

UNDERGRADUATE LAWS BLOG

Balancing Freedoms and Political Extremes – Which Right To Favour?

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Hello, I am Urfan Khaliq and I am Professor of International law. So the blog is called “Balancing freedoms and political extremes – Which right to favour?”

Now, one of the most contentious issues in International Human Rights Law is the weight to be accorded to different rights when they come into conflict with one another. One of the most intractable examples of such a conflict is between freedom of expression and the right to religious freedom, more specifically the right for a belief or those closely associated with it not to be insulted. The emotions on all sides of the debate which such incidents and cases arouse are intense and feed into the febrile atmosphere in which the law must sometimes operate. Two recent high-profile cases highlight the issues both legal and political and in different ways. The first is the decision of the Pakistan Supreme Court in the Asia Bibi case. The second case is the decision of the European Court of Human Rights in *E.S. v. Austria* which was decided in late October 2018.

In the Asia Bibi case to start with, the issue was not about the clash between rights per se but the Supreme Court of Pakistan considered the accused, Asia Bibi, had not blasphemed by drinking water from a cup which was to be drunk out of by some others and that the allegation was entirely without foundation. The widespread demonstrations responding to that decision and the political repercussions have been chilling, instilling fear into the judiciary and anyone involved in that case. The existence of the criminal offence of blasphemy has been widespread until recently but it is the potential to be executed in Pakistan if an accused is found guilty that marks it out. Further the offence only applies in cases of blaspheming or insulting Islam, not other faiths which are equally worthy of protection. Arguably it is not the existence of the offence per se, which is most problematic but the arbitrary and abusive manner in which charges are brought against those from minority groups. Further there are the social, cultural and broader political repercussions of such a charge. The rise of ostensibly religious but in reality extremist political parties with a very significant influence and a large following who demand death for those associated with blasphemy and consider all those accused, let alone found guilty, of blasphemy to automatically be guilty of such an offence, complicates matters hugely. All those associated with the trial be they lawyers, judges or the accused are clearly in mortal danger if a not guilty verdict is reached. In such a febrile atmosphere, the rule of law and any semblance of free expression on matters of belief simply cannot exist.

The situation in Pakistan concerning the rule of law and blasphemy has become extreme in its own right and is one of very significant concern but the discussion does raise a broader point. What is the appropriate balance to be struck between free expression and religious ridicule? The European cultural tradition of satire and ridicule attacks all persuasions be it religious, secular, political, social and so forth. Blasphemy is slowly being decriminalised in some countries but whether this is an abolitionist trend or not, it is simply far too early to tell. For example, Ireland, a religiously rather conservative nation, decided overwhelmingly in October 2018 to decriminalise blasphemy in a referendum. In some countries prosecutions are still being brought but the challenge is how far do you allow the right to insult and ridicule go in the name of free expression? Clearly you cannot allow

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incitement to hatred on a racial, political or religious basis. But what of less than that? These issues have been long debated especially in the context of the arts, films, plays and literature. The manifestation has, as always, continued to evolve and that ridicule and insult is increasingly for political gain – by the extreme right. Of course, one could say that far right political extremists and religious extremists have much in common, both use religion, in their different ways, for their own political gain. There are differences, obviously, but the overlap of objectives is striking.

In *E.S. v Austria*, the other case I mentioned, the issue before the European Court of Human Rights was precisely the balance between the right to ridicule and insult believers of a faith (in this case Islam) and free expression. It is not difficult to be critical of the judgment of the ECtHR where the Court upheld Austria's right to prosecute those who it was felt insulted Muslims. But the case raises broader issues as well. If belief is to be protected then surely all beliefs deserve protection but each faith of the traditional sort at least claims a monopoly on the truth, each thus considers all others to be false. This is not the same as ridicule but the relationship between a State and faith means that the privileges of one faith group are likely to be far greater than others. The protection afforded the sensibilities of adherents of one faith far greater than another. That is problematic in the extreme. Why does Catholicism, for example, deserve protection but not, for example, Hinduism? The anti-discrimination clause of the European Convention, Article 14, is notoriously feeble and the approach of the European Court leaves a great deal to be desired.

Rights will always clash – that is inevitable – but the manner in which balances are struck is critical and is always evolving. This is an issue which it is always worth keep a close analytical eye on for it tells us a great deal about the direction of human rights protection.

I hope you enjoyed this blog.