

Prohibition of Defamation and Insult to Buddhism in Thailand: Liberal Perspective

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Abstract

The paper attempts to question the legitimacy of laws against blasphemy and defamation of religion, drawing attention to the legal situation in Thailand, where nearly 95% of population is Buddhist of the Theravada school, and where the law prohibits the defamation or insult to Buddhism. The analysis leads to the conclusion that the desire to protect religious feelings of Buddhists provokes an attempt to restrict freedom of speech. The need to protect the feelings of believers does not seem to have a solid justification, because it presupposes an invalid right to be free from criticism. The idea that laws against defamation of religion can be justified by the attempt to combat incitement to hatred and violence is rendered invalid too, because it denies the validity of individual moral autonomy. The paper concludes that idea of using legal punishment for a non-aggressive communicative action also contradicts some of the core principles of Buddhism. Although the paper focuses on Thailand, most of the conclusions are applicable to a wider variety of similar legal circumstances.

Introduction

The present paper attempts to question the legitimacy of the laws against blasphemy and defamation of religion, drawing attention to the whole complex of intolerance and aggression that surrounds these laws. The paper focuses on the legal situation in Thailand, and where the law prohibits the defamation or insult to Buddhism. However,

most of the conclusions that we reach seem to be universal and applicable to a wider variety of similar legal circumstances.

In Thailand nearly 95% of population of is Buddhist of the Theravada school (which may technically be considered a philosophy rather than a religion), making it is the

world's most heavily Buddhist country and practically a monocultural society. Theravada is the oldest extant school of Buddhism with a traditional system of complex values and behaviors that the majority of Thai people share. Although politics and religion were generally separated for most of Thai history, Buddhism's connection to the Thai state increased in the middle of the 19th century following the reforms of King Mongkut, that would lead to increased centralization of the religion under the state, with state control over Buddhism increasing further after the 2014 coup d'etat.

The right to freedom of expression in Thailand is subjected to numerous regulations. Before going on to discuss the issue, the legal circumstances related to blasphemy and defamation in Thailand need to be outlined. It should be noted that all of the applicable laws to regulate freedom of expression in Thailand are in a state of flux following the declaration of martial law and the suspension of the 2007 constitution in May 2014, which effectively annulled any legal safeguards for freedom of expression (Freedom House, 2017).

While Theravada Buddhism is the official religion of Thailand, religious tolerance is both customary in Thailand and protected by the constitution. At the same time, the interim constitution issued in July 2014 gave unchecked power to the NCPO (The National Council for Peace and Order which ruled Thailand since 22 May 2014 until 10 July 2019), with laws prohibiting speech likely to insult Buddhism remaining in place. These

laws were still in effect after the NCPO was dissolved, including the 1962 Sangha Act (amended in 1992), which specifically prohibited the defamation or insult of Buddhism and the Buddhist clergy. The word "Sangha" refers to the community of monks in Thailand, and the Sangha Act is the law which governs the monastic community. Violators of the law could face up to one year imprisonment or fines, which effectively means that the defamation or insult to Buddhism is a criminal offence in the country.

This situation is not unique to Thailand — we can witness a world-wide movement in favour of outlawing defamation of religion and blasphemy that has had significant support in the past few years. Although the notion that an idea (in this case religion), rather than a person, can be "defamed" does not fit within most Western legal systems' understanding of defamation, the term "defamation of religion" has been used by the UN Human Rights Committee in its resolution on March 26, 2009. The resolution which deplores the defamation of religions was later approved by the General Assembly on 18 December 2009, and since then reaffirmed three times, which makes the term "defamation of religion" de facto accepted in the international legal practice.

Laws that prohibit blasphemy and the defamation of religion have the goal of imposing a conception of freedom of speech and expression that would severely limit anything deemed critical of or offensive to religious beliefs. The negative impact of this

approach on freedom of expression can be significant, particularly if freedom is viewed from the liberal perspective, which sees freedom of speech is arguably the most important of all values and the foundation of a free society.

The concept of liberalism as a political ideology which advocates civil liberties traditionally emphasises the value of free speech. One of the first arguments for its importance was provided by Milton in “Areopagitica” (1644 [1918]): “the liberty to know, to utter, and to argue freely according to conscience, above all liberties”. Milton believed that the individual is capable of using reason to distinguish right from wrong and to exercise this right, everyone must have unlimited access to the ideas of others which will allow the good arguments to prevail. J. S. Mill in “On Liberty” (1859) also argued that free discourse is a necessary condition for intellectual and social progress.

Classical liberals, however, also debated whether this liberty to speak freely should be extended only to a certain limit. Mill, for instance, believed the “barbarians” were not allowed to exercise any free speech or political activity with those who colonise them. John Locke, another famous liberal theorist, who was a witness of the English Civil War, did not extend his conception of religious liberty to catholicism.

Liberalism today is also not a uniform ideology with multiple interpretations available. In regards to the freedom of speech there are voices of the so called ‘free

speech absolutists’, who believe that any kind of speech, without any exceptions, should be allowed. Following classical liberal ideals they maintain that the right to speak freely needs protection not because everyone has something valuable to say, but because the right to speak freely is valuable. From this perspective the best way to fight a bad idea is through open discourse — more free speech. But what is even more important, they would argue that any exception to the rule opens the door for other exception which completely deteriorate that value of free speech.

On the other hand, there are many who would say that unrestricted free speech goes against liberal values. Perhaps the most well known proponent of this view was Karl Popper. In “The Open Society and Its Enemies” (1945) he argued that liberalism demands treating people equally regardless of their beliefs, race, sex, etc., and thus speech which attacks race, gender or beliefs should not be permitted. And this logic finds a lot of support today — Popper’s view resonates with many, who insist that freedom is relative and that “unlimited tolerance must lead to the disappearance of tolerance”.

Others would argue that liberal values are far from universal — it is a “western” value system which is not relevant for Asian cultures (this argument is a part of the wider “Asian Values Debate”, see for ex., Subramaniam 2000). While there is some evidence that social dynamics are different in South-East Asian countries, this paper asserts that liberal theories are relevant for

Asia too. Liberalism is universal in a sense that it derives its core principles from the very nature of us being humans, and thus is applicable to all people regardless of their cultural or ethnic background. Hence this paper endeavours to defend the classical liberal position and put forward a series of arguments in favour of free speech and against the laws that prohibit blasphemy and defamation of religion.

The nature of coercive punishment

Prior to examining this problem more deeply, it is important to bring the principles of the law clearly into focus so as to have a view of what we are examining. Like every other law, Sangha Act, which prohibits blasphemy and the defamation or insult of Buddhism and the Buddhist clergy, utilizes the means of punishment — punishment that involves coercion and aggression.

But what does it mean to punish by coercion and aggression? In general, punishment is the infliction of physical force on a person, in response to something that he has done or has failed to do. Punishment thus comprises physical coercion committed against a person (Kinsella 1996). In this paper we will use the terms «coercion» to refer a use of physical force or the threat to use physical force against another person. We use «physical force», «aggression» and «violence» interchangeably, implying that the conduct of individuals can be divided into two types: (1) coercive or aggressive (i.e., actions that are initiations of force) and (2) non-coercive or nonaggressive. This division is purely descriptive, and does

not presume that aggression is invalid, immoral or unjustifiable (Ibid, p. 57).

Blasphemy and anti-defamation laws, like every other law, carries with it a coercive punishment to be imposed upon violators. One might argue that Sangha Act does not use physical force or coercion as a punishment (it does not threaten violators with beating, caning, dismembering, capital punishment or anything of that sort — it merely threatens wrongdoers with fines or imprisonment). Nevertheless, physical coercion plays a crucial role in its enforcement, because without the threat of physical coercion, lawbreakers could simply choose not to suffer punishment.

Sangha Act prohibits by command the defamation or insult of Buddhism and the Buddhist clergy. Those who ignore the command can be punished with a fine (which is the lightest punishment). But what if violators choose not to obey the second command — to pay the fine? Perhaps the command may be enforced by a threat of imprisonment. But the threat of imprisonment requires physical enforcement: how can the state ensure that the criminal goes to the prison? The answer lies in coercion, involving actual or threatened bodily injury or, at a minimum, physical pushing or pulling of the individual's body to the location of imprisonment. At the end of the chain there is a final threat that the violator literally cannot defy. The system as a whole is anchored by an intentional, physically harmful coercion.

In common sense morality, the threat or actual coercive imposition of harm is normally wrong. Therefore to justify a law, one must justify imposition of that law through a threat of harm, including the coercive imposition of actual harm on those who are caught violating the law. (See Huemer 2013). This moral reluctance to impose harm is the reason why people are also concerned about justifying punishment. «They want to punish, but they also want to know that such punishment is justified—they want to legitimately be able to punish» (Rothbard 1998, p. 85).

The idea of justice is closely related to the concept of proportionality as a criterion of fairness and as a logical method intended to assist in discerning the correct balance between the restriction imposed by a corrective measure and the severity of the nature of the prohibited act. General moral intuition suggests that the punishment of an offender should fit the crime, but not constitute a greater crime in itself. Given this, what could be done against A who is accused in defamation of religion? At most, it would seem that the victim, B, would be entitled to engage in defamation of A's religion and incitement against A. What more has A done to B, except this? (see Mortellaro 2009, p. 13). It is very hard to justify coercive punishment against a non-aggressive action on the grounds of proportionality.

This point is especially relevant to Buddhists and probably should be understood by Buddhists more than by adherents of any

other religion. Since in this paper we rely on the general non-aggression principle, it is important to mention again that a commitment to nonviolence (ahimsa, not to injure) and is an important foundation of Buddhist ethics, the first precept of Buddhism. It is usually interpreted as a prohibition of all kinds of violence (himsa), and is understood, first and foremost, as a commitment not to kill any sentient being intentionally. But it is also understood, more broadly, as a commitment not to harm any sentient being intentionally, and it is this broader understanding of nonviolence that is crucial to appreciating the implications of the first precept with regard to the punishment of offenders.

Given that punishment involves the intentional infliction of harm, the practice of punishment is incompatible with the principle of nonviolence. A commitment to nonviolence requires not only to refrain from inflicting intentional harm, but to refrain from inflicting unnecessary (or unjustifiable) harm, and this has important implications concerning the practice of punishment. The concept of harm and the Buddhist understanding of this notion leads to the conclusion that none of the standard justifications for punishment of non-aggressive actions are compatible with the principle of nonviolence, properly understood. Given that punishment involves the intentional infliction of harm, it follows that punishment is incompatible with the first precept (Fink 2012, pp. 371-372).

It does not mean that punishment by coercion cannot be justified; it only means

that coercion requires a justification. We shall not attempt to give any comprehensive account of when coercion is justified. We follow the idea of Michael Huemer and rely on the intuitive judgment that harmful coercion requires a justification, as well as on some intuitions about particular conditions that do or do not constitute satisfactory justifications. For instance, one legitimate justification is self-defense or defense of innocent third parties (Huemer 2013). We can reasonably argue that the punishment of aggression can be justified, basically because the use of force in response to force cannot sensibly be condemned. The famous argument in defense of this position was offered by professor Sadowsky, who said that «when we say that one has the right to do certain things we mean this and only this, that it would be immoral for another, alone or in combination, to stop him from doing this by the use of physical force or the threat thereof... This means that we may not initiate violence against others. We say “initiate” because we may certainly employ violence against those who have initiated it against us. In other words, we may repel violence» (Sadowsky 1974, pp. 120–21).

Buddhist tradition, for example, Tähtinen, also suggests that self-defense is appropriate, and criminals are not protected by the rule of ahimsa. Hindu scriptures also support the use of violence against an armed attacker - ahimsa is not meant to imply pacifism. Classical literature of Hinduism such as Mahabharata and Ramayana, as well as modern scholars also debate principles of non-violence when one is faced with

situations requiring self-defense. In general, Buddhist principle of non-violence does not deny the use of force in general, including punishment, and sees punishment as justifiable means to educate or discipline.

So both moral intuition and Buddhist ethics suggest that only justified aggression is acceptable. But since any coercion needs to be justified, it is important to understand the justifications behind the laws that prohibit the defamation of religion, and thus make it morally permissible to punish the violators of these laws.

Usually the purpose of punishment is to prevent crime and to stop others from criminal activities, and to compensate the victims (restitution). Because we can not possibly have any direct awareness of the contents of legislators' consciousness, it is difficult to understand what exactly were the purposes of their actions. We can only rely on inference from what they say and on our understanding of their actions. So if we try to sum up the arguments employed to justify the laws that restrict the freedom of expression religion-wise, we can place them in a set of two types of concerns, or two types of actions that need to be prevented and punished:

- 1) blasphemy and defamation (offensive discourse that arguably insults religion itself or with the intention of inflicting distress on believers) and;
- 2) incitement to hatred or violence/aggression on grounds of religion (the so-called hate speech).

On the pages below we will analyze whether these concerns can represent a convincing attempt to justify coercion implied by the anti-defamatory legislation. And first we will focus on the attempt to protect religion from insult and believers from distress.

Defamation as an insult

The idea that the laws against blasphemy and defamation protect «religious feelings from injury» needs further examination. There is a confusing overlap and imprecision in definition which makes it a dangerous area for freedom of expression. For operational purposes of this paper blasphemy can be defined as an insult or lack of reverence to a deity or sacred objects — it is thus aimed at the beliefs of the religion. Defamation of religion, on the other hand, is aimed at the people who are the adherents of the religion — it aimed at a group of people. Because of these reasons defamation of religion is often treated as “hate speech” similar to racism, and thus the laws against defamation of religion are often seen as more justifiable. Blasphemy laws, on the other hand, are often seen as a legal mechanism of interference with legitimate discussion of religion, and are often seen as tools to provide a single religion with protected status above other religions. However, due to the lack of uniform and universally recognised definitions the terms blasphemy, defamation of religion, insult to religion and religious vilification are terms with significant overlap, as they all deal with offensive speech. This is also true for Sangha law in Thailand, which does not discriminate between blasphemy and religious

defamation, considering both offensive speech acts.

How can these laws be justified? The first argument is that «defamation of religion is a serious affront to human dignity leading to a restriction on the freedom of adherents» (wording used by the U.N. Human Rights Council in 2009). The UNHRC resolution seems to say first that what we can call criticism, whether reasoned, humorous or disrespectful, of the content of certain beliefs (religion in this case) affronts the dignity of those who believe but also restricts their freedom.

This logic requires deeper examination, because «the giving of offence is arguably more a matter of the taking of offence by sensitive people». (Sturges, 2006). Certainly an affront may be felt by a believer encountering some form of criticism. As Sturges put it, «in the defence of such «affronts», we should say that human progress has been built on the replacement of untenable ideas by more solidly-based versions, even though in the process there is a chance that sound ideas will have been attacked by proponents of the unsound. This is the challenging intellectual environment that freedom of expression seeks to defend. Dignity in the defence of one's views involves the potential for dignified withdrawal from a position that proves indefensible. It certainly calls for tolerance of those who criticise or attack one's views» (Sturges 2011).

But it is impossible to understand how an affront of dignity can lead to a restriction of

freedom. Everyone has the right to believe and proclaim beliefs in anything, whether stupid or wise. Criticism cannot possibly contain any restriction of freedom — on the contrary, criticism offers the freedom to change one's views, or to retain them consciously, to make informed intellectual choices on free will. There is no reasons why religious opinions should be treated any differently from other opinions — aesthetical, social, etc. (Ibid).

Laws that prohibit blasphemy and defamation aim to punish what we can refer to as peaceful criticism of ideas. Any statement, no matter if true or false, is a mere act of speech, communication, and as such it does not include initiation of aggression or violence. That is why it is not an easy task to justify coercive measures as a legal punishment for non-violent actions. Most people agree that experiencing a negative feeling (for example, becoming nervous or upset) is not itself a harm. There is no demonstrable or measurable lesion, damage, structural impairment, or loss of value, only a subjective state of mind with no obvious causal connections to any particular type of action or event (van Dun 2004, p. 38).

Is it ever justifiable to punish by the application of force someone's nonaggressive actions? Protecting religion from defamation is rather over-inclusive compared to a justifiable use of force in response to force (self-defence). If all «disrespect» of religion were to be banned because some people might find it offensive or depressing, why

not forbid negative reviews of books, movies, art, dances, and plays, for not one of them shows any deference (Block 2004, pp. 24-25).

The whole approach of protecting religion from mere criticism or insult somehow implies that believers have the rights to feel good about themselves, and in order to do so they have the right to control the opinions that other people may hold about their beliefs. They somehow acquire the right to dictate what others are allowed to think and speak of them and their ideas. But every thought and every opinion that any person holds about anything or anyone belongs only to the person in question. Everyone has a right to the ideas or opinions in their own heads; and a right to disseminate them — this is exactly what we call freedom of speech.

The same would be true about the argument that defamation of Buddhist monks can be an aggressive action because it damages the reputation by saying something bad and untrue about them. First, often the truth or falsity of the statement is a fuzzy zone. But even if it may be relatively easy to determine whether a particular statement was true or false, what is almost impossible to determine is whether the one who uttered it knew for sure that it was false. If the statement was indeed true, then the clergy can not demand to be protected from the consequences of their actions (for example, possible corruption) and from effects of their own actions produce on their reputation. The other alternative is that the possible offender

of defamation laws genuinely believed what he said to be true, and then it would be illogical to advocate for a legal system which punishes people for stating facts. And finally, even if the person accused of defamation of Buddhist clergy knew that the statement was false, this knowledge (and thus malicious intent) will be hard to prove.

In reality any opinion about someone's religion is neither a physical entity nor is it something contained within or on a person. It is purely a function of the subjective attitudes about a belief contained in the minds of other people. But since these are ideas and thoughts in the minds of others, no one can in no way legitimately control them, no one can have ownership claim in reputation. No one can possibly any right to the ideas and minds of other people. This idea, initially proposed by Rothbard, was later supported by other theorists, for example, W. Block who would agree with this proposition, also suggesting that lies about other people's acts or characteristics should not be prohibited by law, because they do not constitute an uninvited border crossing, there is no aggression or theft. Therefore there is no merit in the argument that to make a false accusation against a person is to ruin or damage the latter's reputation (see Block 2004, p. 7).

Critics of this logic would suggest that the question of ownership in this case is irrelevant. They would argue that damages to reputation produce harm which is measurable and clearly identifiable, and therefore real. From a classical liberal

perspective we should accept that although experiencing harm can be extremely unpleasant (and even damaging) for the victim, yet causing harm can still be perfectly legal (albeit not necessarily ethical).

Even if we ignore the arguments above and for the sake of discussion maintain that the loss of one's reputation can be considered a trespass that can be punished, such harm would be difficult to prove from a purely pragmatic perspective. The idea of harm in this case is based on the notion that people believe everything they hear, form negative attitudes towards the person whose reputation has been attacked and then perform some actions based on these negative attitudes.

In fact, of course, people's subjective attitudes and ideas about everything will fluctuate continually, and hence it is impossible to stabilize beliefs by coercion; certainly it would be immoral and aggressive against other people's rights to try. We can, of course, readily concede the gross immorality of spreading false or offensive statements about religion or believers. But we must, nevertheless, maintain the legal right of anyone to do so (see Rothbard 1998, pp. 125-127).

This concept explains why justice can not be achieved by trying to protect feelings. If the right is something that can be legitimately protected and enforced, then the right to feel good about oneself would include the right to use aggression in order to protect this right. This contradicts the principle of

justice, as the punishment for hurt feelings (a non-violent crime) would include physical aggression. That goes against the principle of non-aggression and the first precept of Buddhism.

Besides, although Buddhism has no standard approach to the defamation of religion, overall, however, Buddhist religious leaders generally do not seek to deny anyone the right to speak one's mind, though they may criticize specific instances of disrespectful or slanderous speech as misuses of that right.

Perhaps uniquely among religions, certain strands of Buddhism may even support the defamation of religion as spiritually valuable: a well-known koan from Zen Buddhism says, «If you meet the Buddha on the road, kill him», admonishing believers not to cling to any set ideas about enlightenment or what is sacred. Although individual Buddhists may naturally take offense at attacks against their faith, Buddhist practice largely focuses on improving oneself rather than regulating the affairs of others, leaving most Buddhist authorities largely unconcerned by the defamation of religion.

Incitement to violence

As we showed above laws that protect ideas and religious beliefs from insult are unjustifiable. At the same time, legal system is supposed to protect human beings. This is why the second argument for defamation laws — protecting believers from incitement of hatred and violence towards them — is a more complicated issue which includes the

words and deeds dichotomy and the problem of causation and aggression.

Indeed the suggestion that incitement to violence could be implicit in blasphemy and insult of religion is more understandable. This seems to mean that a critical assault on religion might be followed by a physical assault on the adherents of a religion by the supporters of the criticism. Those who drafted and supported the defamation laws may be able to cite examples to prove that verbal attacks on ideas incited aggression and physical attacks on people. It is quite true that cases of violence based on religious grounds can be observed in many countries. But is this observation enough to solve the 'is' - 'ought' problem and to conclude that because these cases exist we should limit the freedom of expression? Can hate speech and offence to believers be a cause of direct physical aggression, and can defamation in certain cases be classified as an incitement? And if the answer to this question is «yes», then can the offender be held responsible for the spoken words and thus legitimately punished?

This is the view which was expressed by Waldron (2012) in "The Harm in Hate Speech", who endorses hate speech legislation from a liberal perspective. According to Waldron, hate speech is "publications which express profound disrespect, hatred, and vilification for the members of minority groups" (p. 27). Waldron obviously includes defamation of religion in this category, believing that it should be outlawed not because of its immediate consequences

(direct incitement) but the opposite — it is slow contribution towards the erosion of tolerance: tiny impacts of millions of actions — each apparently inconsiderable in itself, which can produce a large-scale toxic effect that, even at the mass level, operates insidiously as a sort of slow-acting poison, and that regulations have to be aimed at individual actions with that scale and that pace of causation in mind" (Ibid).

Even though the effect of an individual hate message may be small, the cumulative effect is the reason why Waldron believes such speech has to be outlawed. Because it sends a signals to other haters that they are not alone alone, in will amplify the effect and destroy the atmosphere of tolerance, which, according to Waldron, all minorities have the right to enjoy. For him one of the reasons why hate speech should be illegal is the assumption that all the citizens that should be able to "count on being treated justly" (p. 85).

Although this logic may find some support, it seems necessary to discriminate between direct causation and possible correlation: even if the religious defamation and hateful speech create this "environment of intolerance" which can be considered a correlate of other people's criminal activity, there is no direct causation. There are many things that people may respond to in an aggressive manner. "The sight of members of a despised race, alcohol, acts which cause jealousy (e.g., a girl who I had my eye on dates another man), when your kid comes home with an "F" on his report card. Are we, by law, to

ban the very existence of minority groups, bring back prohibition of alcohol, bar any woman agreeing to a date of which I disapprove, and disallow poor report cards?" (Block 2004, p. 15). We would therefore adhere to the "strict absolutist" position which would separate the right of a person to defamatory speech, including hate speech (which is not invasive) from any criminal action of other individuals who respond to the words of the inciter on their own free will.

Here we will borrow and slightly modify the famous example provided by M. Rothbard: suppose that somebody exhorts a crowd: «kill the dirty buddhist monks!» and the crowd proceeds to do just that, with the inciter having nothing further to do with these criminal activities. Rothbard would say that «"incitement" can only be considered a crime if we deny every man's freedom of will and of choice, and assume that if A tells B and C: "You and him go ahead ...!" that somehow B and C are then helplessly determined to proceed and commit the wrongful act. But ... while it might be immoral or unfortunate for A to advocate a riot, that this is strictly in the realm of advocacy and should not be subject to legal penalty». (Rothbard 1978, pp. 93–94).

If we apply his ideas to our hypothetical situation, we may argue that since every man is free to adopt or not adopt any course of action he wishes, we cannot say that in some way the inciter determined the crowd's criminal activities; we cannot make him, because of his exhortation, at all responsible

for their crimes. «Inciting» from this point of view is a pure exercise of a man's right to speak without being thereby implicated in crime. (Rothbard 1998, p. 82). Rothbard is assuming here that the rioter cannot be the means of the inciter, because the rioter has free will. Having another human in the chain of causation breaks the chain.

Others would think, as Frank van Dun, that it is vital not to suffer from an obnoxious inability to recognize crucial real differences in real situations. Suppose a million individuals, each of them sitting alone in his room, read a phrase in a book filled with hate-speech against Buddhism. If any one of those readers were to get so excited by his reading that he would commit some gruesome crime, the author of the book would not be implicated. That very same phrase, shouted at the top of one's voice in front of an excited crowd of, say, fifty or five hundred people, is an exhortation that in the circumstances is meant—and is likely—to start the execution of a crime (Van Dun 2003, p. 78).

Do we really need to understand the difference between these two situations? Perhaps, sometimes the incitor is also guilty of aggression, but not because the words were the cause of aggression. Instead, the inciter is responsible for the aggression because of what the words signify in the context they were spoken. If the crowd follows the inciter's orders, the crowd can become his means to achieve a violent end. It should be emphasized, of course, that this is not a general rule: it is case-specific and

depends on the circumstances surrounding the particular case. We can treat situations in this manner only when the relationship between the communicator and the people who actually perform aggressive action may have some sort of a nature that tells us that the communicator is also responsible for the aggression.

If the soap-box orator merely hopes that the crowd would indeed go and perform those violent actions, it is simply wishful thinking: he had no control over their decision. It is aggression when one person intentionally uses another as a means to cause an aggression; it is not aggression when one person merely hopes for an aggression to occur. For instance, consider the famous case of the Danish cartoonists: even if they indeed wanted those who viewed these pictures to participate in violent actions, it does not really matter. The artists did not commit any act of aggression themselves, they merely used their rights to free speech. The intentions are thus not important unless the relations between the inciter and the invitees allow the first to determine the actions of the latter (Block 2011, p. 658).

Hate speech, though often demonstrably vile, can be seen as a merely extreme form of expression of opinion, still remaining to be a speech act. Speech cannot be aggression since it does not actually physically harm other people, and a speech act *per se* is not an act of violence: it does not intentionally cause the person to be physically infringed upon. Therefore, how can it be justifiable to

use coercion in order to punish for «incitement to aggression»? The only way to do this is to argue that incitement is a coercive action that can be thus justifiably punished.

It is one of those ideas that people may find difficult to accept: offending one's religious beliefs, even in the rudest way, should be as legitimate as being a good buddhist. This seems absurd. However, one of the greatest achievements of both western civilisation and, paradoxically, Buddhism, is the emergence of the concept of what we can refer to as “minding one's own business”, concentrating on one's own vices and virtues instead of healing the ills of others. This presupposes accepting and cooperating with those who insult one's cherished beliefs. In a broader sense it means accepting “the other” — strangers who do not share a particular set of values or norms, accepted within a particular society.

Liberal perspective it presupposes that the opinions of others and what they say is their own business, as long as they, paraphrasing Mill, do not do any physical harm. But going back to the “incitement” argument, outlined above, what if someone exposed to an insulting speech towards Buddhism is more apt to commit violence against Buddhists? When one says something that leads another to committing crime, that what the other person hears or reads becomes my business, and if this “something” is blasphemy, then one could argue that blasphemy needs to be restricted. Insult to religion is everyone else's business because

these insults can lead to the behaviour dangerous to others.

But to insist on this logic of direct correlation is of course anti-liberal. It would interprets human action as a simple cause and consequences relations, where what people hear directly determines their actions. To forbid blasphemy because it may incite someone to physical violence means to deny the freedom of will, but also it means to deny the freedom of those who will never commit any crimes. It is the same as to imprison all young black males because they are more likely to commit rape than the rest of the population. Violence is also correlated with age and sex, crime rates differ among different racial and religious groups. But liberalism does not identify dangerous people based on class characteristics, nor does it label some ideas as inherently dangerous and so subject to regulation.

Liberalism sees individuals as morally autonomous in a sense of their legal status, which means that people can only be held accountable for their actions, and not for the correlates of other people's actions. And although some people are statistically more likely to commit crimes (religious fanatics) or are more likely to commit crimes after certain experiences (for instance, exposure to blasphemy), liberals do not seek to eliminate the correlates of crime. For a person is not viewed as a simple causal force of what he sees, hears or reads, but an independent moral agent who is capable of making moral choices about his or her actions.

Conclusion

The desire to protect any ideas, ideals and values (including religious feelings of the Buddhists) provokes, among other things, an illegitimate attempt to restrict freedom of speech. The need to protect the feelings of believers does not seem to be a solid justification, because it presupposes an invalid right to be free from criticism. We may also conclude that laws against defamation of religion cannot be justified by the attempt to combat incitement to hatred. The idea of using the threat of aggressive punishment for a non-aggressive action also contradicts some of the core principles of Buddhism.

However, these were rather philosophical (and partly religious) objections to Sangha Act. But what about legal situation? Are there any legislative guidelines related to freedom of expression and religion? The answer is that indeed there is, in the form of the UN Declaration on Human Rights, which was proclaimed by the United Nations General Assembly in 1948, and to which the nations of the world, including Thailand, are signatories. Article Nineteen of the UN Declaration says that: «Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers».

The protection of religious beliefs does not need to rely on Article Nineteen however.

Article Eighteen of the Declaration states that: «Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance».

What needs to be noted here is that thought, conscience and religion are offered equal protection, thus encompassing atheism and agnosticism; protecting the right to change religion implies the right to proselytise on behalf of one religion to adherents of another; and open observance of religion is also protected.

But if one agrees with the wording of the U.N. Human Rights Council (“defamation of religion is a serious affront to human dignity”), by doing so one is apt to make a different claim: defamation of religion attacks the civil rights of the adherents, committing an affront to human dignity by inducing a perception that adherents of this particular religion are somewhat inferior.

These two problems should be distinguished. The first one is whether believers have the rights to feel good about themselves, and in order to do so they have the right to control the opinions that other people may hold about their beliefs. Liberalism does not assume that anyone has this right to be thought of only in ways one approves, it implies that everyone is confronted with different conceptions of oneself and one's

beliefs, both positive and critical, sometimes even insulting.

However, voluntary cooperation and peace between people of different opinions and religious values is only achievable when there are no prerequisites about how one must think of another. One has no right to control or dictate what others think or say about one's beliefs or opinions, no matter how offensive or flattering it may be.

The second problem is different — defamation, blasphemy and insult to buddhism should be punishable by law because it undermines the public status of buddhists and thus constitutes an attack on their civil rights and restricts their freedom. But if it is true, liberalism is not a valid concept, because then one can not be free (and one can not freely exercise one's religious beliefs) as long as some other people hold and express some negative or offensive conceptions of one's religion. In this case a society in which all people are legally equal is only possible if everyone appreciates each other's beliefs and expresses only non-defamatory conceptions of the beliefs of another. But this ideal is

only again achievable at the price of restricting the range of acceptable beliefs, giving less than equal freedom to those who insult adherents of some religions.

However, human freedom and peaceful coexistence in a free society depends on the idea of equal civil, or legal, status which is based on the concept of moral autonomy. If this autonomy and freedom to criticise one's beliefs, even to the point of insulting the adherent, is not possible, then the only solution will be regulation of the other person's thoughts and beliefs.

Laws against blasphemy and defamation of religion punish non - violent individuals exercising their right to freedom of expression in a peaceful way, even if this expression is offensive at times. And while thinking of a legal code that prohibits the so called hate speech because it can offend some people or produce the environment of intolerance which can lead to some subsequent crimes, it is important to remember the old children saying — “sticks and stones may break my bones but names can never harm me.”

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