

Dividing lines – The French Freedom of speech law Vs Blasphemy

By: Mayannk U. Sharma &

Shubh Jaiswal



BURNISHED LAW

Source: NYmag

“One man’s blasphemy doesn’t override other people’s free-speech rights, their freedom to publish, freedom of thought.” ~ Dan S.

Keywords: France, Blasphemy, Samuel Paty, Freedom of Speech, Emmanuel Macron

Introduction

The entire world watched in dismay as France’s law enforcement agencies were entrusted with restoring order after the events that transpired. The gruesome beheading of a history teacher in Paris in broad daylight, followed by the horrendous massacre of 3 French citizens in Nice has raised certain questions of paramount importance. Samuel Paty’s only fault, which led to his untimely demise, was showing his class, cartoons of Prophet Mohammed as part of a class on, ironically, freedom of expression. Was he within his rights to do so? Did his deeds fall under the purview of freedom of speech, which I am told, is a core tenet of French life or did they

amount to blasphemy? As students of the law, we are often told to set aside our emotions while forming our opinions, especially in issues that possess a legal undertone to them. As you can probably concur, it truly is a daunting task to not let our sentiments cloud our judgment while discussing something so controversial and highly debated: - Religion. Yet, through this paper, we attempt to answer the most riveting of questions purely through a legal perspective. A deep insight into French freedom of expression law is provided while contrasting it with blasphemy law. It attempts at analyzing the application of the law in this contentious scenario. The legal repercussions behind France's response to breaking down Islamic groups are discussed as well. Vital issues plaguing the law are also emphasized upon.

Background

A despicable act of beheading a French schoolteacher, Samuel Paty in Conflans-Sainte-Honorine, a suburb in Paris, sent shivers down the spines of proponents of 'Freedom of Speech' across the world. The same freedom conflicted with the sentiments of Muslim leaders all over the world and many termed it as blasphemy. What was the point of contention? A caricature of Prophet Mohammad published by Charlie Hebdo, a French satirical weekly magazine featuring caricatures, cartoons, and jokes on various issues was shown by Paty in his classroom in Collège Bois-d'Aulne. It was deemed offensive by Abdoullakh Abouyedovich Anzorov, an 18-year-old Muslim-Russian refugee of Chechen origin who was held responsible for Paty's murder and ultimately shot dead by the French Police.^[1] This post in no way condones the beheading of Samuel Paty but sympathizes with the deceased's family. It also aims to create a legal distinction between Freedom of Speech and Blasphemy/offensive speech. Samuel Paty's beheading is a sordid remembrance of the 2015 shooting at Charlie Hebdo's headquarters in Paris which claimed the lives of 17 people including 11 journalists.^[2] "Je suis Charlie" (I am Charlie) was the revolutionary slogan drafted by the renowned French art director Joachim Roncin intended to be a beacon of hope and proffer support to the cause of Freedom of Speech and the Freedom of Press^[3]. Our stand remains clear and unwavering that the *Lex Loci* (Law of the Land) ought to be followed and the same does not permit the egregious act of murder as a response from an individual who considered the published literature as offensive. Though news agencies, in theory, did not break any law but they should respect the beliefs of the sect they are publishing on and abstain from eliciting views that would deeply hurt religious sentiments.

- *Defining Blasphemy and its relevance in the French legal system*

The Freedom of speech and the Freedom of expression has been kept on a higher pedestal of “essential freedoms” enshrined in the ‘Declaration of Rights of the Man and The Citizen’^[4] but even this is subject to reasonable restrictions. These restrictions selectively include anti-Semitism, racial hatred, and racism but do not explicitly cover ‘Islamophobia.’ As far as ‘The Freedom of Press’ is concerned, the same is visceral to the French society and can be found in the ‘Law on the Freedom of the Press.’^[5] France also acquiesced to being a party to the ‘European convention of Human Rights’^[6] which leaves no doubt in mind that the French hold their Freedom sacrosanct.

Blasphemy is defined as “the act of expressing contempt or a lack of reverence for God or sacred things” by the ‘United States Commission on International Religious Freedom’ (USCIRF).^[7] Blasphemy as a concept was mostly abolished by France in 1791 shortly after the French constitution was adopted in 1789. It was finally abolished in the provinces of Alsace and Moselle in 2016 thus making it legal to criticize and not hold one liable for his/her opinions, even religious ones, as long as it does not interfere with the established law and order. On the contrary, Blasphemy is considered a capital offense in 13 Islamic nations and is meted with the death penalty for the same.^[8] Ironically, the holy Quran, which is the basis of existence for these nations, does not prescribe absolutely any penalty for blasphemy. The non-canonical punishment is levied to satiate the fragile egos of clerics and preachers who, in a fear of dissolution of their authority impose such un-Islamic restrictions on the masses.

As France follows the civil law system, unlike India or the UK (who follow the common law system), the foremost significance is given to the statute. All in all, Samuel Paty’s deeds did not amount to blasphemy. Because blasphemy as a concept just does not exist in French Law. This controversial matter dumbs down to something as trivial as this when looked upon through a legal lens. In a country that recognizes blasphemy as a crime, events would pan out differently. If the late history professor had depicted his teachings in the same manner in, say, Pakistan, he would have certainly been held liable. This is where the concept of *Lex Loci* comes into play and portrays its true might. In France, though, all he did was exercise his right to Freedom of expression. But, when speaking in terms of morality, we enter a grey area. Some may argue that Paty is an angel, as even though he had no legal obligations, he allowed all

Muslim students to exit his class as their beliefs could have been harmed. But why did it even have to come down to that? Was there not a more straightforward way to tutor his class? I feel his ethics can unequivocally be questioned. Although, this does not justify his murder. Nothing ever can.

- ***Freedom of Association and the French Government's response***

Another major debacle that makes us question its legality was linked with France's retaliation against terrorism. French police have raided dozens of Islamist groups and suspected extremists since Friday's attack. These assaults were not conducted as part of Paty's murder investigation, but rather, to undermine groups that were surmised of encouraging anti-republic hate speech. High ranking government officials have supported this cause and even applauded this operation of the armed forces. Yes, this is a pre-emptive measure and may seem like a brilliant idea at first glance. But think about it for a second. Is the breakdown of such groups justified even if no concrete evidence of any crime whatsoever is available against them? Enshrined in the 1901 law, "freedom of association"^[9] is a cornerstone of French democracy, just as "Freedom of expression" is. The law in its rawest form states that the dissolution of an organization by the government is reasonable if and only if they possess proof that such an organization is a public enemy or that it preaches hatred against the country as a whole or a particular community. In no way can the clampdown on the Islamic groups be justified when the law is taken into consideration. In a similar controversy, Gerald Darmanin, minister of the interior of France^[10], had ordered the shutdown of the CCIF(Anti-Islamophobia collective).^[11] The minister claimed that the CCIF was involved in the assassination of Samuel Paty even without providing any tangible proof. Isn't this a clear violation of the "Freedom of association?" Baraka City, an Islamist NGO,^[12] was also a victim of such abuse of power by Darmanin. This group has suffered previously as well when they were wrongly accused of supplying aid to various terror organisations by the previous French administration but were acquitted by the judiciary. I agree that such organisations follow a rather rigid version of Islam, but they have never broken the law. They have never insinuated that they are interested in "toppling the republic". A major query arises then- If these groups genuinely threaten France's democracy, why didn't the government curb them earlier? I feel these extreme measures are being followed as the government is under heavy scrutiny from the general public. In the wake of a terror attack that has shocked the nation to its very core, the government is trying to save face through

blatant opportunism. They are taking advantage of the anti-Islamic sentiment prevalent in the country currently.

- *An emotional Emmanuel and the Islamic boycott*

France's President, Emmanuel Macron, made a speech at Sorbonne University^[13] days after Paty's murder which was emotionally moving. It provided for a stricter crackdown on 'Islamist extremism.'^[14] apart from a commitment to uphold French 'laicite' (secularism) in the highest of regards. What followed was a fiery emphasis on 'Freedom of Expression' and how it has and will continue to define French values. A tribute to Samuel Paty at Sorbonne University was tantamount to a tribute to the makers of the French constitution who advocated for these rights so vehemently. But the same speech did not bode well with the Muslim world and was met with protests in Turkey, Pakistan, Bangladesh, and many other nations.

Recep Tayyip Erdogan, Turkey's President called for a systemic boycott of French products as a response to the speech made by Macron. Ironically, Emine Erdogan, the Turkish premier's wife was seen with a \$50,000 French-made bag amid calls for a boycott of French products which drew the ire of many Turkish taxpayers.^[15]

Pakistan's Prime Minister, Imran Khan also called for the boycott of French products and summoned the French ambassador to express deep concerns over rising islamophobia. The Pakistani plebeians took the boycott one step further and burned effigies of the French president in protest.

Former Malaysian Prime Minister, Mahathir Mohamad was rebuked extensively after he tweeted 'Muslims have a right to be angry and kill millions of French people for the massacres of the past.'^[16] The tweet was later deleted as it violated Twitter's 'Freedom of Speech' rules and glorified violence. The tweet referred to the colonial French-Algerian war, which killed millions of Algerian Muslims.

Yes, France does owe reparations to Algeria and this issue is in dire need of acknowledgment but the same does not allow for a tit-for-tat response as tweeted by Mohamad since it is rightfully said by Gandhi that "An eye for an eye makes the whole world blind." For if it were so, the Mughal Muslims would owe a lot more to the Indian subcontinent.

Conclusion

It essentially comes down to the age-old question of morality vs legality. Ethics provides us with the rules on what is the correct action to follow in all aspects of life. On the other hand, the law provides us with statutory guidelines by which society is maintained. But both law and ethics are entwined together, and it is arduous to formulate a distinction between them.

The commitment by the French premier to uphold these freedoms is laudable, however, the thin line between Freedom and offensive speech must also be demarcated clearly since it can easily be blurred. France, also a party to the 'International Covenant on Civil and Political Rights'^[17] is a renowned upholder of civic rights and is looked upon by nations who wish to follow suit.

[1] Onishi, N. & Méheut, C., 2020. A Teacher, His Killer, and the Failure of French Integration. [Online]. [16 November 2020]. Available from: <https://www.nytimes.com/2020/10/26/world/europe/france-beheading-teacher.html>.

[2] Petrikowski, N. 2020. Charlie Hebdo shooting. [Online]. [16 November 2020]. Available from: <https://www.britannica.com/event/Charlie-Hebdo-shooting>.

[3] Devichand, M. 2016. How the world was changed by the slogan 'Je Suis Charlie'. [Online]. [20 November 2020]. Available from: <https://www.bbc.com/news/blogs-trending-35108339>.

[4] de Robespierre, M., 1850. *Declaration of the Rights of Man and the Citizen*. Verlag nicht ermittelbar.

[5] Collins, I., 1959. *The government and the newspaper press in France, 1814-1881*. Oxford University Press.

[6] Amnesty international. 2018. What is the European Convention on Human Rights? [Online]. [16 November 2020]. Available from: <https://www.amnesty.org.uk/what-is-the-european-convention-on-human-rights>.

[7] USCIRF, Blasphemy Laws Report, RESP. RGHTS.1, 17 (2017). <https://www.uscirf.gov/sites/default/files/Blasphemy%20Laws%20Report.pdf>.

[8] Al-khatib, T. 2016. Where Blasphemy Carries a Death Sentence?. [Online]. [16 November 2020]. Available from: <https://www.seeker.com/where-blasphemy-can-get-you-a-death-sentence-2041523454.html>.

[9] Columbia, H.C. 2016. Right of Association in France. [Online]. [16 November 2020]. Available from: http://hrcr.law.columbia.edu/safrica/freedom_assoc/Decision.html#:~:text=Reasoning%3A%20the%20principle%20of%20freedom,filing%20of%20a%20prior%20declaration.

[10] Mallet, V. 2020. Islamist killing prompts a French crackdown on militants. [Online]. [20 November 2020]. Available from: <https://www.ft.com/content/acb1b83a-ea73-45a6-b6c8-8f2635acddbc>.

[11] Dodman, B. 2020. Anger at the beheading of French teacher ‘must not override rule of law’. [Online]. [16 November 2020]. Available from: <https://www.france24.com/en/france/20201022-anger-at-beheading-of-french-teacher-must-not-override-rule-of-law>.

[12] Ezzeldin, E. 2020. France Dissolves Islamic Assembly “Baraka City.” [Online]. [16 November 2020]. Available from: <https://see.news/france-dissolves-islamic-assembly-over-recent-incidents>.

[13] France 24 with Agence france-presse. 2020. France pays homage to slain teacher Samuel Paty at Sorbonne ceremony. [Online]. [16 November 2020]. Available from: <https://www.france24.com/en/europe/20201021-france-to-pay-respects-to-beheaded-teacher-with-ceremony-at-sorbonne>.

[14] Agence france-presse. 2020. Emmanuel Macron promises more pressure on Islamist extremism. [Online]. [16 November 2020]. Available from: <https://www.thehindu.com/news/international/emmanuel-macron-promises-more-pressure-on-islamist-extremism/article32904535.ece>.

[15] Grewal, K. 2020. Photos of Turkey’s First Lady with Hermes bag surfaces amid calls for French goods boycott. [Online]. [16 November 2020]. Available from: <https://theprint.in/world/photos-of-turkeys-first-lady-with-hermes-bag-surfaces-amid-calls-for-french-goods-boycott/531982/>.

[16] Asian news international. 2020. Twitter deletes Mahathir Mohamad's tweet for glorifying violence; France seeks account suspension. [Online]. [16 November 2020]. Available from: <https://timesofindia.indiatimes.com/world/twitter-deletes-mahathir-mohamads-tweet-for-glorifying-violence-france-seeks-account-suspension/articleshow/78947228.cms>.

[17] Office of the united nations high commissioner for human rights. 1976. International Covenant on Civil and Political Rights. [Online]. [16 November 2020]. Available from: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

