

BLASPHEMY AND THE CRIME OF OFFENDING RELIGIOUS FEELINGS VERSUS FREEDOM OF EXPRESSION: BALANCING OF RIGHTS

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ABSTRACT

The main objective of this research was to determine how the crime of offending religious feelings was applied and how it created an imbalance in the practice of free expression and religious freedom. This involved a survey of jurisprudence pertaining to the crime of offending religious feelings, and a review of how the latter affected the practice of free expression and religious freedom. This contains cases on how freedom of expression and religious freedom were practiced in the Philippine setup; how the crime of offending religious feelings caused an imbalance applying the "Defamations of Religions" theory and the abuse of rights doctrine. Qualitative data from offenders of the crime of offending religious feelings, high ranking religious persons, and criminal law experts were gathered from interviews. The study concluded what constitutes as notoriously offensive to religious feelings and the mechanics of the crime of offending religious feelings based on an analysis of cases and jurisprudence and the perceptions of law practitioners. It was also concluded that the crime of offending religious feelings limited free expression in a way that it does not get abused.

Keywords: Free expression, Blasphemy, Religious Freedom, rights, crime

INTRODUCTION

Blasphemy is defined as “a coarsening of public life, a sin, or even a crime, and supported a variety of means to reduce its prevalence in public life” (Patrick 2010). The latter is involved with vilification, and defamation of religious deities; figures and worship. Blasphemy is considered as a crime in a sizable amount of countries like Canada, Great Britain, and countries with state religions, like Turkey and other Islamic countries. In the places enumerated, blasphemers are punished criminally. Blasphemy law has two classifications, if it is to be considered as a crime, “(1) blasphemy laws that are designed primarily to uphold public order by prohibiting actions likely to offend the sensibilities of a particular group of religious believers and (2) blasphemy laws intended to protect from insult a religion, its symbols, and its sacred objects” (Hicks, 2015). The enactment of such laws, incites controversy, because it could limit the practice of free expression, especially in the criticism of religion, when it interferes with the affairs of the state. Acts of blasphemy can also pertain to acts of immorality, and public disorder. The enactment of such law must be discussed because it cannot protect the religion itself, and it must protect the right of the persons. For blasphemy to be possible, there must be an excess of free expression. In the landmark case of *Cantwell v. Connecticut*, where Jesse Cantwell was accused of a common law crime of breach of peace, by the members of the Catholic Church, for playing a phonograph criticizing the latter, the Court ruled that this was a valid practice of free expression because the phonographic material was played only to persons who wanted to hear it. This does not in anyway, constitute a common law crime. Locally, there are no Executive orders, or Republic acts punishing blasphemy specifically, in lieu of that, there is still the crime of offending religious feelings

and the sole existence of this provision can lead to a conflict of views in the practice of free expression and religious freedom. The general research objective of this study was to determine how the crime of offending religious feelings of the Revised Penal Code was applied and what kind of imbalance it created. In the practice of free expression, the two specific research objectives were to survey jurisprudence pertaining to the Crime of Offending Religious Feelings in Article 133 of the RPC and to review how the crime offending religious feelings affects the exercise of free speech and expression. The possible contributions of this study are to further understand the mechanics of the crime of offending religious freedom works considering the perceptions of all sides affected by the crime of offending religious feelings, and how it affects the practice of freedom of expression and religious freedom. Give insight on how to practice the right of free expression in the Philippine context.

Theoretical Framework

The theory of **Defamations of Religions** created by the *Organization of Islamic Conference*, defined this theory as “supports Islamic countries’ rights to enact and enforce blasphemy, defamation, and incitement statutes that persecute and punish non-adherents.” (Belnap, 2010). The mentioned theory can be applicable because of its and purpose; to protect religions rather than protect individuals, and this puts a restraint on the fundamental right of freedom of speech and expression. Moreover, the concept of religious defamation bans the criticism of religion and can make way for gross human rights violations by the enforcement of Blasphemy laws and statutes (Leo, Gaer and Cassidy 2011). The theory protects

Islam from libel, defamation and discrimination and the motivation of this theory is to protect Muslims from defamation because of Islamic stigma. In support to the previous theory, the Abuse of Rights doctrine can be applied. This could be used to support the defamations of religions theory, because the act of speaking or expressing opinions offensive to religious feelings, utilizes the right of free expression; the concept of abuse of rights could be applied on how the crime of offending religious feelings work. It is defined by Reid (2004) and Gradinaru (2012) as "the malicious or antisocial exercise of otherwise legitimate rights". In the New Civil Code of the Philippines, there are three provisions pertaining to the Abuse of rights doctrine, namely Chapter 2, Article 19, 20, 21 of the New Civil Code. In Art. 19 of the NCC, the founding provision of the Abuse of Rights doctrine, which states that, every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. This provision emphasized "Good Faith" as an essential, and necessary element in practicing subjective rights enshrined within the constitution. In application within local jurisprudence, the elements to commit an Abuse of Right is: (1) There is a legal right or duty, (2) Such right has been exercised in bad faith and (3) For the sole intent of prejudicing or injuring another. This theory can be a secondary basis for the dissertation because, to commit the crime of offending religious feelings in the Filipino context the offender must have abused his right to free speech and expression; releasing libelous and offensive speech or written to mock and ridicule religion.

Literature Review

Freedom of Expression

Freedom of expression is a natural, and fundamental right which allows and guarantees crucially, satirical comment, criticism and even harsh words; whether expressed by young or old, at home, on the street, or on the stage. It includes freedom to seek, receive, impart information and ideas of all kinds, regardless of frontiers; either orally, in writing or in print, in the form of art, or through any other media of his choice. (Rehnquist, 1973; Holzaepfel, 2014; Hicks, 2015; and Bussey, 2016). In article 3, section 4 of the 1987 Constitution, it is stated that no law shall be passed abridging the freedom of speech, expression and press. The Bill of rights clearly defines that free expression must be of utmost priority. It is also within the US Constitution which the latter provision was derived from "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." In the case of *Cantwell v. Connecticut*, Jesse Cantwell who played a phonograph criticizing the Catholic Church, was charged with the common law crime of Breach of Peace but was not convicted because it was held that he validly practiced his freedom of speech, and only played the phonograph to the people who are willing to listen. It is

also defined in the case of *Chavez v. Gonzalez* (2008) as "as a fundamental principle, and postulate of our constitutional system; that has been recognized by democratic countries as a preferred right that stands on higher level than economic freedom or other liberties and is an indispensable condition for nearly every other form of freedom in the constitution" (G.R. No. 168338, February 15, 2008).

ASSUMPTION 1: The crime of offending religious feelings limits the exercise of Freedom of Expression.

Freedom of Religion

Freedom of Religion is considered a fundamental right, deserving of legislative protection. A right to choose one's own belief system and deals with the freedom to exercise religious belief that has two components disestablishment and free exercise but does not include the right to have a religion or a belief that is free from criticism or ridicule and without recognizing that the freedom presupposes an affirmative valuing of religion. (Pellegrini, 2009; Holzaepfel, 2014; Hicks, 2015; Cornelio, 2013; Bussey, 2016; and Murphy, 2017). In a local context, Cruz (1991) stated that freedom of religion, is to profess one's belief with the "broadest possible liberty of conscience". The legal and constitutional imbalance of law and religion can be seen in the case of *Gerona v. Secretary of Education* (G.R. No. L-13954), which involves the children of Jehovah's Witnesses being expelled from their school because of their refusal to perform the flag salute; and recite the national anthem, invoking their religious freedom that their belief is contrary to Department Order No. 5, which mandates the flag ceremonies within school premises. As the decision states, the Philippine flag is not an object of religious veneration. This entails that right of religious freedom is given for by the Constitution but does not exempt them from abiding laws that are reasonable and non-discriminatory. However, the decision was reversed in *Ebralinag v. Division of Superintendent Schools of Cebu* (G.R. No. 95770). As held with the latter cases, while the highest regard must be afforded their right to the free exercise of their religion, this should not be taken to mean that school authorities are powerless to discipline them "if they should commit breaches of the peace by actions that offend the sensibilities, both religious and patriotic, of other persons.

ASSUMPTION 2: There is a need to amend Art 133 – Crime of Offending Religious Feelings of the Revised Penal Code, because it limits freedom of expression.

Blasphemy

Blasphemy is a coarsening of public life, sin, or even a crime. It includes all expressions offensive to God, the Virgin Mary and the Saints. It is fundamentally on transgression, on crossing the lines between the sacred and profane in seemingly improper ways and a restriction to freedom of expression (Patrick, 2010; Gianfreda, 2014 and Hicks, 2015). The case of People of the Philippines v. Celdran(Criminal Case 837435-SA). In violation of Article 133 of the RPC:

"Art. 133. Offending the religious feelings. — The penalty of to arrest the mayor in its maximum period to prisoncorrectional in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony shall perform acts notoriously offensive to the feelings of the faithful."

A decision that would invoke a critique of the right of free speech and expression. As the petitioners contended that free speech is a fundamental right, but not an absolute one if it is contrary to law. This decision illustrated the concept of Article 133 and its requisites in which, the person committing the offence must be in a place devoted to religious worship, or during the celebration of any religious ceremony, and he/she must perform acts notoriously offensive to the feelings of the faithful; but for this to be applicable it must be based from the point of view of the latter (Caguioa and Escalona, 2012). Similar in Canadian Law, in one of the most famous cases of Blasphemous Libel in Canada, the *Sterry* Case illustrates the latter completely in which Eugene Sterry published satirical content that criticizes religion with offensive content. Which he personally handed down to public officials, prompting to file for criminal case which involves blasphemous libel. As Patrick (2010), would conclude in his journal dedicated to the case of *Sterry*, the suppression of blasphemy exists in communities of varying religiosity and may trigger through zeal or fear. In communities that are deeply religious, blasphemous speech can raise an immediate visceral reaction of outrage and offense, leading to demands for swift and certain punishment. In Italian Law, there is also a manifestation of blasphemy law, which is referred to as *mens rea*, it means "the intention or the recklessness to offend God, symbols or persons of the Catholic religion in the case of blasphemy" and *Velipendio*, "For vilification of ministers of religion, believers, sacred things and objects and for blasphemy, God, persons and symbols of the state religion" (Gianfreida, 2014). In Britain, "blasphemy is referred to as a breach of peace or public disorder mostly in football matches wherein persons defame other persons and their religions, covered by breach of the peace. The result is that the concept of blasphemy has been broadened and can include heads of religious groups who can be considered vehicles for insulting their followers." (Falsone, 2014).

Simulacrum

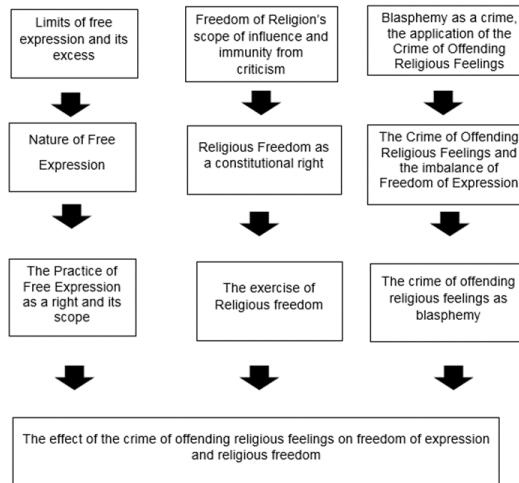


Figure 1. Research Simulacrum

METHOD

The research used a qualitative approach and a survey of jurisprudence which pertained to the crime of offending religious feelings in gathering data because of the subjectivity of blasphemy and what constituted such.

The method was ensured by dwelling on the cases decided by the supreme court on what were the acts that were notoriously offensive to religious feelings.

The thesis utilized a case study design, because the issue presented in the case of blasphemy, blasphemous acts, such as mocking religion vocally or defaming a deity's power or name in speech or in action. The latter limits the practice of free expression and religious freedom, and exhibits that such recurring cases of blasphemy, or Crime of Offending Religious feelings directly intersects the constitutional rights of free expression and religious freedom.

The data consisted of mostly interviews from different parties of the crime of offending religious feelings. The offender of the crime and the victim which was high ranking religious person. A survey of jurisprudence was also used as data because of its sheer importance in contribution to the mechanics of the provision

In analyzing the gathered data, a Kelly grid was utilized leading to a dendrogram to identify the recurring problems on the mechanics of free expression and the crime of offending religious feelings. A content analysis on jurisprudence was also utilized on the survey of jurisprudence.

The study was conducted in Manila and Bulacan, namely: Casa Manila, Intramuros, Divine Mercy Parish, Sta. Rosa, Bulacan, Quiapo, and Quezon City. A total of four interviewees were asked to answer the questions involved.

RESULTS AND ANALYSIS

I. The Practice of Free Expression as a right and its scope

As rights bestowed upon us by the 1987 Constitution, within Article 3 Section 4, “No law shall be passed abridging the freedom of speech, of expression, or of the press.” It is sufficient that every person practice this right. For the four interviewees, freedom of expression is “so innate in every human being that from birth to tomb, an individual is imbued with the inherent right to articulate or convey his/her needs, desires, feelings, beliefs, or opinions and can be practiced by way of saying about what you feel, what you think, manifestations of a person’s belief and conviction. Respectively, these answers pertain to the manner free expression is practiced, it is tantamount to know how these rights are practiced and applied within our daily life. Free expression is practiced either orally, in print, or written opinions of any person as long as it does not undermine the right of others and guarantees the protection of such by the Constitution.

However, free expression as defined previously is still a limited right to maintain a certain balance between different rights. For the Participants, the limits of free expression are when it comes to inciting violence and hate speech; if it would be offensive and if it is contrary to law. In Participant 3’s answer “*freedom of expression should not be used persecute other people and their own beliefs*” it primarily pertains to the abuse of rights concept in civil law, an excess of free expression could lead to other rights being jeopardized to safeguard it which creates turmoil between other rights. Participant 4 mentions that “With every freedom, there is a corresponding obligation. Respect for other’s rights is part of that obligation. More importantly, free expression should not violate our criminal laws.”

II. The Exercise of Religious Freedom

Contained in Article 3, Section 5, “No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.” of the 1987 Constitution. For Participant 3, when asked if they practice religious freedom “*I practice the right of religious freedom because I could choose to be a catholic, I could choose to be a Muslim, I could choose to be a Buddhist, I could choose to not believe any god, without being prosecuted.*” religious freedom for him is practice of religion without fear of persecution as stated within the constitution itself. Freedom of religion is the privilege and freedom to practice your faith, not impeding the faith of others. This pertains to the practice of rights with reservations, in a way freedom of religion cannot under the practice of religious subdivisions in the Philippines, one cannot undermine another religion, religious freedom must be practiced equally throughout. It also includes the right to practice such freedom in whatever form that is not contrary to law.

Religion and its scope of influence, throughout history has influenced society as a whole, the established beliefs and dogma that has been built within the annals of history; as a right, religious freedom is an essential part of society. The Participants have mixed feelings on the interference of religion in the enactment of law. Participant 1 states that ‘*Religious institutions should stay away from law and government. Because they are not using logic or rationality in order to execute they’re tasks, they’re using faith, and faith is subjective.*’ While Participant 2 says that “*Religious institutions are groupings of Filipino citizens, and since the religious is a part of our conviction, these religious institutions should be free and encouraged to express their religious convictions and to promote the common good of the country sharing their religious conviction.*”

III. Crime of Offending Religious Feelings as Blasphemy

The Crime of Offending Religious Feelings stated in the Revised Penal Code, has two requisites, they must commit an act notoriously offensive to religious feelings, and they must commit an act in a place devoted to religious worship or during a religious celebration. In the case of People v. Baes, a key term was stated “*whether or not the act complained of is offensive to the religious feelings of the Catholics, is a question of fact which must be judged only according to the feelings of the Catholics and not those of other faithful ones*”. With this in mind, the crime of offending religious feelings cannot work both ways, one may set aside the religious feelings of another, if they gravely abused their right to religious freedom, or expression.

Participant 3 as an expert of criminal law, states, “*what is prohibited in article 133, is a direct disrespect of religious processes and procedures, if art 133 is not in place then a person could just, act disrespectfully whenever a religious act is performed, and that could endanger society in general.*” This means that the purpose of the enactment of article 133 is to protect the persons practicing the religion. Blasphemy, for the participants is part of freedom of speech, is to go against god, to speak what is contrary to what god is and to the will of god and disrespecting the god, using those religious figures in a disrespectful or in an offensive manner. Participant 3, considering if the crime of offending religious feelings can be blasphemy per se “In a way it could be considered as blasphemy, art 133 prohibits acts that may disrespect religious beliefs I could think some of those acts that may not be considered as blasphemy but disrespectful to a particular religion.”

For centuries, blasphemy law and enactments have existed. As society evolved, and basic civil liberties were established. When asked about the excess of the practice of the right of free expression should be punished by law criminally, Participant 1 answered “*Not criminally, but there should be statutes limiting it. Because free speech is a big part of how we practice our free will.*” For him limiting free expression and speech should not be a priority, and free expression is a part of our free will to manifest our human nature, but there should still be limits on how free speech is practiced. For Participant 3, as an expert of criminal law excess of free expression is already punishable by law, there penal

laws locking the boundaries of free expression like slander or libel one cannot just say anything demeaning against other individuals especially when it taints the reputation of others, otherwise they can be prosecuted for oral defamation, or libel. It is peremptory that if any freedom is used to curtail or taint another person, it must be punishable by law.

Survey of Cases

In People v. Nosce (1934), it was ruled that Nosce, the defendant was guilty of the crime of offending religious feelings for slapping Rev. Fr. Arcand during the performance of the sacrament of confirmation this constitutes as a crime of offending religious feelings because the nature of slapping reduces the dignity of a human person. Also, in People v. Reyes (1934), wherein the defendants were accused of committing the crime of offending religious feelings, for disturbing a *pabasaby* building a fence during the occurrence of the latter. The Court ruled that disturbing a *pabasacannot* be constituted as crime of offending religious feelings, because it does not amount to a religious celebration and the act of building a fence is an act to protect private and proprietary rights.

On the other hand, in the landmark case of People v. Baes (1939), it was decided that a churchyard is not constituted as a place devoted to religious worship. The brief facts of the case is that Fr. Baes did not allow a funeral of a "Church of Christ" member to pass on the churchyard, stating that the churchyard was place devoted to religious worship. It ruled that "Whether or not the act complained of is offensive to the religious feelings of the Catholics, is a question of fact which must be judged only according to the feelings of the Catholic and not those of other faithful ones." Also, in the opinion of Justice Albert, "An act is said to be notoriously offensive to the religious feelings of the faithful when a person ridicules or makes light of anything constituting a religious dogma. Works or scoffs at anything devoted to religious ceremonies; plays with or damages or destroys any object of veneration by the faithful." The passage of such funeral of a Church of Christ member this does not offends, mocks, or ridicules the Roman Catholic Church.

In Santos et al., v. People (1969), the neighborhood of Manguiring, town of Calabanga, exists and for many years there is a Catholic cemetery on a date not clearly explained in the evidence. A certain Catalina Atienza with others obtained title to the land in her name so the parish priest of Calabanga in representation of the Catholic Church filed a claim for cancellation of the title. This was a matter that won the Church in the Instance but lost before this Court 23rd of September, 1958, a neighbor died in the neighborhood, called Dorotea Bosque, wife of one of the defendants, Teofilo Cal, and both husbands belonged to the sect called Jehovah's Witness information the village Treasury by Pilipino Largo. One of the defendants also a supporter of the dissident sect sent by the office the departure of defunction, and buried the corpse of Dorotea in the old cemetery. In burying a corpse of another religion, in this case, a Jehovah's witness in a catholic cemetery without permission can amount to the crime of offending religious feelings.

The case of People v. Nanoy (1972), in a congregation of the Assembly of God having its afternoon services in its chapel, the accused Epifanio Nanoy, was drunk and entered with uplifted hands, and approached Levita Lapura, the song leader, and attempted to grab her but ran away from Nanoy. The remaining members of the sect also ran out of the church and the religious services were discontinued. Accused was charged with the crime of offending religious feelings penalized under Art. 133 of the RPC. The complaint alleged that he had the intention of stopping the said rite in an unholy manner. This did not constitute as a crime of offending religious feelings, because there was no intent to defame or ridicule religion. The act of Nanoy was ruled as unjust vexation.

DISCUSSION

The underlying concepts within the research was to determine what constitutes as a valid practice of free expression. The nature and effect of religious freedom and how the crime of offending religious feelings works to influence the practice of two constitutional rights. The three main categorical themes explain the meaning of such rights, how exercised and the mechanics of the crime of offending religious feelings in the eyes of the interviewees and jurisprudence. Specifically, the practice of free expression as a right and its scope, the exercise of religious freedom, and crime of offending religious feelings as blasphemy.

In the review and survey of jurisprudence in relation to the crime of offending religious feelings. An act notoriously offensive to religious feelings as the cases would apply, anyone who pickets or shouts derogatory words during a religious celebration (People v. Celdran), if a person slaps a reverent father during a sacrament (People v. Nosce) and Burying a corpse of another religion, in this case a Jehovah's witness in a catholic cemetery without permission can amount to the crime of offending religious feelings (Santos et al. v. People). The analysis applied, shows that the crime of offending religious feelings when applied in a Court of law, affects the practice of free expression in a way that it restricts the practice of the given because as stated all rights must be practiced with limits and reservations without excess or abuse. The decisions insofar if it is in favor of free expression and religious freedom, it does in fact, affects the practice of the two constitutional rights because of the intersection that the two rights must be practiced before there can be a commission of the crime of offending religious feelings.

Applying the defamations of religions theory, the crime of offending religious feelings' purpose was not to protect the religion itself, but the person who has the religion, and not to suppress freedom of expression but to avoid an excess of it. The said theory can be applied because of how the crime of offending religious feelings serves to protect religion in general and how it is practiced. Contrary to that, the crime of offending religious feelings was not enacted to punish the excess of free expression, but rather to protect the persons practicing their religious freedom.

According to Atty. Eddie B. Tamondong of the Public Attorney's Office, after being shown the theses of the study, "Free expression, is a right guaranteed by the constitution, with that in mind, it should be protected. But it does not mean that it should undermine other laws protecting the Filipino citizen, because an excess of another right is a violation of the law, especially when it comes to free expression, crimes are already existing such as libel and slander." He proceeded "In that regard, the religious freedoms of the person cannot also undermine free expression." On the matter of the crime of offending religious feelings creates an imbalance of rights he responded, "The crime of offending religious feelings was established much like the libel and slander, it is to protect the person from defamation, it doesn't necessarily cause an imbalance because it serves to protect a person."

This study provided a helpful insight to the rights of free speech, expression, freedom of religion and the manifestation of blasphemy laws within our body of law. Practically speaking, there is no repeal or abolition of the crime of offending religious feelings needed. It is within the foresight of the law makers at that time to make such provision not to undermine free expression in general but to limit it accordingly to balance its practice, there should not be excesses to its practice not if another right is involved. While, the free expression is still being quelled by this provision. What is needed is the creation of an official law proposed in Congress, in relation to blasphemy. Being pre-dominantly religious, the lawmakers should ensure the well-being of every citizen practicing religious freedom in peace and without fear of vexation or harassment.

In terms of the basic practice of fundamental rights, it is imperative that one practices any right without abuse to the point where it abridges another one's right. There must be a sufficient law punishing forms of blasphemy.

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