

SECTION 295A IPC, WILL IT BE THE UNDOING OF CREATIVITY & EXPRESSION IN THE ENTERTAINMENT INDUSTRY: A CRITICAL ANALYSIS

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ABSTRACT

A country of rich cultures and art forms with storytelling as its most prominent representation, be it in the form of dance, theatre or printed work irrespective of the language or religion it comes from, has always been a symbol of freedom of expression and creativity. Freedom of expression (Article 19(1)(a) of the Indian Constitution) and the Right to Religion (Article 25 of the Indian Constitution) has perpetually been crucial ingredient in this spirit of democracy in India. The birth of section 295 A was said to be significant and the need of that hour to quench the public disorder and communal distress. Yet today it appears that it has existed to fuel more Communal violence than to its contrary expectation to prevent the same. With dynamic seasons of the political forces who wield the religious sentiments of ordinary people to fill up their vote banks, oversensitive zealots trying to satisfy one's individual beliefs in religion by silencing another's opinions are few of the plethora of the reasons how this section might be liberally being misused. In This paper, we will explore section 295A- right from its history to its growing impact on the entertainment industry with the rigorous changes brought in by the IT rules as well as how it's hampering the growing 23 billion(media and entertainment) industry by hanging a sword on its creative control.

KEYWORDS: Section 295A, Freedom of Speech & Expression, Right to religion, communal Distress, Impact on Media and Entertainment Industry, creativity

INTRODUCTION

With growing religious fanaticism around the globe, India is not far too behind this shift, with the accounts of the latest FIRs popping up along with every new film that's released or every opinion that's shared, be it with a hint of religious theme or boldness has become increasingly common in recent times. The country is standing on this slippery slope of outrage ready to unleash its horror, which has blurred the lines between freedom of expression and outraging religious feelings. Currently Media and entertainment industry is the biggest target of these

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ancient Blasphemy laws, with legal machinery at hand which can be utilised at the whim and instances of every offended individual, section 295A of IPC along with Section 153A of IPC has become a toy in a fool's hand. Although the Indian Constitution incorporates the idea and practise of secularism, there are nevertheless religious distinctions among the citizens of the state. When it comes to stifling the voices of minorities and other nationalities, section 295A is most frequently abused. The fiction between free speech and religious sensitivities has skewed public opinion and the international community leading to violent political power battles.

¹In an article authored by the eminent Mr. Soli Sorabjee, he stated that "The report of the Select Committee preceding the enactment of Section 295(A) is significant. It stated that the purpose of the Section was to punish persons who indulge in wanton vilification or attacks upon the religion of any particular group or class or upon the founders and prophets of a religion. It, however, emphasised that an insult to a religion or to the religious beliefs of the followers of a religion might be inflicted in good faith by a writer with the object of facilitating some measure of social reform by administering such a shock to the followers of the religion as would ensure notice being taken of any criticism so made". Therefore the Committee recommended that the words with "deliberate and malicious intention" be inserted in the Section. Ironically Jinnah, who was one of the members of the Committee, had stressed the necessity of securing "the fundamental principle that those who are engaged in historical works, those who are engaged in the ascertainment of truth and those who are engaged in bona fide and honest criticisms of religion shall be protected"

HISTORY OF SECTION 295A

Before we examine the origin of section 295A let us first glance into this age-old provision of IPC which inspired the need of section 295A.²One of the earliest provisions which dealt with issues related to blasphemy though not exclusively addressing the issue at the core was section 153 A of IPC, although broadly defined, it Criminalises promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and

¹Anushree Rauta, 'Section 295-A IPC Continues To Haunt The Entertainment Industry- Singer Ranjit Bahwa The Latest Target For His Song 'Mera Ki Kasoor'', (*IPRMENTALW*, 10 May 2020) <<https://iprmentlaw.com/2020/05/10/section-295-a-ipc-continues-to-haunt-the-entertainment-industry-singer-ranjit-bahwa-the-latest-target-for-his-song-mera-ki-kasoor/>> accessed 5 April 2023

²M J Aslam, 'How India's 'Insult To Religion' Law Evolved And Why It Must Be Protected?', (*Kashmir Life*, 10 September 2020) <<https://kashmirlife.net/how-indias-insult-to-religion-law-evolved-and-why-it-must-be-protected-246786/>> accessed 15 April 2023

doing acts prejudicial to maintenance of harmony” either by words spoken or written or by visible signs or representation. The focus and scope of introducing this law were to preserve social harmony and promote religious equality. Thus the “Tragic Flaw” in law as remarked by Justice Dalip Singh of Lahore High Court in the case of *Rajpal v Emperor* in 1927 led to the want of section 295A.

³The genealogy of section 295A can be traced back to British India Era when certain books/written materials were creating quite a controversy in the country; the publication of certain scurrilous pamphlets/Books caused an uproar among the Mohammedan community in Punjab which turned into the infamous case of ⁴*Rajpal v Emperor* in 1927. ⁵The book titled “Rangila Rasul” which was initially published in 1924 by Mahashay Rajpal was said to be highly offensive in the way prophet Mohammed and his personal life were portrayed, The invective contents of the pamphlet talked about the private life of the Prophet implying “sexual dalliance,” which prompted the government to prosecute Mahashay Rajpal the Publisher of the pamphlet and press charges under section 153-A of Indian Penal Code.

⁶The lower court ruled Mahashay Rajpal guilty. ⁷The Sessions Court considered it "intentionally offensive, scurrilous, and wounding to the religious feelings of the [Muslim] community" to promote "feelings of enmity or hatred between" Hindus and Muslims. Though MahashayRajpal never disclosed the name of the author of the scurrilous text it was suspected to be one Pandit Chamupati Lal. The Sessions Court did, however, grant MahashayRajpal permission to appeal the conviction verdict, resulting in which On May 4, 1927, he was acquitted of the charges against him by the Lahore High Court.

⁸Justice Dalip Singh of the Lahore High Court, who dealt with mahashys acquittal, pronounced that though the writings in pamphlets were offensive to the Muslim community the prosecution initiated was not sustainable as it would be unable to determine whether the

³ Harmanpreet Kaur, ‘Section 295a Ipc – A Potent Weapon In Criminalizing Comedy And Cinema’(*Know Law*,9 January, 2022) <<https://knowlaw.in/index.php/2022/01/09/analysing-section-295a-ipc/>> accessed on 15 April 2023

⁴*Rajpal v. Emperor* [1927], A.I.R. 1927 Lah. 590

⁵ S. KarthikVarun and M. Kannappan, ‘A Critical Analysis on Sec. 295A of IPC and its Punishable Qualifications’(2018) 119(17)IJPAM <<https://acadpubl.eu/hub/2018-119-17/2/102.pdf>> accessed on 16 april 2023

⁶*ibid*

⁷M J Aslam, ‘How India’s ‘Insult To Religion’ Law Evolved And Why It Must Be Protected?’,(*Kashmir Life*, 10 September 2020) <<https://kashmirilife.net/how-indias-insult-to-religion-law-evolved-and-why-it-must-be-protected-246786/>> accessed 15 April 2023

⁸*ibid*

accused had intended to sow discord or hatred between Muslims and Hindus in the sense of section 153-A.& the content reported did not fulfill the criteria of section 153A of IPC which may cause enmity or hatred between different religious communities. The fact that he could not sustain the Sessions Court's conviction ruling was something he saw as a "tragic flaw" in the law. ⁹In the conclusion of his judgement Justice Dalip Singh added "that a clause might well have been added to section 297 of the IPC, by which the publication of pamphlets published with the intention of wounding the religious feelings of any person or of insulting the religion of any person might be made criminal. I can only say, that, speaking for myself, I regret the absence of such a clause, but I am unable to hold that this particular case comes within the purview of section 153-A. I, therefore, reluctantly accept the revision and acquit the petitioner". This judgement led to huge State wide protests and criticisms erupted from the Muslim community, widening the communal hatred and differences.

¹⁰At the same time on February 24, 1927 author Kali Charan Sharma was arrested and convicted by Allahabad High Court under section 153A on similar facts giving rise to the cases of ¹¹Kali Charan Sharma v. Emperor, AIR 1927, ¹²the full bench of Allahabad opined that the accused had written a book whose theme revolved around promoting of "Hindus feelings of hatred or enmity against their Muslim fellow-subjects". The contention by the accused that he wrote the book as a Brahmin missionary while exerting his rights to induce people to embrace Hinduism was rejected by Justice Banerjee. After his conviction was upheld even in Allahabad High Court the accused sought to challenge the order of the session judge on technical grounds through a criminal revision petition in front of a Single Judge bench of the Allahabad High Court, this petition was rejected by Justice Dalal who dismissed his theory that the book was just based on the reconversion of Muslims into Hinduism and criticized Dalip Singh J of the Lahore High Court for his decision of acquitting Mahashay Raj Paul.

¹³Thus with increasing communal disturbance and widespread agitations due to the acquittal by the Lahore High Court, there was a demand for change in the laws, then-Governor of

⁹ M J Aslam, 'How India's 'Insult To Religion' Law Evolved And Why It Must Be Protected?', (Kashmir Life, 10 September 2020) <<https://kashmirlife.net/how-indias-insult-to-religion-law-evolved-and-why-it-must-be-protected-246786/>> accessed 15 April 2023

¹⁰ *ibid*

¹¹ *Kali Charan Sharma vs Emperor* [1927] AIR All 649

¹² M J Aslam(n9)

¹³ *ibid*

Punjab, Malcolm Hailey who sympathised with the Muslim leaders emphasised the need for a legal weapon by which such future incidents could be prevented.

¹⁴In the end, an amendment to the IPC was passed by the Indian Legislative Assembly on September 22, 1927. Section 295A was added to the IPC By the 25th Amendment Act of 1927, which makes wanton acts of insulting any religion, or the religious sentiments of any group a criminal offence punishable with imprisonment which may extend to two years, or fine, or with both.

UNDERSTANDING SECTION 295A OF IPC

If we go through Indian Penal Code 1860 it states section 295A as Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—

¹⁵By a simple reading, it can be discerned that this section deals with elements considered blasphemous, a colonial law that is still very relevant in India today. Blasphemy can be understood as any act or gesture of offence of speaking disrespectfully about God or sacred things.

¹⁶It also states that this section is a cognizable & non Bailable offence which indicates that the police have the power to arrest anyone without any warrant, on mere suspicion or just a complaint to further investigate the case or to prevent the individual from committing any more offence, thus this provision not only has the fatal capacity to abuse this power but also but to also curb one's freedom of speech and expression directly effecting Article 19(1)(a) & Article 21. ¹⁷The most necessary ingredients to invoke this section are:

- The accused must insult or attempt to insult the religion or religious beliefs of any class or group of citizens;

¹⁴ M J Aslam, 'How India's 'Insult To Religion' Law Evolved And Why It Must Be Protected?', (*Kashmir Life*, 10 September 2020) <<https://kashmirlife.net/how-indias-insult-to-religion-law-evolved-and-why-it-must-be-protected-246786/>> accessed 15 April 2023

¹⁵ Sarah Imran, 'Section 295 A: The Indian Blasphemy Law in Making' (*News Click*, 28 Jan 2021) <<https://www.newsclick.in/section-295-indian-blasphemy-law-making>> accessed on 15 April 2023

¹⁶ Ajit Warriar, 'India: Section 295A IPC And The Slippery Slope Of 'Outrage' (*Mondaq Ltd*, 10 December 2020) <<https://www.mondaq.com/india/broadcasting-film-tv-radio/1013784/section-295a-ipc-and-the-slippery-slope-of-outrage>> assessed on 15 April 2023

¹⁷ Harmanpreet Kaur, 'Section 295a Ipc – A Potent Weapon In Criminalizing Comedy And Cinema' (*Know Law*, 9 January, 2022) <<https://knowlaw.in/index.php/2022/01/09/analysing-section-295a-ipc/>> accessed on 15 April 2023

- The alleged defamation or insult must be made with the intention of slandering the religious sentiments of a specific class or group of citizens;
- The words, whether spoken or written, signs, visible representation, or other means must be used to express the aforementioned insult or defamation.¹⁸

Interestingly, the law related to blasphemy that was introduced to India during British rule stands abolished in the United Kingdom now. In 2008, England and Wales abolished the blasphemy and blasphemous libel. As recently as 2021, the British Parliament enacted Hate Crimes and Public Order (Scotland) Act (Hate Speech law), which has prospectively outlawed blasphemy as having criminal consequences. In Ireland, until January 17, 2020, publication or utterances or blasphemous matter defamatory of any religion was a criminal offence as per the Irish Constitution of 1937. Ireland got rid of it through a referendum held in 2018.

CONSTITUTIONALITY OF SECTION 295A

¹⁹The constitution of India provides the people of the country with certain rights and liberties but these rights are not absolute in nature which means the extent & use of these rights will be limited by the state so as to maintain a balance in the socio-political and democratic balance in the country. Reasonable restrictions come under Article 19(2) of the constitution which deals with various forms of freedom and their reasonable restrictions.

The existence of section 295A of IPC was credited under Article 19(2) of reasonable restriction necessary to maintain peace and public order in a secular state in the case of ²⁰Ramji Lal Modi v State of Uttar Pradesh, 1957,²¹ here the constitutional validity of section 295A was challenged when a publisher of a magazine named Gaurakshak was convicted under section 295A for publishing an article which was insinuated to be insulting to the Muslim community, lower courts convicted him guilty, leading him to appeal to the higher court on the constitutionality of the section 295A.

¹⁸ Harmanpreet Kaur, 'Section 295a Ipc – A Potent Weapon In Criminalizing Comedy And Cinema' (Know Law, 9 January, 2022) <<https://knowlaw.in/index.php/2022/01/09/analysing-section-295a-ipc/>> accessed on 15 April 2023

¹⁹ Ibid

²⁰ *Ramji Lal Modi v State of Uttar Pradesh* [1957] 1 SCR 860

²¹ 'Ramji Lal Modi v. State of Uttar Pradesh' (*Columbia Global Freedom of Expression*) <<https://globalfreedomofexpression.columbia.edu/cases/modi-v-uttar-pradesh/#:~:text=He%20was%20charged%20under%20section,Muslims%20and%20accordingly%20convicted%20him.>> accessed on 17 April 2023

²²Here the Petitioner argued that any law that restricts freedom of speech "in the interests of public order" would only be valid if the speech was likely to cause public disorder and had a direct connection to the disorder. In this way, insulting a community's religion will not always result in public disorder, though it may be in some instances. This argument was rejected by the Court. It started by taking note that the limitations listed under Article 19(2) are qualified by the saying "in light of a legitimate concern for", which is uniquely more extensive in its degree than the maxim "for the upkeep of". Accordingly, "[a] the law might not have been intended to directly keep public control but it might have been established in light of a legitimate concern for public order." The Court then concluded that only insults to religion that are "perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class" are subject to Section 295A's penalties. The Court supported this position by stating that the "calculated tendency" of maliciously intended insults is to disrupt public order. ²³Following this in the year 1960 In Superintendent, Central Prison, Fatehgarh v. Ram ManoharLohia, the judgment of RamjilalModi was challenged. In this case, the scope of Article 19(2) was questioned. It was determined that there needed to be evidence that restrictions could help curtail said disruption of public order and that such restrictions are proportional to the disruption, In such cases Article 19(2) is said to be applicable, and the restriction is deemed reasonable.

IMPACT OF SECTION 295A ON THE ENTERTAINMENT INDUSTRY

²⁴One of the world's largest and most vibrant film industries is based in India. On the global stage, people recognise India for its music and movies with dynamic storylines. Today not only Bollywood but the regional film industries are also recognised on an international level. But ironically the proportion of reverence the Indian film industry is gaining at the international level is completely contradictory to the situation here in India, with Boycott Bollywood hashtags trending every other Friday on social media.

²² 'Ramji Lal Modi v. State of Uttar Pradesh' (Columbia Global Freedom of Expression)

<[²³ Siddharth Aiyar, 'IPC 295a: Unconstitutional Or A Reasonable Restriction?',](https://globalfreedomofexpression.columbia.edu/cases/modi-v-uttar-pradesh/#:~:text=He%20was%20charged%20under%20section,Muslims%20and%20accordingly%20convicted%20him.> accessed on 17 April 2023</p></div><div data-bbox=)

2(1)JLRJS, <<https://jlrjs.com/wp-content/uploads/2022/12/36.-Siddharth-Aiyar.pdf>> accessed on 17 April 2023

²⁴ 'The enigmatic Indian film industry & its expansive reach' (*The Hans India*, 3August 2022)

<<https://www.thehansindia.com/hans/opinion/news-analysis/the-enigmatic-indian-film-industry-its-expansive-reach-756146>> accessed on 17April2023

The growing intense scrutiny armed with legal machinery that can be invoked at the desire of blind religious zealots and the political coins, who claim themselves to be the saving grace of the religious piousness in the country has created an uncertain environment in the media and entertainment industry. Weaponising Section 295A to justify their religious ideology, every public content be it on OTT platforms, the box office or television shows is being subjected to religious Assessment in the name of hurting sentiments.

²⁵with the latest being an FIR filed against the makers of Prabhas and Kriti Sanon starrer Movie Adipurush over its new poster for hurting people's religious feelings by inappropriately depicting a Hindu mythological figure. Where the complainant (self-proclaimed preacher of Sanatan Dharma) asserts that none of the male characters are wearing the Janeu, a garment of special significance in the Hindu community.

²⁶Shah Rukh Khan's Pathaan movie was also targeted for its song Besharam rang which allegedly hurt the religious sentiments of the Hindu community as the actress was wearing a saffron-colored bikini (a holy colour in the Hindu community) while performing the song explicitly thus complainant sought FIR and filed a special complaint with the Information and Broadcasting Ministry against the lead actors. On the other hand, Syed Anas Ali, the president of the Madhya Pradesh Ulema Board, too had called for the boycott of the movie Pathaan for hurting Muslim religious sentiments.

²⁷Another instance where FIR had been filed against two Netflix executives for certain kissing scenes shown in the web series 'A Suitable Boy', which allegedly hurt the religious sentiments of the Hindu community as it was shot inside a temple. By Koimoi.com Team

²⁸The innate problems with the blasphemy laws are that they are extremely subjective, what one section of people may find offensive might not be to others. The primary concern

²⁵Adipurush: FIR filed against the makers of Prabhas and KritiSanon starrer over the new poster' (*Filmfare*, 5 April 2023) <<https://www.filmfare.com/news/bollywood/adipurush-fir-filed-against-the-makers-of-prabhas-and-kriti-sanon-starrer-over-the-new-poster-57755.html>> accessed on 19 April 2023

²⁶Shah Rukh Khan's Pathaan Lands In Legal Trouble! Complaint Seeking FIR Filed Against Deepika Padukone & SRK For 'Hurting Religious Sentiments' Of The Hindu Community' (*Koimoi.com*, 17 December 2022) <<https://www.koimoi.com/bollywood-news/shah-rukh-khans-pathaan-lands-in-legal-trouble-complaint-seeking-fir-filed-against-deepika-padukone-srk-for-hurting-religious-sentiments-of-the-hindu-community/>> accessed on 19 April 2023

²⁷Ajit Warrier, 'India: Section 295A IPC And The Slippery Slope Of 'Outrage'(Mondaq Ltd, 10 December 2020) <<https://www.mondaq.com/india/broadcasting-film-tv--radio/1013784/section-295a-ipc-and-the-slippery-slope-of-outrage>> accessed on 15 April 2023

²⁸Anushree Rauta, 'Section 295-A IPC Continues To Haunt The Entertainment Industry- Singer Ranjit Bahwa The Latest Target For His Song 'Mera Ki Kasoor'', (IPRMENTALW, 10 May 2020)

currently is the widespread misuse of blasphemy laws fuelled by religious fervour, which is only embraced by a small fraction of the population but is often manipulated in the media to create a façade of unanimity. These tensions have led to constraints on creativity and free speech, resulting in a dearth of original ideas and an overreliance on repetitive content in the entertainment industry. If each project is made to go through numerous screenings it will ultimately lose its creative shine and originality.

²⁹In the case of Mahendra Singh Dhoni vs Yerraguntla Shyamsundar the SC clarified that “that Section 295A does not stipulate everything to be penalised and any and every act would amount to insult or attempt to insult the religion or the religious beliefs of a class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens that are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the Section. The Constitution Bench has further clarified that the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty.”

CONCLUSION

Taking everything into account we can remark that although the inception of section 295A happened to pacify the communal violence and protect religious communities for the imminent time being but such a legal framework where arrests can be made without warrants and it is a non-bailable offence makes it a dangerous provision in today's time with sensitive religious beliefs and changing political climate.³⁰ Though the religious feelings that the provision seeks to safeguard must be safeguarded, not by restricting freedom of thought, expression, and speech. In a nation that is constitutionally secular, enforcing laws of blasphemy would mean focusing solely on the anti-religious content of speech rather than the public disorder objective. The constant scrutiny of OTT platforms and big screens for

<<https://iprmentlaw.com/2020/05/10/section-295-a-ipc-continues-to-haunt-the-entertainment-industry-singer-ranjit-bahwa-the-latest-target-for-his-song-mera-ki-kasoor/>> accessed 05 April 2023

²⁹ Ibid

³⁰ Sarah Imran, 'Section 295 A: The Indian Blasphemy Law in Making' (News Click, 28 Jan 2021) <<https://www.newslick.in/section-295-indian-blasphemy-law-making>> accessed on 15 April 2023

religiously sensitive issues may lead to the development of an agnostic attitude toward religion. While free speech serves as a fundamental principle, it also defines the basic structure of the society. Therefore, there is an immediate need for amendment in section 295A so that it cannot be used as a weapon of Will.

