

BALANCING FREEDOM OF RELIGION AND FREEDOM OF EXPRESSION: REVIEW OF THE BLASPHEMY LAWS IN NIGERIA

- Sophia Chima*

Abstract

The relationship between freedom of religion and regulated speech raises essential questions about balancing individual rights for societal harmony. The Universal Declaration of Human Rights and Nigeria's Constitution guarantee the freedom to believe and express religious views. Still, this broad protection may conflict with the need to limit speech that could be offensive or harmful. This paper explores the laws regulating offensive religious speech and their coexistence with the constitutional right to freedom of speech and freedom of expression in Nigeria. It examines whether regulations on free speech can protect society without undermining the core values of religious freedom, relying on legal sources such as the Nigerian constitution, the penal code, and the criminal code to explore the relationships between these rights. This paper argues that regulations on offensive religious speech can protect societal harmony without undermining core religious freedoms, provided they are consistent with constitutional principles and human rights laws. Part I discusses the Nigerian case of Deborah Yakubu and the impact of having an unbalanced application of blasphemy law. It also analyses the operation of blasphemy law in various regions in Nigeria. Part II overviews International laws guaranteeing freedom of speech and religion and discusses Nigeria's obligations under international law. Part IV deals with the US perspective and global trends concerning blasphemy laws as well as the perspective of other European countries; Part V argues for the need for a balance between both rights, citing that one right should not be sacrificed at the detriment of another, Part VI urges the need for urgent reform of the current Laws on Blasphemy citing that they should be more precise leaving no room for speculations as to the extent and scope which it covers. Part VII concludes by recommending a robust application of Nigeria's Right to freedom of religion and expression.

* Delta State University, Cleveland, Mississippi; Email: amazonsofia2305@gmail.com

Keywords: *Fundamental Rights, UDHR, Blasphemy Law, Religious Freedom, Nigerian Constitution.*

INTRODUCTION

Freedom of Religion has been a complex issue from time immemorial, and religious persecution in Nigeria is of significant concern Nationally and Internationally.¹ On December 12, 2023, Congressman Christopher H. Smith of New Jersey addressed the House of Representatives, urging that Nigeria be promptly designated as a Country of Particular Concern (CPC) under the International Religious Freedom Act (IRFA) of 1998². His remarks referenced a letter sent to Capitol Hill by religious freedom advocates, which documents severe and systematic religious persecution in Nigeria.³

Before the colonial era, traditional African religion existed, and beliefs, practices, and worship were tied to communities. During this era, religious practices and governance existed side by side. Traditional rulers often played the role of religious and political leaders.

After the colonial era, the society generally acknowledged three main religions in Nigeria⁴: African Traditional Religion, Christianity, and Islamic religion. Concerning the Islamic religion, English laws were applied to criminal matters in the North, while Islamic laws governed non-criminal or personal issues.⁵ Upon gaining independence in 1960, the constitution made express provisions for certain fundamental human rights, including the right to freedom of thought, conscience, and religion, including freedom to change one's religion or belief and freedom, either alone or in community with others, and in public or in private to manifest and propagate his religion or belief in worship, teaching, practice, and observance.⁶ Nigeria is a secular state, as evidenced by its constitutional provisions guaranteeing freedom of religion; there are no provisions in the constitution for adopting any

¹ International Christian Concern, "ICC Releases Report on Concerning Religious Persecution Trends in Nigeria", *available at*: <https://www.persecution.org/2024/07/10/icc-releases-report-on-concerning-religious-persecution-trends-in-nigeria/> (last visited on: 05.01.2025).

² 169 Cong. Rec. E1207, 1 (2023).

³ *Ibid.*

⁴ Kingsley Pardung & G. S. Chukwuemeka, "The History of Religion in Nigeria" in G. S. Chukwuemeka, *Religion and Society* 71 (2023) *available at*: <https://dymbs.com/index.php/DJHSM/article/view/13/83> (last visited on: 05.06.2025).

⁵ Mamman Lawan, "Islamic Law and Legal Hybridity in Nigeria", 58 *J. Afr. Law* 303 (2014), *available at*: <http://www.jstor.org/stable/24735218> (last visited on: 10.07.2025).

⁶ 1960 Constitution of Nigeria, Centre for Laws of the Federation (Nov. 11, 2020), <https://lawnigeria.com/2020/11/11/1960-constitution-of-nigeria/.a> (last visited on 05.01.2025).

state religion⁷. However, in 1999, 12 out of 36 states in Nigeria adopted Sharia law as the law governing Muslims within the Northern Jurisdiction.⁸ In addition, Nigeria became a member of the Organization of Islamic Cooperation (OIC)⁹ This further sparked off controversies around Nigeria's alleged secularity¹⁰ given the fact that most members are Islamic states.

SUBJECTIVITY, ABUSE, AND THE CASE OF DEBORAH YAKUBU

In analysing how blasphemy law operates in Nigeria, the recent case of Deborah Yakubu¹¹ is worth mentioning. A Student of the Shehu Shagari College of Education, Sokoto, a college located in the northwestern part of Nigeria, was brutally murdered by an angry mob of students. She was accused of posting a blasphemous statement about Prophet Mohammed in her class group. This incident caused an uproar within Nigeria and internationally. Police in the vicinity were unable or unwilling to quell the unrest, and authorities reportedly limited charges against two alleged perpetrators to "conspiracy and inciting public disturbance."¹² From the foregoing, it is evident that Blasphemy laws, as currently applied in Nigeria, appear to do more harm than good. Their vague and subjective nature makes them ripe for abuse,

⁷ *Ibid.*

⁸ Rasheed Oyewole Olaniyi, "Hisbah and Sharia Law Enforcement in Metropolitan Kano", 57 (4) *Africa Today* 71 (2011), available at: <https://doi.org/10.2979/africatoday.57.4.71> (last visited on: 05.06.2025). Shortly after the 1999 constitution came into force, various state governments in northern Nigeria embarked on a process of reforms designed to restore Sharia to the position of pre-eminence it had enjoyed within their territories in precolonial times (Iwobi 2004:111). The debate goes beyond constitutional matters to include such political questions as expression of marginalization. Many Muslims felt aggrieved that Sharia had been unduly marginalized within the Nigerian legal order.

⁹ Member States, Org. of Islamic Cooperation, available at: <https://www.oic-oci.org/states/?lan=en> (last visited on: 05.06.2025). The OIC is an intergovernmental Organization established in 1969 to fosters unity and cooperation among its member states, advocating for the protection and promotion of Islamic values and principles and Nigeria became a member in 1985.

¹⁰ Katrin Gänslar, "Nigeria Looks Back on 20 Years of Sharia Law in the North", DW (Oct. 27, 2019), <https://www.dw.com/en/nigeria-looks-back-on-20-years-of-sharia-law-in-the-north/a-51010292>. (last visited on: 05.06.2025). In the name of democracy and the spread of its dividends, Zamfara State government and later governments of other eleven northern states (Jigawa, Kaduna, Kano, Katsina, Kebbi, Sokoto, Niger, Bauchi, Bornu, Yobe, Gombe) respectively enacted, repealed and amended certain laws in order to pave way for the smooth enforcement of the criminal aspects of Sharia law in their various enclaves. While Sharia Court Laws were enacted to establish Sharia Courts, Sharia Court of Appeal (Amendment) Laws were made to add criminal causes to the jurisdiction and the supervisory roles of the Sharia Courts of Appeal of the relevant states. In the same vein, while the Area Courts (Repeal) Laws were enacted with a view to replacing Area Courts with the new Sharia Courts, the Sharia Penal Code Laws were passed to codify the Sharia offences.

¹¹ Stephanie Busari, "Nigerian Female Student Killed for Alleged Blasphemy", *CNN* (May 13, 2022), available at: <https://www.cnn.com/2022/05/13/africa/female-student-blasphemy-attack-intl/index.html> (last visited on: 05.06.2025).

¹² *Ibid.*

empowering individuals or groups to suppress dissenting views and enforce their religious beliefs on others.

This is just one of the many human rights and religious freedom violations that occur in Nigeria. The International Christian Concern (ICC),¹³ describes Nigeria as one of the scariest places to be a Christian, and further reports by the ICC show that no less than 896 civilians were killed in violent attacks in Nigeria during the first three months of 2022.¹⁴ In most cases, the perpetrators are never brought to the book, and this creates a society where mob violence and lynching thrive.

According to Isa Sanusi, Director of Amnesty International Nigeria,¹⁵ the menace of mob violence is perhaps one of the biggest threats to the right to life in Nigeria. The fact that these killings have been happening for a long time, with few cases investigated and prosecuted, highlights the failure of the Governmental structures to uphold and fulfill their obligation to protect people from harm and violence.¹⁶ Blasphemous offences must be brought before and adjudicated in courts of law rather than left to the whims of mob justice. When this is done, it allows the courts to play a critical role in striking a delicate balance between freedom of expression and religion based on the facts and circumstances of each case. This would enable Nigerian courts to establish precedents that promote tolerance, protect individual rights, and ensure that religious sensitivities are respected without infringing on free speech.

How Blasphemy Laws Operate under the Nigerian Penal and Criminal Code

The application of Blasphemy laws in Nigeria is quite sketchy, as none are applicable nationwide. The Criminal Code governs the prosecution of the offence of blasphemy in the southern part of Nigeria, while the Penal Code operates in the North. It is noteworthy that neither of the codes makes explicit mention of the term '*blasphemy*', but they both address the issue using a similar term: '*insult to religion and wounding religious feelings*.'

¹³ Christian Solidarity Worldwide, "Nigeria: The World's Scariest Country for Christians" (May 14, 2022), available at: <https://www.persecution.org/2022/05/14/nigeria-worlds-scariest-country-christian/> (last visited on: 05.06.2025)

¹⁴ *Ibid.*

¹⁵ "Escalation of Mob Violence Emboldens Impunity", Amnesty International, Nigeria (Oct. 2024), available at: <https://www.amnesty.org/en/latest/news/2024/10/nigeria-escalation-of-mob-violence-emboldens-impunity/> (last visited on: 05.06.2025)

¹⁶ *Ibid.*

Section 204 of the Criminal Code ¹⁷ provides, “Any person who does an act which any class of persons considers as a public insult on their religion, with the intention that they should consider the act such an insult, and any person who does an unlawful act with the knowledge that any class of persons will consider it such an insult, is guilty of a misdemeanour and is liable to imprisonment for two years”.¹⁸

From the wording of the provisions of the criminal code, the test is subjective as it places the determination of whether an act is blasphemous on the perception of the affected group. This means that the focus is on how the act is perceived by the religious group rather than on an objective standard. This is problematic because it gives room for potential abuse, as religious groups or individuals may claim that specific actions are an insult to their religion. Moreover, this approach tends to fuel religious intolerance by empowering one group to impose its standards of what is considered an insult to others.

A similar provision exists under the Penal Code Section 210,¹⁹ as ‘Insulting Religion or Wounding Religious Feelings.’ “Whoever to wound the religious feelings of any person, utters or writes any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.”²⁰

Again, this provision is vague and highly subjective; the term ‘wounding religious feelings’ could mean different things to different people; religious extremists would often take advantage of vague languages like this to prosecute individuals or suppress free speech, claiming that certain words, actions, or gestures “wounds” their religious feelings, even when no harm was intended. The criminal and penal code provisions aim to protect religious beliefs and practices from intentional verbal, written, or symbolic insults. It also seeks to protect the sanctity and peacefulness of religious gatherings from disruptions and intentional disregard for one’s religious beliefs, but in practice, the Penal Code is applied selectively. Ordinarily, it ought to apply in all criminal cases in the North, but since the adoption of Sharia law by 12 Northern states, the effect of this provision in the Penal Code has been watered down. Sharia

¹⁷ Criminal Code Act (Nigeria), sec. 204 (1990).

¹⁸ *Ibid.*

¹⁹ Penal Code Act (Nigeria), sec. 210 (1990).

²⁰ *Ibid.*

Law is often resorted to in cases of religious offenses because it provides stricter punishments than those provided for in the penal code. For example, insulting religious feelings under the penal code carries a two-year penalty, fine, or both. Still, under Sharia law, the punishment is more severe, and this includes the death penalty. Blasphemy, in its simplest form, refers to the act of showing disrespect toward a deity or sacred beliefs.²¹

In Nigeria, various regions have prohibitions against blasphemy, which vary in strictness. At the same time, some religions have enforced strict measures against insult to religion and wounding religious feelings, while others have adopted a more moderate approach.

Constitutional Protection for Freedom of Religion in Nigeria

Section 38 of the *Constitution of the Federal Republic of Nigeria*²² (1999, as amended) provides that, “Every person shall be entitled to freedom of thought, conscience, and religion, including the freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice, and observance”.

A close examination of the wording of the above provision reveals the use of the term “shall”, which positively guarantees the freedom of thought, conscience, and religion for every person, including the right to express criticism of the beliefs of others freely. The courts in Nigeria have held in many cases that the word ‘shall’ when used in statutes implies an obligation²³. There is no doubt that freedom of religion is fundamental, and hence, it is a very sensitive issue in Nigeria. Respect for each other’s beliefs and opinions is the recipe for individual and societal harmony and peaceful co-existence.²⁴

Freedom of religion is fundamental in secular states as it is necessary to prevent the dominance of any religion over another.²⁵ Religious freedom strengthens democracy by ensuring that different beliefs, religions, and manifestations are respected and that individuals

²¹ Merriam-Webster, Blasphemies, Merriam-Webster.com Dictionary, available at: <https://www.merriam-webster.com/dictionary/blasphemies> (last visited on: 30.11.2024).

²² Nigerian Constitution (1999), sec. 38 (1-4).

²³ *Bamaiyi V A.G. OF FED* 2001 90 LRCN 2738

²⁴ Ikenga K. E. Oraegbunam, “Islamic Law, Religious Freedom and Human Rights in Nigeria”, 2 *Sacha J. Hum. Rts.* 1 (2012).

²⁵ Ikenga K. E. Oraegbunam, “Sharia Criminal Law and State Secularity Principle in Nigeria: Implications of Section 10 of the 1999 Constitution (as Amended)”, 28 *J. L. Pol’y & Globalization* 39 (2014), available at: <https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/14978/15751> (last visited on: 10.07.2025)

can live according to their convictions without fear of persecution or discrimination²⁶. In states where religious freedom is not safeguarded, there are higher chances of minority persecution.²⁷

Jeperone²⁸ argues that there should be a balance between the right to freedom of expression and the right to protect religious sentiments. He asserts that, historically, blasphemy laws have been employed by dominant religions to safeguard religious feelings²⁹. He contends that religion was traditionally perceived as the root of society's political and moral behavior, and blasphemy poses a challenge to the very fabric of society, warranting severe punishment.³⁰

He distinguishes the operation of blasphemy laws in Islamic states, noting that these laws are not considered obsolete; instead, they remain actively enforced. Through a comparative legal survey, Jeperone concludes that in some jurisdictions, the protection of religion serves as a basis for restricting fundamental human rights, particularly freedom of expression.³¹ I agree with Jeperone's position because both rights are essential, and neither should come at the expense of the other because neither is absolute.

NIGERIA'S OBLIGATION UNDER INTERNATIONAL LAW AND THE QUESTION OF ABSOLUTE RIGHTS

The Federal Republic of Nigeria was admitted as a member state of the United Nations on 7 October 1960, having gained independence on 1 October the same year.³² Nigeria, as a Member of the UN, has various obligations under the International Bill of Rights, which includes the Universal Declaration of Human Rights (UDHR), the International Covenant on

²⁶ Gray Group International, "Freedom of Religion: Upholding Belief and Expression", (Oct. 1, 2024) *available at*: <https://www.graygroupintl.com/blog/freedom-of-religion> (last visited on: 22.12.2024).

²⁷ Stanley Carlson-Thies, "Religious Liberty in the States: 2024 Report Highlights Surprising Rankings and Key Trends", *Christian Public Justice* (2024), *available at*: <https://cpjustice.org/religious-liberty-in-the-states-2024-report-highlights-surprising-rankings-and-key-trends/> (last visited on: 05.06.2025)

²⁸ Jeroen Temperman, "Blasphemy, Defamation of Religions & Human Rights Law", 26 (4) *Netherlands Quarterly of Human Rights* 517 (2008), *available at*: <https://ssrn.com/abstract=2041292> (last visited on: 05.06.2025)

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² UN, "About the United Nations in Nigeria", *available at*: <https://nigeria.un.org/en/about/about-the-un> (last visited on: 16.11.2024).

Civil and Political Rights (ICCPR), which was ratified by Nigeria in 1993, and African Charter on Human and Peoples' Rights.³³

The Supreme Court of Nigeria in *Abacha v Fawehinmi*³⁴ held that when international law is ratified and incorporated into domestic law, it is superior to all domestic laws except the Constitution³⁵ Considering that both rights rank equally under Nigerian Laws, should one of these rights be interpreted to have more weight than the other? Is the freedom of expression an absolute right? Reference shall be made to the relevant international laws for a broader understanding.

International Laws

1. **UDHR:** Article 19 of the Universal Declaration of Human right establishes the right to freedom of opinion and expression, stating:

*'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media, regardless of frontiers. The exercise of this right carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, such as for respect of the rights or reputations of others, for the protection of national security or public order, or the protection of public health or morals'*³⁶

2. **International Covenant on Civil and Political Rights (ICCPR):** The ICCPR, adopted by the United Nations in 1966, also guarantees the right to freedom of speech. Article 19(3)³⁷ of the ICCPR asserts that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media regardless of frontiers. It further provides that the exercise of this right carries with it

³³ African Charter on Human and Peoples' Rights, *available at:* <https://www.african-court.org/wpafc/wp-content/uploads/2020/04/AFRICAN-BANJUL-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf> (last visited on: 05.06.2025)

³⁴ *General Sanni Abacha v. Chief Gani Fawehinmi*, 2000 SCC OnLine SCN 1

³⁵ *Ibid.*

³⁶ United Nations, "Universal Declaration of Human Rights", *available at:* <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english> (last visited on: 19.10.2024).

³⁷ United Nations, "International Covenant on Civil and Political Rights, *available at:* <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last visited on: 19.10.2024).

special duties and responsibilities; it may, therefore, be subject to certain restrictions, such as for respect of the rights or reputations of others, for the protection of national security or public order, or the protection of public health or morals.”³⁸

From the foregoing, the right to express oneself is not without constraints; the laws allow for limitations on various grounds, including the protection of national security, public order, health, morals, and the rights of others. The restrictions on these rights must, therefore, be necessary and proportionate to the goal they seek to achieve.³⁹

Case Laws

In the case of *Otto-Preminger-Institut v. Austria*,⁴⁰ the court reasoned that those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of doctrines hostile to their faith⁴¹. However, the way religious beliefs and even doctrines are opposed or denied is a matter that may be the state’s responsibility. The international courts, when faced with cases of freedom of religion and belief, approach the case by a 3-test measure⁴²

1. Whether there is an interference that the law has prescribed,
2. Whether the interference had a legitimate aim, and
3. Whether the acts by the government are necessary in a democratic society

On July 29th 2011, the UN Human Rights Committee published General Comment No. 34⁴³, which provides an authoritative interpretation of the right to freedom of opinion and expression under Article 19 of the International Covenant on Civil and Political Rights

³⁸ *Ibid.*

³⁹ Centre for Law and Democracy, “Freedom of Expression: Briefing Notes” (Feb. 2015), *available at*: <https://www.law-democracy.org/live/wp-content/uploads/2015/02/foe-briefingnotes-2.pdf> (last visited on: 05.06.2025)

⁴⁰ *Otto-Preminger-Institut v. Austria*, 11/1993/406/485, Council of Europe: European Court of Human Rights (ECtHR), 23 August 1994, *available at*: <https://www.refworld.org/jurisprudence/caselaw/echr/1994/en/94253> [last visited on: 05.06.2025]

⁴¹ *Ibid.*

⁴² U.N. Human Rights Comm, “General Comment No. 34 on Article 19: Freedoms of Opinion and Expression”, CCPR/C/GC/34, (July 29, 2011) *available at*: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and> (last visited on: 05.06.2025).

⁴³ *Ibid.*

(ICCPR). This comment clarifies that blasphemy laws are generally incompatible with the Covenant, except in specific circumstances outlined in Article 20, paragraph 2, which prohibits any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.⁴⁴

In *Kokkinakis v. Greece*⁴⁵, the European Court of Human Rights stated, “*Freedom of speech was not an absolute right, but a right subject to various duties and responsibilities, which include an obligation not to use expressions which are offensive to others and amount to infringement of other people’s religious rights.*”

This means that there must be a balance between freedom of speech and religiously offensive words and conduct.⁴⁵ Rabbi Jarrod Grover⁴⁶ argues that, although freedom of expression is sometimes hurtful, it’s the price we pay for living in a vibrant and prosperous democracy that allows our most cherished values to be questioned⁴⁷. As one of the first generation of rights guaranteed by the constitution of the Federal Republic of Nigeria, it allows people to make choices of the faith they would like to practice or even choose to follow no faith at all⁴⁸. It even includes the freedom to change one’s belief.⁴⁹ This same protection is offered under the right to free speech; it enables a person to speak, write, publish, and communicate freely without any form of interference.⁵⁰

The right to freedom of speech is, however, subject to certain restrictions; Article 29(3) of the Universal Declaration of Human Rights provides,⁵¹ “*In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely*

⁴⁴ *Ibid.*

⁴⁵ Diana Swift, “Freedom of Expression vs. Religious Sensibilities: What’s the Balance?”, *Anglican Journal*, available at: <https://anglicanjournal.com/freedom-of-expression-vs-religious-sensibilities-what-s-the-balance/> (last visited on: 22.12.2024).

⁴⁶ Beth Tikvah Synagogue, Clergy & Staff, available at: <https://www.bethtikvahtoronto.org/clergy--staff.html> (last visited on: 05.06.2025). Rabbi Jarrod Grover is a prominent promoter of religious freedom, actively advocating for interfaith dialogue and community engagement. In addition to his leadership role at Beth Tikvah Synagogue, he serves as Vice-President of the Toronto Board of Rabbis and is a member of the Toronto Police Chief’s Jewish Community Consultative Committee, reflecting his commitment to fostering religious tolerance and cooperation across diverse faith communities. His work emphasizes the importance of religious liberty, social justice, and mutual respect within both the Jewish and broader communities.

⁴⁷ *Ibid.*

⁴⁸ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited on: 05.06.2025)

⁴⁹ *Ibid.*

⁵⁰ Nigerian Constitution, Chapter 4, Section 39:

⁵¹ Universal Declaration of Human Rights art. 29, para 2, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

to secure due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.”

This means that the limitations on the right to free speech must be prescribed by law and cannot be arbitrarily left to the discretion of any individual or group.

GLOBAL AND US PERSPECTIVE

Early American Practices.

As antiquated as it may sound, about 84 countries currently have laws criminalising blasphemy⁵². In earlier times, the United States even had laws on blasphemy, which were enacted by various states, including Massachusetts, New Hampshire, and New Jersey, even though their respective constitutions protected religious freedom.⁵³ In the case of *Updegraph v. Commonwealth*,⁵⁴ the court reasoned that blasphemous statements - when spoken with wilful premeditation to call the truth of Christianity into question in the presence of community members - are an indictable offence under Pennsylvania common law. Also, the Maryland Toleration Act of 1649, which promoted the “free exercise” of Christianity, simultaneously imposed the death penalty or forfeiture of land for non-Christians guilty of blasphemy, showing the historical misuse of religious laws.⁵⁵

However, the United States changed its position in the case of *Joseph Burstyn, Inc. v. Wilson*,⁵⁶. The case arose after the New York State Board of Regents revoked the license to exhibit *The Miracle*. This film had been deemed “sacrilegious.” Joseph Burstyn appealed the decision, arguing that the censorship violates the First Amendment’s protections for freedom of speech and the press. The Supreme Court’s decision in *Burstyn* overruled its earlier decision in the case of *Mutual Film Corp. v. Industrial Commission of Ohio*⁵⁷, which

⁵² USCIRF, “Violating Rights: Enforcing the World’s Blasphemy Laws” (2020), *available at*: <https://www.uscifr.gov/publication/violating-rights-enforcing-worlds-blasphemy-laws> (last visited on: 05.06.2025).

⁵³ Anna Price, “A History of Blasphemy Laws in the United States”, *Library of Congress Blogs* (Dec. 2023), *available at*: <https://blogs.loc.gov/law/2023/12/a-history-of-blasphemy-laws-in-the-united-states/>. (last visited on: 05.06.2025).

⁵⁴ *Updegraph v. Commonwealth*, 11 Serg. & Rawle 394 (Pa. 1824).

⁵⁵ Maryland Toleration Act of 1649, ch. 22, 1649 Md. Laws 72, *available at*: <https://oll.libertyfund.org/pages/1649-maryland-toleration-act> (last visited on: 05.06.2025)

⁵⁶ *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952).

⁵⁷ *Mutual Film Corp. v. Indus. Comm’n of Ohio*, 236 U.S. 230 (1915).

allowed film censorship based on the government's content assessment. The Court held that motion pictures were a form of expression and that the censorship of the film, based on its perceived sacrilegious content, was unconstitutional because it infringed upon freedom of speech and the press⁵⁸.

In the United States case of *State of Maryland v. Irving K. West*,⁵⁹ the court ruled that the Maryland blasphemy statute, which criminalised blasphemous utterances, violated the First Amendment's Establishment and Free Exercise Clauses. The law was seen as a governmental effort to protect and perpetuate Christianity, which contravenes the constitutional mandate for governmental neutrality toward religion⁶⁰. The court held that the states should not use their power to support one religion or restrict religious freedoms; thus, the statute was unconstitutional. The laws on blasphemy are being regarded as outdated and inappropriate in many countries⁶¹

Global Trends

In Western Europe, many countries have retained blasphemy and related laws, while in some other countries, they have never been enforced, although there have been prosecutions in recent years, including Austria, Finland, Germany, Greece, Switzerland, and Turkey.⁶² The offense of Blasphemy was officially abolished in England and Wales in May 2008 by Section 79 of the Criminal Justice and Immigration Act 2008.⁶³

A democratic state must guard the constitutional right of free speech since religion can be used to promote peace or be abused by extremists to cause unrest. Still, blasphemy law can respond to a public moral vision⁶⁴ Hence, both rights must be balanced. The big question is whether blasphemy laws can serve any legitimate purpose insofar as human rights law is concerned.⁶⁵ The justification of Blasphemy law is often hinged on upholding public moral

⁵⁸ *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952).

⁵⁹ *State of Maryland v. Irving K. West*, 9 Md. App. 270, 263 A.2d 602 (Md. Ct. Spec. App. 1970).

⁶⁰ *Ibid.*

⁶¹ Ismail Misbahu, "Discussing Blasphemy in the Context of Nigeria: Does It Target Minority Groups?", 7 *Polac Int'l J. of Humanities & Sec. Stud.* 189 (2023).

⁶² Blasphemy Law, LIBR. OF CONG., available at: <https://maint.loc.gov/law/help/blasphemy/index.php>. (last visited on: 05.06.2025)

⁶³ Erica Howard, "Freedom of Expression, Blasphemy and Religious Hatred: A View from the UK", 17 *Ecclesiastical L.J.* 191 (2015).

⁶⁴ Neville Cox, "Justifying Blasphemy Laws: Freedom of Expression, Public Morals, and International Human Rights Law", 35 *J.L. & Religion* 1 (2020).

⁶⁵ *Ibid.*

standards and criminalising certain religious offences. This can help maintain societal stability by creating an environment where one is free to profess or practice their religion and belief without fear of ridicule. The laws on blasphemy seek to serve as a preventive measure against violence and social unrest, which inflammatory speeches may cause. Criminalizing blasphemy is believed to mitigate risk and promote peaceful existence amongst different religious groups. While blasphemy law does not operate effectively in some countries, it is a potent weapon in some other countries to combat unguarded utterances against one religion or personage by another.⁶⁶

BALANCING FREEDOM OF EXPRESSION AND BLASPHEMY LAWS IN NIGERIA

According to The Economist⁶⁷, Freedom of speech includes the right to defame religion. If limitations are allowed, governments may use such laws to suppress dissent, target minority viewpoints, or protect certain ideologies over others⁶⁸. Dr. Evan Harris,⁶⁹ argues that the law on blasphemy has a ‘chilling effect’ because it could mean that people might avoid showing, publishing, or printing material that might be blasphemous because they might be subject to criminal sanctions.⁷⁰ Protecting the freedom of speech and expression is one way in which the equal dignity of all individuals can be protected. Granting A the effective right to determine the limits of B’s speech simply because A finds it offensive is a clear prima facie violation of freedom of expression, no matter how large a group is represented by A, even if B is a solitary individual. Restricting speech based on religious sentiments undermines the fundamental right to free expression. At the same time, imposing limits on free speech to protect religious beliefs can similarly infringe upon the core principles of freedom of expression. Therefore, Protecting religious feelings should be balanced with the fundamental right to free expression and freedom of speech.

⁶⁶ Aliu Jimoh & Abdulwahab Shittu, “The Nigerian Criminal Justice and the Belligerence of Blasphemy: Societal, Judicial and Islamic Law Perspectives”, 13 (1) *Jurnal Hukum Novelty* 81-97 (2022), available at: <https://doi.org/10.26555/novelty.v13i1.a23582> (last visited on: 11.07.2025)

⁶⁷ The Meaning of Freedom, The Economist (Apr. 2, 2009), available at: <https://www.economist.com/leaders/2009/04/02/the-meaning-of-freedom>. (last visited on: 05.06.2025)

⁶⁸ *Ibid.*

⁶⁹ Dr. Evan Harris, former Member of Parliament for Oxford West and Abingdon, Liberal Democrat, and advocate for the abolition of blasphemy laws, tabled an amendment to abolish the offences of blasphemy and blasphemous libel during the Report stage of the Criminal Justice and Immigration Bill 2007-08.

⁷⁰ Carl Wellman, “Freedom of Religion and Freedom of Expression: Religiously Offensive Speech and International Human Rights”, 20 *Human Rights Quarterly* 82 (1998).

In a multi-religious society like Nigeria, the absence of a balance between both rights can result in mob violence incited by extremists who use these blasphemy laws or free speech to perpetuate unrest. A notable example of the need for a balance between freedom of religion and regulated speech in Nigeria is the case of Sharif-Aminu, a Nigerian musician arrested by authorities in March 2020. Sharif-Aminu, a follower of the Sufi Tijaniyya Order, faced widespread backlash after audio messages he shared via WhatsApp praised an imam from the Tijaniyya Muslim Brotherhood, Ibrahim Niasse, to the extent of elevating him above the Prophet Muhammad. The messages triggered significant controversy, and Sharif-Aminu went into hiding after protestors burned down his family home. He was eventually arrested and charged with insulting religious creed under Section 382(6) of the Kano State Sharia Penal Code Law, 2000.⁷¹

From the foregoing, it is evident that while protecting religious sentiments, it is also imperative to acknowledge that freedom of speech is a universal and fundamental right. The laws on blasphemy, when unchecked, create a dangerous precedent in limiting speech. Another critical case that highlights the harmful effects of unbalanced blasphemy laws, especially in terms of proportionality, is the imprisonment of Humanist Association of Nigeria President Mubarak Bala for 24 years on the grounds of insulting religion with the intent to break the peace.⁷²

The above cases highlight the urgent need for Nigeria to re-evaluate its laws on Blasphemy and ensure that they align with international human rights standards. The severity of the punishments meted out in these instances suggests that there is the potential for these laws to be used disproportionately, infringing on the freedoms of expression and speech. Jeperone believes that there is no abstract conflict between freedom of expression and freedom of religion and belief.⁷³ He argues that proceeding along the lines of tension between both rights would not only be at the detriment of the fundamental right of freedom of expression but too broad a right to freedom of religion or belief as a right to respect for one's religion also jeopardizes the right to freedom of religion or belief itself⁷⁴ I agree with the opinion of Jeperone on grounds that when a right to respect for one's faith is interpreted too

⁷¹ Yahaya Sharif-Aminu is detained for his religious expression. *available at*: <https://www.uscifr.gov/religious-prisoners-conscience/forb-victims-database/yahaya-sharif-aminu> (last visited on: 19.10.2024).

⁷² Ishaq Khalid, "Nigeria's Christian and Muslim Leaders Unite to Combat Religious Violence" *BBC News* (Mar. 3, 2022), *available at*: <https://www.bbc.com/news/world-africa-60997606> (last visited on: 05.06.2025)

⁷³ *Supra* note 28.

⁷⁴ *Ibid.*

expansively, it can lead to restrictions on the free expression of differing opinions. An overextension of one right can inadvertently infringe on the other, so both rights must be respected and balanced.

Without a balance, blasphemy laws tend to deviate from the principles of Legality and proportionality as they are often broad and their penalties overly harsh; as seen in the Nigerian cases cited above, they act as a de facto censure of religious dialogue and criticism, they afford different levels of protection to various religious groups and are generally regarded as inconsistent with universal human rights standards.⁷⁵

NEED FOR URGENT REFORMS

To effectively balance the fundamental rights of freedom of expression and freedom of religion, Nigeria needs comprehensive legal, institutional, and societal reforms. While the international communities have condemned mob violence and killings associated with blasphemy, there is no clear strategy by the Nigerian government to put an end to it. In the case of *Inspector General of Police v. ANPP*⁷⁶, the Nigerian Court of Appeal held that the right to freedom of expression is one of the citizens' most fundamental rights, which must be guarded jealously because it is the backbone of any democratic government.

Reforms can only be possible with the combined efforts of all three arms of government in Nigeria. While there is advocacy for legislative reforms in the laws relating to blasphemy, this would not be meaningful if the judiciary and the executive continue to take on a side role in interpreting and enforcing the right to free speech, particularly in Northern Nigeria. One of the significant duties of the judiciary in every democratic society is to ensure that the rights of citizens are protected and to balance any competing interests. Societies where free speech is not guaranteed are heading for tyranny or dictatorship.

In a religious context, if people cannot criticize a particular religion or religious belief, it creates a situation of fear and tension. Suppose the three arms of government fail to promote religious freedom. In that case, it makes a slippery slope where state governments can use the laws of blasphemy to target a particular religious group or ethnic group. Without assurances

⁷⁵ Spotlight on Blasphemy Laws, "The George Washington University International Law and Policy Brief" (Dec. 5, 2022), available at: <https://studentbriefs.law.gwu.edu/ilpb/2022/12/05/spotlight-on-blasphemy-laws> (last visited on: 05.06.2025)

⁷⁶ *Inspector General of Police v. All Nigerian Peoples Party & Ors.*, 2007 AHRLR 179 (Ng. CA 2007).

from the judiciary and the executive branch, any legislative action by the lawmakers would be merely aspirational and could not yield the intended reform.

Religious intolerance is a menace that has eaten very deeply into the fabric of Nigerian society. In the first half of 2004, hundreds of people were killed in inter-communal fighting between Muslims and Christians in and around the town of Yelwa and the southern part of Plateau State, central Nigeria, bringing the total number of victims of the violence in Plateau State since 2001 to between 2,000 and 3,000.⁷⁷ One of the most troubling aspects of these violent episodes is the lack of accountability. Nobody was brought to the book, which tends to create an environment that enables the recurrence of disastrous consequences.

To adequately address this issue, the Nigerian government must take active steps to ensure that the constitutional right to freedom of speech, expression, religion, and belief is upheld and protected.

1. *More precise Legislation on Blasphemy:* The Legislative arm of government should provide more accurate and specific definitions of blasphemy and the scope of speech protected under the constitutional right to freedom of expression. The judiciary must also strive to offer interpretations that balance both rights. This would ensure that restrictions on speech are precise rather than vague or overly broad, which could lead to arbitrary enforcement. The Nigerian Government needs to do more to recognize and uphold the freedom of expression as a fundamental pillar of democracy, applicable even to expressions that may offend, annoy, or disturb. Open debate on religion and beliefs should be encouraged, as this is essential to a democratic society, provided it does not incite violence or discrimination. The Government should encourage religious groups to tolerate public debate and critical statements about their beliefs and teachings. Non-members' discussions about a particular religion should not be considered intentional insults unless they incite violence or cause public disturbance. The Nigerian Government should encourage religious groups to work hand in hand to foster respect for cultural and religious diversity, ensuring ongoing dialogue that helps avoid friction. There must be an intentional effort by government,

⁷⁷ Human Rights Watch, "Revenge in the Name of Religion: A Cycle of Violence in Plateau and Kano States" (May 25, 2005), available at: <https://www.hrw.org/report/2005/05/25/revenge-name-religion/cycle-violence-plateau-and-kano-states>. (last visited on: 05.06.2025).

religious institutions, and private persons to promote respect for individuals regardless of their spiritual orientation.

2. *Abolishing or Reforming the Death Penalty for Blasphemy*: In states where blasphemy laws carry severe penalties such as the death penalty, the legislature should consider abolishing such penalties or substituting them with lesser, non-violent forms of punishment, as prescribed by international human rights norms. International bodies such as the United Nations Human Rights Committee have criticized the use of capital punishment for blasphemy-related offenses, urging countries to reconsider these practices. While the courts can condemn insults to religious beliefs and practices, the state must be cautious when issuing excessive sanctions. It is the state's responsibility to determine what qualifies as a criminal offense, ensuring that penalties are not excessive, especially concerning issues of religion. For example, the death penalty for blasphemy is not commensurate. The state must be seen to take a standpoint of religious tolerance.
3. *Education for Tolerance*: The Government must prioritize education that boosts understanding among individuals of different religions. Teaching about other religious beliefs at primary, secondary, and university levels would help drastically reduce ignorance and the likelihood of religious insults. It would also go a long way toward improving tolerance. There is a dire need to be more intentional about curriculum development and review law and religion issues within the Nigerian framework. In line with this, Nigeria should have an International Center for Law and Religion to promote religious dialogue and tolerance.

CONCLUSION

The tragic case of Deborah Yakubu and other cases and statutes cited above highlight Nigeria's ongoing challenges in balancing the fundamental rights to freedom of expression and religion. While both rights are enshrined in Nigeria's constitution and international human rights treaties, the country's legal system and law enforcement have struggled to effectively protect these rights, especially in sensitive cases involving blasphemy. Both rights can coexist, but to effectively address these challenges faced in upholding the right to freedom of expression or religion, the government must take proactive measures by clarifying blasphemy laws, promoting public awareness of human rights, and ensuring a fully

independent judiciary. By doing so, Nigeria can better uphold the delicate balance between these rights, providing both freedom of expression and religious liberty, which are protected in a manner that is necessary, proportional, and in line with international standards.