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Analysing blasphemy in relation to the rights to freedom of religion and freedom of expression.

Blasphemy, “Sabb Allah aw Sabb al-Rasul”, means “reviling God or reviling the Messenger (Prophet Muhammad, Peace be Upon Him¹)” and is a punishable crime in Islamic law.² The act of a Muslim who blasphemes can overlap with apostasy³ as it can be viewed as reversion from Islam. Manifestation of one’s belief and identity is an exercise of one’s freedom of religion and an exercise of one’s freedom of expression. Blasphemy strains this inter-relationship between the two rights as it questions whether freedom of religion includes the right not to be exposed to mockery or insult of that religion and the consequent obligation of states to prevent it.⁴ It is argued that if expression is a manifestation identity, whether through art or religion, then harmony between the two rights in relation to blasphemy is best explained by the Qur’an itself at 109:6: “For you is your religion *and* for me is my religion” [emphasis added]. The key lies in the manner in which freedom of expression is exercised.

(A) Islamic law and Human rights

The Qur’an, being a source of Islamic law, recognises freedom of religion at 2:256 which provides that there shall be no compulsion in religion⁵, and at 109:6 which recognises that there are others who will choose their religion, apart from Islam⁶. The Qur’an states at 55:4 “[God] The most Gracious! [He] Taught the Qur’an; [He] created man [and] taught him eloquent speech”⁷. Kamali notes that in Islam, expression is used to stimulate dialogue, discover truth, pursue justice and uphold dignity.⁸

Blasphemy is seen as a limitation on the right to freedom of expression in barring the encroachment of rights or dignity of others and espousing the principles of truth and dignity.⁹ This limitation has been recognised in the Cairo Declaration 1990, which all Organisation of Islamic Countries (OIC) have adopted. Article 22(a) of the Declaration recognises the freedom of opinion and expression subject to the principles of the Shari’ah.

Generalisation of the application of Islamic law should be avoided. The implementation of Islamic law cannot be severed from the socio-political context and objectives of the regime involved¹⁰. Notwithstanding the different sources of law, the four different Sunni schools of thought and the five Shi’ite schools of jurisprudence, it is generally accepted, however, that Blasphemy is a ta’zir offence in Islamic jurisprudence providing for discretionary punishment. If linked to apostasy, it attracts the

¹ All further references to Prophet Muhammad are taken to acknowledge the prayer, “Peace be Upon Him”.

² Baderin M. A., *International Human Rights and Islamic Law* (Oxford: OUP, 2005) 49, 128

³ Id

⁴ Benesch S, “Charlie the Freethinker: Religion, Blasphemy, and Decent Controversy” (2015) 10 Religion & Hum. Rts. 250

⁵ Kamali M, “Freedom of Religion in Islamic Law” (1992) 21 Cap. U. L. Rev.67

⁶ Mayer E. A., *Islam and Human Rights: Tradition and Politics*, 5th Ed., (2012) Chapter 9, 178

⁷ Baderin (n 2)

⁸ Kamali M, *Freedom of Expression in Islam*, 2nd Ed. (Cambridge: ITS, 1997) 212

⁹ Goolam N, “The Cartoon Controversy: A Note on Freedom of Expression, Hate Speech and Blasphemy” (2006) 39 Comp. & Int’l L.J. S. Afr. 333, 342

¹⁰ Mayer (n 6) 201

hadd or mandatory penalty.¹¹ Outside the more flexible Hanafi school, prevalent in Afghanistan, Pakistan, Turkey and Egypt,¹² jurists recommend execution for blasphemers.

(B) Blasphemy

The word “blasphemy” is found in two Greek words, “blapto”, to harm, and “pHEME”, speech and means to defame or insult religion which offends God, His names, attributes, laws, or Prophets.¹³ Although Goolam adds to this definition offence to the sensibilities of the religious adherents, this is a matter of contention and has given rise to the problematic recognition of “religious feelings” in European jurisprudence¹⁴. The act can occur as blasphemy simpliciter (oral non permanent statements) and blasphemous libel (permanent form in print or film).¹⁵ It exists as an offence in the western world including Ireland, Australia and, until 2008, Britain. The need for recognising the offence has been rationalised by Hosking J in New Zealand as maintaining peace, order and respect for things sacred.¹⁶ Jeremy Patrick rightly notes that “as long as people believe certain things are sacred, they will believe that certain remarks are blasphemous”.¹⁷ The offence had been rationalised in Britain as attack on beliefs expressed in highly offensive ways¹⁸ “destroying the obligations whereby civil society is bound together”¹⁹.

Opponents of the offence argue that blasphemy cannot be estranged from the political context of early Islam when the offence was viewed as political treason or rebellion against the Islamic polity.²⁰ Opponents also argue that blasphemy is protectionist of religions denying the right to critique it especially where its adherents kill under the tenets of their religion.²¹ This argument is flawed in that any intelligent inquiry into the tenets of Islam will show that it is the fundamentalists that need to be critiqued, not the religion. Furthermore, it is not the right to critique that is being challenged here but the manner of the critique, as discussed below.

¹¹ Forte D, “Apostasy and Blasphemy in Pakistan” (1994) 10 Conn. J. Int’l L. 27, 47

¹² Arzt D, “Heroes or Heretics: Religious Dissidents under Islamic Law” (1996) 14 Wisconsin International Law Journal, No. 2 349, 368

¹³ Goolam (n 9) 343

¹⁴ See also Select Committee on religious offences in England and Wales, *Religious Offences in England and Wales: First Report*, Session 2002-2003 (published in HL Paper 95-I, 2003), Appendix 3: Blasphemy, para. 6 and reference to “shock and outrage feelings” of believers.

¹⁵ Montgomery J, “Can Blasphemy Law Be Justified” (2000) 145 Law & Just. – Christian L. Rev. 6, 9

¹⁶ Id, 15

¹⁷ Micklewright F. H. A., “Blasphemy and the Law” (1979) 60 Law & Just. – Christian L. Rev. 20, 190

¹⁸ Sandberg R and Doe N, “The Strange Death of Blasphemy” (2008) 71 Mod. L. Rev. 971, 973

¹⁹ R v Chief Metropolitan Stipendiary Magistrate ex parte Choudhury, 1 ALL E.R. 306 (Q.B. 1991). The offence of blasphemy and blasphemous libel which had only applied to Christianity was abolished in England and Wales by s. 79(1) of the Criminal Justice and Immigration Act 2008 showing a change in law and policy.

²⁰ O’Sullivan D, “The Interpretation of Qur’anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers” (2001) 3 Journal of Qur’anic Studies, No. 2 63, 86. See also Smith P. S., “Speak No Evil: Apostasy, Blasphemy and Heresy in Malaysian Syariah Law” (2004) 10 U. C. Davis J. Int’l L. & Pol’y 357, 402

²¹ Holzapfel C, “Can I Say That: How an International Blasphemy Law Pits the Freedom of Religion against the Freedom of Speech” (2014) 28 Emory Int’l L. Rev. 597, 638

A more difficult objection to counter is that blasphemy prevents proselytism and the free speech right to share beliefs thereby denying the freedom of opinion to choose which religion to believe.²² On the contrary, Shah rightly notes that the Qur'an at 61:3 acknowledges that "it is odious in the sight of Allah to say that which ye do not"²³ and that if it were God's will all of mankind would have become believers²⁴ suggesting the element of choice is recognised in the Qur'an. It must then come down to the manner of the questioning, as discussed below.

(C) Harmonious co-existence of Freedom of Religion and Expression

Jacob reasons that freedom of expression is the key element in the manifestation of freedom of thought and conscience and is thus complementary to freedom of religion or belief.²⁵ It follows that respect for persons includes respect for their choice to lead lives according to the tenets of their religion.²⁶ Baderin notes that under the Shari'ah the objective of this right is the "discovery of truth and upholding human dignity".²⁷ Marshall argues that a religious belief system provides a psychological defence to overwhelming feelings of insignificance²⁸ which leads to the notion of identity²⁹ as central to the complementarity between the two rights. Hostility towards a community to which one belongs negatively impacts on an individual's self worth and acceptance³⁰ because his identity is dependent on how he is perceived by his community.³¹ In discussing the Salman Rushdie affair, Slaughter explains that "Rushdie had exposed, ridiculed and shamed their Prophet, their religion and their community and hence themselves in the eyes of the non-Muslim world". The book *Satanic Verses* mocked the revelation of the Qur'an as a recitation and rebuked its sacred teachings.³² (Confusingly, Marshall suggests that self identity is not a constitutionally cognisable interest.³³ On the contrary, the notion of rights is entirely individualistic).

For the two rights to have complementarity, emphasis also falls on the manner in which expression is used to critique religion. Coleridge LCJ said that "If the decencies of controversy are observed, even the fundamentals may be attacked without the attackers being guilty of blasphemous libel".³⁴ When blasphemy was an offence in English law, Lord Scarman stated that it is not the substance of the

²² Holzapfel (n 21) 643-646

²³ Shah N, "Freedom of Religion: Koranic and Human Rights Perspectives" (2005) 6 Asia-Pac. J. On Hum. Rts. & L. 69, 74

²⁴ Id, 87

²⁵ Jacob K, "Defending Blasphemy: Exploring Religious Expression under Ireland's Blasphemy law" (2011) 44 Case W. Res. J. Int'l L. 803, 804

²⁶ Wiles H, "A Right to Artistic Blasphemy – An Examination of the Relationship between Freedom of Expression and Freedom of Religion, through a Comparative Analysis of UK Law" (2006) 6 U. C. Dublin L. Rev. 124, 137

²⁷ Baderin (n 2)

²⁸ Marshall W, "Religion as Ideas: Religion as Identity" (1996) 7 J. Contem. Legal Issues 385, 390

²⁹ Gunn T, "The Complexity of Religion and the Definition of Religion in International Law" (2003) 16 Harvard Human Rights Journal 189, 200

³⁰ Goolam (n 9) 337

³¹ Slaughter M.M., "The Salman Rushdie Affair: Apostasy, Honour and Freedom of Speech" (1993) 79 Virginia Law Review 153, 190

³² Id 162 – 166

³³ Marshall (n 28) 396

³⁴ R v Ramsay and Foote (1883) 15 Cox CC 231, 238

doctrine but whether it is couched in decent and temperate language that is the test.³⁵ Jacob explains that the focus then shifts from prohibiting offensive speech to barring speech that is expressed offensively.³⁶ The Court in *Otto-Preminger Institut v Austria*³⁷ elaborated upon this by stating that in exercising the right to freedom of expression in the context of religious opinions and beliefs, expressions that “shock, offend or disturbs” the population must be tolerated but there is an obligation to avoid expressions that “do not contribute to any form of public debate capable of furthering progress in human affairs”.³⁸ (The dissenting judges rightly observed that this cannot be decided by the authorities’ idea of “progress”³⁹.) Nevertheless, the Court accepted the state’s margin of appreciation in this respect and upheld the state’s ban of a film that offended the religious feelings of a Catholic majority population.

The Court also noted that opposing or denying religious beliefs can inhibit those who hold such beliefs from exercising their freedom to express them⁴⁰ and would lead them to resolve to opt out of discourse⁴¹. It is suggested that this also highlights the tension that arises between the rights of the majority and minority population. The tension is exacerbated by the view of the Human Rights Council which states that the freedom of expression applies to “ideas that offend, shock and disturb”⁴².

(D) The Conflict between Freedom of Opinion and Expression

The central argument is that human rights does not recognise a right to have one’s religion or belief exempted from criticism, ridicule or insult or to respect one’s religious feelings⁴³. Under the International Covenant for Civil and Political Rights 1966 (ICCPR), Article 18 provides that everyone has the right to freedom of thought, conscience and religion which is limited, if necessary, to protect public safety, order, health or morals or the *fundamental rights and freedom of others*. Article 19 provides for the right to hold opinions without interference but is limited for the *respect of the rights or reputation of others*, the protection of national security, public order, public health or morals. Both rights are complemented by inter-alia the Universal Declaration of Human Rights, the European Convention on Human Rights (ECHR) and the American Convention on Human Rights in similar terms.

The best example of this tension between the two rights with reference to blasphemy is illustrated by the expression through art. Wiles argues that art is intimately linked with freedom of thought.⁴⁴ Benesch explains that Georges Wolinsky, one of the murdered *Charlie Hebdo* cartoonists said “humour is the shortest path between one man and another”⁴⁵. The cartoons produced included one of the

³⁵ R V Lemon cited in Fikre B. M., “Blasphemy in a Secular State: Some Reflections” (2013) 7 Mizan L. Rev. 29, 36-37. See also *Wingrove v United Kingdom* 24 Eur. H.R. Rep. 1 (1996)

³⁶ Jacob (n 25) 838

³⁷ (13470/87) [1994] ECHR 26 (20 September 1994)

³⁸ Article 14 p. 251

³⁹ (13470/87) [1994] ECHR 26 (20 September 1994), paragraph 3

⁴⁰ (13470/87) [1994] ECHR 26 (20 September 1994)

⁴¹ O’Reilly A, “In Defence of Offence: Freedom of Expression, Offensive Speech, and the Approach of the European Court of Human Rights” (2016) 19 Trinity C. L. Rev. 234, 238

⁴² U.N. Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Ambey; Ligabo, 63-66, U.N. Doc. A/HRC/7/14 (Feb. 28, 2008)

⁴³ Article 30 p. 517

⁴⁴ Wiles (n 26) 135

⁴⁵ Benesch (n 4) 246

Prophet Muhammad with a bomb in his turban and the shahadah written across it⁴⁶. This was rightly viewed by Muslims as a mockery and ridicule of the Prophet and Islam. Another cartoon depicted the Prophet with a caption that read “it’s hard being loved by idiots”⁴⁷. The cartoons led to over 100 riot related deaths worldwide⁴⁸ and 241 murders in France⁴⁹. Modood proffers the view that the “republishing of the [Danish] cartoons across continental Europe...was deliberately done to teach Muslims a lesson”.⁵⁰ At best, the critique demands an explanation as to why the Ummah has not addressed more openly why the actions of extremists are not condoned by the Qur’an but from a human rights perspective the critique shows no basic respect for rights of others.

Carens rightly notes that material that can be published legally does not mean that it should be published and that the cartoons contributed to the marginalisation of Danish Muslims who were already socially, economically and politically marginalised⁵¹.

The law and policy concerns were that some methods of opposing religious beliefs can inhibit those believers from the free expression of those beliefs which can lead to hatred, discrimination and violence⁵². The courts’ struggle lies in deciding: when allowable criticism turns into forbidden contempt or ridicule; whether criticisms of beliefs can be distinguished from criticism of believers; whether “truth” statements about religion should be considered; and whether criticism of religious beliefs can be made “reasonably” and in “good faith”.⁵³ The question that arises is how the two rights are to be balanced and whether some believers should be allowed to claim that their own religion merits a greater degree of protection than others.⁵⁴

(i) State and Religion

Fikre rightly notes that the state is not in a position to define religious truths and errors.⁵⁵ Jacob adds that the state is not competent to arbitrate in matters of belief⁵⁶. Yet, as Benesch succinctly notes, the state has an interest in preventing a collision between one’s freedom of expression and the right of others not to be outraged⁵⁷ and in maintaining civil order.

With regard to Islamic states, Mayer argues that unpopular regimes command approval from their citizens if they are seen as defenders of Islam⁵⁸ and Arzt gives the example of Ayatollah Khomeini

⁴⁶ Modood T *et al.*, “The Danish Cartoon Affair, Free Speech, Racism, Islamism, and Integration” (2006) 4 International Migration, Issue 5, 153, 154

⁴⁷ Benesch (n 4) 248

⁴⁸ Patrick J, “The Curious Persistence of Blasphemy” (2011) 23 Fla. J. Int’l L. 187, 218

⁴⁹ “Charlie Hebdo has been forgotten by France say hard-up satirists”, Charles Bremner, The Times, 5 January 2018

⁵⁰ Modood (n 45) 6

⁵¹ *Id* 34, 37

⁵² Temperman J, “Blasphemy, Defamation of Religions and Human Rights Law” (2008) 26 Neth. Q. Hum. Rts 517, 536

⁵³ Micklewright (n 17) 200

⁵⁴ Wiles (n 26) 131

⁵⁵ Fikre (n 35) 48

⁵⁶ Jacob (n 25) 825

⁵⁷ Benesch (n 4) 245

⁵⁸ Mayer (n 6) 188

whose fatwa against Salman Rushdie originated from a political context which saw Iran's humiliating ceasefire with Iraq, noting also that the book had not been translated into Farsi or Arabic at the time of the non-English speaking leader's fatwa⁵⁹. The discourse between Islamic law and human rights cannot therefore be divorced from this political reality and it makes the need for a temperate expression of views even more essential.

(ii) Jurisprudence

The national authority's decision to deny the certification of a film that depicted St Teresa displaying erotic ecstasy in contact with crucified Christ was upheld by the European Court of Human Rights in *Wingrove v United Kingdom*⁶⁰ on the basis that it did not violate Article 10 of the ECHR on freedom of expression. The Court followed the reasoning in the *Otto-Preminger* case which provided that the state has a margin of appreciation in balancing the competing interests of preserving free speech and avoiding gratuitous offence to the public⁶¹. In that case, a film that caricatured God, the Virgin Mary and Jesus as immoral figures was confiscated. The Court found that respect for the religious feelings of believers can justify interference with the right to freedom of expression on the basis of the legitimate aim in Article 10(2), namely the "protection of the rights of others"⁶². The dissenting judges rightly noted that the protection of religious feelings "cannot be derived from the right to freedom of religion which in effect includes a right to express views critical of the religious opinions of others"⁶³. Nash adds that religious feelings cannot be measured or quantified and cannot be defined⁶⁴.

It is argued that the rhetoric of religious feelings falls short of the bar which should demand an objective inquiry as to the target's sense of identity and communitarianism. The problem with this approach is exposed by Wintemute who argues that this could mean protecting the rights of religious majorities over those of religious minorities.⁶⁵ However, policy changes are possible as evidenced by Britain's repeal of blasphemy law and its move towards religious hatred legislation, discussed below.

(iii) Defamation of Religion

From 2005 to 2011, the United Nations General Assembly passed non binding resolutions, at the instigation of Pakistan, to combat defamation of religions. Patrick notes that they did not specify which religions other than Islam deserved protection or what constituted a defamatory statement⁶⁶. He notes that Pakistan has used its blasphemy laws to suppress religious dissent or difference⁶⁷. The

⁵⁹ Arzt (n 12) 400, 401

⁶⁰ [1995] ECHR 19/1995/525/611 [1997] 24 EHRR 1

⁶¹ *Montgomery* (n 15) 13

⁶² *Temperman* (n 52) 534. The same notion of religious feelings was also adopted in the earlier case of *Gay News Ltd v United Kingdom* 5 Eur. H.R. Rep. 123 (1983). Note also *Baderin* (n 2) who distinguishes between opinion which does not interfere with rights of others and expression which may do so if not controlled.

⁶³ *Temperman* (n 52) 535

⁶⁴ Nash D, "Legal Definitions of Religion in Historical Context: Toleration versus Freedom – Some Lessons from Blasphemy" (2003) 8 J.C.L. 131, 149

⁶⁵ Wintemute R, "Blasphemy and Incitement to Hatred under the European Convention" (1996) 6 K.C.L.J. 143, 154

⁶⁶ *Micklewright* (n 17) 192

⁶⁷ *Id*

OIC supported the resolutions concerned over Islam's wrongly associated connection with terrorism⁶⁸. Dobras notes that the Resolutions allowed Pakistan to punish religious minorities for merely offending religious feelings and gave international justification to blasphemy laws. They encouraged countries to take measures to prevent Islam from being defamed⁶⁹.

Mayer notes that even the Cairo Institute for Human Rights Studies argued that the right to freedom of belief protects the community to some extent but not religions.⁷⁰ Furthermore, religious institutions cannot be immune from criticism as that would undermine freedom of thought, conscience and religion⁷¹. Leo also notes that the OIC's reliance on Article 20(2) of the ICCPR prohibited religious hatred but did not create a right⁷².

The negotiated resolution in 2011 recognised hostility against vulnerable individuals or groups of individuals and formed the basis of General Comment 34 in July 2011⁷³ which permits restrictions to respect the rights or reputation of others encompassing members of a community defined by its religious faith or ethnicity,⁷⁴ a fair compromise. Holzapfel argues, however, that this prejudices free speech and that Islamic nations can still cite blasphemy offences against individual Muslims⁷⁵.

(iv) Pakistan

Article 19 of the Pakistani Constitutional law provides that freedom of speech is a derogable right.⁷⁶ Non-Muslims have inferior status and cannot preach their faith in public⁷⁷. The government has suppressed the Ahmadis, Christians, Shi'ites, Zikris, Isma'ilis and Hindus. They consider Ahmadis as apostates⁷⁸. The feature of "public outrage" in the crime of blasphemy risks engaging punishment as a result of personal vendettas and to control outrage⁷⁹. The quench for any act of blasphemy, however indirect, is pulverising as evidenced by the killing of a Pakistani cleric whose copy of a page of the Qur'an accidentally fell on to a stove⁸⁰.

⁶⁸ Grinberg M, "Defamation of Religions v. Freedom of Expression: Finding the Balance in a Democratic Society" (2006) 18 Sri Lanka J. Int'l L. 197, 200

⁶⁹ Dobras R. J., "Is the United Nations Endorsing Human Rights Violations: An Analysis of the United Nations' Combating Defamation of Religion Resolutions and Pakistan's Blasphemy Laws" (2009) 37 Ga. J. Int'l & Comp. L. 339, 371-379

⁷⁰ Mayer (n 6) 194

⁷¹ Leo L. A., *et al* "Protecting Religions from 'Defamation': A Threat to Universal Human Rights Standards" (2011) 34(2) Harvard Journal of Law and Public Policy 769, 770

⁷² *Id* 775, 778

⁷³ Holzapfel (n 21) 621

⁷⁴ *Id*, Human Rights Comm. *General Comment No. 34: Article 19: Freedoms of Opinion and Expression* para 28 U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011)

⁷⁵ Holzapfel (n 21) 623

⁷⁶ Grinberg (n 68) 360

⁷⁷ Dobras (n 69) 360

⁷⁸ Forte (n 11) 41

⁷⁹ Holzapfel (n 21) 612

⁸⁰ Arzt (n 12) 399

This strict application of Islamic law demonstrates how the legitimate crime of blasphemy can be abused to thwart respect for human rights and the mutual respect that this paper argues for by proponents of free speech and freedom of religion. This must be equally demonstrated by states (and the move towards punishing hate crime may be a way forward). The theocratic governance of Islamic states coupled with the communitarian and socio-political context makes this a hurdle that is harder to overcome, but not impossible. It is suggested that hostile expression of views in advocating for reform must not be allowed to douse the prospect of dialogue from the outset.

(v) Hate Speech

The Racial and Religious Hatred Act 2006 in Britain is seen as being consistent with Article 20(2) ICCPR⁸¹. Wiles explains the conceptual shift from blasphemy to religious hatred is due to an increasingly secularised and pluralistic society and the need to avoid criminalising ideas and beliefs which pose no intended harm⁸². The requirement of intent is seen as a favourable compromise to limiting freedom of expression⁸³ and its emphasis on the individual is seen as being more compatible with the notion of human rights⁸⁴. Opponents argue that religious believers will view attacks on them as an attack on their belief, and the offence is therefore tantamount to blasphemy⁸⁵.

The element of intent is subjective, however, and justifications of the Danish cartoons described above with the purported aim of bringing humour does not demonstrate mutual respect for freedom of expression and freedom of religion. Nevertheless, it is suggested that hate speech is a step forward in emphasising the individual which is more aligned with the notion of human rights and promotes the incremental development of the notion of religious feelings already advanced in western jurisprudence. The link between religious feelings and the Universal Islamic Declaration of Human Rights emphasis on religious beliefs can be bridged by appreciating Islamic communitarianism which shapes individual identity.

Blasphemy presents an opportunity to bridge human rights and Islamic law if the expression of one's views do not denigrate another's expression of identity inevitably acquired from his religion. The strict application of blasphemy under Islamic law may lessen as constructive and tempered dialogue between opposing views develops. In the bigger picture, blasphemy is one example that highlights the tension between Islamic law and human rights. The irony of the attempts at advancing human rights in the Islamic world is that the very dignity of man that is inherent in the notion of human rights has been desecrated, as evidenced by the aftermath of the Arab Spring and the orthodoxy that complements authoritarian rule. That is, however, the subject of another question entirely.

⁸¹ Fikre (n 35) 46

⁸² Wiles (n 26) 128

⁸³ Fikre (n 35) 41

⁸⁴ Dobras (n 69) 367

⁸⁵ Micklewright (n 17) 216