

# The Crime of Offending Religious Feelings and Carlos Celdran

Patricia Ann O. Escalona\*

Leon Ma. Angel P. Caguioa\*\*

I. FACTS OF THE CASE.....	400
II. REACTIONS TO THE DECISION.....	402
III. ARTICLE 133 OF THE REVISED PENAL CODE: OFFENDING RELIGIOUS FEELINGS.....	404
IV. RELIGION AND LAW IN THE PHILIPPINES .....	407
A. <i>Legislative History on the RPC Enactment and Article 133</i>	
B. <i>Religion and Jurisprudence</i>	
C. <i>Issues Arising from the Application of the Law</i>	
V. BLASPHEMY LAW IN OTHER COUNTRIES .....	416
A. <i>Russia</i>	
B. <i>The United States</i>	
C. <i>Kuwait and Egypt</i>	
D. <i>The United Nations</i>	
VI. CONCLUSION .....	424

## I. FACTS OF THE CASE

On 30 September 2010, the Manila Cathedral was host to a religious ceremony commemorating the two year anniversary of the “May They Be One” campaign, as well as launching a campaign aimed at distributing 5,000,000 bibles within five years.<sup>1</sup> In the middle of the ecumenical service, Carlos P. Celdran, a noted supporter of the Reproductive Health (RH)

---

\* ’10 J.D., Ateneo de Manila University School of Law. The Author was a Member of the Executive Committee and the Board of Editors of the *Ateneo Law Journal*. The Author has previously written *The Google Books Settlement and the Philippine Perspective*, 54 ATENEO L.J. 1018 (2010); *Time Out: Prescription, Public Office, and the Case of People v. Romualdez & Sandiganbayan*, 54 ATENEO L.J. 780 (2009); & *Playing with Power and Rights: A Case Comment on Social Justice Society, et al. v. Hon. Jose L. Atienza, Jr.*, 53 ATENEO L.J. 159 (2008).

\*\* ’15 J.D. cand., Ateneo de Manila University School of Law. Member, Board of Editors, *Ateneo Law Journal*. He was the Associate Lead Editor of the second issue of the 57th volume of the *Journal*.

Cite as 58 ATENEO L.J. 400 (2013).

1. *People v. Celdran*, MeTC Crim. Case No. 387435-SA, Dec. 14, 2012.

Bill,<sup>2</sup> approached the middle of the church and raised a placard over his head.<sup>3</sup> The placard read “Damaso,” a reference to the antagonist friar in Jose P. Rizal’s novel “Noli Me Tangere.”<sup>4</sup> As he neared the area where several bishops were seated, Celdran began shouting at them, and was eventually taken outside by some of the churchgoers.<sup>5</sup>

Celdran was expressing his discontent at what he perceived as the Church’s intrusions into the political arena.<sup>6</sup> His words to the bishops present were to the effect of “stop meddling in politics.”<sup>7</sup> Padre Damaso, in Rizal’s novel, represented the oppression visited upon Filipinos by the Church.<sup>8</sup> Damaso was, effectively, a symbol of how the Church was used in order to manipulate the Philippines in accord with Spain’s desires.<sup>9</sup> Celdran’s protest centered on this image — he disapproved of how the Church used its moral influence in order to sway public opinion away from the RH Bill.<sup>10</sup>

- 
2. Mark Merueñas, Church critic Carlos Celdran convicted for raising Damaso sign in cathedral, *available at* <http://www.gmanetwork.com/news/story/292332/news/metromanila/church-critic-carlos-celdran-convicted-for-raising-damaso-sign-in-cathedral> (last accessed Sep. 12, 2013).
  3. Erika Sauler, Celdran found guilty in ‘Damaso,’ *available at* <http://newsinfo.inquirer.net/348713/celdran-found-guilty-in-damaso> (last accessed Sep. 12, 2013).
  4. *Id.* See generally JOSE RIZAL, NOLI ME TANGERE (Virgilio S. Almario trans., 2011).
  5. See Sauler, *supra* note 3.
  6. See Paterno Esmaguél II, CBCP hits Bernas over RH bill, *available at* <http://www.rappler.com/nation/11509-cbcp-hits-bernas-over-rh-bill> (last accessed Sep. 12, 2013); GMA News Online, CBCP launches anti-RH bill website, *available at* <http://www.gmanetwork.com/news/story/221665/news/nation/cbcp-launches-anti-rh-bill-website> (last accessed Sep. 12, 2013); CBCP for Life, CBCP says RH is not only a Catholic issue, launches web portal on life, family, *available at* <http://cbcpforlife.com/?p=1006> (last accessed Sep. 12, 2013); & Paola Palma, CBCP won’t give up fight against RH Bill, *available at* <http://www.solarnews.ph/news/2012/12/18/cbcp-won-t-give-up-fight-against-rh-bill> (last accessed Sep. 12, 2013).
  7. *Celdran, MeTC Crim. Case No. 387435-SA.*
  8. Rina Jimenez-David, *The arrogance of ‘Damaso,’* PHIL. DAILY INQ., Jan 29, 2013, *available at* <http://opinion.inquirer.net/45877/the-arrogance-of-damaso> (last accessed Sep. 12, 2013).
  9. See RIZAL, *supra* note 4 at 69–73. Manipulation through religious feelings is a recurring theme in the book.
  10. Asia Pacific Youth Network, Philippines: Don’t imprison Carlos Celdran, *available at* <http://www.apyouth.net/2013/02/25carlosceldran> (last accessed Sep. 12, 2013).

A criminal case was then filed against Celdran for violating Article 133 of the Revised Penal Code (RPC),<sup>11</sup> the crime of Offending Religious Feelings.<sup>12</sup> The Metropolitan Trial Court (MeTC) of Manila heard the case, and convicted Celdran of the crime, sentencing him to up to one year, one month, and 11 days in prison.<sup>13</sup>

## II. REACTIONS TO THE DECISION

The reaction to the Damaso incident, and Celdran's subsequent prosecution and conviction, was mixed. People from all over the world weighed in on the controversy, with compelling arguments for each side.<sup>14</sup> The arguments are centered on two main points. Those against the conviction argue that it (as well as the law itself) is violative of the fundamental right of freedom of speech.<sup>15</sup> On the other hand, those who agree maintain that freedom of speech is not absolute, and that there are proper fora to express such opinions — the Manila Cathedral not being one.<sup>16</sup>

Celdran's defenders emphasize that the Philippines is not a theocracy, but a democracy.<sup>17</sup> Article 133, they claim, is a product of a bygone era, having its roots in a Spanish legal concept called *lese majeste*.<sup>18</sup> This kind of

---

11. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 133 (1932). This Article provides that —

Article 133. *Offending the religious feelings*. — The penalty of *arresto mayor* in its maximum period to prison correccional 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.

*Id.*

12. Philip C. Tubeza, *Church: Gov't pursued charges vs Celdran*, PHIL. DAILY INQ., Jan. 30, 2013, available at <http://newsinfo.inquirer.net/349955/church-govt-pursued-charges-vs-celdran> (last accessed Sep. 12, 2013).

13. *Celdran*, MeTC Crim. Case No. 387435-SA.

14. Edwin P. Sallan, 'DAMASO' DIVIDES | Carlos Celdran conviction splits netizens, available at <http://www.interaksyon.com/article/53828/damaso-divides--carlos-celdran-conviction-splits-netizens> (last accessed Sep. 12, 2013).

15. *Id.*

16. *Id.*

17. Florin T. Hilbay, *Offending Religious Feelings*, PHIL. DAILY INQ., Jan. 31, 2013, available at <http://opinion.inquirer.net/45975/offending-religious-feelings> (last accessed Sep. 12, 2013).

18. *Id.*

crime refers to injury or insult towards the King.<sup>19</sup> The early Spanish government dominating the colonies was built on theocratic foundations, making insults to the monarchy equivalent to insults against God's "temporal embodiment[s]."<sup>20</sup> This is a dated point of view, and one that, at least to Celdran's supporters, has no more place in modern society.<sup>21</sup>

Human Rights Watch (HRW), an international organization advocating and advancing human rights, expressed alarm at the conviction, calling it a "setback for free speech in the Philippines."<sup>22</sup> Carlos H. Conde, the HRW Asia researcher, further commented that "[n]obody should be jailed for voicing out an opinion or position, especially on a subject that concerns the lives of millions of Filipino women and mothers."<sup>23</sup> This same sentiment was echoed by Rep. Kimi S. Cojuangco, in a privilege speech delivered in Congress. Rep. Cojuangco pointed out that such form of expression was not so far removed from what the Church itself would do when it would come out with its own political stance.<sup>24</sup> She further argued that priests themselves expressed similar opinions from the pulpit, where they would mercilessly bash lawmakers, threatening them with losses in the upcoming elections.<sup>25</sup>

On the other hand, supporters of the decision maintain that freedom of speech, while a fundamental right, is not an absolute one.<sup>26</sup> It is basic in our civil law that in the exercise of one's rights, one must still respect the rights of others, and give others their due (this is commonly known as the "abuse of right" doctrine).<sup>27</sup> In what may be an oversimplification, this doctrine is

---

19. Lucie Morillon, *Monarchs Use 'Lese Majeste' Laws to Silence Online Critics*, available at <http://www.pbs.org/mediashift/2009/02/monarchs-use-lese-majeste-laws-to-silence-online-critics> (last accessed Sep. 12, 2013).

20. Hilbay, *supra* note 17.

21. *Id.*

22. Interaksyon.com, *Human Rights Watch 'alarmed' by Celdran Conviction for 'Damaso' Stunt*, available at <http://www.interaksyon.com/article/53751/human-rights-watch-alarmed-by-celdran-conviction-for-damaso-stunt> (last accessed Sep. 12, 2013).

23. *Id.*

24. Andreo Calonzo, *Solon defends Carlos Celdran, says priests attack others in Church too*, available at <http://www.gmanetwork.com/news/story/293709/news/nation/solon-defends-carlos-celdran-says-priests-attack-others-in-church-too> (last accessed Sep. 12, 2013).

25. *Id.*

26. Sallan, *supra* note 14.

27. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, arts. 19-21 (1950). Articles 19-21 provide —

commonly explained thus — “your freedom to swing your fist ends where my nose begins.”<sup>28</sup> The point made here is that Celdran’s fist landed squarely on the Church’s nose, by virtue of the venue in which he chose to start swinging. One supporter of Celdran’s conviction said —

The case of Celdran must not be framed under the free-speech clause because in order to exercise it, you must have your own forum to vent your speech. You can use the public plaza for that. If you want to use a school auditorium, you must ask permission from the school first. If you want to use the pulpit or the church premises, you must ask the permission of the church first. Inside church premises, your speech that is anti-church cannot be tolerated. You were demanding [ ] untram[m]elled speech inside [ ] premises that [do] not welcome it.<sup>29</sup>

Another point raised is that the judge in the MeTC merely did his duty as a member of the judiciary, and applied the law.<sup>30</sup> As will be shown more clearly later in this Article, Celdran’s acts fulfilled all the elements of the crime as defined in the law. The arguments that the law is archaic, or that the punishment meted out was too harsh, are not concerns of the court, but of Congress.<sup>31</sup> This argument may be summed up in a simple maxim that every first year law student knows — *dura lex sed lex*. The law may be harsh, but it is the law.<sup>32</sup>

### III. ARTICLE 133 OF THE REVISED PENAL CODE: OFFENDING RELIGIOUS FEELINGS

---

Art. 19. 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.

Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

*Id.*

28. Get Real Philippines, Why Carlos Celdran should go to jail for his 2010 Damaso stunt, *available at* <http://getrealphilippines.com/blog/2013/01/why-carlos-celdran-should-go-to-jail-for-his-2010-damaso-stunt/> (last accessed Sep. 12, 2013).
29. Jose Chavez Camano, The Conviction Of Carlos Celdran Raised A Cacophony of Discordant Voices!, *available at* <http://jcc34.wordpress.com/2013/02/03/the-conviction-of-carlos-celdran-raised-a-cacophony-of-discordant-voices/> (last accessed Sep. 12, 2013).
30. *Celdran*, MeTC Crim. Case No. 387435-SA.
31. *Id.*
32. RUBEN AGPALO, STATUTORY CONSTRUCTION 127 (2003 ed.).

The elements of the crime of Offending Religious Feelings are the following:

- (1) That the acts complained of were performed —
  - (a) in a place devoted to religious feelings, or
  - (b) during the celebration of any religious ceremony; and
- (2) Acts must be notoriously offensive to the feelings of the faithful.<sup>33</sup>

As stated earlier, the acts of Celdran fulfill the requirements of these elements.

The venue of the event was the Manila Cathedral (Cathedral) itself, the country's original "Kilometer Zero."<sup>34</sup> The Cathedral is one of the oldest Catholic churches in the Philippines,<sup>35</sup> and is a revered place for many of the faithful. Article 301 of the RPC may be used as a guide in determining what is deemed a place devoted to religious worship.<sup>36</sup> It may be said that there

---

33. LUIS B. REYES, *THE REVISED PENAL CODE: CRIMINAL LAW BOOK TWO* 80 (2012 ed.) [hereinafter REYES, BOOK TWO].

34. 6 Misplaced Landmarks in Manila, *available at* <http://journeyingjames.com/2011/08/6-misplaced-landmarks-in-manila/> (last accessed Sep. 12, 2013). This was meant to illustrate the centrality of religion and the Church in the country. The Dome of the Manila Cathedral was deemed to be the centermost point of the Philippines, from which everything radiated. *Id.*

35. *See* Manila Cathedral, The Church before it became a Cathedral: 1571, *available at* <http://www.manilacathedral.org/History/history.htm> (last accessed Sep. 12, 2013).

36. REVISED PENAL CODE, art. 301. This Article provides that —

Article 301. What is an inhabited house, public building or building dedicated to religious worship and their dependencies. — Inhabited house means any shelter, ship[,] or vessel constituting the dwelling of one or more persons, even though the inhabitants thereof shall temporarily be absent therefrom when the robbery is committed.

All interior courts, corrals, waterhouses, granaries, barns, coach-houses, stables[,] or other departments or inclosed places contiguous to the building or edifice, having an interior entrance connected therewith, and which form part of the whole, shall be deemed dependencies of an inhabited house, public building[,] or building dedicated to religious worship.

Orchards and other lands used for cultivation or production are not included in the terms of the next preceding paragraph, even if closed, contiguous to the building[,] and having direct connection therewith.

The term 'public building' includes every building owned by the Government or belonging to a private person not included[,] used[,] or rented by the Government, although temporarily unoccupied by the same.

can be no question that Celdran was in a place “devoted to religious feelings” when he chose to speak out.<sup>37</sup>

That the act took place during the celebration of a religious ceremony remains unquestioned. In fact, the congregation was in the middle of an ecumenical service, before the actual mass.<sup>38</sup> The whole ceremony was in commemoration of a campaign aimed at spreading bibles,<sup>39</sup> and was undoubtedly more solemn than a normal Sunday mass.

As for the second element, whether an act is “notoriously offensive to religious feelings,” must be judged from the point of view of the complainant.<sup>40</sup> The prosecution presented several witnesses from the congregation present, and they all expressed horror and offense at Celdran’s act.<sup>41</sup> One explained that while she did not know the exact context of “Damaso,” she knew that it had a negative connotation to her faith, and claimed that “every time she hears the word ‘Damaso,’ it is very traumatic for her.”<sup>42</sup> Another witness described himself as being “surprised, offended, and angry,”<sup>43</sup> especially given that “it was a solemn celebration.”<sup>44</sup>

An additional element added by jurisprudence, however, is that there be deliberate intent to hurt the feelings of the faithful.<sup>45</sup> It is here where Celdran may find a case. He may claim, as some of his supporters do, that there was no specific intent to hurt the feelings of the churchgoers, or Catholics in general.<sup>46</sup> It may be argued that the primary intention was to advance a political agenda or merely express his own opinion. However, as intent is axiomatically difficult to prove,<sup>47</sup> this argument stands on flimsy ground.

---

*Id.*

37. Hillbay, *supra* note 17.

38. Raissa Robles, Ex-Comelec chair Christian Monsod thinks Carlos Celdran is not guilty, *available at* <http://raissarobles.com/2013/02/01/ex-comelec-chair-christian-monsod-thinks-carlos-celdran-is-not-guilty/> (last accessed Sep. 12, 2013).

39. *Celdran*, MeTC Crim. Case No. 387435-SA.

40. REYES, BOOK TWO, *supra* note 33, at 82.

41. *Celdran*, MeTC Crim. Case No. 387435-SA.

42. *Id.*

43. *Id.*

44. *Id.*

45. REYES, BOOK TWO, *supra* note 33, at 81.

46. Robles, *supra* note 38.

47. *Id.*

For purposes of this Article, the conviction of Carlos Celdran is taken as valid from the point of view of strictly applying the law. What the Article aims to do is not to contradict this point, but to examine Article 133 itself, its history and application, and to provide grounds for discussion on its relevance to the present Philippine legal setting. This analysis shall be done by revisiting the intent and history of the RPC provision, examining Philippine jurisprudence on the matter, and delving into other countries' application of similar laws and concepts.

#### IV. RELIGION AND LAW IN THE PHILIPPINES

##### *A. Legislative History on the RPC Enactment and Article 133*

The RPC compiles the general penal laws of the Philippines, which means that it criminalizes a whole class of acts that are generally accepted as criminal.<sup>48</sup> It was enacted in 1930, and has since been subjected to amendments. The RPC had replaced the Spanish Penal Code, which was in force in the Philippines from 1887 to 1930.<sup>49</sup> The RPC was drafted by a committee created in 1927, and headed by then-judge Anacleto Diaz.<sup>50</sup>

Deliberation records on the drafting of the RPC would show that instead of carrying out an extensive codification of all penal laws existing in the Philippines, the committee simply revised the old Penal Code and included all other penal laws only insofar as they related to the Penal Code.<sup>51</sup>

As previously illustrated, one of the RPC's more controversial provisions is Article 133 defining the crime of "Offending Religious Feelings" (*Ofensa a los sentimientos religiosos*), which falls under Section Four (Crimes Against Religious Worship) of Title II (Crimes against the Fundamental Laws of the State) of the RPC.<sup>52</sup> The provision states that "[t]he penalty of *arresto mayor* in its maximum period to *prision correccional* 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."<sup>53</sup>

---

48. Mongabay.com, Philippine Index, available at [http://www.mongabay.com/history/philippines/philippines-penal\\_law.html](http://www.mongabay.com/history/philippines/philippines-penal_law.html) (last accessed Sep. 12, 2013).

49. *Id.*

50. LUIS B. REYES, THE REVISED PENAL CODE: CRIMINAL LAW BOOK ONE 22 (2012 ed.) [hereinafter REYES, BOOK ONE].

51. *Id.*

52. See REVISED PENAL CODE, art. 133.

53. REVISED PENAL CODE, art. 133.



The RPC makes it a crime to “perform acts notoriously offensive to the feelings of the faithful” while “in a place devoted to religious worship.”<sup>54</sup>

As stated earlier, two essential elements must be present under Article 301: (1) that the facts complained of were performed in a place devoted to religious worship or during the celebration of any religious ceremony; and (2) that the said act or acts must be notoriously offensive to the feelings of the faithful.<sup>55</sup>

The concept of a “notoriously offensive” act was expounded further by the Supreme Court in *People v. Baes*,<sup>56</sup> through Justice Albert. The case provides that 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 or work, scoffs at anything devoted to religious ceremonies, or plays with, damages, or destroys any object of veneration to the faithful.<sup>57</sup>

A brief historical overview of Article 133 would illustrate that it has been recognized in Philippine laws since before the enactment of the RPC. For instance, in a Supreme Court case decided in 1934, Article 241 of the Spanish Penal Code<sup>58</sup> was cited by the majority in *People v. Nosce*.<sup>59</sup> Here, a certain Antonio Nosce was convicted on the strength of Article 241 for having slapped Reverend Father Ulric Arcand, a Catholic priest, before a large congregation.<sup>60</sup> Article 241 states that the penalty of *arresto mayor* in its minimum and medium periods shall be imposed upon anyone who, in a religious place, shall scandalously perform acts not included in the preceding articles, which shall offend the religious feelings of the people present.<sup>61</sup>

---

54. *Id.*

55. REYES, BOOK TWO, *supra* note 33, at 82.

56. *People v. Baes*, 68 Phil. 203 (1939).

57. *Id.* at 205.

58. CÓDIGO PENAL [C.P.] art. 241 (Spain).

59. *People v. Nosce*, 60 Phil. 895 (1934). In this case, Arcand was a resident of, and chaplain of the Catholic Youth, in the municipality of Lucena, Tayabas. Some disgruntled residents were working for his transfer to another municipality, and upon the visit of the Catholic Bishop of the Diocese of Lipa, these disgruntled residents staged a public demonstration. As the bishop was presenting his pastoral ring to be kissed by the faithful who thronged the passageway, Nosce arrived and approached Arcand in an attempt to speak to him, but the latter told him that he had no time to talk to him then, and Nosce assaulted and struck him in the face with his hand. *Id.* at 895.

60. *Id.* at 898.

61. C.P. art. 241.

During the American period, on the other hand, the Penal Code enforced in the Philippines was the Penal Code of 1884 (Philippine Islands).<sup>62</sup> The 1913 case of *The United States v. Balcorta*<sup>63</sup> illustrates how the application of the Penal Code of 1884 came to be. Justice Trent explained that

[t]he Constitution of 1876, in Spain, which is still in force, after providing for a state religion, guaranteed that no one in Spanish territory would be molested for his religious opinions, nor for observing the forms of his faith, provided due respect were shown for Christian morals. By this same [A]rticle, however, only the followers of the state religion could engage in public ceremonies or other manifestations. It will be noted that this [A]rticle materially modified [A]rticle 21 of the former [C]onstitution. While everyone could still worship God in his own manner, it was no longer permissible for cults other than the state religion to demonstrate their religious beliefs in public.

It was under this [C]onstitution that the Penal Code for the Philippine Islands was promulgated in 1884. As a consequence, its provisions are considerably different from those in the Spanish Penal Code. Of the eight articles defining and penalizing Crimes Against Religion and Worship (which is the title of the chapter), six refer specially and solely to crimes against the state religion. The only crime specifically defined against religious other than that of the state is for disturbing, by means of violence, threats, etc., their ceremonies when conducted in cemeteries or other places where such ceremonies may be lawfully authorized. (Art. 225.)

The change of sovereignty and the enactment of the 14th paragraph of [S]ection 5 of the Philippine Bill *caused the complete separation of church and state*, and the abolition of all special privileges and all restrictions theretofore conferred or imposed upon any particular religious sect. *All became equal in the eyes of the law and those articles of the Penal Code defining special crimes against that denomination which under the former sovereign was the state religion as well as [A]rticle 225 defining a crime against all others than that religion, necessarily became inoperative. Only those articles of the Penal Code which refer to all religions equally and without distinction can now be considered as in effect.* They appear to be two in number, [A]rticles 223 and 571.<sup>64</sup>

Articles 223 and 571 of the Penal Code of 1884 was considered operative until the enactment of the RPC, pursuant to Paragraph 1 of Article 677.<sup>65</sup> Article 223 of the Penal Code of 1884<sup>66</sup> provides —

---

62. See *United States v. Balcorta*, 25 Phil. 273, 275 (1913).

63. *Balcorta*, 25 Phil. at 273.

64. *Id.* at 275-76 (emphasis supplied).

65. REVISED PENAL CODE, art. 367. This Article provides that —

Art. 367. Repealing Clause. — Except as is provided in the next preceding article, the present Penal Code, the Provisional Law for the

Article 223. He who by means of menaces, violence, or other lawless coercion shall force any person to perform acts of worship, or prevent him from performing them, shall incur the penalty of *prision correccional* in its medium and maximum degrees and a fine of from 625 to 6,250 *pesetas*.<sup>67</sup>

Article 223 of the Penal Code of 1884 was not reproduced under the Title on Crimes against the Fundamental Laws of the State of the RPC.<sup>68</sup> However, it is within the context of Article 286 of the RPC, which states —

Article 286. Grave coercions. — The penalty of *arresto mayor* and a fine not exceeding [P500.00] shall be imposed upon any person who, without authority of law, shall, by means of violence, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong.

If the coercion be committed for the purpose of compelling another to perform any religious act or to prevent him from so doing, the penalty next higher in degree shall be imposed.<sup>69</sup>

On the other hand, Article 571 (1) of the Penal Code of 1884 provides

---

Article 571. The following shall be punished with the penalty of arrest of from one to [10] days, and a fine of from 15 to 125 *pesetas*:

- (1) Those who shall disturb any act of a religious character in any manner not foreseen in Section III, Chapter II, Title II of Book II of this code.<sup>70</sup>

---

application of its provisions, and Acts Nos. 277, 282, 480, 518, 519, 899, 1121, 1438, 1523, 1559, 1692, 1754, 1955, 1773, 2020, 2036, 2071, 2142, 2212, 2293, 2298, 2300, 2364, 2549, 2557, 2595, 2609, 2718, 3103, 3195, 3244, 3298, 3309, 3313, 3397, 3559, and 3586, are hereby repealed.

*Id.*

66. *Balcorta*, 25 Phil. at 275.

67. Berne Guerrero, Article 133 Revised Penal Code #DAMASO, available at <http://berneguerrero.wordpress.com/2013/02/07/article-133-revised-penal-code-damaso/> (last accessed Sep. 12, 2013) & Archive.org, Full text of “Translation of the Penal code in force in the Philippines [microform],” available at [http://archive.org/stream/bbm8772.0001.001.umich.edu/bbm8772.0001.001.umich.edu\\_djvu.txt](http://archive.org/stream/bbm8772.0001.001.umich.edu/bbm8772.0001.001.umich.edu_djvu.txt) (last accessed Sep. 12, 2013).

68. See REVISED PENAL CODE, arts. 124-33.

69. REVISED PENAL CODE, art. 286.

70. *Balcorta*, 25 Phil. at 275. See also Guerrero, *supra* note 67 & Archive.org, *supra* note 67.

Article 571 (1) of the Penal Code of 1884 provides a catch provision for acts not falling under Section III or crimes in connection with religion and worship.<sup>71</sup>

Clearly, it took a change in sovereignty to bring the concept of “separation of church and state” into the Philippines.<sup>72</sup> Prior to this period, the existence of laws supporting a theocracy propounded by the Spanish colonizers was considered the norm. In 1930, the RPC came into effect, and as can be gleaned from the previous discussions, it was enacted without significant changes from the penal laws that preceded it.<sup>73</sup>

### *B. Religion and Jurisprudence*

The case of *Estrada v. Escritor*<sup>74</sup> explained the history and link between our laws and religion, particularly that of Catholicism —

Before our country fell under American rule, the blanket of Catholicism covered the archipelago. There was a union of church and state and Catholicism was the state religion under the Spanish Constitution of 1876. Civil authorities exercised religious functions and the friars exercised civil powers. Catholics alone enjoyed the right of engaging in public ceremonies of worship. Although the Spanish Constitution itself was not extended to the Philippines, Catholicism was also the established church in our country under the Spanish rule. Catholicism was in fact protected by the Spanish Penal Code of 1884[,] which was in effect in the Philippines. Some of the offenses in chapter six of the Penal Code entitled ‘Crimes against Religion and Worship’ referred to crimes against the state religion. The coming of the Americans to our country, however, changed this state-church scheme for with the advent of this regime, the unique American experiment of ‘separation of church and state’ was transported to Philippine soil.<sup>75</sup>

In this particular case, the complainant, Alejandro Estrada, wrote to Judge Jose F. Caoibes, Jr. requesting for an investigation of rumors that respondent Soledad Escritor, court interpreter of Las Piñas, was living with a man not her husband.<sup>76</sup> Estrada filed a letter-complaint for “disgraceful and immoral conduct” under the Revised Administrative Code against Escritor after learning that Escritor was cohabiting with another man who was not her husband.<sup>77</sup> Escritor testified that when she entered the judiciary in 1999,

---

71. *Id.*

72. See *Estrada v. Escritor*, 408 SCRA 1, 129 (2003) [hereinafter *Estrada, 2003*].

73. See REVISED PENAL CODE, art. 1.

74. *Estrada, 2003*, 408 SCRA 1 (2003). See also *Estrada v. Escritor*, 492 SCRA 1 (2006) [hereinafter *Estrada, 2006*].

75. *Estrada, 2003*, 408 SCRA at 129.

76. *Id.* at 50.

77. *Id.* at 51.

she was already a widow.<sup>78</sup> She admitted that she had been living with Luciano Quilapo Jr. without the benefit of marriage for 20 years and that they have a son.<sup>79</sup> However, as a member of the religious sect known as Jehovah's Witnesses, and having executed a "Declaration of Pledging Faithfulness" (which allows members of the congregation who have been abandoned by their spouses to enter into marital relations) jointly with Quilapo after 10 years of living together, Escritor stated that the conjugal arrangement is in conformity with her religious beliefs and has the approval of the congregation, thus, not constituting disgraceful and immoral conduct.<sup>80</sup>

The Court applied the Benevolent Neutrality approach and the Compelling State Interest test in the case and dismissed the administrative case against Escritor.<sup>81</sup> In this particular case and under these distinct circumstances, the Court thereafter found that

respondent Escritor's conjugal arrangement *cannot* be penalized as she has made out a case for exemption from the law based on her fundamental right to freedom of religion. The Court recognizes that state interests must be upheld in order that freedoms — including religious freedom — may be enjoyed. In the area of religious exercise as a preferred freedom, however, man stands accountable to an authority higher than the state, and so the state interest sought to be upheld must be so compelling that its violation will erode the very fabric of the state that will also protect the freedom. In the absence of a showing that such state interest exists, man must be allowed to subscribe to the Infinite.<sup>82</sup>

The aforementioned case<sup>83</sup> may be useful to understand certain areas of the Celdran controversy. One critiqued that in some aspects

such as that of the nature of the religious clauses, the different approaches in determining constitutionality of government acts, the tests used, and even the apparent inconsistencies of various precedents, among others — notwithstanding that the facts of the case itself may not be relevant to the present controversy inasmuch as such are directed towards the distinction between public and secular morality, on one hand, and religious morality, on the other.<sup>84</sup>

From the foregoing, it would then be fitting to discuss the resulting issues arising from the application of Article 133 in convicting Celdran.

---

78. *Id.*

79. *Id.*

80. *Id.*

81. *Estrada, 2006*, 492 SCRA at 91.

82. *Id.*

83. *Estrada, 2003*, 408 SCRA at 1 & *Estrada, 2006*, 492 SCRA at 1.

84. Guerrero, *supra* note 67.

*C. Issues Arising from the Application of the Law*

1. Article 133 and the Provisions on Freedom of Speech, Free Exercise, and Non-establishment of a Religion

As a reaction to toppling a dictator and installing the widow of a martyred Senator as President, the 1987 Philippine Constitution was ratified. This Philippine Constitution, under Article 2, Section 6, recognizes that “the separation of Church and State shall be inviolable.”<sup>85</sup> Similarly, the first clause of the First Amendment of the United States (U.S.) Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”<sup>86</sup>

This statement from the U.S. Constitution is reinforced in various provisions within the Philippine Constitution.<sup>87</sup> For instance, Article 3 contains the Bill of Rights, which provides for the Freedom of Speech, Free Exercise of Religion, and Non-Establishment of Religion.<sup>88</sup> The Bill of Rights is a “set of prescriptions setting forth the fundamental civil and political rights of the individual, and imposing limitation on the powers of government as a means of securing the enjoyment of those rights.”<sup>89</sup> Generally, government actions made in violation of the Bill of Rights are considered void.<sup>90</sup>

2. Freedom of Speech

Section 4 of Article 3 provides that “[n]o law shall be passed abridging the freedom of speech, of expression[,] or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”<sup>91</sup> This provision guarantees the freedom of any and all modes of expression.<sup>92</sup>

---

85. PHIL. CONST. art. II, § 6.

86. *Estrada, 2006*, 492 SCRA at 239 (J. Carpio, dissenting opinion) (citing U.S. CONST. amend 1).

87. PHIL. CONST. art. III, § 5.

88. *See generally* PHIL. CONST. art. III.

89. ANTONIO B. NACHURA, *OUTLINE/REVIEWER IN POLITICAL LAW* 91 (2009 ed.).

90. 1 MAX FARRAND, *THE RECORDS OF THE FEDERAL CONVENTION OF 1797* 93 (1911).

91. PHIL. CONST. art. III, § 4.

92. Nepomuceno Malaluan & Malou Mangahas, *Abridging Freedom of Expression, Reneging on Freedom of Information*, available at <http://pcij.org/blog/2012/10/08/abridging-freedom-of-expression-reneging-on-freedom-of-information> (last accessed Sep. 12, 2013).

Briefly, the right covers two aspects, that is, freedom from prior restraint, and freedom from subsequent punishment. Freedom of speech is violated when speech is restrained or punished even if the speech does not present a clear and present danger of a substantive evil which the state has the right to prevent.<sup>93</sup>

In *Primicias v. Fugoso*,<sup>94</sup> it was held that —

The right of freedom of speech and to peacefully assemble and petition the government for redress of grievances, are *fundamental personal rights of the people recognized and guaranteed by the Constitutions of democratic countries*. But it is a settled principle growing out of the nature of well-ordered civil societies that the exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, not injurious to the rights of the community or society. The power to regulate the exercise of such and other constitutional rights is termed the sovereign ‘police power’ which is the power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people. This sovereign police power is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights, and it may be delegated to political subdivisions, such as towns, municipalities, and cities authorizing their legislative bodies, called municipal and city councils to enact ordinances for the purpose.<sup>95</sup>

It has been argued by proponents siding with Celdran that Article 133 has the effect of a law that restrains this Constitutional guarantee.<sup>96</sup>

### 3. Free Exercise of Religion and the Non-Establishment Clause

In the 1987 Philippine Constitution, Section 5 of Article 3 on Freedom of Religion provides —

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.<sup>97</sup>

Free exercise of religion is violated when a person is prevented from, or punished for, externalizing his religious belief or is forced to do something

---

93. Joaquin G. Bernas S.J., *Of Padre Damaso and Other Things*, PHIL. DAILY INQ., Feb. 3, 2013, available at <http://opinion.inquirer.net/46209/of-padre-damaso-and-other-things> (last accessed Sep. 12, 2013).

94. *Primicias v. Fugoso*, 80 Phil. 71 (1948).

95. *Id.* at 75-76 (emphasis supplied).

96. Robles, *supra* note 38.

97. PHIL. CONST. art. III, § 5.

contrary to his religious belief.<sup>98</sup> Non-establishment of religion is violated when the state shows preference for one religion over others or prefers religion to no religion.<sup>99</sup>

The Constitution guarantees the absolute freedom to believe, and a non-derogable guarantee that it will not favor or endorse a religion. Similar to their perspective on the Freedom of Speech, some groups have argued that Article 133 of the RPC violates both Constitutional guarantees.<sup>100</sup>

The case of *Iglesia Ni Kristo v. Court of Appeals*<sup>101</sup> sheds light on the concept of freedom of religion and the non-establishment clause, as applied it to its ruling below. In this case, the Movie and Television Review and Classification Board (MTRCB) gave an “X” rating to pre-taped programs of the Iglesia ni Kristo criticizing religious dogmas of the Catholic Church, including the satire of the Virgin Mary.<sup>102</sup> The Court ruled that the “X” rating was a prior restraint and a violation of the guarantee of state neutrality in the realm of religious beliefs.<sup>103</sup>

Former Chief Justice Reynato Puno stated —

The respondent Board may disagree with the criticisms of other religions by petitioner but that gives it no excuse to interdict such criticisms, however, unclean they may be. Under our Constitutional scheme, it is not the task of the State to favor any religion by protecting it against an attack by another religion. Religious dogmas and beliefs are often at war and to preserve peace among their followers, especially the fanatics, the establishment clause of freedom of religion prohibits the State from leaning towards any religion. *Vis-à-vis* religious differences, the State enjoys no banquet of options. *Neutrality alone is its fixed and immovable stance.* In fine, respondent [B]oard cannot squelch the speech of petitioner Iglesia ni [K]risto simply because it attacks other religions, even if said religion happens to be the most numerous church in our country. In a State where there ought to be no difference between the appearance and the reality of freedom of religion, the remedy against bad theology is better theology. The bedrock of freedom of religion is freedom of thought and it is best served by encouraging the marketplace of dueling ideas. When the luxury of time permits, the marketplace of ideas demands that speech should be

---

98. JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 330-31 (2009 ed.).

99. *Id.* at 345.

100. Harry Roque, *Offending Religious Feelings*, available at <http://harryroque.com/tag/art-133-revised-penal-code/> (last accessed Sep. 12, 2013). See also REVISED PENAL CODE, art. 133.

101. *Iglesia Ni Kristo v. Court of Appeals*, 259 SCRA 529 (1996).

102. *Id.* at 530.

103. *Id.* at 549.



met by more speech[,] for it is the spark of opposite speech, the heat of colliding ideas that can fan the embers of truth.<sup>104</sup>

Considering the foregoing arguments, at issue is if Article 133 has become archaic, dated, and no longer necessary. More important is the question raised regarding its validity in light of the constitutionally-protected freedoms the Philippines enjoys today.

#### V. BLASPHEMY LAW IN OTHER COUNTRIES

This kind of law respecting statements and acts against religion or religious feelings is called Blasphemy Law. These crimes specifically deal with expressions which insult, display contempt, or display lack of reverence towards things important to religion — the deities themselves, the rituals and symbols of the religion, or places of worship.<sup>105</sup>

The Philippines is not alone in having this kind of legislation. Blasphemy Law exists in many other jurisdictions, with varying degrees of relevance and applicability. As will be seen later in this part of the Article, some countries still actively prosecute these kinds of crimes, some even going as far as imposing the death penalty. In others, the laws still exist, though prosecution under them is very rare. An examination of these specific countries will do well to understand the relevance of Article 133 of the RPC in the Philippine legal system.

##### A. Russia

Russia has recently made the news for criminalizing blasphemy. The State Duma overwhelmingly approved the new law, with only four Duma deputies voting against the bill, 304 in favor, and one abstaining.<sup>106</sup> Under this law, “public actions expressing clear disrespect for society[,] and committed with the goal of *offending religious feelings of the faithful* would be punishable by jail terms” and large fines.<sup>107</sup>

---

104. *Id.* at 547.

105. Benedict Rogers, Blasphemy may be Offensive, but Blasphemy Laws Kill, *available at* [http://www.huffingtonpost.co.uk/ben/blasphemy-laws\\_b\\_3560615.html](http://www.huffingtonpost.co.uk/ben/blasphemy-laws_b_3560615.html) (last accessed Sep. 12, 2013).

106. The Institute on Religion & Public Policy, Analysis on Russia’s New Blasphemy Law, *available at* <http://www.religionandpolicy.org/reports/the-institute-country-reports-and-legislative-analysis/europe-and-eurasia/russia/analysis-on-russia-s-new-blasphemy-law-2013/> (last accessed Sep. 12, 2013).

107. Agence France-Presse, *New law brings jail terms for ‘offending religious feelings,’* SYDNEY MORNING HERALD, June 12, 2013, *available at* <http://www.smh.com.au/world/new-law-brings-jail-terms-for-offending-religious-feelings-20130612-2035c.html> (last accessed Sep. 12, 2013) (emphasis supplied).

Also, “publicly expressing clear disrespect to believers, including actions taken at places of worship” would be punishable by even longer jail terms, stiffer fines, and even compulsory correctional labor.<sup>108</sup>

This law has been met with considerable controversy. Detractors have called it “legally indefinable,” referring to the inherent difficulty with Blasphemy Laws — what acts do we consider to be offensive to religious feelings? Sergey Mironov, a Russian politician, said that the law might be “stretched to indict many Russians, even those who did not intend to offend anyone.”<sup>109</sup>

The proponents of the bill, however, claim that it is carefully crafted and “chiselled to perfection.”<sup>110</sup> The law, they say, does not deal with the nebulous term of “religious offense,” but rather only punishes those that “obviously go out of their way to insult a religion.”<sup>111</sup>

Russia’s enactment of this law was reportedly a reaction to the protest held by the all-female rock band Pussy Riot.<sup>112</sup> The band staged a demonstration in the Christ the Savior Cathedral in Moscow, the city’s main church.<sup>113</sup> The protest, which was eventually made part of a music video called “Punk Rock Prayer,” led to the prosecution and imprisonment of some of the band members under hooliganism charges.<sup>114</sup>

What is notable here is the timing of the enactment.<sup>115</sup> While people in the Philippines decried Celdran’s conviction as a throwback to a backward way of thinking, Russia actually passed a law condemning acts similar to what Celdran did.<sup>116</sup> Evidently, the legislature of Russia considered such acts as problematic enough to enact a law to combat them. However, it is interesting to note that only now has such a law been suggested.<sup>117</sup> As will be seen later in the Article, most jurisdictions are common in that their

---

108. Michael Stone, Russia criminalizes blasphemy: jail time for insulting religion, *available at* <http://www.examiner.com/article/russia-criminalizes-blasphemy-jail-time-for-insulting-religion> (last accessed Sep. 12, 2013).

109. RT, ‘Rubber band’ bill: Russian parliament passes ‘legally indefinable’ anti-blasphemy law, *available at* <http://rt.com/politics/anti-blasphemy-law-russia-580/> (last accessed Sep. 12, 2013) [hereinafter Rubber Band Bill].

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. Rubber Band Bill, *supra* note 109.

116. *Id.*

117. *Id.*

Blasphemy Laws exist only in their history, not at present. In a sense, Russia has only now begun to consider such acts as worthy of legislative intent.<sup>118</sup>

*B. The United States*

Russia's Blasphemy Law would necessarily fail under U.S. Constitutional standards as violative of the First Amendment.<sup>119</sup> The provision is almost identical to the Philippine Constitution provision regarding freedom of speech, and states —

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.<sup>120</sup>

Accordingly, most states of the U.S. have no blasphemy provisions in their respective laws, with the exception of a few.<sup>121</sup> Also, some of these states' blasphemy provisions are holdovers from the founding times.<sup>122</sup> It is interesting to note that the Blasphemy Law provisions refer exclusively to offenses against the Christian religion, referring to acts and words against "our Savior Jesus Christ."<sup>123</sup> This shows the datedness of such statutes, especially in our more diverse and tolerant society today. Any attempt to pass a similar law now would be met with cries of discrimination and unequal treatment.

Recent court decisions have illustrated this trend. In 2007, George Kalman tried to establish a new corporation with the name "I Choose Hell Production."<sup>124</sup> The Pennsylvania Department of State denied the application, stating that the business name was blasphemous, one that "profane[d] the Lord's name."<sup>125</sup> Kalman took the case to court, and the District Judge ruled in his favor, striking down the blasphemy statute as violative of the U.S. Constitution.<sup>126</sup>

---

118. *Id.*

119. *Id.* See also U.S. CONST., amend. 1.

120. Compare U.S. CONST. amend. 1 with PHIL. CONST. art. III, § 5.

121. See Barry Lyn, *Blasphemy laws: alive and well in the U.S.?*, WASH. POST, Jan. 4, 2011, available at [http://onfaith.washingtonpost.com/onfaith/panellists/Barry\\_Lynn/2011/01/blasphemy\\_laws\\_alive\\_and\\_well\\_in\\_the\\_us.html](http://onfaith.washingtonpost.com/onfaith/panellists/Barry_Lynn/2011/01/blasphemy_laws_alive_and_well_in_the_us.html) (last accessed Sep. 12, 2013).

122. *Id.*

123. Revised Code of the Public General Laws, MD. STAT. tit. 27, art. 72, § 189 (1879) (U.S.).

124. *Kalman v. Cortes*, No. 09-684 (Dist. Pa. July 28, 2009) (U.S.).

125. *Id.*

126. *Id.*

The U.S. Supreme Court also had occasion to pass on the validity of Blasphemy Law with respect to constitutional rights. In *Joseph Burstyn, Inc. v. Wilson*,<sup>127</sup> decided in 1952, the U.S. Supreme Court held that the New York state Blasphemy Law was unconstitutional, being a prior restraint on freedom of speech.<sup>128</sup>

It is interesting to note that while there have been very few prosecutions for Blasphemy Law in the U.S.,<sup>129</sup> some states still have them. Consider the example of *Kalman v. Cortes*<sup>130</sup> above, as well as the Maryland state laws — laws that were still in existence in the 21st Century. If this fact is considered against the very liberal background<sup>131</sup> of the U.S., it is surprising that no one bothered to prosecute based on these Blasphemy Laws.<sup>132</sup> This speaks of a general apathy or even ignorance of the existence of such law, and raises questions as to the relevance of the statute in the society.

### C. Kuwait and Egypt

In contrast with the previous countries mentioned, Blasphemy Law is and has always been part and parcel of the laws of Kuwait and Egypt.<sup>133</sup> In both jurisdictions, Islam is enshrined in the constitution as the state religion.<sup>134</sup>

The 1961 Press and Publications Law of Kuwait allows any Muslim citizen to file a complaint against authors who they feel have defamed Islam.<sup>135</sup> The same law in fact prohibits publication of material which attacks

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

128. *Id.*

129. *See R. v. Ramsay and Foote*, 15 Cox CC 231, 235 (1883) (U.S.). The last person to be jailed for blasphemy was in the 19th Century. The last high prosecution for blasphemy was in the 1920s. *Id.*

130. *Kalman*, No. 09-684 Dist. Pa.

131. After the 9/11 attacks on the US, experts believed that religious tolerance is a core liberal value. *See generally* Peter J. Boettke & Christopher J. Coyne, *Liberalism in the Post-9/11 World* (Draft of an Article Published by the Indian Journal of Economics & Business), available at [http://www.ccoyne.com/Liberalism\\_in\\_the\\_Post-9-11\\_World.PDF](http://www.ccoyne.com/Liberalism_in_the_Post-9-11_World.PDF) (last accessed Sep. 12, 2013).

132. Michael McGough, *Americans have cracked down on blasphemy too*, L.A. TIMES, Sep. 25, 2012, available at <http://articles.latimes.com/2012/sep/25/news/la-obama-blasphemy-islam-20120925> (last accessed Sep. 12, 2013).

133. Catholic Online, *Kuwait Adopts Hard Line with Islamic Anti-Blasphemy Laws*, available at [http://www.catholic.org/international/international\\_story.php?id=48968](http://www.catholic.org/international/international_story.php?id=48968) (last accessed Sep. 12, 2013).

134. *See* KUWAIT CONST. art. 2 & EGYPT CONST. art. 2.

135. State of Kuwait Public Administration Country Profile (Country Profile of Kuwait Made by the U.N.), available at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan023178.pdf> (last accessed Sep. 12, 2013). *See also*

religion, or incites crime, creates and espouses hatred, or spreads dissension.<sup>136</sup>

The jurisprudential history of Blasphemy Law in these countries is much richer than that of the U.S. As recently as 2012, a man was jailed — and in fact, many people asked for him to be put to death — for posting insulting messages directed towards Mohammed and Islam on his Twitter account.<sup>137</sup> As a reaction to this incident, in that very year, an amendment was pending in the legislative mill, upgrading the offense of blasphemy to one punishable by death.<sup>138</sup>

There have been several other cases in Kuwait in recent history. In 2009, a special forces officer was convicted (although subsequently acquitted on appeal) for defamation of Muhammad.<sup>139</sup> In 2004, another citizen was convicted, this time for producing an audiotape with allegedly blasphemous content.<sup>140</sup>

---

Carnegie Endowment for International Peace, *New Press Law in Kuwait*, available at <http://carnegieendowment.org/2008/08/19/new-press-law-in-kuwait/6c54> (last accessed Sep. 12, 2013). The Kuwaiti Parliament approved a new press law last 6 March 2006. The new law replaced the 1961 Press and Publications Law. The new law prohibits the arrest and detention of journalists until a final court verdict is delivered by the Supreme Court and allows citizens whose applications for newspaper licenses are rejected to sue the government in court. The 1961 Law gave applicants the right to appeal only to the government itself. Carnegie Endowment for International Peace, *supra* note 135.

136. United States Department of State, *Kuwait 2012 International Religious Freedom Report (Report on the Religious Freedom of Kuwait)* § 2, available at <http://www.state.gov/documents/organization/208610.pdf> (last accessed Sep. 12, 2013).

137. BBC News Middle East, *Kuwaiti jailed for 10 years for Twitter ‘blasphemy,’* available at <http://www.bbc.co.uk/news/world-middle-east-18322418> (last accessed Sep. 12, 2013).

138. Reuters, *Kuwait close to death penalty law for blasphemy*, available at <http://www.reuters.com/article/2012/05/03/us-kuwait-blasphemy-idUSBRE8420SG20120503> (last accessed Sep. 12, 2013). Eventually, however, the amendment was rejected. *See Amir Rejects ‘Death’ For Blasphemy — Awqaf Resignation Rejected*, available at <http://www.arabtimesonline.com/NewsDetails/tabid/96/smld/414/ArticleID/184164/reftab/36/Default.aspx> (last accessed Sep. 12, 2013).

139. International Religious Freedom News, *Kuwait: Court Acquits Man Arrested for Blasphemy*, available at <http://becketinternational.wordpress.com/2009/08/10/kuwait-court-acquits-man-arrested-for-blasphemy/> (last accessed Sep. 12, 2013).

140. Fox News, *Kuwait strips hard-line Shiite activist of citizenship after claims of blasphemy*, available at <http://www.foxnews.com/world/2010/09/20/kuwait->

Egypt, meanwhile, is also a jurisdiction where prosecution for this type of crime is popular. For the majority of the 20th Century, and up to the year 2012, Egypt had been under “emergency law” — a form of martial law very similar to what the Philippines went through under Ferdinand Marcos.<sup>141</sup> This law gave the government the authority to disregard several fundamental human rights — among them the freedoms of religion and of expression.<sup>142</sup> Some have claimed that the entire point of the Emergency Law was to prosecute those with “unorthodox” beliefs.<sup>143</sup>

The Egyptian Penal Code also has Blasphemy Law provisions. Imprisonment and fines are inflicted on persons who “make use of religion in propagating, either by words, in writing, or in any other means, extreme ideas for the purpose of inciting strife, ridiculing or insulting a heavenly religion or a sect following it, or damaging national unity.”<sup>144</sup> Another article punishes the hindering of religious ceremonies.<sup>145</sup> The “heavenly religions” referred to here refer not only to Islam, but to Judaism and Christianity as well.<sup>146</sup> This makes Egypt unique from Kuwait, the U.S., and the United Kingdom, but similar to the Philippines — there is no *one religion* that is not allowed to be offended. However, there is still discrimination present. While not in any statute, a concept incorporated into the Egyptian juridical system is that of “*hisba*” — a “principle by which one Muslim can bring a case against another Muslim for perceived violations against Islam.”<sup>147</sup> While this has no basis in the law itself, courts have ruled in such a way that a precedent has been set, allowing these *hisba* cases to be filed.<sup>148</sup>

---

strips-hard-line-shiite-activist-citizenship-claims-blasphemy/ (last accessed Sep. 12, 2013).

141. BBC News Middle East, Egypt’s ruling generals to partially lift emergency law, available at <http://www.bbc.co.uk/news/world-middle-east-16704551> (last accessed Sep. 12, 2013).

142. International Federation of Human Rights, The Emergency Law in Egypt, available at <http://www.fidh.org/THE-EMERGENCY-LAW-IN-EGYPT> (last accessed Sep. 12, 2013).

143. Nina Shea, Briefing on “Religious Freedom in Egypt: Recent Developments” (Remarks Before the Task Force on Religious Freedom of the United States House of Representatives) 1, available at [http://www.hudson.org/files/publications/EgyptSheaTestimony5\\_23\\_07.pdf](http://www.hudson.org/files/publications/EgyptSheaTestimony5_23_07.pdf) (last accessed Sep. 12, 2013).

144. PENAL CODE, art. 98 F (1937) (Egypt).

145. *Id.* art. 160.

146. Mahmoud Salem, Blasphemy in New and Old Egypt, available at <http://www.mei.edu/content/blasphemy-new-and-old-egypt> (last accessed Sep. 12, 2013).

147. FREEDOM HOUSE, POLICING BELIEF: THE IMPACT OF BLASPHEMY LAWS ON HUMAN RIGHTS 21 (2010).

148. *Id.*

The state of Egyptian law, as it exists, is alarming — given that they have constitutional provisions safeguarding freedom of expression<sup>149</sup> and religion.<sup>150</sup> However, the aforementioned provision making Islam the state religion also makes it so that the principal source of legislation is the *Shari'a* law.<sup>151</sup> This leads, logically, to laws discriminatory against non-Muslims, and some say that it has created a culture of intolerance.<sup>152</sup>

Human rights groups have characterized Egypt's Blasphemy Laws as violative of international law and of human rights.<sup>153</sup> They claim that these laws can be used to prosecute people who merely wish to “engage in peaceful debate about religion.”<sup>154</sup> For example, a professor was arrested and charged in a *hisba* case, stemming from alleged blasphemies in his academic writings.<sup>155</sup> He himself surmised that the case stemmed from a “personal grudge” of another professor with whom he had an on-going academic debate.<sup>156</sup>

Another case illustrating this is that of the producers and actors of the movie “Innocence of Muslims.”<sup>157</sup> The movie, a 13-minute amateur product, was highly controversial and it sparked riots in several Islamic states.<sup>158</sup> Seven Egyptian Christians connected with the movie were convicted of blasphemy and were sentenced to death on 28 November 2012.<sup>159</sup>

The long list of notable cases in these two jurisdictions, as well as the apparent regularity with which these cases are filed, is in stark contrast to the apathy or ignorance shown in the U.S., or Russia's enthusiasm to pass such laws in present-day society. In these two countries, there is no debate on

---

149. EGYPT CONST. art. 30.

150. EGYPT CONST. art. 39.

151. EGYPT CONST. art. 2.

152. FREEDOM HOUSE, *supra* note 147, at 2.

153. *Id.* at 2-3.

154. *Id.* at 26.

155. *Id.*

156. *Id.*

157. The Associated Press, Sam Bacile, Filmmaker Behind Anti-Islam Movie that Sparked Riots, in Hiding, available at <http://www.hollywoodreporter.com/news/sam-bacile-filmmaker-anti-islam-hiding-libya-egypt-369776> (last accessed Sep. 12, 2013).

158. *Id.*

159. Egypt Independent, *Grand mufti approves death penalty for 'Innocence of Muslims' producers*, EGYPT INDEP., Jan. 1, 2013, available at <http://www.egypt-independent.com/news/grand-mufti-approves-death-penalty-innocence-muslims-producers> (last accessed Sep. 12, 2013).

whether such laws are relevant — there is an acceptance that such laws are part of everyday life, even as there are criticisms from all around.

*D. The United Nations*

In 2011, the United Nations (U.N.) released General Comment 34, concerning freedom of expression and opinion.<sup>160</sup> In this document, the U.N. spoke about “prohibitions of displays of lack of respect for a religion” and Blasphemy Laws. The Comment declared these to be incompatible with the International Covenant on Civil and Political Rights (ICCPR), except in specific circumstances.<sup>161</sup> The comment clearly stated that “defamation laws must be crafted with care to ensure that they ... do not serve, in practice, to stifle freedom of expression.”<sup>162</sup>

This is a departure from the previous stance of the U.N., which traditionally held that acts of religious defamation were to be combated and discouraged.<sup>163</sup> The 21st Century saw several resolutions by both the U.N. and the United Nations Human Rights Council (UNHRC) which advocated the elimination of defamation of religion, as this would lead to discrimination, conflict, and intolerance.<sup>164</sup>

The 2011 General Comment signals a paradigm shift in the U.N.’s thinking, one that mirrors what some of the Philippine public expressed about the Celdran case.<sup>165</sup> The shift is from the primacy of the institution of religion and the respect accorded to it, to the importance of the fundamental human right of expression and free speech.<sup>166</sup>

It is important to note, however, the logic and rationale behind the U.N.’s traditional stance. Allowing such displays would necessarily open the door to more radical demonstrations, which could potentially lead to situations where conflict would inevitably arise, especially in countries where there is diversity in faith.<sup>167</sup>

---

160. U.N. Human Rights Committee, General Comment No. 34 (2011): Freedoms of opinion and expression (art. 19 of the International Covenant on Civil and Political Rights), U.N. Doc. CCPR/C/GC/34 (July 11–29, 2011) [hereinafter U.N. Report].

161. *Id.* ¶ 49.

162. *Id.* ¶ 47.

163. Nat Hentoff, U.N. Forbids Defaming Religion, Especially Islam, *available at* <http://www.cato.org/publications/commentary/un-forbids-defaming-religion-especially-islam> (last accessed Sep. 12, 2013).

164. U.N. Report, *supra* note 160, ¶ 47.

165. *Id.*

166. *Id.*

167. *Id.*



## VI. CONCLUSION

In all, Celdran is being punished for religious speech.<sup>168</sup> Religious belief is a personal matter,<sup>169</sup> and the right of people to believe what and how they choose should be fiercely protected.<sup>170</sup> But is religion itself entitled to the same rights as the believer?<sup>171</sup> As previously illustrated, there are different arguments for and against the claim that Article 133 of the RPC is “archaic,” outdated, and a throwback to the Spanish colonial period when the native population in the Philippines was ruled by a theocracy, and Church and State were considered one.<sup>172</sup> But that time has passed, and from this perspective, there seems to be no relevance for the existence of this provision in present laws. Including the so-called Blasphemy Laws and providing certain beliefs with statutory protection would support the argument that ideologies and concepts like communism and capitalism should also be protected from insult.<sup>173</sup> Beliefs do not have rights, and laws that say otherwise are directly at odds with the fundamental rights of human beings.<sup>174</sup>

That being said, the remedy lies not with the courts which only apply the laws as they should, considering the attendant facts and circumstances of each case. It is up to Congress to adapt and make the necessary changes.

---

168. Bernas, *supra* note 93.

169. *Id.*

170. *Id.*

171. Courtney C. Radsch, The Trouble with Blasphemy Laws, *available at* <http://www.freedomhouse.org/blog/trouble-blasphemy-laws> (last accessed Sep. 12, 2013).

172. *Id.*

173. *Id.*

174. *Id.*