and women;

Revise hate speech laws or adopt law on incitement to hatred that may result in violence, hostility and discrimination, based on article 20 of the ICCPR and the recommendations of the Rabat Plan of Action. In particular, such laws should only be applied in situations of imminent violence. They should be implemented in a non-selective, non-arbitrary and transparent manner. They should not be used to stifle dissent or the legitimate exercise of freedom of expression;

Allow and enable religious minorities’ parliamentarians to raise issues relating to freedoms of expression and religion, and the intersection of these rights, in the parliament and other fora;

**On Justice and Policing:**

Condemn and prevent, without discrimination, all instances of violations of freedom of expression in the context of religion and incitement of hatred resulting in violence, including those uttered and

disseminated in the name of religion;

Refrain from promoting or disseminating incitement of hatred, including in the name of religion, and from censoring individuals engaged in the legitimate exercise of their freedom of expression. This includes ensuring that media and telecommunications regulators, education and agencies concerned with religion abide by this principle;

Bring perpetrators of violations of freedom of expression in the context of religion and of extra-judicial actions in the name of religion to justice, and end the culture of impunity;

Monitor Court, prosecutorial, and police conduct to make sure the rule of just law is upheld;

Protect And promote artistic, cultural and intellectual expression, and prevent arbitrary curbs or attacks through judicial or extrajudicial means; and

Sensitize and train security forces, law enforcement agencies and judicial fraternity at the national and state levels on issues relating to freedom of expression in the context of religion.

#### 4.1.2 Judiciary and Legal Community should:

Initiate legal reform of laws relating to freedoms of expression and religion, and the intersection of these rights, either through strategic litigation or through suo-moto processes; and

Ensure that the limitations placed on freedom of expression in the context of religion are legitimate, necessary, proportional and meet international standards.

#### 4.1.3 International and Regional Mechanisms/Bodies should:

Increase focus on, and resources to, the human rights issues and violations at the intersection of freedoms of expression and religion;

Follow up and assess the implementation of Resolution 16/18 and Rabat Action Plan;

Develop specific indicators for States in relation to its duty to protect freedom of expression in the context of religion;

Specifically, the relevant UN Special Procedures mandate holders (in particular, but not exclusively, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the UN Special Rapporteur on freedom of religion or belief; the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the UN Special Rapporteur on the situation of human rights defenders) should:

Highlight the issue of freedom of expression in the context of religion by including violations and trends in their thematic reports and statements;

Highlight cases of state and public persecution or victimization specifically due to the practice of freedom of expression in the context of religion in communications to governments;

Strengthen their cooperation on the issue of freedom of expression in the context of religion, including through joint statements.

4.2 We urge governments, the United Nations, regional bodies and other international and regional actors to respond to the threats faced by journalists, activists and human rights defenders working to protect the right of freedom of expression in context of religion urgently. We urge all relevant domestic actors, including political parties and leaders, religious institutions, and civil society to respond to these consolidated civil society recommendations to ensure that an enabling environment for the practice of these rights is created and protected in Asia.







Bytes for All (B4A), Pakistan is a human rights organization and a research think tank with a focus on Information and Communication Technologies (ICTs). It experiments with and organizes debates on the relevance of ICTs for sustainable development, democracy, social justice and strengthening human rights movements in the country. Its strategic plan delivers in following key result areas (KRA):

1. Securing digital rights and freedom of expression for civil liberties;
2. Strengthening digital security of human rights defenders & media professionals;
3. Ending technology-driven gender-based violence;
4. Network building at national, regional and global level; and
5. Community development and communications for environmental sustainability.

To deliver above-mentioned KRAs, B4A conducts research for evidence-based policy advocacy and capacity building of human rights defenders on their digital security, online safety & privacy.

