

CRITICAL ANALYSIS ON CHALLENGES OF BLASPHEMY LAW IN INDIA & COMPARISON BETWEEN U.K AND INDIA

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INTRODUCTION

"Irreverence for Deity, faith, a holy symbol, or anything else considered sacred" may be a generally accepted definition of blasphemy. By virtue of Section 295A of the Indian Penal Code, the blasphemy act is criminalized in India [S. 295A]. In particular, the section was enacted to target speech meant to outrage religious sentiments by offending people's religion or faith. Section 295 A, and hereby states that “ Deliberate and malicious acts, intend to outrage religious feelings or any class by insulting its religion or religious beliefs ”.India is home to many religions and cultures and thus makes a country more challenging in treating the religions equally, Perhaps blasphemy is an unfamiliar term for the Indian constitutional landscape because the Indian judiciary has long stressed the inclusive and plural nature of Hinduism, which makes a concept like blasphemy incoherent.

BLASPHEMY LAWS IN INDIA: HISTORY

As the blasphemy laws originated from the Colonial period, it is also expressed in colonial logic too. This resulted in a number of misunderstandings on how the word "blasphemy" would fit and adapt in a diversified nation like India. One of the key concerns was what form of secularism would work best for "India.". The term ‘secular state’ has raised many questions. Secularism as stated in the constitution points out that, “no religion is above the law and all religions are considered equal”. But in reality, Religion is a more sensitive issue that could even lead to riots, and deaths and one of the main reasons why this is happening is because of the thinking of one’s own religion as superior to others. Blasphemy law provides both positive and negative aspects. In one way, the law is providing a protective layer for the people, If one violates or misuses any religious sentiments, the person will be held liable for a cognizable offense under IPC. Section 295-A¹ of the IPC is widely used and is a cognizable offense, that the police are allowed to arrest the accused without the need for a warrant with judicial sanction. Section 295A is also claimed not as a provision on blasphemy but as a provision

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¹ 295A, Pen. Code, 1860

against hate speech. One positive aspect is that they protect religious values and traditions, and shield organizations and members from legitimate criticisms, and one negative aspect is that they **restrict freedom of speech under Article 19(1) of the Constitution.**

The issue was about the constitutionality of sec 295. In the case of **Ramji Lal Modi v State of U.P.**² In compliance with Article 19(2) of the Constitution, the court held that it is valid and ruled that it was a 'reasonable restriction' on freedom of speech and also on the interests of public order. The court's major argument was that, as required by Article 19(2), the phrase '**in the interests of**' was very broad in nature and allowed the state to create a range of laws. In order for a law to be a reasonable restraint on freedom of speech in the interests of public order, it was claimed before the court that it would have to be restricted to situations where there was a degree of correlation between forbidden speech and the possibility of public disturbance (for example, it would be applicable to cause an armed mob to harm public property, but to publish an article in a magazine supporting Naxalite movement will not). This assertion was drawn from the court's previous decisions, where it was held that the criterion of 'reasonableness' meant that there had to be a degree of proportionality between the term and the potential harm predicted by the state. One of the prominent cases of all time, **Shreya Singhal v UOI**³, in this case, Supreme Court distinguished between 'advocacy' and 'incitement' and held that legislation limiting freedom of expression would have to be specifically revised to include only the latter forms of expression within their scope. If the required test is that of incitement to lawless conduct, so it is very clear that the terms of Section 295A are often too vague. It cannot be stated that, by no interpretation, a deliberate provocation of faith or religious sentiments is inherently equal to 'incitement. As specified in the case of Shreya Singhal, the Supreme Court made it clear that 'over-broad laws' would have to be declared unconstitutional because of their ability to chill core political and cultural discourse to trap even lawful and legitimate expression within their scope. Section 295 A states that any deliberate or malicious acts, that intend to insult any religious sentiments or feelings of any class or any religious beliefs will be imprisoned for more than 3 years.

ANTIBLASPHEMY LAWS

Many countries have either removed or decreased the penalties for blasphemy law on several grounds because of failure to identify the meaning of the religion, and sometimes religion

² A.I.R. 1957 SC 620.

³ [2015] 5 S.C.C. 1.

cannot be properly defined. Therefore Art.18 protects atheistic and nontheistic views in order to expand the term religion by the Universal Declaration of Human Rights. Since atheism may be considered a kind of religious freedom, and in many cases, atheism is regarded as blasphemy. Freedom of speech and expression, which is a human right and a basic right in many other countries, is guaranteed by the Indian Constitution. As a result, many nations now grant their citizens the freedom to express themselves without interference from blasphemous content. But article 19 of the International Convention on Civil and political rights ⁴provides the right to freedom of expression without any restriction or boundaries which is mainly a disadvantage for minorities as they are facing oppression from the majority. So, blasphemy is defined as the term "irreverence to god or religion, as the term religion itself is vague. It can combine all religions while some religions believe in a god (Christianity, Islam, Judaism) while some are polytheist like Hinduism, while some do not have a god-like (Buddhism). Due to this, The US has provided two main approaches, one is by identifying central beliefs and the other is by identifying religion through an analogy⁵. Not all approaches are clear or definitive.

COMPARISON BETWEEN INDIA AND UK

As per the common law, the offense of blasphemy originated from canon law and only focused on insulting Christianity. In medieval times, "Blasphemy" was punishable by execution. In England, the Abolition of blasphemy and blasphemous libel was merely considered indictable offenses. The death penalty was abolished in the year 1676. For instance, In 1841, Edward Moxon, a magazine editor in Percy Bysshe Shelley's Queen Mab, ⁶found a "blasphemous libel" guilty. The poet was sentenced to life in prison. Commentators accept that in Scotland and Northern Ireland the Human Rights Act (1998) constitutionally disenforces the 'blasphemy' laws. This is because the legislation under the Act on Human Rights especially must be applied by all courts in the United Kingdom and in such a manner that it is consistent with the Convention on Fundamental Freedoms and Human Rights, including the freedom of speech provided for in Article 10. In *Wingrove v UK* (1997)⁷, however, it was questioned before the enactment of the Human Rights Statute that the regulation of 'blasphemy' was incompatible with the right to freedom of expression, on the basis that the scope of free speech of the state

⁴ Johannes Quack, *Disenchanted India: Organized Rationalism and Criticism of Religion in India*,

⁵ Wibke Kristin Timmermann, *The Relationship between Hate Propaganda and incitement of Genocide: A New Trend in International law Towards Criminalisation of Hate Propaganda?* *Leiden Journal of International law*, 18 (The Foundation of Leiden Journal of International Law 2005) p.266.

⁶ Walter, Nicolas, *Blasphemy in Britain*, Rationalist Press Association. 1977.

⁷ David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton, N.J.: Princeton University Press, 1996).

could contain limits of 'blasphemy.' Therefore, it is not clear if they could be punished under the laws in Northern Ireland and Scotland as they exist. The report, *Criminal Law: Crimes against Religious and Public Worship*, was issued by the Law Commission (England and Wales) in 1985⁸, which found that common law crimes of heresy and blasphemous libel should be repealed without substitution. An amendment to the Criminal Justice and Immigration Act 2008 was enacted on 5 March 2008, which repealed the common law crimes of blasphemy and blasphemous libel in England and Wales. Later in December 2016, the Humanist Society of Scotland demanded revocation of the Blasphemy law. Blasphemous laws were abolished in both England and Wales in 2008 but equivalent laws remain in both Scotland and Ireland. But in 2020, the UK government published a new bill seeking a reformation of the hate crime legislation, so it would provide better protection for the race, sex, and religion and would also decriminalize Blasphemy.

In the British India era, laws made it a crime if anyone disturbs religious assembly, beliefs, or defile a place or an object of worship and punished for 10 years in jail, But presently, section 295 A of IPC is been used as a blasphemy law in order to prevent insulting any religions. British era section 295 A has not been repealed to date as it is an Anti-blasphemy law. A significant difference in the crime in the Indian Penal Code and English common law is that the criminal in the Indian Code would have a "deliberate and malicious intention to outrage religious sentiments," although there was no such inclusion in English common law. Section 295A has been used many times to avoid open and honest dialogue on religious matters and remains an obstacle to freedom of speech. Both Pakistan and Myanmar have the same penal codes where section 295 A is recognized as a blasphemy law. There were widespread demands from Hindus in India to abolish the regressive British code. Many countries don't have a blasphemy law, while in the U.S blasphemy law was taken out as it was claimed unconstitutional. Being a democratic country, India had added laws relating to blasphemy in order to protect the society from further problems.

CONCLUSION

India is a secular country, as was said in the introduction, and this specific provision of the IPC contributes significantly to maintaining the sanctity of secularism. The aforementioned paragraph mentions that it protects the core of secularism by equally protecting religious

⁸ Yale Law Journal 108 (1999): 1059-1085. Barrier, N. Gerald. *Banned: Controversial Literature and Political Control in British India, 1907-1947*. Columbia: University of Missouri Press, 1974

sensibilities by criminalizing coordinated activities on religious parts, despite the IPC having been around long before the constitution. Instead of abolishing or closing down this provision, it is crucial to stop its abuse, which will happen if the aforementioned clause is correctly interpreted. On the one hand, we feel that it infringes a fundamental right, but on the other hand, we see that religion is more significant than rights. According to some, the blasphemy legislation makes it easier to violate human rights in other ways. It is clear from several cases that blasphemy laws play a significant role in a country like India. Without the "intention" to mock or disparage a religion, it might not be judged to constitute blasphemy, and India faces its own challenging problems.



BIBLIOGRAPHY

WEBSITES

- www.latestlaws.com/articles/critical-analysis-of-blasphemy-law-in-india-and-uk
- www.thewire.in/law/the-constitutional-case-against-indias-blasphemy-law
- End Blasphemy Laws: the campaign to abolish blasphemy laws, worldwide- India, available at: <https://end-blasphemy-laws.org/countries/asia-central-southern-and-south-eastern/india/>

ARTICLE:

Marshall, Paul, Blasphemy's Assault on Free Speech Vol. 141, No. 2806, July 2012

