

BRIEFING PAPER



DESECRATING
EXPRESSION

CONFRONTING CHALLENGES OF
EXPRESSION IN ASIAN COUNTRIES



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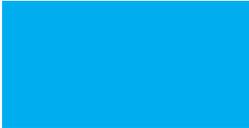
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INTRODUCTION

This briefing paper is based on extensive conversation that began in a regional civil society consultation on Opinion, Expression and Religious Freedoms in Jakarta in 2015, that also involved independent experts as well as former and incumbent Rapporteurs of the United Nations.

Through interviews with different stakeholders and experts, Bytes for All, in collaboration with other CSOs in the region, importantly Forum Asia carried out a qualitative mapping of the general climate around freedom of expression in Asia and the challenges faced. The assertions in this paper benefit from the mapping exercise that involved nine Asian countries, namely; Bangladesh, India, Indonesia, Malaysia, Maldives, Myanmar, Pakistan, Sri Lanka and Vietnam, which together, constitute nearly half of Asia's population.

Nevertheless, the conclusions of the assessment as well as the recommendations in this paper may be applicable to other Asian countries.

The collective analysis was aimed at gathering insights about shared problems and possible solutions in the region. Two main trends were observed in Asian countries; first, the abuse of blasphemy laws and suppression of religious minorities that ultimately entails infringement of freedom of conscience and freedom of expression in societies being discussed. Second, the legal impediments and administrative restrictions on freedoms, seems to have failed to address the social hostility against religious minorities and majority sects.

The main prescription here is that the Asian countries can tackle challenges in law and order and democratic development, if they make realization of freedom of expression a priority.



BRIEF FACTS :**Asian countries and freedom of expression**

Asia presents a vast diversity of religions and cultures besides a grand density of population. Historically, Asian people and the governments contributed immensely to evolving values of tolerance and international standards of human rights yet, upholding pluralistic values and freedoms has become a daunting challenge, particularly the freedom of expression in contemporary times.

Over the last few years, Asian countries have experienced disturbing trends that threaten freedom of expression exemplified in killings of bloggers in Bangladesh and journalists in Pakistan; discriminatory legislation in Malaysia; state interference in privacy of citizens particularly in Vietnam; increasing manifestations of religious intolerance in India; acts of violence against minorities in Sri Lanka and Myanmar.

Journalists, activists, sexual and religious minorities, lawyers and politicians, face persecution and continue to be at risk. Moreover, online and offline violence is one of the most conspicuous and life-threatening hazards that NGOs and media practitioners have to navigate in today's Asia.

Similarities are found in patterns of persecution of minority groups and dissenting voices despite countries claiming to follow democratic ideals and dispensations. In Pakistan, violent extremism and militant attacks besides the de jure discrimination is faced by Christians and Hindus religious minorities and minority Muslim sects like Shias and Ahmadis. India, though a secular polity, witnessed incidence of sheer intolerance on the basis of religion and belief, particularly targeting the Muslims and Christians.



Hence, a large part of the Asian region finds itself stressed by intolerant expressions around allegations of defamation of religion or blasphemy which impacts the exercise of freedoms particularly those of expression. Abuse of blasphemy laws and movements for criminalization of blasphemy accompanied more curbs on freedom of expression.

The civil society viewed that the Asian countries have not utilized the following developments in international framework sufficiently, to factor in and address the issues:

Developments in the international framework concerning **Freedom of Expression**

1. Building on the existing norms in international human rights law, the UN HRC's resolution 16/18 (2011) entitled "Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence Against Persons Based on Religion or Belief" encouraged the creation of collaborative networks and appropriate mechanism within the government to identify and address potential areas of tension between members of different religious communities, and assisting with conflict prevention and mediation. This resolution also recognised the need for states to train government officials in effective outreach strategies, and encourages leaders to discuss within their communities causes of discrimination, and work toward evolving policies to counter discrimination.
2. OHCHR facilitated intergovernmental meetings Rabat Action Plan (2011) and Istanbul process (2012) that brought valuable conclusions (Action Plan) on combating hate speech based on religion and belief.

A/HRC/RES/16/18 available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18_en.pdf

Rabat Plan of Action - Conclusions and recommendations emanating from the four regional expert workshops and adopted by experts in Rabat, Morocco on 5 October 2012. Available at: http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf



3. The Human Rights Committee presented comprehensive observation in 2011 (General Comment 34) stating that “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant (ICCPR), except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant .

These processes and the outcomes relied on Articles 18 and 19 of the ICCPR, and other international norms dealing with freedom of conscience, religion and belief, moreover freedom of opinion and expression which may be subject to only necessary and proportionate restrictions which pursue objectively legitimate aims, including the protection of the rights and freedoms of others.

Restrictions are to be exercised only as prescribed by law and must be necessary and proportionate to the aim that the restrictions seek to achieve. Restriction on freedom of expression must pursue a legitimate aim; the restriction must be imposed by a democratic law and be necessary and proportionate.

Article 20 of ICCPR prohibits advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Policy recommendations for the governments

In order to tackle issues relating to religion and to help create an enabling environment for the exercise of all rights and freedoms, particularly the rights to freedom of expression for everyone and people in Asia, we present following recommendation to governments in Asia:

1. Recognise and affirm the intrinsic value of freedom of expression in the context of religion for building a pluralistic society based on democratic norms.



3. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f34&Lang=en

2. Implement the recommendations made by the Special Rapporteur on freedom of religion or belief in the report presented to the 31st Session of the UN Human Rights Council as well as those provided for in the Rabat Action Plan.
3. Train security and law enforcing agencies at the national and state level on issues related to freedom of expression and religion.
4. Bring perpetrators of violations of freedom of expression and religion to justice and end the culture of impunity.
5. Take all necessary steps to prevent hate speech and promote an environment of tolerance. Ensure that persons who have suffered harm damage as a result of incitement to hatred have a right to an effective remedy and access to it, including a civil or non-judicial remedy for damages including restitution, public apology and guarantees of non-repetition.
6. Ensure that state authorities, including state-owned media and telecom regulators, state-run educational institutions and religion-related agencies do not promote hate or censor individuals in their exercise of freedom of expression and religion.
7. Monitor court, prosecutorial, and police conduct to ensure the rule of law is followed, that domestic laws observe internationally acknowledged standards of justice, and that extrajudicial actions in the name of protecting religion are effectively controlled.
8. Implement laws, and accompanying policy measures, which meet international standards relating to freedom of expression and religion in a non-discriminatory manner, especially in relation to women and including on the basis of gender, sexual orientation or gender identity.
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10. Protect artistic, cultural and intellectual expression, and prevent curbs or attacks through judicial or extrajudicial means.
11. Prevent education and educational institutions from perpetrating hate and intolerance; prohibit hate speech content in school curricula; and include human rights messages in textbooks to contribute towards fostering an enabling environment for the exercise of freedom of expression and religion.
12. Ensure that state agencies, regulators and ministries whose remit includes issues impacting freedom of expression and religion uphold national guarantees and international standards on freedom of expression, especially on the Internet.
13. Become party to international instruments to ICCPR; remove any reservations placed on Articles 18, 19 and 20 of the ICCPR; and comply with standards therein in domestic laws.
14. Ensure that the Constitution and other relevant legislation ensure equal status to all religions and guarantee freedom of expression.
15. Repeal all laws that: support the idea of ‘defamation of religion’, including blasphemy laws and anti-apostasy law, or which criminalise, or allow detention or other punishment, including physical punishment, for the above.
16. Review hate speech laws, to ensure that they meet international standards prescribed under Article 20 of the ICCPR, including that;
 - a. These provisions are only applied when absolutely necessary in a non-discriminatory manner;
 - b. These provisions are not used in an arbitrary manner or abused to crackdown on dissent or the exercise of freedom of expression and religion.



17. Empower and ensure that religious minorities' representatives to raise issues relating to freedom of expression and religion in the parliament and other forums.
18. Ensure effective legal remedies, including the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, for victims of violations of freedom of expression, particularly on the basis of religion.
19. Ensure that perpetrators of violations and violence against freedom of expression in the context of religion are brought to justice in accordance with the law.
20. Recognise defamation as a civil matter, and refrain from handing down penal punishments for the exercise of free speech.
 - a) understanding of various forms of hate speech, such as offensive, insulting, and violent hate speech, as well as differentiating between violent hate speech and freedom of expression.
 - b) reporting in a sensitive manner on issues relating to communal and religious violence, as well as accusations of blasphemy.
 - c) gender awareness training on gender and sexual rights, particularly in reporting on violence against women, and attacks on the SOGI community in relation to issues that touch upon religion, and to avoid moralistic discourses.
21. Companies providing Internet infrastructure and services should be made accountable for their compliance with the UN Guiding Principles on Business and Human Rights, including requiring them to respect human rights in their activities.
22. Internet intermediaries should be accountable for their compliance with international human rights law to ensure their Community Standards and Terms of Service do not support or promote the denial of sexual and bodily rights under the guise of morality or cultural relativist arguments, particularly of women and SOGI people.





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