

---

## THE PROTECTION OF ISLAM FROM RELIGIOUS INSULT IN THE CONTEXT OF FREEDOM OF EXPRESSION

<sup>i</sup>Ainun Syafiqah Rajuddin, <sup>ii</sup>Adzidah Yaakob

<sup>i</sup>LLM (UKM), Bachelor of Syariah and Law (USIM),  
Faculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM),  
Bandar Baru Nilai, 71800 Nilai, Negeri Sembilan  
ainunsyafiqah91@gmail.com

<sup>ii</sup>(Corresponding Author), PhD (Malaya), MCL (IIUM), LLB (Hons) (IIUM)  
Senior Lecturer, Faculty of Syariah and Law, Universiti Sains Islam Malaysia  
(USIM), Bandar Baru Nilai, 71800 Nilai, Negeri Sembilan  
adzidah@usim.edu.my

### ABSTRACT

*The purpose of this study is to examine the nature of freedom of expression from three perspectives of laws, namely, international human right law, Malaysian law as well as Islamic law, and its relation in protecting religion of Islam from religious insult. The study argues that there ought to be a legal protection equipped to religion in order to protect religion from being insulted and indirectly to maintain the peace and the public order in the world. The protection cannot be viewed as violation to the freedom of expression but it shall be viewed as one of restrictions to the freedom of expression because no right or freedom is absolute. The findings indicate that the protection to religion from religious insult has never been regarded as a necessary because it clashes with the freedom of expression. Lastly, the study concludes with recommendations on how to strike a balance between the freedom of expression and the right to have religion to be protected as well as a proposal to develop an international anti-blaspemy law protecting all religions and beliefs. By implementing these methods, religion of Islam can be protected from religious insult and peoples can no longer invoke their freedom of expression as an excuse.*

**Keywords:** *Blasphemy, Freedom of expression, Islam, Religious Insult.*

## **INTRODUCTION**

Freedom of expression is protected and upheld by all major international human rights instruments, such as the Universal Declaration of Human Rights 1948, and the International Covenant on Civil and Political Rights 1966. At the regional level, the European Court of Human Rights (ECtHR) has constituted freedom of expression as one of the essential foundations of a democratic society and that “it is applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population” (*Handyside v United Kingdom*). This idea suggests that there is no differentiation between what kind of information or idea that can be uttered or disseminated under the right of freedom of expression.

Nevertheless, like the other rights protected by the international instruments, the right to enjoy freedom of expression is not absolute. Every right shall have its own limits. There must always be a balance between one’s right to the freedom of expression and one’s right to be protected such as protection of public order, safety, and reputation.

Lately, there are many incidents involving insult against religions, especially Islam, in the name of freedom of expression. Social hostilities in response to the religious insult are too increasing year by year. In September 2012, a video entitled “The Innocence of Muslims” was broadcasted by an Egyptian television station. It caused riots, casualties, thousands arrest and a fatwa offering bounty for the death of the producer. The publication of the Prophet Muhammad cartoons in a Danish newspaper has also led to similarly dreadful consequences and recently the world has been shocked again with the Charlie Hebdo shooting incident.

However, it is important to note that not only the religion of Islam is being targeted but the other religions as well although the frequency of the incidents attacking their sacred beliefs is not as much as what Islam has faced. For instance, the Greek court had charged the director and actors of a play, depicting a number of saint figures as homosexuals, with “malicious blasphemy”. Meanwhile in Spain, a leading artist was prosecuted for offending religious feelings after a provocative short film he made thirty-five years ago.

All of these incidents occurred because of the belief that peoples have absolute right to the freedom of expression in which an insult against religion is not an exceptional and this belief exists due the vagueness of the existing laws relating to the protection of religion itself. This is because they are two kinds of protection, namely the laws that only protect the individuals or groups of people from blasphemous insult and secondly the laws that protect the religion alone from insult in which the former is mostly enacted in the Western countries while the latter is the most popular within Islamic countries. As a result, there is no worldwide consensus whether the insult against religion is an exception to the freedom of expression where the authors believe that this is the main cause of the above-mentioned incidents keep happening. However, there is an on-going pressure by several Islamic religious groups and organizations urging the international body and their governments to extend the protection not only to groups or individuals but also to religions *per se*, which has been rejected by most of the Western countries (Holzaepfel, 2014).

## **DEFINITION AND NATURE OF FREEDOM OF EXPRESSION**

According to Oxford Learners Dictionaries, expression is what people say, write or do in order to show their feelings, opinions and ideas (Oxford Learner’s Dictionaries, 2014). Meanwhile, freedom is defined as a right or power or liberty (The Law Dictionary, 2013). From this combination of definitions, basically, it can be understood that a person has a liberty or a right to show to the others what they feel or think.

Meanwhile in the legal context, freedom of expression is a derivative of a basic human right which sometimes is expressed in more limited language such as freedom of speech, freedom of thought or freedom of the press and this right can be expressed in various means such as through writing, social media, movie and others. Therefore, freedom of expression is a freedom to communicate ideas, whether orally or in print or by other means of communication but it is subject to certain restrictions (Duhaim Legal Dictionary, 2014).

Freedom of expression is a fundamental human right protected at both the universal and the regional level but the main concern under this premise is of its nature and protection at the universal level, Malaysian law as well as Islamic law.

## **FREEDOM OF EXPRESSION UNDER THE INTERNATIONAL LAW**

In discussing the nature of freedom of expression under the international law, the main references are specifically made to the international human right instruments such as the Charter of the United Nations (hereinafter shall be referred as “the Charter”), the 1948 Universal Declaration of Human Right (hereinafter shall be referred as “the UDHR”) and the 1966 International Covenant on Civil and Political Right (hereinafter shall be referred as “the ICCPR”) and they will be discussed in turn.

The Charter is a multilateral law-making treaty and is the constituent instrument of an international organisation, namely the United Nation Organisation. The Charter is usually referred to as the starting point for any study of the protection of human rights. Article 1 of the Charter, for example, lists among the main purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language and religion (Abdul Ghafur, 2011). Similarly, in accordance with Article 55 of the Charter, the United Nations has duty to promote universal respect for, and observance of, human rights and fundamental freedoms for all without any discrimination.

Although some argue that the human rights clauses in the Charter do not impose obligation on Member States but the word “pledge” used in Article 56 implies a legal obligation to the Member States to observe and protect the fundamental human rights from any violation by their nationals (Abdul Ghafur, 2011). From these provisions of the Charter, it can be inferred that all fundamental freedoms and human rights, such as freedom of expression, are protected and shall be enjoyed by every person indiscriminately. Notwithstanding, these provisions may only be regarded as the general principles of human rights as nothing is absolute in this world. This is because the right to enjoy the fundamental human rights is subjected to certain limitations which can be found in the other international human rights instruments.

Next are the UDHR and the ICCPR in which both are the products of the United Nations in its attempt to have international documents acceptable to all members of the international community. However, they are differing in term of their legal binding effect whereby the former is not a treaty; thus, its declaration is not legally binding (Khin, 1980). Despite of that, it has contributed a significant impact in shaping subsequent treaties on human right. This is because the rights and freedoms set out in it have been laid down more precisely in two international covenants on human rights of 1966. Unlike the former, the latter is an international treaty giving legal binding effect to its ratifying States (Khin, 1980). Therefore, the States parties are bound by its provisions therein.

Both the UDHR and the ICCPR protect individuals' rights to the freedom of expression. Yet, the freedom of expression is not absolute. Although the ICCPR, through its Article 19(1) guarantees the enjoyment of the right but whilst enjoying it certain restrictions must be adhered to. A reference shall be made to Article 19(3) of the ICCPR which lays down three restrictions to the right to freedom of expression. The restrictions are; they must be provided by law, they may only be imposed in order to protect, amongst others, the rights of others and public order and they must be justified as being "necessary in a democratic society" to do so (Callamard, 2006). In the other

words, it can be inferred that this right is not absolute and must be exercised responsibly.

It is also important to be noted that Article 19 of the ICCPR should be read in conjunction with Article 20 of the ICCPR which prohibits any advocacy of hatred that constitutes incitement to discrimination, hostility or violence. Indirectly, the ICCPR imposes a duty upon the Member States to restrict the freedom of expression within their states. Therefore, it can be concluded that there is an obligation on the part of every State party to the ICCPR to ensure that there is a provision in its domestic law for protection against such incitement on these grounds. However, this duty can be avoided because the State party to the ICCPR may make reservation on this provision as what the United States of America did (First Amendment to the Constitution of the United States of America, 179). Notwithstanding, the law is there.

With regard to the Malaysia's position, of the two core human rights treaties, the Charter and the ICCPR, Malaysia is only a party to the Charter. As a Member State to the United Nations, Malaysia has pledged to promote and to observe universal respect for human rights and for all fundamental freedoms for all without distinction as to race, sex and religion. In showing its support, Malaysia has included the fundamental liberties in the Federal Constitution (Laws of Malaysia Federal Constitution, Articles 5 - 13). There is no discrimination is allowed in Malaysia save in accordance with law, such as the Malay privileges and Shariah law.

Apart from the Charter, Malaysia also referred to the UDHR as a guideline when framing its law in order to ensure that Malaysian laws are conform to the international standard in protecting the human rights (*Abd Malek bin Hussin v Borhan bin Hj Daud & Ors.*). Since the ICCPR is founded on the UDHR, but with greater detail of the rights, therefore Malaysia feels no necessity to ratify the ICCPR because basically they are same. Moreover, some of the provisions are contrary to the Shariah law (thestar.com.my, 3 December 2012).

In the meantime, there is no specific law at the international level that protects religion from criticism. The only law that has something to do with protection of religion is the

ICCPR by virtue of its Article 20 which imposes a duty on Member States to prohibit any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. But the yardstick for the expression to be constituted as advocacy of religious hatred is high (Foreign and Commonwealth Office, 2014). Being offensive or provocative does not necessarily reach that level. It depends on the case at hand. The degree of the hatred, the effects it generates, and the intent of its maker are all relevant to be taken into consideration.

Notwithstanding, it is also important to be noted that the ICCPR is the international human rights treaty, thus it only protects the rights of individual or groups but not religion. Therefore, it can be concluded that there is neither specific provisions in general international law nor in international human right instruments that provide protection to religion *per se*. Thus, in general, religion can be said to have no immunity from religious insult against it under the existing international law.

## **FREEDOM OF EXPRESSION UNDER MALAYSIAN LAW**

In Malaysia, the fundamental liberties or human rights are guaranteed and protected in Part II of the Federal Constitution. As such, the freedom of expression is guaranteed by Article 10(1)(a). The provision states that every citizen has the right to freedom of speech and expression but it is subject to certain limitations. There is no elaboration of the exact scope of this freedom or its constituent parts. In constitutional law, however, it is generally understood that the right to freedom of speech and expression is a combination of many rights in many forms (Faruqi, 1992). Thus, communication by word of mouth, signs, symbols and gestures and through works of art, music, sculpture, photographs, films, videos, books, magazines and newspapers are all part of free speech and expression (Faruqi, 1992).

As mentioned earlier, the right to enjoy the freedom of expression is restricted. The Federal Constitution, in Articles 10(2)(a), 10(4), 149 and 150 authorises Parliament to impose such restrictions on free speech as it deems necessary or expedient. They are fourteen grounds altogether, among others,

the freedom of expression may be restricted if it causes incitement to any offences like obscenity or causing disharmony, disunity on grounds of religion and many other Penal Code offences.

### **LAW PROTECTING RELIGION IN MALAYSIA**

There are five provisions of the Penal Code criminalizing offences against religion. The provisions are placed under Chapter XV of the Code with the title "Offences relating to Religion". The relevant provisions are sections 295, 296, 297, 298 and 298A. Offences prescribed by these provisions are; insults against religion and religious feelings, which includes injuring or defiling places of worship and sacred objects (Laws of Malaysia Penal Code [Act 574], Section 295) trespassing on burial places and places of worship, indignity to human corpses and disturbing funeral ceremonies (Act 574, Section 297) and uttering words to wound religious feelings (Act 574, Section 298), disturbing religious assemblies (Act 574, Section 296) and causing disharmony on the grounds of religion (Act 574, Section 298A). Although the objectives of these provisions are not explicitly spelt out, but it is generally understood that they serve to protect the religious feelings and religious practices from any form of contempt (Shamrahayu, 2009) or criticism.

Apart from that, another law which protects religions in Malaysia from insult is the Sedition Act 1948. Under the revised Malaysian Sedition Act (Sedition Act 1948 (Revised 2015) (Act 15), Section 3(1) (ea)), insulting religion and promoting hostility between persons or groups on the grounds of religion are an offence (Tan, 9 April 2015). This is important in order to prevent public disorder and disharmony among races professes different religions living within Malaysia. In fact, the same approach can be found under the old Sedition Act but the provision was not specifically focused on the religion. For instance, in the case of Alvin and Vivian, both are charged under Section 4(1)(c) of the Sedition Act for publishing a seditious picture showing the two of them eating pork soup and carrying the words 'Selamat Berbuka Puasa' during Ramadan which incited anger from Muslims. They are charged under that provision because they

promote hostility between different races of Malaysia (Saw, 21 April 2014).

### **FREEDOM OF EXPRESSION UNDER ISLAMIC LAW**

Islam clearly provides everyone right to exercise freedom of expression, as long as he does not encroach the freedom and dignity of other people. Islam does not promote propagation of evil and wickedness because Islam forbids the right to use abusive or offensive language in the name of criticism and freedom of expression. Indeed, Islam grants everyone the right to have his own opinion within the boundaries of morality.

For instance, Allah says in the Al-Quran:

*70. O ye who believe! fear Allah, and  
(always) say a word directed to the right*

(Al- Quran. Al-Ahzab 33:70)

Here Allah orders His believers to speak only the truth.

Allah further says;

*148. Allah loveth not that evil should be  
noised abroad in public speech, except  
where injustice hath been done; for  
Allah is He who heareth and knoweth all  
thing*

(Al- Quran. An-Nisa' 4:148)

This verse explains that Allah the Exalted does not like for evil to be uttered in public and this includes all harsh words which may hurt someone or cause sadness; such as insults, slander and defamation. However, it is permissible for the person who has been wronged to publicly speak out against the person who oppressed him.

Apart from verses from the Quran, the Prophet p.b.u.h has also warned the Muslims of the impacts of not being cautioned in uttering words.

The Prophet p.b.u.h says;

① *ن العبد ليتكلم بالكلمة ما يتبين فيها يزلّ بها إلى النار أبعد مما بين المشرق  
والمغرب*

(Bukhari.n.d.*Fathul Bari*. (Internet). Bab Hifdz Lisan.  
#6477.<http://sunnah.com/riyadussaliheen/18>)

This Hadith explains that if a person utters a word thoughtlessly, without thinking about it is being good or not, therefore as a result of this, he will fall down into the fire of Hell deeper than the distance between the east and the west.

Islam prohibits insult against religion. There are several verses from the Quran that prohibit Muslims from insulting or criticizing the other beliefs and warn them of His punishment.

Allah says;

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ  
(Al- Quran. Al-An`am. 6:108)

In this verse, Allah forbids His Messenger p.b.u.h and the believers from insulting those whom the disbelievers worship besides Allah. This is because the disbelievers would retaliate by insulting Allah wrongfully without knowledge.

However, there is no worldly criminal sanction exists for insulting Allah and His Messenger p.b.u.h in Shariah as the matter is left solely to God.

Allah says;

إِنَّ الَّذِينَ يُؤْذُونَ اللَّهَ وَرَسُولَهُ لَعَنَهُمُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ وَأَعَدَّ لَهُمْ عَذَابًا مُهِينًا  
(Al- Quran. Al-Ahzab. 33:57)

Based on this verse, it shows that Allah not even cursed them in this world but also promised to prepare in the Hereafter a humiliating torment to those who insult Allah and His Messenger p.b.u.h. Although there is no divine punishment for the offender in the world but it still can be carried out by the State leader under *ta'zir*.

However, based on a Hadith narrated by Jabir bin Abdullah in the *Sahih Bukhari*, the punishment for insulting Allah and the Prophet Muhammad p.b.u.h is death penalty. This recounts the murder of Ka'b bin al-Ashraf, a Jewish poet who wrote verses insulting Allah and the Prophet Muhammad. The Prophet Muhammad p.b.u.h asked Muslims who want to kill him and several volunteered (Bukhari (59:369) Volume 5, Book 59, Number 369 <http://www.usc.edu/org/cmje/religious-texts/hadith/bukhari/059-sbt.php#005.059.369>).

Therefore, it can be concluded that Islam strictly prohibits its believers from insulting or criticizing not only Allah and His Messenger p.b.u.h but also the other beliefs. At the same time, Islam permits to speak evil of others but only if when there is a valid and strong reason to do so. Instead of speaking badly about others, Islam teaches its believers to express themselves through gentleness, courtesy and quiet discretionally through the concepts of giving advice.

### **WHAT IS BLASPHEMY?**

Blasphemy is an act targeted at God and religion in which the doer is said to have a deliberate and malicious intention to wound the feelings of mankind or to excite contempt and hatred against the religion, or to promote immorality either by words; oral or written, or by visible representations (Duhaime Legal Dictionary, 2014). The act of blasphemy has not yet been recognized as a universal offence because not all countries have criminalized it on the basis of upholding the right to freedom of expression. Based on the definition above, therefore, blasphemy and religious insult are said to be the same act.

### **ANTI-BLASPHEMY LAW**

There are two distinct types of anti-blasphemy laws around the world, namely; the one that protect individuals and the one that protect religions (Holzaepfel, 2014). Each of them will be examined in turn.

The first type of anti-blasphemy law intends to protect an individual's freedom of choosing his religion and freedom from insult. This kind of law is most prominent in Western democratic nations such as Ireland, Germany and Finland (Angelina, 28 May 2014). These countries have become more active in using anti-blasphemy law to ban expression deemed to be harmful to society or certain individuals (Angelina, 28 May 2014).

Unlike the first, the second type of anti-blasphemy law is specifically enacted and enforced to protect the religion itself from insult or ridicule and this law is emerged dominantly in Islamic countries (Holzaepfel, 2014).

The existence of this kind of law is in line with Shariah law origins from the Quran and the Sunnah which prohibit Muslims from insulting the belief of others and warn them of its consequences (Al-Quran. Al-An'am, 6:108). The example of Islamic countries famously known of their anti-blasphemy law protecting religion is Saudi Arabia and Pakistan. Malaysia also has this anti-blasphemy law protecting religion which can be found in several provisions in the Penal Code and other domestic statutes.

### **BLASPHEMY LAW DEBATE IN THE UNITED NATIONS AND THE RECENT ATTEMPTS TO ESTABLISH AN INTERNATIONAL ANTI-BLASPHEMY LAW**

For many years, Islam has always been the main target by its non-believers with extreme provocation of religious insult to Muslims. This irresponsible conduct has incited anger among Muslims around the world and most of the time, they will lead to public chaos because Muslims can no longer withstand to let the others insulting their sacred belief. Moreover, the provocations or insults are too much and very offensive whereby the non-believers portrayed the Prophet Muhammad as animal, adulterer and others. This will somehow create a misunderstanding about Islam for those who do not have the knowledge about Islam. Although the other beliefs have also faced religious insults but they are not frequently happened if compared to Islam.

Because of this, the Organization of Islamic Cooperation (hereinafter shall be referred as "the OIC") has repeatedly sought to codify the protection of religions alone, especially Islam, from being insulted or offended. Therefore, the OIC has proposed a Defamation of Religions Resolution (UfukGokcen, 2012) at the former Commission of Human Rights and at the present Human Rights Council (hereinafter shall be referred as "the UNHRC) in Geneva, as well as at the UN General Assembly in New York (Holzaepfel, 2014). A resolution on the Defamation of Religions (hereinafter shall be referred as "the Resolution") was tabled at these bodies, being inspired by the objective to protect religion from religious insult and to curb incitement to religious hatred and intolerance.

However, the members of the UNHRC expressed their concern over the Islamic-centric focus on the Resolution. Because of that, although the Defamation of Religions Resolution initially was meant to protect Islam and Muslims in particular, the OIC, keeping in line with its policy of moderation, tolerance and modernization, decided to drop the terminology related to “Islam” by name to make the Resolution applicable to all religions (Holzaepfel, 2014). As a result, the Resolution had been endorsed by both the UN Human Rights Council (UNHRC) and the General Assembly and was adopted by a comfortable majority over many successive years (Ekmeleddin, 2012). Despite the fact that the resolution was adopted by the UNHRC and UN General Assembly with the support of both OIC and non-OIC member countries, EU member states and the US voted against the Resolution on the ground that an EU and US vote in favor of the Resolution would undermine “freedom of expression.”

Unfortunately, it did not last long. Due to the pressure by the United States, EU member states as well as the human right activist, on March 2011, the UNHRC after a discussion with the OIC, has shifted the Resolution from blasphemy law that protect religions *per se* to blasphemy law that protect individuals.

The new nature of blasphemy law went well until the release of a short blasphemous film entitled “The Innocence of Muslim” on September 11, 2012 which falsely depicting the Prophet Muhammad as a womanizer, child molester and homosexual. This film has caused riots in many countries urging the film to be removed and its producer to be punished. However, the international media has reported it as if the Muslims are terrorists based on their reactions. Again, it tarnished the image of Islam as a religion that brings peace.

Because of the production of the film, the debate demanding for international legal protection of religion from insult re-emerged (Kiley, 2013). The OIC supported by the League of Arab States, in response to the blasphemous film and the scrutiny of Islam in international media coverage, demanded for a binding international law in order to confront insulting religions and ensuring the religious faith and its symbols are respected.

Despite of the OIC's demand, there is no sign the UNHRC will shift back from the protection to individuals to religions. However, the OIC's concerns get a strong support from the United Nations Secretary General Ban Ki Moon (Holzaepfel, 2014). He is also opined that freedom of expression have to be restricted if it is used to provoke or humiliate the other beliefs (United Nations, 2012).

Up to 2017, there is no progress in establishing an international law protecting religions from being insult even after many incidents rooting up from religions has occurred. Therefore, it may be concluded that the attempts to establish an international blasphemy law has failed because of the lack of support from the Western countries due to their strong support to freedom of expression.

There are many incidents insulting the religion of Islam worldwide on the ground of the freedom of expression to justify these offensive acts. For instance, art exhibition depicting the Prophet Muhammad in Texas (thestar.com.my, 2015) "Charlie Hebdo" case in France (bbc.com, 2015) Malaysia's "Alvin-Vivian" case (Saw, 2014), "The Innocence of Muslim" video (Liz, 12 September 2012) and cartoons in the Danish Newspaper (news.bbc.co.uk., 2006).

Based on the above-mentioned incidents in these States, it shows that peoples, especially the non-Muslims or the non-believers, feel no harm or fear when insulting the religion of others because there is no law and punishment awaits. This is because there is no anti-blasphemy law in these States such as France and the United States. Besides, they also invoke the ground of freedom of expression to justify their irresponsible conducts. It is important to be noted that the insult against religion does not simply end there but it has often led to dreadful and severe consequences too. For instance, it leads to a high social hostility or chaos and public disorder. Apart from that, the image of Islam has also tarnished by the overreaction of the Muslims who could no longer watching their religion from being mocked and insulted and maybe their justification is to warn the other peoples of the consequences of insulting their religion.

In contrast, Malaysia shows a good example in protecting religion from being insulted as what happened in ‘Alvin-Vivian’ case. This is because the law itself exists and with a good enforcement, insulting religion is not a serious issue in Malaysia. Denmark also starts to prosecute its people for blasphemy for the first time in 46 years, which is an applaudable move (Lizzie, 23 February 2017). The prosecution is made in response to the incident of a Danish man who posted a video of himself setting fire to the Quran on Facebook entitled “Consider your neighbour: it stinks when it burns” to a group called “YES TO FREEDOM – NO TO ISLAM” in December 2015. Therefore, at this time an effective enforcement of anti-blasphemy law is required to play its significant role, such as, by;

- (i) criminalizing the religious insult,
- (ii) imposing proper punishment for the offender and
- (iii) specifying the conduct that will invite the enforcement of anti-blasphemy.

## **RECOMMENDATIONS**

Based on the above-discussions, the authors propose several recommendations to curb this issue in the following section.

### **Harmonizing the freedom of expression and the right to have religion protected**

The authors think that it is crucial to harmonize or strike a balance between the rights to freedom of expression and the right to freedom of religion or belief, to be specific, the right to have religion or belief protected in order to avoid these two rights from being deprived by one another. This is due to several reasons, firstly it is suggested that freedom or right can never be absolute. The law itself stipulated the restrictions to the guaranteed rights, thus, such rights must be exercised responsibly with due respect to the other rights. Secondly, rights or freedoms are relative in nature. For example, portraying Jesus Christ as a gay person may be acceptable in the West today because of their liberalism, but to depict religious figures of Islam as gay would be totally unacceptable in Muslim countries and this may probably lead to religious riots and violence as what happened nowadays. In order to be fair and to protect the

public interest, therefore, a harmonization between these two rights is necessary.

The authors think it is possible to harmonize between these two rights on the ground that both of these rights are interrelated by showing that the right to have religions protected is part and parcel of the freedom of religion or belief protected under Article 18 of the ICCPR which no one is permitted to infringe this freedom without proving any reasonable justification. The impact of this established relationship may justify any law imposes to restrict peoples, who are using the freedom of expression as an excuse, from insulting religions and indirectly this may rebut the assertion that religion is not protected from religious insult. Although it is not expressly stated under the international law but impliedly the protection is there.

Unlike the right to have religions protected, the right to freedom of expression is a clear cut one of the fundamental human rights guaranteed by the law. Notwithstanding, the authors suggest that the former right could be classified as one of the entailing rights of the right to freedom of religion or belief under Article 18 of the ICCPR.

Based on the said provision, everyone shall have the absolute right to freedom of religion. In order to be meaningfully protected, therefore, this accorded right must be respected at all the times as to include the prohibition to the other believers or atheists from deliberately and groundlessly insulting or ridiculing the religions or beliefs of others. We must respect what the others have faith into because, except for Muslims, it is their absolute freedom to choose what religion they want to. Hence, it is concluded that the right to have religions protected from insult is part and parcel of the right to freedom of religion.

Since these two rights, the freedom of expression and the freedom of religion, are the fundamental human rights, thus they must be exercised responsibly and reasonably as not to depriving each other. Moreover, it is stipulated in Article 5 of the Vienna Convention stating that all human rights are universal, indivisible and interdependent and interrelated. Therefore, the international community must treat human rights globally in a fair and equal manner, on the same footing and with the same

emphasis (Vienna Convention on the Law of Treaties 1969, Article 5).

### **To Resolve Conflict Between the Freedom of Expression and The Right to Have Religions Protected**

Whenever there is a relationship, usually there will be a conflict that could not be avoided as what happened to these two rights in discussion. For instance, within this context, several groups of people claiming that it is not an offence to insult religions because it is their rights to freedom of expression. In contrast, the other groups of people claiming that their rights to freedom of religion have been violated or deprived by the offensive expression against their religion because such offensive expression has indirectly hindered the believers from freely exercising their right to freedom of religion through breaching their right not to be insulted in their religious beliefs. Thus, the possible question would arise is that whether these two rights could undermine one another to avoid a conflict?

To answer this, a reference shall be made to Article 5 of the ICCPR. It states clearly that no State, group or person has any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized by the law or at their limitation to a greater extent than is provided for in the present Covenant (International Covenant on the Civil and Political Right 1966, Article 5). Based on this provision, therefore individuals cannot justify undermining the other's rights, simply because they want to uphold their own rights. On that note, people cannot undermine the others' freedom of religion by insulting their religions or beliefs on the basis of freedom of expression and *vice versa*.

### **Differentiate between insult and critique**

Insult and critique bring two different meanings and often the effect is also different. The word "insult" refers to a deliberate act or expression which is disrespectful and offensive to someone or something. On the other hand, "critique" is a detailed analysis and assessment of something. Although critique is commonly understood as fault finding and negative judgment,

it can also involve merit recognition. From these two definitions, it can be understood which one should be prohibited and which one is justified to be practiced in the name of freedom of expression.

In the context of protecting religion of Islam, the authors suggest that Islam has no problem with criticism against it because there is no compulsion in Islam to attract people to have faith in it. The non-believer can write in measured, considered tones about why Islam is not the truth, or why the Prophet was not a Prophet. Such books even fill bookstores across the West but never have any of these books resulted in a riot. Even sometimes from this criticism, many non-believers have reverted to Islam after making a thorough research about Islam. Therefore, this kind of expression should be allowed and the denial of it could amount to deprivation of freedom of expression.

But to mock, to provoke, to agitate or to depict Allah and the Prophet as something offensive is something else and it is totally unacceptable. Moreover, insult brings nothing to the society except hatred, riot and divisiveness. On that note, the insult to religion must be prohibited.

### **Make a clear distinction on the types of expression**

Notwithstanding the difference between “insult” and “critique”, a definite standard of permissible expression is needed. The authoritative body need to differentiate what kind of expression that will incite to hatred or violence and what is not before a legal action can be taken against the doer. This kind of approach may be considered as a lenient consideration on part of the offended party because it is understandable that the doer has no true knowledge about one’s religion that cause him or her to express his or her thought irresponsibly. Moreover, it is difficult to make the others understand and respect the religion that they do not believe in. Therefore, the possible way to make this distinction on the type of expression is by using a “public order test”.

### **Public order test**

People who make an expression about religion or belief may be subjected to legal liability if the expression conforms to this test. The questions that need to be tested are as follows:

- i) whether the expression about religion or belief is perceived as being too offensive,
- ii) whether the expression creates imminent risk of harm or chaos in the society,
- iii) whether the maker of the expression intend to cause the chaos or foresee the possibility that his or her expression would create chaos and
- iv) whether the expression could be disseminated widely as to cause chaos globally.

If faithfully applied, this test would achieve a proper balance between, on one hand protecting the religion from insult and preventing public disorder, and on the other hand, preventing States from recklessly placing restrictions as to impair the freedom of expression.

### **To establish the international anti-blasphemy law protecting religion from religious insult**

Religious insults have become a global issue. Firstly, its believers are scattered in the world. Secondly, the offensive expression can be spread widely, what more in the age of modern technology. Thus, the reaction to this offensive expression would come from all places in the world where the believers are in. Therefore, an international anti-blasphemy law protecting the religions from religious insult must be developed, continuing the proposal made by the Organization of Islamic Cooperation (OIC). This international anti-blasphemy law would give many benefits not confining to the protection of religion from religious insult only. Among others, this law can also help to maintain the peace and public order in the world because the incident of religious insult would be reduced or curtailed after having this law. Since public interest should be prioritized, thus there is no reason why this international anti-blasphemy law must not be enacted.

### **States' initiatives**

The promotion of religious tolerance, respect for diversity and mutual understanding are of utmost importance with a view to creating an environment conducive to the full enjoyment by all persons of freedom of religion or belief. In keeping the balance between these two within the society, therefore, the States have also to come out with several initiatives. The States can provide a proper medium for their people to give expression about religions. These are among the initiatives that can be carried out by the States:

- (i) promoting, through the educational system and other means, respect for diversity and mutual understanding by encouraging a wider knowledge of the diversity of religions and beliefs within their jurisdiction.
- (ii) make use of all available tools, including the financial instruments, to promote a culture of mutual respect, diversity, tolerance, dialogue and peace and coordinate as appropriate, with regional and international organisations in order to do so.
- (iii) organising an open, constructive and respectful debate of ideas, as well as inter-religious and inter-cultural dialogue at local, national and international levels. Such activity can play a positive role in combating religious hatred, incitement and violence.

## **CONCLUSION**

In a nutshell, all human beings have the inalienable right to freedom of expression. It is a very fundamental right. But, at the same time, this freedom of expression should not be abused by individuals. Freedom of expression should be and must be guaranteed and protected, when they are used for common justice and common purpose. When some people use this freedom of expression to provoke or insult religions or beliefs, then this cannot be protected in such a way. It is very important that all people around the world should have due respect and deeper understanding of the values and beliefs and tradition and history of other people and other groups of communities. This is because it is a basic foundation of a civilized society. On top of that, Islam has in the first place shown its beauty of tolerance towards the other religions by prohibiting the Muslims from

insulting the other religions. As a reciprocal, the non-Muslims have also to do the same by respecting the religion of Islam. By having this mutual respect, peoples could live in peace and harmony without any hatred merely because of religion differences. In order to achieve this aim, the international body has to play its role. Indeed, there is implied protection to the religion from being insulted by the existing international law. However, there is still a need to reform and to have a new specific international law on anti-blasphemy.

## REFERENCES

- Al-Quran
- Abdul Ghafur, H. (2011). *Public International Law: A Practical Approach*. Kuala Lumpur: Thomson Reuters.
- Abd Malek bin Hussin v Borhan bin Hj Daud & Ors.* [2008] 1 MLJ 368
- Angelina, T. 28 May 2014. "Which countries still outlaw apostasy and blasphemy?" *Pew Research Center*. <http://www.pewresearch.org/fact-tank/2014/05/28/which-countries-still-outlaw-apostasy-and-blasphemy/>
- Bukhari.n.d.*Fathul Bari*. (Internet). Bab Hifdz Lisan. #6477.<http://sunnah.com/riyadussaliheen/18>
- Callamard, A. (2006). "Freedom of Speech and Offence: Why Blasphemy Laws Are Not the Appropriate Response". *Equal Voices*.
- Duhaime Legal Dictionary, 2014
- Ekmeleddin, İ. 15 August 2012. "*Freedom of Expression is Not a License to Incite Hatred and Intolerance*". The Organization of Islamic Cooperation (OIC).
- Faruqi, S.S. (1992). "Free Speech and the Constitution". Kuala Lumpur: *Current Law Journal*. Vol. 4.
- Foreign and Commonwealth Office. (2014). *Hate Speech, Freedom of Expression and Freedom of Religion: A Dialogue. Year 2014*.
- Handyside v United Kingdom* [1976] ECHR 5

- Holzaepfel, C. (2014). "How an International Blasphemy Law Pits the Freedom of Religion against the Freedom of Speech". *Emory International Law Review*. TN: LexisNexis.
- Khin, M.S. (1980). "Universal Declaration of Human Right: Is it Binding?". *University Law Journal*. Yangon: University of Yangon Press.
- Kiley, W. (2013). "A Global Blasphemy Law: Protecting Believers at the Expense of Free Speech". *Pepperdine Policy Review*. California: Peppedine University. Vol. 6.
- Laws of Malaysia Federal Constitution.
- Laws of Malaysia Sedition Act [Act 15].
- Laws of Malaysia Penal Code [Act 574].
- Liz, G. 12 September 2012. "Innocence of Muslims': The Film that May have Sparked U.S. Embassy Protests". *Yahoo News*. <http://news.yahoo.com/blogs/the-lookout/innocence-muslims-film-sparked-deadly-u-embassy-attacks-142118931.html>
- Lizzie, D. 23 February 2017. *Danish man who videoed himself burning the Quran charged with blasphemy*. <http://www.independent.co.uk/news/world/europe/denmark-man-burned-quran-koran-video-blasphemy-facebook-islam-prosecuted-charged-46-years-a7594796.html>
- n.a..7 January 2015. "As it Happened: Charlie Hebdo Attack". *BBC*. <http://www.bbc.com/news/live/world-europe-30710777>
- n.a. 4 May 2015. "Two Gunmen Shot Dead at Islamic Art Show in Dallas". *The Star*. <http://www.thestar.com.my/News/World/2015/05/04/Gunmen-killed-islam-art-expo/>
- n.a. 19 June 2014. "Freedom of Expression". *Duhaime*. <http://www.duhaime.org/LegalDictionary/F/FreedomofExpression.aspx>
- n.a. 26 January 2014. "Expression". *Oxford Learner's Dictionaries*. <http://www.oxfordlearnersdictionaries.com/definition/english/expression>

- n.a. 10 March 2013. "Freedom". *The Law Dictionary*.  
<http://thelawdictionary.org/freedom/>
- n.a. 3 Desember 2012. "Deputy Minister: Malaysia Will Sign ICCPR Only If Beneficial to Nation". *The Star*.  
<http://www.thestar.com.my/News/Nation/2013/12/03/Malaysia-ICCPR-signatory/>
- n.a. 19 September 2012. "Press Conference by Secretary-General Ban Ki-moon at United Nations Headquarters". *United Nations*.  
<http://www.un.org/press/en/2012/sgsm14518.doc.htm>.
- n.a. 6 February 2006. "Muslim Cartoon Fury Claims Lives". *BBC News*. <http://news.bbc.co.uk>.
- Oxford Learner's Dictionaries, 2014.
- Saw, S. F. 21 April 2014. "Alvin Tan's Ex-Girlfriend May Face Criminal Charges Alone, Says Lawyer". *The Malaymail Online*.  
<http://www.themalaymailonline.com/malaysia/article/alvin-tans-ex-girlfriend-may-face-criminal-charges-alone-says-lawyer>
- Shamrahayu, A.A. (2009). "Some Thoughts on the Relationship Between Law and Religion in Malaysia". Kuala Lumpur: *Current Law Journal*. Vol. 1.
- Tan, Y.L. 9 April 2015. "Najib: Sedition Act for protection of all Malaysians". *The Star*.  
<http://www.thestar.com.my/News/Nation/2015/04/09/Najib-Sedition-Act/>
- The Law Dictionary, 2013.
- Ufuk Gokcen. 10 February 2012. Advancing Freedoms of Expression and Religion in the Islamic World. *Organization of Islamic Cooperation*.  
<http://www.oicun.org/71/20121128015637690.html>