Spectrum of Defamation of Religion Laws and the Possibility of a Universal International Standard

Nicole McLaughlin

Archer Norris APC

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Nicole McLaughlin

I. INTRODUCTION

In October 2008, Jordanian police arrested a local poet for incorporating verses of the Quran in his love poems. The poet was charged with harming the Islamic faith by “combining the sacred words of the Quran with sexual themes.” The Jordanian poet’s arrest is just a recent example of a country enforcing defamation of religion laws since a 2005 Danish cartoon ignited international controversy over religious defamation.

The Danish cartoon that sparked this controversy included twelve caricatures criticizing and making fun of the prophet Muhammad, outraging many Muslims. The Danish newspaper, Jyllands-Posten, claimed that the cartoon was an exercise of free speech; however, Muslims called it “despicable racism” and “ridiculous and revolting.” The cartoon sparked riots around the Islamic world and dozens of people were killed. In Damascus, Syria, Muslim rioters shattered windows with stones and set fires...
outside Denmark’s embassy. Assassins have even attempted to murder the cartoonist, Kurt Westergaard.

The Danish cartoon controversy thrust defamation of religion to the forefront of international politics and started the debate on whether defamation of religion laws are proper, or whether they unduly encroach on freedom of expression. Despite the controversy, countries are passing and enforcing defamation of religion laws around the world. For example, Britain adopted the Racial and Religious Hatred Act of 2006, which criminalizes stirring up hatred against people on both racial and religious grounds. Additionally, many countries are actively punishing violations of defamation of religion laws, including Britain, France, and Canada. For example, the United Nations Human Rights Council passed Resolution 7/19 on “Combating Defamation of Religions” and Decision 1/107 on “Incitement to Racial and Religious Hatred and the Promotion of Tolerance” to prohibit religious defamation.


Many of the recent international resolutions are aimed at specifically protecting the sanctity of Islam. For example, in Resolution 7/19, the Council recognized discrimination in the Resolution by “[n]oting the Declaration adopted by the Islamic Conference of Foreign Ministers... which condemned the growing trend of Islam-phobia and systemic discrimination against adherents of Islam.” However, many major religious groups have used defamation of religion laws as a shield to protect others from criticizing and mocking their religious beliefs.

Several countries oppose laws that prohibit defamation of religion because these countries see defamation of religion laws as an encroachment on freedom of expression. These countries represent one end of a spectrum of approaches that promotes freedom of expression over religious freedoms; however, many countries are on the opposite end of that spectrum and have defamation of religion laws that do limit freedom of expression. This comment will analyze several different countries’ free speech and defamation of religion jurisprudence and argue that defamation of religion laws are compatible with democracy if limited to a particular scope.

In Part II, this comment describes the legal basis for international law’s preference for religious freedom over freedom of expression. Part III analyzes the leading international defamation of religion cases. Part IV looks at a spectrum of countries’ domestic laws approaching freedom of expression and

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freedom of religion, and argues that religiously homogenous countries tend to favor strict defamation of religion laws more than religiously diverse countries. Part V explores the possibility of a universal standard for domestic defamation of religion laws. In Part VI, this comment makes recommendations as to how the international community should balance defamation of religion laws with freedom of speech.

II. The Structural Preference for Religious Freedom over Freedom of Expression in Major Human Rights Treaties

Each principal human rights treaty protects both freedom of expression and freedom of religion, yet limits freedom of expression when it clashes with freedom of religion. Ratifying countries must follow these human rights treaties in their domestic legislation and policies, and violations are adjudicated in courts or commissions that determine whether a human right in the treaty has been violated.

A. The International Covenant on Civil and Political Rights

One human rights treaty, the International Covenant on Civil and Political Rights ("ICCPR"), structurally prefers freedom of religion over freedom of expression when these rights clash. Article 18 of the ICCPR protects the right to freedom of religion, but this right is subject to limitations when "necessary to protect public safety, order, health, or morals or the fundamental rights

19. Id.
20. ICCPR, supra note 17, at arts. 18-20.
and freedoms of others."\(^\text{21}\) Article 19 protects freedom of expression, including the right to hold opinions without interference and the right to freedom of expression.\(^\text{22}\) These rights, however, are subject to a limitation clause. The limitation clause says that these rights are subject to "special duties and responsibilities," including "respect of the rights or reputation of others" and "protection of national security or of public order . . . or of public health or morals."\(^\text{23}\)

While both of these rights are subject to some limitations, Article 20 clarifies which right trumps by prohibiting "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence . . . ."\(^\text{24}\) Therefore, freedom of expression is a more limited right because it is subject to "special duties and responsibilities" beyond the limitations put on other rights, and the ICCPR explicitly forbids advocacy of religious discrimination or hatred.

\section*{B. European Convention for the Protection of Human Rights and Fundamental Freedoms}

Similarly, like the ICCPR's Article 20, Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") protects freedom of thought, conscience, and religion.\(^\text{25}\) The ECHR's Article 10 protects freedom of expression with a limitation clause, stating that freedom of expression carries with it duties and responsibilities.\(^\text{26}\)

The ECHR's Article 17 "prohibits abuse of rights" and states:

\begin{quote}
Nothing in this Convention may be interpreted as implying for any State, group, or person any rights to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.
\end{quote}

Like ICCPR's Article 20, Article 17 does not expressly prohibit certain types of expression; however, the European Court of

\begin{itemize}
\item \textit{Id.} art. 18.
\item \textit{Id.} art. 19.
\item \textit{Id.}
\item \textit{Id.} art. 20 (emphasis added).
\item \textit{ECHR, supra} note 17, art. 9.
\item \textit{Id.} art. 10.
\item \textit{Id.} art. 17.
\end{itemize}
Human Rights has interpreted Article 17 to exclude certain types of expression in exceptional situations.28 These types of expression include remarks against the ECHR’s underlying values, particularly “a category of clearly established historical facts – such as the Holocaust . . .”29 Most human rights treaties have the same structural components as the ICCPR and ECHR to limit freedom of expression when it encroaches on freedom to manifest one’s religion.30

III. EUROPEAN CASE LAW PROTECTING FREEDOM OF RELIGION OVER FREEDOM OF EXPRESSION

A. The Human Rights Committee

The Human Rights Committee is the treaty-body mandated to monitor implementation of the ICCPR.31 The Human Rights Committee has adjudicated several cases where freedom of expression and freedom of religion clash, implementing the ICCPR’s preference for religious freedom at the expense of the right to offensive speech. The Human Rights Committee has determined that certain expressions are not protected by the ICCPR’s Article 19 when it constitutes hate speech against a religion.32 The Committee has also decided that Article 20 imposes an obligation on states to restrain expression that is offensive to a religion.33

For example, in the case of J.R.T. & W.G. Party v. Canada, the Human Rights Committee decided that Canada had an

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obligation to censor offensive messages against Judaism under the ICCPR’s Article 20. 34 Here, the Canadian Human Rights Commission decided that the W.G. Party’s automated telephonic messages warning citizens about “international Jewry leading the world into wars, unemployment and inflation and the collapse of world values and principles” 35 violated Canada’s Human Rights Act. 36 The W.G. Party argued that Canada’s decision to censor its speech violated the party’s Article 19 rights to freedom of opinion and expression. 37 The Committee opined that W.G. Party’s anti-Semitic message was not protected under Article 19 because Canada has an obligation to prohibit the incitement of racial hatred under Article 20. 38

The Human Rights Committee continued to impose an obligation on states to suppress offensive messages against religions fifteen years later in Faurisson v. France. 39 In this case, a professor of literature publically questioned the existence of the Holocaust in violation of France’s “Gayssot Act,” which made it a crime to deny the existence of crimes against humanity. 40 The Committee decided that Article 19’s limitation clause on freedom of expression applied because the offensive speech affected the community as a whole. 41 The speech affected the entire Jewish community because it was intended to raise or strengthen anti-Semitic feelings and cause the Jewish community to live in fear from an anti-Semitic environment. 42 The court approved France’s policy of sanctioning speech aimed at race, culture, and ethnicity, as well as speech that is at variance with the officially approved version of historical truth, including the Holocaust. 43

In both cases, the Committee allowed restrictions on freedom of expression under the provisions of the ICCPR because the

34. Id.
35. Id. ¶ 2.1.
36. See id. ¶ 8(b).
37. Id. ¶ 1.
38. Id. ¶ 8(b).
40. Id. ¶ 2.1-3.1.
41. Id. ¶ 9.6.
42. Id. ¶ 9.6.
restrictions were aimed towards protecting a group from discrimination. In the Faurisson case, the Committee particularly emphasized the importance of the broader social context when prohibiting offensive expression against a religious group. Also, in the J.R.T. & W.G. Party case, the court recognized that Canada has a duty to prohibit offensive speech against a religious group because such speech violates human rights.

B. The European Court of Human Rights

Like the Human Rights Committee, the European Court of Human Rights adjudicates violations of the ECHR. The European Court of Human Rights also follows the ECHR's preference for freedom of religion by protecting freedom of religion over defamatory expression against religion. Kokkinakis v. Greece is the first in a series of cases from the mid-1990s that held that a state may suppress offensive speech aimed at a religion. In that case, Kokkinakis, a Jehovah’s Witness, was arrested over sixty times for violating Greek anti-proselytizing laws. The European Court of Human Rights allowed Greece to suppress proselytizing against the Greek Orthodox Church because, under Article 9, it may be necessary to place restrictions on expression to ensure that every citizen’s beliefs are respected. Similarly, in Otto Preminger Institut v. Austria, the Austrian government seized a film “in which God the Father is presented both in image and in text as a senile, impotent idiot, Christ as a cretin and Mary Mother of God as a wanton lady...” Despite seizing the film pursuant to Austrian law as an “attack on Christian religion,” the European Court of Human Rights held that the Austrian government did not violate Article 10. The court instead held that restrictions on freedom of expression are allowable when “necessary in certain democratic societies.”

The court reiterated this holding in Wingrove v. United

44. Information Document on the Court, supra note 18.
47. Id. § 33.
49. Id.
50. Id. at 19.
Kingdom, where the United Kingdom deemed a video that showed sexual conduct between a woman and the crucified Christ blasphemous under British law. The court held that the ban was “necessary in a democratic society” to protect the right to manifest the Christian religion under Article 10. The court considered whether the ban corresponded to a “pressing social need” and whether it was “proportionate to the legitimate aim pursued.”

In the most recent case, *I.A. v. Turkey*, the court upheld a criminal prosecution for defamation of religion. There, the Turkish courts imposed a fine on the author of a book that described the prophet Muhammad as having sexual intercourse with dead people and live animals. The court declared that the book was “an abusive attack on the Prophet of Islam.” The court held that the Turkish government’s anti-defamation laws did not violate Article 10 because the restriction coincided with the holdings of *Kokkinakis* and *Otto Preminger Institut*.

Despite these holdings, the European Court of Human Rights has declined to impose an unqualified duty on states to protect religions from defamation. In *Dubowska and Skup v. Poland*, the Polish government investigated a potentially defamatory newspaper publication of Jesus and Mary with gas masks over their faces, but decided not to take any action. The court held that the publication did not prevent Christians from exercising their freedom of religion and the ECHR did not require Poland to enact laws to protect against such defamation.

IV. Spectrum of Domestic Defamation of Religion Laws

Countries react to the tension between freedom of expression and freedom of religion with varying types of laws and policies that favor one over the other when these rights collide. To handle the multitude of approaches, the Human Rights Committee and
European Court of Human Rights have upheld several Western European and North American countries' versions of defamation of religion laws without requiring countries to impose such laws.\textsuperscript{59} One trend among the approaches, however, is clear: countries that are more ethnically and religiously diverse tend to favor freedom of expression, whereas countries that are ethnically and religiously homogenous tend to favor laws and policies against defamation of a majority religion. For example, on one end of the spectrum of possible laws is the United States, which has a wealth of religious and ethnic diversity and protects freedom of expression almost universally.\textsuperscript{60} On the other end of the spectrum are religiously homogenous countries like Pakistan and Jordan, which favor protection of the majority religion at the expense of almost all freedom of expression.\textsuperscript{61} In the center are countries like Israel and Panama, which navigate a fine line between an official preference for a particular religion and an espousal of freedom of expression and religion.\textsuperscript{62}

\textbf{A. United States}

The United States is a culturally and ethnically diverse nation that has favored near total freedom of expression.\textsuperscript{63} Defamation of religion laws are widely opposed in the United States because they are contrary to the United States's protection of freedom of

\begin{itemize}
  \item \textsuperscript{60} RONALD J. KROTOSZYNSKI, JR., THE FIRST AMENDMENT IN CROSS-CULTURAL PERSPECTIVE: A COMPARATIVE LEGAL ANALYSIS OF THE FREEDOM OF SPEECH 12 (2006).
  \item \textsuperscript{63} See Kim L. Rappaport, In the Wake of Reno v. ACLU: The Continued Struggle in Western Constitutional Democracies with Internet Censorship and Freedom of Speech Online, 13 Am. U. Int'l L. Rev. 765, 771-72 (1998) (noting that state regulation restricting expression on basis of content or ideas is presumptively invalid).
\end{itemize}
expression and general refusal to censor "low value speech." The United States Supreme Court has typically followed the "marketplace of ideas" metaphor first evoked in Justice Oliver Wendell Holmes's dissent in Abrams v. United States. The marketplace of ideas metaphor embraces John Stuart Mill's liberty ethic that truth is best served by a free and full competition of ideas within a free marketplace rather than a paternalistic state-sponsored effort to protect citizens from bad ideas.

Building upon the marketplace of ideas metaphor, the Supreme Court has held that several types of "low value" speech are protected by the First Amendment, such as a dial-a-porn service or wearing a "Fuck the Draft" t-shirt. Even the most vile, racist, and offensive speech is protected, absent violent or threatening behavior. For example, in Skokie v. National Socialist Party, the Illinois Supreme Court, on remand from the United States Supreme Court, upheld the National Socialist (Nazi) Party of America's First Amendment right to display swastikas in a march through a predominantly Jewish neighborhood, where many Holocaust survivors resided. The Supreme Court, however, has occasionally departed from the marketplace of ideas metaphor. The Court has been unwilling to fully protect some particularly offensive categories of speech, such as obscenity and child pornography, defamatory speech, fighting words, and

64. See id.
67. See JOHN STUART MILL, ON LIBERTY (Elizabeth Rapaport ed., Hackett Publ'g Co. 1978) (1859).
68. KROTOFSZYNSKI, supra note 60, at 14.
73. New York Times Co. v. Sullivan, 376 U.S. 254, 264-65 (1964) (holding that the Constitution prevents a "public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' - that is, with knowledge that it was false or with reckless disregard of whether it was false or not").
74. Chaplinsky v. New Hampshire, 315 U.S. 568, 571-572 (1942) ("There are certain
incitement.  

In the United States, some scholars and groups have advocated moving towards more state control over expression. Several Western scholars have famously argued for censoring certain types of offensive and hateful speech. For example, a Los Angeles based Islamic group named the Constitutional Rights Foundation proposed the following amendment to the First Amendment: "The First Amendment shall not be interpreted to protect blasphemous speech. States shall be free to enact anti-defamation laws as long as they prohibit offensive speech against all religions." This proposed constitutional amendment will probably never become main-stream, however, because the United

well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

75. Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) ("[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.").

76. For example, Mari Matsuda argues that the increasing amount of hate speech on college campuses generates a need for formal and administrative sanctions. Richard Delgado argues for favoring racial and gender equality higher than freedom of speech, and Catharine MacKinnon argues in favor of protecting women from harassing speech in the workplace. See generally MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (1993) [hereinafter WORDS THAT WOUND] (arguing that college campuses present a unique environment that leaves students vulnerable to hate propaganda); Mari J. Matsuda, Public Response to Racist Speech: Considering the Victim's Story, 87 MICH. L. REV. 2320 (1989) (noting racial incidents which occurred in the 1980s on college campuses); RICHARD DELGADO & JEAN STEFANCIC, MUST WE DEFEND NAZIS? HATE SPEECH, PORNOGRAPHY, AND THE NEW FIRST AMENDMENT (1997) (discussing how hate speech harms minorities and women); Richard Delgado, Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling, 17 HARV. C.R.-C.L. L. REV. 133 (1982) (arguing for the creation of an independent tort action for racial insults); CATHARINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN (1979) [hereinafter SEXUAL HARASSMENT OF WORKING WOMEN] (arguing that sexual harassment of women in the workplace is sex discrimination); CATHARINE A. MACKINNON, ONLY WORDS (1993) [hereinafter ONLY WORDS] (arguing that women need protection from harassing speech at work because such words are the equivalent of a harassing act).

States has a long history of favoring almost complete freedom of expression.\(^7^8\)

As a diverse nation, the United States balances its citizens' numerous viewpoints and beliefs by allowing all types of expression without censorship. The United States is at the extreme end of the spectrum by favoring almost complete freedom of expression under the marketplace theory. Under the United States's First Amendment jurisprudence, there is no protection against defamation of religion.\(^7^9\)

B. India

Like the United States, India is a multi-ethnic society composed of numerous ethnic groups, languages, religions, and cultures; however, India has promulgated defamation of religion laws to balance freedom of expression and freedom of religion in its multi-ethnic society. As the world's most populous democracy, Indian law promotes tolerance among these multiple groups to prevent civil disorder.\(^8^0\) For example, India's Penal Code section 153A(1)(a) punishes whoever "by words . . . promotes or attempts to promote, on grounds of religion . . . disharmony or feelings of enmity, hatred, or ill-will between different religious groups." Subsection (2) states that "whoever commits an offence specified in sub-section (1) in a place of worship or in an assembly engaged in . . . religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also

\(^7^8\) KROTOSZYNSKI, supra note 60, at 12.

\(^7^9\) The only recognized exceptions to complete freedom of speech under the First Amendment are child pornography, defamatory speech, fighting words and true threats, and incitement. See, e.g., Miller v. California, 413 U.S. 15, 23-25 (1973) (upholding state statute regulating obscenity as a proper restriction of First Amendment rights); Osborne v. Ohio, 495 U.S. 103, 111 (1990) (upholding a state statute's proscription of the possession and viewing of child pornography); New York v. Ferber, 458 U.S. 747, 763-64 (1982) (concluding that child pornography is outside the protections of the First Amendment); New York Times Co. v. Sullivan, 376 U.S. 254, 264-65 (1964) (holding that public officials suing for libel and defamation cases must meet a high threshold of "actual malice"); Chaplinsky v. New Hampshire, 315 U.S. 568, 571-72 (1942) (holding that a state's prevention of "fighting words" does not raise any constitutional concerns); Brandenburg v. Ohio, 395 U.S. 444, 448-49 (1969) (holding that state statutes forbidding the advocacy of the use of force do not offend constitutional protections when such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action).

\(^8^0\) THOMAS DAVID JONES, HUMAN RIGHTS: GROUP DEFAMATION, FREEDOM OF EXPRESSION AND THE LAW OF NATIONS 211-12 (1998).
be liable to fine."\textsuperscript{81} In short, India’s defamation of religion statute punishes words that promote ill-will between religious groups in a place of worship, with maximum punishments of five years imprisonment and a possible fine.

Indian domestic courts have litigated cases similar to those litigated in front of the Human Rights Committee and the European Court of Human Rights. For example, in \textit{Kali Charan Sharma v. Emperor}, a Hindu wrote a book ridiculing the prophet Mohammed as part of a propaganda campaign.\textsuperscript{82} The court held that the book violated Indian law because it promoted feelings of hatred and enmity between Hindus and Muslims.\textsuperscript{83} The decision to censor the plaintiff’s book in \textit{Kali Charan Sharma} is analogous to the \textit{Otto Preminger Institut}, Wingrove, and I.A. cases that upheld censorship of films and books under defamation of religion laws.\textsuperscript{84} Additionally, limiting the plaintiff’s anti-Muslim propaganda campaign is consistent with \textit{Kokkinakis}’s limitation on proselytizing that did not respect other religious beliefs.\textsuperscript{85}

As a multi-ethnic society, India balances the competing interests between freedom of expression and protection of religion with defamation laws that do not censor more speech than necessary. India’s Penal Code is narrowly tailored to punish offensive speech that is made during religious worship and aimed at religion; therefore, the law is not overly broad because it does not censor benign expression. As a multi-ethnic society, India leans towards the United States’s side of the spectrum by prosecuting hate speech aimed at a religion in the places of worship, while strictly censoring other types of expression.

\textbf{C. Nigeria}

As in India, Nigeria is a multi-ethnic society that uses

\footnotesize
81. \textsc{India Pen. Code} § 153A.
83. \textit{Id}.
defamation of religion laws to balance the competing interest of freedom of speech and religion for its diverse citizenry. Nigeria is a comparatively newer country, which gained its independence from Great Britain on October 1, 1960. After its independence, Nigeria became a common law country, borrowing English law from its former colonial ruler. The Nigerian Constitution is modeled after the United States’s Constitution. While the Nigerian Constitution protects freedom of expression, that freedom is not an absolute right.

Nigeria’s version of a defamation of religion law is written broadly to protect different Nigerian “classes.” Section 51 of Chapter 7 of the Federal Criminal Code of Nigeria prohibits “any act with a seditious intention.” Seditious intentions are intentions to “raise discontent or disaffection among the citizens or other inhabitants of Nigeria; or to promote feelings of illwill and hostility between different classes of the population of Nigeria.” The statute is worded to protect “different classes of the population,” which includes Nigeria’s two main competing religions, Christianity and Islam. Section 50 implicitly protects defamation against tribes and defamation based on religion.

Divisions among ethnic groups and religious tensions have led to civil war and riots between religious groups. For example, in November 2003, Abuja, Nigeria hosted the Miss World competition, angering some Islamic populations who claimed the pageant promoted sexual promiscuity and indecency. Journalist

86. JONES, supra note 80, at 214.
87. Id.
88. Id.
89. Id. at 215.
91. Id. § 51(1)(a).
92. Id. § 50(2)(c)-(d).
93. Nigeria has over 300 ethnic tribes. The largest tribes are “[t]he Ibo (or Igbo) in the East, the Yoruba in the West, and the Hausa and Fulani in the North . . . Peripheral zones are occupied by minority groups such as the Ijaw, Kanuri, Nupe, Kwale, and Urhobo tribes.” JONES, supra note 80, at 218.
94. See Criminal Code Act § 50(2)(c)-(d) (Specific concerns regarding disaffection among Nigerian citizens and feelings of ill-will between different classes evidences the protection of tribes and their differing religions) (emphasis added).
Isioma Daniel incited riots over the pageant by writing in *This Day* newspaper that if the sacred Muslim leader were alive today he would have enjoyed the pageant and “he would probably have chosen a wife from one of [the contestants].”

Nigeria's religious differences led Nigeria to adopt Articles 259-263 of the Nigerian Constitution, which establish Sharia courts. These courts have jurisdiction over disputes involving Islamic personal law, or disputes where all parties are Muslim and request the jurisdiction of the court.

Although the Nigerian government has legitimized Sharia law by establishing Sharia courts, Nigeria still leans towards the United States's side of the spectrum. The Sharia courts have limited jurisdiction to Muslims who already follow Sharia law or to people who consent to the court's jurisdiction. Additionally, Nigeria has a secular set of courts to adjudicate violations of Nigerian law and the Constitution. This system shows that although Nigeria recognizes Christianity and tribal religions, it does not use the Sharia courts or Nigerian laws to establish Sharia law as an official religion or to unduly encroach on freedom of expression or religion. Sharia law is kept separate from Nigerian law.

**D. Israel**

Israel teeters in the middle of the spectrum as a democratic and secular state that mixes religion and government. The Zionist movement for the creation of Israel began in response to some Jewish groups' perceived failure to assimilate in Europe. The United Nations officially recognized Israel as a Jewish Zionist state on November 29, 1947, and it was officially established on

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98. *Id.* art. 262; *Jones, supra* note 80, at 218.


100. *Jones, supra* note 80, at 218.

101. See *id.*


May 14, 1948. 104 Although the founders of Israel intended to draft a constitution, political contentions arose over the proper balance between religion and democracy, and a constitution was never drafted. 105 Today, Israel is governed by eleven “basic laws.” 106 As a result, some Israelis perceive Israel as a Jewish theocracy, while others perceive it as a secular state.

Israel’s Declaration of the Establishment of the State of Israel describes the country as a Jewish state, but calls for full social and political equality irrespective of religion. 108 Similarly, Israel’s Basic Laws guarantee freedom of religion and safeguard the “Holy Places” of all religions. 109 However, in reality, the Israeli government is deeply influenced by Orthodox Jewish political parties, and the government implements certain policies based on Orthodox Jewish interpretation of religious laws. 110 For example, the national airline, El Al, and public buses in most cities do not run on Saturday because Saturday is the Jewish Sabbath. 111 The U.S. Department of State concluded in its report entitled “Israel and the Occupied Territories: International Religious Freedom Report 2007” that the Israeli government’s policy of following Orthodox Jewish teaching leads to unequal treatment of religious minorities. 112 According to the U.S. Department of State, Israel also experiences religious tensions among various religious groups, including Jews and non-Jews, Muslims and Christians, Jews and Muslims, and groups within the different streams of Judaism.

Additionally, as in Nigeria, Israel has both secular and

104. THE DECLARATION OF THE ESTABLISHMENT OF THE STATE OF ISRAEL 1 (Isr. 1948) [hereinafter DECLARATION].
106. The eleven Basic Laws have pseudo-constitutional status because they are considered the preliminary chapters of what will eventually become the constitution. Id.
108. DECLARATION, supra note 104, at 2.
111. Id.
112. Id.
113. Id.
religious courts.\textsuperscript{114} Israel's religious courts decide most issues associated with the daily lives of Israeli citizens.\textsuperscript{115} Israel has four recognized religions, Judaism, Christianity, Islam, and Druze,\textsuperscript{116} and each of these religions has its own judiciary and a set of laws based on its respective religious teachings.\textsuperscript{117} The Rabbinical courts, for example, have considerable power, retaining exclusive jurisdiction over marriage and divorce cases and concurrent jurisdiction with the Israeli civil courts over other personal matters, including inheritance, legitimation, guardianship, and maintenance.\textsuperscript{118} The religious court system is consistent with Jewish law, which states that everything in the concrete world—including sociological creations like the state, law of business, torts, neighbors, creditors, partners, agents, family life, war, courts—is subject to God's will.\textsuperscript{119} Although Israel's secular High Court of Justice is technically the highest court of the land, it has virtually no power over matters reserved to the religious court of appeals over religious court decisions.\textsuperscript{120} Israel's dual court system is a more extreme version of religious integration than the Nigerian dual court system, since Israel's religious courts have considerable power over the everyday lives of their citizens, while the Nigerian religious courts only have voluntary jurisdiction over some of their Muslim populations.

Israel, a country with a 76.1\% Jewish population,\textsuperscript{121} follows the trend that a religiously homogenous country is more likely to

\begin{itemize}
  \item \textsuperscript{114} Andrew Treitel, \textit{Conflicting Traditions: Muslim Shari'a Courts and Marriage Age Regulation in Israel}, 26 COLUM. HUM. RTS. L. REV. 403, 411 (1995).
  \item \textsuperscript{115} See id. at 411-13.
  \item \textsuperscript{116} Id. at 411.
  \item \textsuperscript{117} See id. at 411-13.
  \item \textsuperscript{118} MARTIN EDELMAN, COURTS, POLITICS, AND CULTURE IN ISRAEL 52 (1994).
  \item \textsuperscript{120} See Basic Law: Judicature, art. 15, 5744-1984, 38 L.S.I. 101 (1983-84). In a few isolated cases, however, the Israeli High Court of Justice has overturned the judgments of religious courts. For example, in \textit{Bavli v. Grand Rabbinical Court}, the High Court overturned a Rabbinical court's ruling over the property rights of a woman during a divorce dispute. Divorces are normally under the exclusive jurisdiction of the religious courts; however, because the Rabbinical court did not apply the state law granting women and men equal property rights upon divorce, the High Court held that the Rabbinical court acted outside of the scope of its jurisdiction and used its administrative power to return the case back to the Rabbinical court with instructions. See generally HCJ 1000/92, Bavli v. Grand Rabbinical Court, [1994] IsrSC 48(2) 221.
  \item \textsuperscript{121} See Israel and the Occupied Territories, \textit{supra} note 110.
\end{itemize}
favor religious rights. However, Israel is an unusual mix of both theocratic and democratic tendencies. Israel has not implemented traditional defamation of religion laws as in India or Nigeria, and Israel’s approach to religious defamation is similar to the American approach because its Basic Laws recognize freedom of religion and expression.\textsuperscript{122} Therefore, Israel’s laws do not facially encroach on freedom of expression when they clash with freedom of religion. Israel’s governmental policies could nonetheless potentially encroach on freedom of religion because of the heavy influence of Orthodox Jewish teachings. For example, citizens with other religious obligations may not be able to get to their churches because public transportation is unavailable on Saturdays.\textsuperscript{123}

Furthermore, Israel has recently experienced its own cartoon controversy analogous to the Danish cartoon controversy.\textsuperscript{124} The cartoon, by Pulitzer Prize-winning cartoonist Pat Oliphant, depicts a large, headless Israeli soldier marching in a Nazi-like fashion while pushing a large fanged Star of David towards a tiny woman, who is carrying a baby labeled “Gaza.”\textsuperscript{125} Prominent Jewish groups, such as the Anti-Defamation League and Simon Wiesenthal Center, decried the cartoon as anti-Semitic for comparing Israel to the Nazis and using anti-Semitic imagery, like a fanged Star of David.\textsuperscript{126} Even though the cartoon offended Jewish groups, Israel did not officially ban its publication or distribution like other countries did in response to the Danish cartoon.\textsuperscript{127} Therefore, Israel navigates a fine line between freedom of expression and religion, without imposing formal defamation of religion laws.

\textbf{E. Panama}

Similar to Israel, Panama is a predominately Christian country that vacillates between democratic ideals and the protection of its preferred religion, Catholicism. As of 1989, Panama is a constitutional democracy with a secular judicial

\textsuperscript{123} Israel and the Occupied Territories, \textit{supra} note 110.
\textsuperscript{125} \textit{Id.}
\textsuperscript{126} \textit{Id.}
\textsuperscript{127} \textit{Id.}
branch that is organized under one Supreme Court.128

Panama's Constitution provides for freedom of religion with the caveat that "Christian morality and public order" are respected.129 The Constitution recognizes Catholicism as "the religion of the majority,"130 but does not designate Catholicism as the official religion of Panama. However, Catholicism enjoys state-sanctioned advantages over other religions, and Panama observes Good Friday and Christmas Day as national holidays.

Panama's caveat that "Christian morality and public order" must be respected has led to some instances where freedom of expression has been repressed based on religious beliefs. For example, a gay and lesbian advocacy group was denied the legal recognition that is commonly given to nonprofit organizations.132 The Minister of Government and Justice cited Article 38 of the Panamanian Constitution, which forbids the creation of companies, associations, or foundations that are contrary to moral or legal order.133 Therefore, like Israel, Panama does not have defamation of religion laws per se, but it does refuse to recognize minority expression that contradicts Catholicism.

In sum, Panama, like Israel, teeters in the middle of the spectrum as a secular state that mixes religion and government. Although Panama recognizes democratic values, Panama mixes its official preference for Catholicism with democratic ideals, all without imposing formal defamation of religion laws.

F. Pakistan

Pakistan is on the opposite end of the spectrum from the United States because Pakistan uses its defamation of religion laws to censor all expression that is critical of Islam. Pakistan was originally a British colony and gained independence in 1947.134

128. Background Note: Panama, supra note 62.
129. CONSTITUTION OF PANAMA, art. 34.
130. Id.
133. CONSTITUTION OF PANAMA, art. 38.
Pakistan’s first constitution was based on the Government of India Act of 1935, an act promulgated by the British. The framework of the Government of India Act provided for a strong central government, an independent executive, and limited popular representation with feudal domination over politics. Some experts believe Pakistan’s current anti-democratic regime is a holdover from colonial times. Pakistan’s current constitution, the 1973 Constitution, describes Pakistan as an Islamic Republic with Islam as its official religion, but which guarantees freedom of religion for minorities.

Pakistan has a long history of defamation of religion laws dating back to the British colonial period under the Pakistan Penal Code of 1860. The purpose of the original defamation of religion laws was to prevent and curb religious violence. Pakistan’s defamation of religion laws prohibit defiling a copy of the Quran, using derogatory remarks towards the Prophet Mohammed, people of holy personage, and people of the Qadiani group calling themselves Muslim or preaching or propagating their faith. Additionally, death is the penalty for violating Pakistan’s defamation of religion law section 295-C (the use of derogatory remarks against the Prophet Mohammed and people of holy personage).

Amnesty International studied several dozen people charged under these defamation of religion laws and reported that Pakistan used its defamation of religion laws arbitrarily against people with minority religious beliefs and against people who advocate novel ideas. The Amnesty International study also questioned the fairness and procedural safeguards of Pakistan’s criminal justice system. For example, in Pakistan, death is the penalty for a
person who is charged with defamation of religion under section 295-C, and there is no right to appeal. Additionally, many Pakistani lawyers, police, and lower judiciary exhibit bias against people who are charged with blasphemy. Representative M. Younus Sheikh testified to the United Nations Commission on Human Rights that he was falsely accused of defamation of Islam and sentenced to death. Younus said that he spent over two years in solitary confinement and that his attorneys were harassed and threatened. The study concluded that Pakistan does not meet universal international standards of fairness for many reasons, including its corrupt officials and excessive punishments.

Pakistan is an example of a religiously homogenous country that has used its defamation of religion laws in an anti-democratic way to suppress minority religions and viewpoints. Pakistan is on the opposite end of the spectrum from the United States because it favors religious rights over almost all freedom of expression, which is in stark contrast to the United States’s marketplace of ideas model.

G. Jordan

Similar to Pakistan, religiously homogenous Jordan is also on the end of the spectrum, as it undemocratically uses defamation of religion laws to promote Islam while suppressing freedom of expression. Jordan, like Pakistan, was a British Colony that was awarded to Britain by the League of Nations after World War I. Britain created the semi-autonomous Emirate of Transjordan in 1922, and the mandate over Transjordan ended in 1946. Jordan officially broke ties with Britain when it ended its special defense treaty in 1957.

Jordan’s Constitution, promulgated on January 8, 1952, stipulates that Jordan is an Arab Constitutional Monarchy with a
parliamentary system.\textsuperscript{154} The Constitution declares Islam as Jordan’s official religion.\textsuperscript{155} Jordan’s legal system, based on Islamic law and French codes, is divided into three categories: civil courts, religious courts, and special courts.\textsuperscript{156} Jordan’s Constitution also guarantees the independence of the judicial branch, stating that judges are “subject to no authority but that of the law.”\textsuperscript{157}

In addition, Jordan’s Constitution specifically guarantees the personal rights of Jordanian citizens, including the freedoms of speech,\textsuperscript{158} association,\textsuperscript{159} education, political parties,\textsuperscript{160} religion, and the right to elect parliamentary and municipal representatives.\textsuperscript{163} The right to religious freedom, however, is qualified under Article 14.\textsuperscript{164} Article 14 provides that “[t]he State shall safeguard the free exercise of all forms of worship and religious rites in accordance with the customs observed in the Kingdom, unless such is inconsistent with public order or morality.”\textsuperscript{165} With the caveat that religious worship must be consistent with the customs observed in the Kingdom, minority religions are vulnerable to suppression by Muslim majority leadership.

Furthermore, under Article 15, freedom of speech must not violate domestic laws.\textsuperscript{166} This approach is the opposite of the United States’s approach that domestic laws must not violate a citizen’s constitutionally protected right to freedom of speech.\textsuperscript{167} The arrest of a Jordanian for incorporating verses from the Quran in love poems is one example of Jordan using its defamation of religion laws to censor expression that is contrary to Islamic teachings. The poet was charged with harming the Islamic faith

\begin{itemize}
  \item \textsuperscript{154} CONSTITUTION OF THE HASHEMITE KINGDOM OF JORDAN, art. 1.
  \item \textsuperscript{155} Id. art. 2.
  \item \textsuperscript{156} Id. art. 99.
  \item \textsuperscript{157} Id. art. 97.
  \item \textsuperscript{158} Id. art. 15.
  \item \textsuperscript{159} Id. art. 16.
  \item \textsuperscript{160} Id. art. 19.
  \item \textsuperscript{161} Id. art. 16.
  \item \textsuperscript{162} Id. art. 6.
  \item \textsuperscript{163} Id. art. 1.
  \item \textsuperscript{164} Id. art. 14.
  \item \textsuperscript{165} Id.
  \item \textsuperscript{166} Id. art. 15.
  \item \textsuperscript{167} See KROTOSZYNSKI, supra note 60, at 12.
\end{itemize}
and violating press and publication law.\textsuperscript{168} The poet could not evoke his constitutional right to freedom of speech because he violated Jordanian domestic law, and Jordan could prosecute his poem as being inconsistent with public morality and, in particular, Islamic morality.\textsuperscript{169}

Another example of Jordan’s use of defamation of religion laws to censor expression is Jordan’s response to the Danish cartoon controversy. After two weekly newspapers reprinted the Danish newspaper caricatures of Muhammad, a Jordanian court responded by convicting and sentencing the editors of the newspapers to two months in prison for insulting Islam.\textsuperscript{170}

Moreover, Jordan’s domestic defamation of religion laws have gone further than just repressing freedom of speech within Jordan. With the Jordanian Justice Act of 2006, Jordan attempted to repress all offensive speech against Islam. For example, the Jordanian Justice Act prohibits reproducing images of the Prophet Muhammad inside or outside the country.\textsuperscript{171} Public Prosecutor Hassan Abdullat summoned the eleven Danes involved in the cartoon controversy to answer for the charges of blasphemy and threatening national peace under the Jordanian Justice Act of 2006, as well as filed the domestic charges against the newspapers that reprinted the cartoon.\textsuperscript{172}

Therefore, Jordan is at the opposite end of the spectrum, where religion and speech clash. Although Jordan’s Constitution espouses promises of freedom of speech, Jordan’s domestic laws create complete Muslim control over religion and societal speech with the aim of controlling all speech against Islam internationally.

IV. THE POSSIBILITY OF A UNIVERSAL STANDARD FOR DEFAMATION OF RELIGION LAWS

The laws and policies of many countries treat freedom of religion and expression in varying ways, which lead to inconsistent protection of freedom of expression and religion. A single
universal approach would be beneficial to the protection of democracy and expression because it would prevent a country from using defamation of religion laws in a non-democratic way. However, there are some problems with a single universal standard, including the difficulties of implementing such a standard and finding a forum to adjudicate its violations.

**A. Defamation of Religion Laws and Their Compatibility with Democracy**

One of the major concerns surrounding defamation of religion laws is the laws’ effect on democracy. When a country stifles freedom of expression, it threatens democracy because democracy thrives under transparency and freedom of speech. For example, countries like Pakistan and Jordan can hardly be called democratic because they have used their defamation of religion laws to stifle almost all minority opposition. Similarly, countries like Israel and Panama have pushed the limits of democracy by imposing official church policies on their citizenry.

Democracy has had a positive impact on the protection of human rights; therefore, human rights advocates operate under the goal of globally infusing democracy. The United Nations has concluded that democracy, development, and respect for human rights are interdependent and mutually reinforcing. The 1993 World Conference on Human Rights recommended national and international actions to promote democracy, development, and human rights, requesting global promotion of democracy in General Assembly Resolution 49/30. Therefore, domestic defamation of religion laws must respect democracy and human rights to be legitimate.

Domestic defamation of religion laws do not necessarily endanger democracy, however. In religiously and ethnically diverse countries, such as India and Nigeria, defamation of religion laws are compatible with functioning democracies. Similarly, the European Court of Human Rights has upheld many domestic defamation of religion laws in several Western European countries.
democracies, including Greece, Austria, Britain, and Turkey. In some religiously and ethnically homogenous countries like Pakistan and Jordan, however, defamation of religion laws allow majoritarian rules based on religion and do not comport with democratic standards.

Therefore, it is necessary to determine a single standard that can be applied to different countries to ensure that defamation of religion laws do not unduly encroach on democracy. Rather than ban a country from passing defamation of religion laws, the international community should demand that defamation of religion laws comport to a minimum standard that protects freedom of expression and democracy.

B. The "Necessary in a Democratic Society" Universal Standard

The European Court of Human Rights's "necessary in a democratic society" standard is a workable benchmark for the permissible scope of domestic defamation of religion laws for all countries. The "necessary in a democratic society" standard can ensure that democracy and freedom of expression are protected. The standard has two parts: necessity and democratic society.

Under the necessity prong, the European Court of Human Rights has opted to show broad deference to individual countries in order to determine what is necessary with respect to their own cultural values and norms. For example, the European Court of Human Rights has held that censorship is necessary in a democratic society for proselytizing, denying the Holocaust, and sexual depictions of Jesus and the prophet Muhammad. This broad deference is appropriate because a sovereign nation is in the best position to determine what is necessary based on its own cultural norms and history. Professor Ronald J. Krotoszynski aptly states that "[r]ules operate in a cultural context, and a careful observer should never lose sight of this fact." America, for example, is on one extreme end of the spectrum regarding its freedom of speech rights, which are based on its cultural history. Consequently, Americans tend to be hypercritical of defamation of

176. See, e.g., cases cited supra note 14.
177. ECHR, supra note 17, at arts. 9-10.
178. Id.
179. See, e.g., cases cited supra note 14.
180. KROTOSZYNSKI, supra note 60, at 3.
religion laws and lose a sense of cultural relativity.

One example of cultural necessity is Nigeria’s decision to pass section 50 of its Criminal Code because of the historical divisions among ethnic and religious groups.\textsuperscript{181} Nigeria ultimately decided that its defamation of religion laws were necessary to prevent war and civil unrest.\textsuperscript{182} Thus, it is appropriate to show deference to a sovereign nation as long as it meets the minimum necessity requirement.

Countries on the opposite end of the spectrum, such as Pakistan, do not meet the low necessity threshold because their defamation of religion laws go beyond necessity and cross over into minority oppression. For example, Pakistan criminalizes all criticism of Islam.\textsuperscript{183} The European Court of Human Rights allows as necessary the censorship of offensive videos and speech aimed at religion, but does not uphold censorship for the purpose of suppressing oppositions to religion or suppressing minorities.\textsuperscript{184} This necessity threshold also overlaps with the democratic society requirement to guard against repression via defamation of religion laws.

The democratic society prong shows broad deference to domestic legislation because it requires countries to impose procedural safeguards that protect democracy. For example, India’s Penal Code section 153A protects democracy and speech rights by narrowly classifying the type of speech to be censored and the locations to be regulated, as well as by limiting the punishment to five years and a possible fine.\textsuperscript{185} By contrast, Pakistan does not afford those charged with defamation of religion the basic procedural safeguards for a fair trial, such as the right to appeal or the right to be heard in front of an impartial magistrate,\textsuperscript{186} as is required by a democratic society.

An advantage of having one universal standard is that it will allow countries the freedom to choose whether or not to promulgate domestic defamation of religion laws, while the international standard protects individual rights to freedom of...

\textsuperscript{181} B.O. NWABUEZE, A CONSTITUTIONAL HISTORY OF NIGERIA 129-30 (1982).
\textsuperscript{182} See JONES, supra note 80, at 218-19.
\textsuperscript{183} PAKISTAN PEN. CODE §§ 295-98.
\textsuperscript{184} See cases cited supra note 14.
\textsuperscript{185} INDIA PEN. CODE § 153A.
\textsuperscript{186} See International Humanist and Ethical Union, supra note 147.
expression and freedom of religion. A single universal standard would balance the competing interests between a state’s control over religious defamation and an individual’s right to freedom of expression and freedom of religion.

On the other hand, the blaring disadvantages of a single universal standard are its enforcement and application. For example, the decisions of the European Court of Human Rights are only binding on its ratifying nations and have no legal authority over other nations. Logistically, a universal standard would have to be adopted by the enforcement mechanism in charge of implementing a regional human rights treaty. This is possible because each principle human rights treaty recognizes both freedom of speech and religion, and structurally prefers religious freedom when it clashes with freedom of expression. Therefore, defamation of religion laws do not seem to violate freedom of expression when they fit within the “necessary in a democratic society” standard because each treaty’s protection of expression and religion is structurally similar.

C. Fora for Adjudicating Violations of the Universal Standard

The proper forum for adjudicating a dispute on whether a defamation of religion law violates freedom of expression is in domestic courts, rather than regional courts or commissions. First, a state should exhaust all domestic remedies before turning to regional courts or commissions like the European Court of Human Rights, which exercises “last resort” jurisdiction. Countries are primarily responsible for implementing international rights under the various international human rights treaties, and domestic courts must first adjudicate human rights violations. Treaty implementation courts and commissions, however, are essential because they act as neutral decision makers when a conflict arises between a state law and an international human right. Therefore, regional courts and commissions should produce parallel case law imposing the same standard on the countries within their

188. See generally cases cited supra note 14.
190. Id.
jurisdiction.

Problems may nonetheless arise where countries do not ratify regional human rights treaties or submit to the jurisdiction of regional courts and commissions. Furthermore, imposing the "necessary in a democratic society" standard may be superfluous because countries that fall outside of this standard most often also fall outside of the jurisdiction of human rights treaties and the implementation courts and commissions.

Additionally, the international law concept of universal jurisdiction is not applicable to the enforcement of violations that are based on defamation of religion laws. Universal jurisdiction allows states to claim criminal jurisdiction over persons whose alleged crimes were committed outside the boundaries of the prosecuting state, regardless of nationality, country of residence, or any other relation with the prosecuting country. Universal jurisdiction is premised on the assumption that the crime is a crime against all, which any state is authorized to punish. Universal jurisdiction is reserved for certain international crimes that are erga omnes, or owed to the entire world community, based on the concept of jus cogens, or certain international law obligations that are binding on all states and unmodifiable by a treaty. These crimes usually include serious crimes against humanity, such as genocide, slavery, and racial discrimination. For example, Belgium's law of universal jurisdiction allows Belgium to judge people accused of war crimes, crimes against humanity, or genocide. In 2001, Belgium convicted four Rwandan citizens for their involvement in the 1994 Rwandan genocide.

Defamation of religion laws that violate the right to freedom of expression are not the type of criminal charges that universal


192. Id.


jurisdiction is intended to combat. Freedom of expression of defamation of religion is not an *erga omnes* right in the way that freedom from slavery and genocide are rights owed to the entire world. Therefore, it would be improper to use universal jurisdiction in a domestic or regional court to adjudicate freedom of expression violations resulting from the domestic defamation of religion laws of other non-ratifying countries.

In sum, although the proper forums for adopting the “necessary in a democratic society” standard are domestic and regional courts, problems may arise when a state refuses to conform its defamation of religion laws to the “necessary in a democratic society” standard, ratify a human rights treaty, or submit to the jurisdiction of the implementation courts and commissions. In these situations, there is no proper forum for adjudicating a violation.

VI. RECOMMENDATIONS

Defamation of religion laws should be optional for countries that choose to implement such laws, so long as those laws do not encroach on democracy. The United States, India, Nigeria, Israel, Panama, Pakistan, and Jordan represent the possible spectrum of laws that address the conflict between freedom of speech and freedom of religion. States should be free to choose whether or not to adopt the American approach or to adopt defamation of religion laws within the “necessary in a democratic society” standard. However, to ensure that defamation of religion laws do not encroach on democracy, these laws should not exceed the “necessary in a democratic society” standard.

Additionally, groups pushing for international defamation of religion laws, such as United Nations Resolution 7/19 “Combating Defamation of Religions,” should not impose defamation of religion laws on states that do not wish to follow this international trend. Defamation of religion laws should be promulgated at the national level, but should also meet international standards of necessity and democracy. Therefore, defamation of religion laws should be a nation-by-nation choice and not thrust upon countries, like the United States, which favor an approach that prefers freedom of expression over freedom of religion.
VII. CONCLUSION

Many countries have varying laws and policies that favor either freedom of expression or freedom of religion when these rights clash. The spectrum of approaches shows that countries that are more ethnically and religiously diverse tend to favor freedom of expression, whereas countries that are ethnically and religiously homogenous tend to favor laws and policies against the defamation of a majority religion.

For example, on one end of the spectrum of laws is the United States, which favors almost complete freedom of speech. Near the United States’s end of the spectrum are India and Nigeria. India and Nigeria are ethnically and religiously diverse countries that impose defamation of religion laws to curb ethnic clashes and violence. India and Nigeria’s laws, however, are limited to seditious intentions, or words that promote ill-will between groups, and therefore do not suppress more speech than is necessary. Teetering in the middle of the spectrum are Israel and Panama. Israel and Panama vacillate between democratic ideals and the protection of their preferred religions, which sometimes leads to minority oppression of speech or religion. On the opposite end of the spectrum are Pakistan and Jordan. Pakistan and Jordan use their defamation of religion laws to stifle almost all minority expressions offending religion.

Based on the spectrum of approaches that different countries take, the international community should give deference to these different approaches as long as they fall within a universal standard that protects democracy. Infusing democracy throughout the world is essential to the protection of human rights, and defamation of religion laws should not unduly stifle the right to freedom of expression or religion. Therefore, the international community should adopt the European Court of Human Right’s “necessary in a democratic society” standard as a universal standard. The “necessary in a democratic society” standard should be applied in domestic courts, where nations impose defamation of religion laws, and should be reviewed by regional courts or commissions of last resort jurisdiction.

In conclusion, the international community should adopt a universal standard for countries that choose to impose defamation of religion laws. The international community should not impose defamation of religion laws on unwilling countries, such as the
United States, but the international community should be able to uphold domestic defamation of religion laws where they are compatible with democracy and fit within the "necessary in a democratic society" standard.