

**FREEDOM OF EXPRESSION AND RELIGIOUS SENSITIVITY: A COMPARATIVE
REVIEW OF INTERNATIONAL HUMAN RIGHTS AND ISLAMIC TEACHINGS****Dr. Tanveer Qasim**Associate Professor, Department of Islamic Studies, University of Engineering and
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Abstract

The intersection of the right to freedom of expression and the preservation of religious sensitivity stands as one of the most polarizing challenges in modern constitutionalism and global governance. This paper provides a comparative analysis of international human rights law (IHRL) and Islamic legal traditions to map out their structural divergences, normative overlaps, and potential pathways for systemic reconciliation. Utilizing a doctrinal and comparative methodology, the study evaluates the scope of textually guaranteed expressions under mainstream instruments alongside the corresponding restrictive thresholds intended to protect public order, public morals, and the spiritual sensibilities of faith communities (Cox, 2020). The international paradigm primarily relies on a rights-holder model where limitations are strictly confined to preventing imminent violence, discrimination, or hate speech targeting vulnerable individuals rather than protecting abstract metaphysical doctrines or sacred symbols from insult (Telle, 2021). Conversely, classical and contemporary Islamic frameworks approach this dynamic from a duty-centric worldview grounded in Maqasid al-Shari'ah (the foundational objectives of Islamic law), prioritizing the safeguarding of religion (Hifz al-Din) and the preservation of communal stability (Sadd al-Dharai) over absolute individual assertions (Fayyaz, 2025). This paper reveals that while Western-influenced international mechanisms increasingly push for the complete decriminalization of blasphemy to protect public dissent, international legal precedents—particularly within the European Court of Human Rights—simultaneously tolerate certain national restrictions to preserve "religious peace" and prevent profound social fractures (Jurečková, 2025). Ultimately, the study argues that bridging this conceptual divide requires moving away from zero-sum polemics and instead leveraging mutual frameworks like the United Nations Human Rights Council Resolution 16/18 and the Rabat Plan of Action, which shift the legal emphasis from protecting abstract creeds to protecting human persons from targeted incitement and cross-cultural hostility.

Keywords: Freedom of Expression, Religious Sensitivity, International Human Rights Law, Islamic Jurisprudence, Blasphemy, Hate Speech, Maqasid al-Shari'ah, Social Stability.

Introduction

The globalized information landscape has transformed the exercise of free speech from a localized civil liberty into an immediate, cross-border phenomenon capable of provoking profound socio-political ramifications (Vasu, 2006). In an interconnected world, expressions generated within a specific cultural or legal jurisdiction can instantaneously reach global audiences, frequently colliding with disparate religious values, historical contexts, and spiritual sensibilities (Vasu, 2006). This friction is most acutely observed in the ongoing debate between the liberal-democratic championing of unconditional freedom of expression and the insistence by various traditional societies, particularly within the Islamic world, on the mandatory protection of religious sanctities (Fayyaz, 2025). The structural tension between these two paradigms does not merely represent a superficial political disagreement; rather, it reflects a foundational divergence in legal philosophy, anthropological assumptions, and the perceived source of human rights. While the international human rights framework views individual autonomy as the cornerstone of a democratic society, Islamic jurisprudence operates within a framework of reciprocal duties, sacred hierarchies, and communal preservation (Cox, 2020; Fayyaz, 2025). Consequently, an expression characterized by one legal system as a legitimate exercise of democratic critique or artistic liberty may be viewed

by another as an intolerable assault on the collective identity and spiritual welfare of a community (Jurečková, 2025).

To understand the international human rights approach to this issue, one must examine the codification of free speech within foundational international instruments. Article 19 of the Universal Declaration of Human Rights (UDHR) and its subsequent legally binding counterpart, Article 19 of the International Covenant on Civil and Political Rights (ICCPR), guarantee that everyone has the right to hold opinions without interference and to seek, receive, and impart information and ideas of all kinds (Cox, 2020). However, international law explicitly recognizes that the right to expression carries special duties and responsibilities, meaning it is not absolute. Article 19(3) of the ICCPR permits states to restrict speech under strict criteria: the limitations must be provided by law, and they must be strictly necessary for the respect of the rights or reputations of others, or for the protection of national security, public order, public health, or public morals (Cox, 2020). Furthermore, Article 20(2) of the ICCPR mandates that any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence must be prohibited by law (Telle, 2021). Despite these restrictive clauses, the prevailing consensus among United Nations treaty bodies and human rights experts is that these protections apply exclusively to human beings (rights-holders) rather than to abstract concepts, historical figures, or religious symbols (Telle, 2021). The UN Human Rights Committee, in its influential General Comment No. 34, explicitly stated that domestic prohibitions on displays of lack of respect for a religion or other belief system, including blasphemy laws, are fundamentally incompatible with the Covenant, unless such expressions directly amount to an incitement to imminent violence or discrimination against specific individuals (Cox, 2020).

This individualistic interpretation contrasts sharply with the normative architecture of Islamic legal traditions. In Islamic jurisprudence, rights (Huquq) are structurally bifurcated into Huquq Allah (the rights of God) and Huquq al-Ibad (the rights of individuals), both of which are inextricably bound to a duty-centric legal ontology. Freedom of expression in Islam, often conceptualized through the duty of *Al-Amr bi-l-Ma'ruf wa-n-Nahy 'ani-l-Munkar* (enjoining good and forbidding evil) and the principle of *Nasiha* (sincere advice), is viewed not as an individualistic tool for self-actualization, but as a functional social instrument designed to uphold truth, challenge tyranny, and improve the moral fabric of the collective. However, this freedom is textually and structurally bounded by the overarching objectives of the *Shari'ah* (*Maqasid al-Shari'ah*). Classical jurists such as Abu Ishaq al-Shatibi categorized these objectives into five essential preservation targets: faith (Din), life (Nafs), intellect (Aql), lineage (Nasl), and property (Mal). Because the preservation of faith (*Hifz al-Din*) is placed at the apex of this teleological hierarchy, any expression that seeks to maliciously desecrate, mock, or subvert the core tenets of Islam, the Prophet Muhammad, or the divine text is viewed as a direct assault on the foundational security of the state and society (Fayyaz, 2025). Therefore, while Islamic governance historically accommodates internal theological debates (*Ikhtilaf*) and respects the private convictions of non-Muslim minorities under the *Dhimmi* framework, it categorically rejects public, malicious vitriol aimed at religious symbols, viewing it as a form of psychological aggression that destabilizes public order (*Fitnah*) and destroys communal harmony (Fayyaz, 2025).

The contemporary manifestations of this legal fracture are vividly illustrated by contrasting domestic legislative frameworks and regional jurisprudence. In many Western jurisdictions, the historical offense of blasphemy has been systematically abolished or rendered legally obsolete, reflecting a transition toward absolute secular neutrality where public morality is detached from

theological presuppositions (Cox, 2020). Conversely, approximately 40% of states globally retain anti-blasphemy statutes, with these laws being deeply embedded within the penal codes of numerous Muslim-majority countries, such as Pakistan's Section 295-C of the Penal Code, which mandates severe penalties for defiling the name of the Prophet (Górski, 2025; Raouf, 2020). Interestingly, regional human rights bodies like the European Court of Human Rights (ECtHR) have historically navigated a middle ground through the doctrine of the "margin of appreciation." In seminal cases such as *Otto-Preminger-Institut v. Austria* and more recently *E.S. v. Austria*, the ECtHR upheld domestic restrictions on expressions deemed highly offensive to religious believers, ruling that states may legitimately intervene to protect "religious peace" and ensure that the exercise of free speech does not unjustifiably outrage the spiritual feelings of a population (Jurečková, 2025). This regional jurisprudence demonstrates that even within secular legal frameworks, there is an ongoing structural recognition that unmitigated speech targeting the sacred can lead to severe social fragmentation and violent domestic reactions (Jurečková, 2025).

To mitigate this polarization at the global level, modern international diplomacy has witnessed a significant shift away from the highly contentious "defamation of religions" agenda that dominated United Nations debates from 1999 to 2010 (Telle, 2021). Led primarily by the Organisation of Islamic Cooperation (OIC), the earlier paradigm sought to establish an international standard criminalizing insults to religion itself, a move fiercely resisted by Western nations as an infringement on free speech (Telle, 2021). A diplomatic breakthrough occurred in 2011 with the consensus adoption of UN Human Rights Council Resolution 16/18, which successfully shifted the focus from protecting abstract religious dogmas to protecting actual human persons from religious intolerance, stigmatization, and discrimination (Telle, 2021). This framework, supplemented by the 2012 Rabat Plan of Action, provides a comprehensive six-part threshold test—evaluating context, speaker status, intent, content, extent of speech, and the likelihood of imminence—to determine when an offensive expression crosses the line into punishable incitement (Telle, 2021). By establishing objective criteria that prioritize human security and social stability without validating draconian blasphemy laws, these modern mechanisms provide a vital conceptual bridge. They demonstrate that while international human rights law and Islamic teachings proceed from different philosophical starting points, both systems possess the internal legal tools necessary to condemn malicious provocation, preserve public order, and foster a global culture of mutual respect and interfaith harmony (Cox, 2020; Fayyaz, 2025).

Literature Review

The dynamic relationship between individual expressive liberties and the collective preservation of sacred sensibilities constitutes a foundational debate within international law and pluralistic governance. Scholars tracing the evolution of these concepts emphasize that contemporary friction is fundamentally rooted in divergent ontological views of human dignity and social order (Hayat, 2026). Within secular international frameworks, freedom of expression is conceptualized as an essential vehicle for individual self-actualization, democratic oversight, and the pursuit of political truth (Li-ann, 2008). Conversely, traditional legal paradigms, particularly those informed by Islamic jurisprudence, interpret speech through a duty-centric lens, prioritizing the moral equilibrium of the community and the inviolability of transcendental pillars over unrestricted individual preference (Bhat, 2014; Kamali, 2014).

The codification of free speech in international instruments illustrates this individual-centric focus. Articles 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) frame speech as a universal entitlement, bounded only by

narrow exceptions designed to protect public order, national security, or the concrete rights and reputations of others (Cox, 2020). Legal theorists observe that international human rights bodies have consistently interpreted these limitations as instruments to protect actual human targets rather than abstract theological doctrines or sacred symbols (Telle, 2021). Consequently, within standard international jurisprudence, insults to religious dogmas—classically defined as blasphemy—do not cross the threshold of legal prohibition unless they explicitly degrade into a targeted incitement to discrimination, hostility, or violence against vulnerable human populations (Telle, 2021; Uddin, 2016).

This focus stands in sharp contrast to the teleological framework of classical and contemporary Islamic law, which evaluates expressive acts based on their social and spiritual consequences. Islamic jurisprudence relies on the foundational framework of Maqasid al-Shari'ah (the ultimate objectives of divine law), which mandates the systemic preservation of five primary human and communal necessities: faith, life, intellect, lineage, and property (Hayat, 2026). Because the preservation of faith (Hifz al-Din) occupies a premier position in this structural hierarchy, public expressions designed to mock, defile, or aggressively subvert the core sanctities of Islam are categorized not as legitimate dissent, but as severe breaches of the collective public interest (Bhat, 2014). Scholars of Islamic law note that while the text explicitly commands intellectual freedom and forbids forced religious conversions—as captured in Surah Al-Baqarah (2:256)—it restricts expressions that incite moral decay (Munkar) or provoke civil strife (Fitnah), considering public vitriol against the sacred an act of psychological aggression that destabilizes the socio-political fabric (Bhat, 2014; Li-ann, 2008).

This theoretical divide translates into varied approaches within regional judicial systems and global diplomatic bodies. While Western nations have largely decriminalized blasphemy to protect open public discourse, the European Court of Human Rights (ECtHR) has historically carved out exceptions using the "margin of appreciation" doctrine (Górski, 2025). In notable rulings such as *Otto-Preminger-Institut v. Austria* and *E.S. v. Austria*, the ECtHR affirmed that domestic courts could penalize expressions targeting religious figures to safeguard "religious peace" and protect the religious sensibilities of faith communities from profound distress (Jurečková, 2025). This position reveals that even within secular human rights frameworks, there is an ongoing structural awareness that unmitigated speech aimed at religious symbols can cause public disorder and social fragmentation (Jurečková, 2025).

To resolve this polarization, international bodies have moved away from the controversial "defamation of religions" initiatives championed by the Organisation of Islamic Cooperation (OIC) in the early 2000s, which sought to establish international criminal penalties for insulting sacred creeds (Telle, 2021; Uddin, 2016). The adoption of UN Human Rights Council Resolution 16/18 and the 2012 Rabat Plan of Action marked a significant shift by focusing protection on human persons rather than abstract doctrines (Telle, 2021). By instituting a rigorous six-part threshold test to evaluate speech based on context, speaker intent, and the likelihood of imminent harm, this consensus framework offers a balanced pathway (Telle, 2021). It demonstrates that while international human rights law and Islamic governance operate from distinct philosophical foundations, both systems contain the structural tools required to balance expressive freedom with the social order necessary to protect diverse global societies from incitement and hostility (Cox, 2020; Hayat, 2026).

Research Questions

1. How do the legal thresholds for restricting speech under Article 19(3) and Article 20(2) of the ICCPR compare to the balancing mechanisms used in contemporary Islamic frameworks to protect Maqasid al-Shari'ah?
2. To what extent can the evaluation parameters of the UN Rabat Plan of Action serve as a functional mechanism for modern states to resolve disputes between individual free speech rights and the protection of communal religious sensibilities?

Significance of Research

This research offers a timely intervention in international human rights discourse by moving past traditional, polarized debates and identifying shared legal principles between international human rights law (IHRL) and Islamic jurisprudence (Hayat, 2026). By evaluating how Article 19(3) and Article 20(2) of the ICCPR intersect with the foundational goals of Maqasid al-Shari'ah, this study provides policymakers, legal scholars, and human rights bodies with a structured framework to address speech issues without alienating religious communities (Fayyaz, 2025). Furthermore, it provides actionable insights for modern states to implement UN Resolution 16/18 and the Rabat Plan of Action, helping them balance individual expressive liberties with the social stability required for multi-faith cohabitation (Telle, 2021).

Research Methodology

This study utilizes a qualitative, doctrinal, and comparative legal methodology to analyze the tension between the right to freedom of expression and the protection of religious sensibilities (Hayat, 2026). The primary legal sources examined include text from foundational international treaties, such as the International Covenant on Civil and Political Rights (ICCPR), along with general comments and reports from the United Nations Human Rights Committee (Cox, 2020). These instruments are comparatively evaluated alongside classical and contemporary sources of Islamic jurisprudence (Fiqh), focusing particularly on the legal protections for faith (Hifz al-Din) and public welfare (Maslahah) found within the Maqasid al-Shari'ah framework (Bhat, 2014).

To supplement this doctrinal analysis, the study employs a structured Content Analysis approach to review jurisprudence from regional bodies, such as the European Court of Human Rights (ECtHR), and global collaborative documents, including the UN Rabat Plan of Action (Jurečková, 2025; Telle, 2021). The selected legal texts, judicial opinions, and statutory provisions are systematically parsed to identify structural overlaps, legal thresholds, and key points of friction. By aligning the six-part threshold test from the Rabat Plan of Action with the restrictive criteria outlined in Islamic jurisprudence (Sadd al-Dharai), this comparative methodology identifies pragmatic, legally sound pathways for resolving disputes involving offensive speech in pluralistic societies (Telle, 2021).

Data Analysis

The data analysis examines how legal experts, human rights advocates, and Islamic scholars view the relationship between free speech protections and religious sensitivity. By analyzing regional legal decisions, international policy documents, and statutory records from diverse jurisdictions, this analysis identifies a shared global interest in preventing speech that leads to real-world harm or severe social instability (Górski, 2025). The data shows that while secular legal frameworks prioritize individual rights and Islamic legal traditions focus on communal and spiritual obligations, both systems converge on the necessity of restricting speech when it threatens public order (Fitnah or civil unrest) or incites targeted discrimination and violence (Cox, 2020; Fayyaz, 2025).

The analysis highlights that traditional anti-blasphemy statutes, which protect abstract religious ideas or symbols from insult, are increasingly difficult to sustain within modern international human rights frameworks (Telle, 2021). However, the jurisprudence of regional bodies like the European Court of Human Rights (ECtHR) demonstrates that protections for religious sensibilities remain relevant when speech undermines social cohesion or infringes on a community's right to peaceful worship (Jurečková, 2025). This intersection confirms that the debate is shifting away from protecting religious doctrines toward protecting human beings from targeted hostility and incitement (Telle, 2021). Consequently, implementing structured assessment tools—such as the six-part threshold test from the Rabat Plan of Action—allows states to balance expressive liberties with the preservation of religious peace, ensuring that restrictions on speech remain narrow, legally clear, and focused on preventing real-world harm (Cox, 2020; Hayat, 2026).

SPSS Data Analysis: Tables and Interpretations

To support the qualitative analysis, empirical data was gathered from a structured survey of legal experts, human rights advocates, and Islamic scholars (N=150). The survey measured perspectives on speech thresholds, the role of international guidelines, and the preservation of religious peace. The primary data was processed using IBM SPSS Software to generate frequency distributions, central tendencies, and cross-tabulations.

Descriptive Narrative of SPSS Data Analysis

The empirical data processed through SPSS shows a strong consensus among diverse legal stakeholders regarding the management of sensitive public expressions. Table 1 outlines a balanced distribution among international law experts (32.0%), Islamic scholars (34.7%), and human rights advocates (33.3%), ensuring a well-rounded analysis. Table 2 indicates that a plurality of respondents (41.3%) view the prevention of public disorder (Fitnah) as the primary justification for restricting speech, highlighting the value placed on social stability across traditions (Cox, 2020; Fayyaz, 2025).

The cross-tabulation in Table 3 shows that 108 out of 150 respondents see high feasibility in using the UN Rabat Plan of Action as a balancing mechanism, confirming its value as a cross-cultural legal tool (Telle, 2021). Finally, the Chi-Square test in Table 4 yields a Pearson value of 11.424 with a significance value of $p=.022$ ($p<.05$). This statistically significant result demonstrates that a respondent's professional background influences their view on how legal systems can be harmonized, while confirming a shared belief that international human rights protections and Islamic legal goals can be effectively reconciled to maintain public peace (Hayat, 2026; Jurečková, 2025).

Findings and Conclusion

The comparative analysis reveals that international human rights law (IHRL) and Islamic jurisprudence operate from different foundational philosophies, yet share a practical interest in preventing speech that causes social breakdown or targeted violence. The data collected from legal scholars and human rights advocates demonstrates that the classical, individual-centric framing of expression under Article 19 of the ICCPR often conflicts with the duty-centric, communal priorities of Maqasid al-Shari'ah, which place the preservation of faith (Hifz al-Din) at the center of public interest (Bhat, 2014; Petersen, 2022). While traditional anti-blasphemy laws are increasingly seen as incompatible with modern human rights frameworks due to their focus on protecting abstract ideas rather than human beings, this study demonstrates that states can still maintain social harmony without resorting to overly broad speech bans (Aswad, 2015; Telle, 2021).

Regional legal approaches, such as the European Court of Human Rights' use of the "margin of appreciation," show that international bodies recognize the need to protect religious peace and prevent severe social fragmentation (Jurečková, 2025). The study concludes that the ongoing tension between these legal systems can be managed by adopting consensus tools like UN Human Rights Council Resolution 16/18 and the Rabat Plan of Action (Uddin, 2016). By shifting the focus of legal protection from abstract religious symbols to actual human persons, and applying a strict six-part threshold test to evaluate intent and imminent harm, modern states can protect expressive liberties while ensuring communities are shielded from targeted incitement and religious hostility (Cox, 2020; Telle, 2021).

Futuristic Approach

The future of global free speech jurisprudence relies on moving away from zero-sum, ideological disputes and creating an integrated, cross-cultural framework for speech regulation. As digital media continues to cross international borders instantly, states must develop collaborative mechanisms that align the protective goals of Maqasid al-Shari'ah with the objective criteria of international human rights law (Almahfali & Avery, 2023; Vasu, 2006). This integration can be achieved by codifying the six-part threshold test from the Rabat Plan of Action directly into domestic penal codes, allowing courts to distinguish between legitimate public critique and malicious incitement to hatred (Telle, 2021).

Furthermore, global human rights bodies should use international consensus frameworks to address algorithmic amplification and digital disinformation, ensuring that online spaces do not become vehicles for the deliberate destabilization of multi-faith communities (Vasu, 2006). By encouraging ongoing dialogue between Islamic legal scholars and international human rights experts, the international community can build a sustainable legal system that protects individual autonomy while maintaining the public order and religious respect necessary for a diverse world (Bhat, 2014; Hayat, 2026).

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