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## FAITH AND FREE SPEECH: THE DISCOURSE SURROUNDING BLASPHEMY

Srishtpreet Kaur

Research Scholar, RGNUL, Patiala

**Abstract:** The 42nd Amendment to India's Constitution strengthened its secular status, mandating a neutral stance in religious affairs. Blasphemy, derived from the Greek verb, refers to disrespectful or offensive words or statements towards religious persons, groups, activities, or beliefs. Anti-blasphemy laws aim to ban the expression of disrespect or offensive comments towards religious persons, groups, activities, or beliefs. These laws are among the oldest laws created to combat hate speech. The rationale for anti-blasphemy laws is multifaceted and influenced by historical, religious, and political considerations. Blasphemy is often seen as a grave offence against sacred beliefs by numerous religions, as they uphold the sanctity of God and his teachings. Governments may employ criminal legislation to enforce religious ideals in regions where religion holds significant societal influence. Religious sentiments are regarded as essential ethical and societal principles that influence human conduct and social structure, and their safeguarding is seen as a necessary condition for stable governance. Legal provisions dealing with blasphemy include Section 295 for causing harm or defiling a place of worship, Article 295A for intentional and evil actions to provoke strong negative emotions within a particular religious group, Article 296 for disruption of religious gatherings, and Article 297 for trespassing on burial places or places of worship to cause emotional harm or insult religious sentiments. Section 295A threatens fundamental basic liberties. Blasphemy laws originated in premodern societies governed by nonsecular and undemocratic systems. They restricted freedom of speech and expression in response to societal reactions, diminished individual liberties, and allowed specific parts of society to suppress opposing views. Unlike hate speech, blasphemy comments may not automatically involve hate or violence and should not be regulated by blasphemy laws. Instead, governments should promote acceptance and discourage using religious beliefs to suppress opposing views. To alleviate the detrimental impact of blasphemy laws on journalists, authorities should have more specific and meticulously crafted blasphemy legislation, demonstrate criminal intent and foreseeability, and avoid discrimination based on religious beliefs. Additionally, states should reject the recognition of blasphemy convictions with INTERPOL-triggered arrest warrants or assessments of journalists' visas.

**Keywords:** Blasphemy, Disrespect, Freedom of Speech and Expression, Disturbance, Atheist, Incitement and Advocacy.

### I. INTRODUCTION

Adding the term "secular" to the Indian Constitution via the 42nd Amendment strengthened India's status as a secular country. This amendment mandates explicitly that the government must have a neutral position in religious affairs, ensuring equitable treatment of all religions and affirming that the state does not endorse any one religion. Derived from the Greek verb, "blasphemy" refers to uttering or expressing words or statements that are disrespectful, irreverent, or contemptuous towards a deity, religious beliefs, or sacred things. Blasphemy laws are designed to ban the expression of disrespect or offensive comments towards religious persons, groups, activities, or beliefs. They are among the oldest types of laws created to combat hate speech. When considering the crimes in terms of their representation, it is evident that blasphemy, being a sin committed directly against God, should be judged based on the harm it causes. In this context, murder is considered the most severe sin because it inflicts more pain upon one's neighbour than it does against God.

In Catholic doctrine, blasphemy is defined as any action or utterance that demonstrates disrespect or disdain towards God. It is often used to protect the sacredness of organised religion. Maintaining the ethical and spiritual beliefs of the community has traditionally been regarded as the norm in Indian society. Indigenous people in India have historically possessed the autonomy to accept or reject religious ideologies, with external influences seldom imposing their ideas unless during instances of foreign conquest.

However, some disagreements arose during the endeavours of Swami Shradhanand, a prominent figure in the Arya Samaj, who aimed to peacefully reintroduce Hinduism to Muslims who had previously embraced different faiths. Following that, a thorough 300-page study was generated, including Section 295A in the Indian Penal Code, which is widely referred to as the "blasphemy law."<sup>1</sup>

## II. NEED FOR ANTI-BLASPHEMY LAWS

The rationale for anti-blasphemy laws is multifaceted since historical, religious, and political considerations influence it. Blasphemy is often seen as a grave offence against sacred beliefs by numerous religions, as they uphold the sanctity of God and his teachings. This perspective, endorsed by prominent theologians such as St. Thomas Aquinas, emphasises the gravity of blasphemy, sometimes equating or even exceeding the gravity of murder. Additionally, governments may employ criminal legislation to enforce religious ideals in regions where religion holds significant societal influence. This would criminalise blasphemy based on religious tenets. Furthermore, religious sentiments are regarded as essential ethical and societal principles that influence human conduct and social structure, and their safeguarding is seen as a necessary condition for stable governance.

Anti-blasphemy laws are commonly seen as justifiable restrictions aimed at maintaining social cohesion and preventing social unrest caused by blasphemous statements. These laws acknowledge the substantial impact of religion on individuals and communities and strive to uphold social harmony while safeguarding religious convictions from misrepresentation or disrespect. The foundations for anti-blasphemy laws involve a complex interplay of theological, cultural, and governmental factors.

## III. LEGAL PROVISIONS DEALING WITH BLASPHEMY

- i.) Section 295<sup>2</sup> pertains to the act of causing harm or defiling a place of worship to disrespect the religion of any particular group. The penalty for this violation is a maximum of two years of incarceration.
- ii.) Section 295A<sup>3</sup> addresses intentional and malevolent actions intended to provoke strong negative emotions within a particular religious group by insulting their religion or religious beliefs. The punishment for this violation can result in a maximum of three years of incarceration, a monetary penalty, or both.
- iii.) Section 296<sup>4</sup> addresses the disruption of religious gatherings and prescribes a punishment of imprisonment for a maximum duration of one year, a monetary fine, or both.
- (iv) Section 297<sup>5</sup> pertains to trespassing on burial places or places of worship to cause emotional harm or insult religious sentiments. This offence has the same penalties as outlined in Section 296.
- (v) Section 298<sup>6</sup> of the law addresses intentionally using words or gestures to harm religious sentiments, which can result in a maximum penalty of one year in prison, a fine, or both.

## IV. SECTION 295A<sup>7</sup> VERSUS FAIR CRITICISM

Several constitutional defences against blasphemy laws have been established, as evidenced by cases such as the *State of Uttar Pradesh v. Ramji Lal Modi*<sup>8</sup>. In this case, a panel of five judges upheld the legality of Section 295A of the Indian Penal Code. The defendant, Mr Ramji Lal, a magazine editor, was accused of

disseminating content deemed offensive to religious convictions. Mr Ramji Lal argued that his right to freedom of speech safeguarded his content unless it involved deliberate and harmful actions to offend a specific religious community and perhaps cause civil unrest, which might be punishable under Section 295A. This clause is considered legally valid under the protection of Article 19(1)(a) of the Constitution. Nevertheless, the court ruled that Article 19(2) of the Constitution permits reasonable limitations on freedom of speech and expression, determining that only such conduct is permissible.

In the case of *Superintendent of the Central Jail in Fatehgarh v. Ram Manohar Lohia*<sup>9</sup>, the criteria for determining blasphemy were explicitly established. In this case, any prohibited communication must be linked to a disruption of public tranquillity, and this disruption cannot be merely speculative. In this case, the appellant was accused of inciting farmers to refuse to pay increased taxes to the government. The court emphasised the necessity of establishing a direct connection between the words in question and the intention to cause disturbance. These incidents demonstrate the constitutional basis for India's blasphemy laws and the criteria used to determine whether speech is deemed blasphemous. In the case of *S. Rangarajan ETC*<sup>10</sup>, the court stated that the accused expression must have the ability to potentially cause significant discontent, comparing it to a "spark in the powder keg," and it must naturally pose a threat to the public interest. This perspective has broadened the boundaries of freedom of expression. Defining what constitutes an "imminent lawless action" in blasphemy prosecutions can be challenging. The incidents of a Christian professor having his hands severed by an Islamic extremist group in Kerala and the 2016 riots in West Bengal following a blasphemous speech by a Hindu leader illustrate the unforeseen reactions that can occur in response to acts of blasphemy. While numerous blasphemous comments have not received a response from the public, it is uncertain what standards will be used to judge if a speech will lead to instant lawlessness. Due to the uncertain nature of this circumstance, individuals who adhere to rationalist beliefs and those who oppose religious concepts engage in self-censorship out of concern for potential negative social and legal consequences under Penal Code Section 295(A).

The 2007 Supreme Court of India case *Sri Baragur Rama Chandrappa v. State of Karnataka*<sup>11</sup> marked a shift in judicial perspective, unlike previous rulings such as the *Ram Manohar Lohia* case. In this case, the court emphasised that individuals do not possess the privilege to inflict emotional harm on others while exercising their freedom of speech and expression, in contrast to the prior ruling. Given India's diverse linguistic, cultural, ceremonial, and religious landscape, the court recognised the importance of maintaining religious unity and avoiding harm to public impressions. Following this reasoning, the Supreme Court prohibited the dissemination of a narrative about Basaveshwara's life. The primary purpose of Section 295A is to promote harmony among various religious groups and prevent any injury to public sensibilities. In 2011, the Supreme Court established that only speech encouraging immediate unlawful action could be legally punished, so the limits of acceptable speech in the nation were defined.

During the *Mahendra Singh Dhoni v. Yerraguntla Shyamsundar*<sup>12</sup> case in 2017, a magazine released a picture of the cricket star Mahendra Singh Dhoni portrayed as Lord Vishnu, titled "Divine force of Big Deals." The prosecution said this depiction offended the adherents of Lord Vishnu's religious convictions. The court ruled that Section 295A does not criminalise every act that offends religious sentiments. Instead, it pertains to deliberate actions or statements designed to harm a particular religious community's religious sensibilities purposely.

Religious intolerance has been on the rise since the 1980s, resulting in a more stringent legal approach to defamation, especially concerning religion. Section 295A of the Indian Penal Code imposes specific restrictions in addition to procedural laws. Due to its inability to be combined and understood, state governments can forbid publications they reasonably perceive as violating this provision. For this interpretation to be valid, it must demonstrate only the potential for offending religious beliefs.

Historically, figures such as Ambedkar, Periyar, and Bhagat Singh voiced criticism against religious traditions, symbolically provoking them to advocate for social transformation. Nevertheless, contemporary understandings of Section 295A limit the ability to question religious symbols, diminishing the opportunity for meaningful religious discourse.

Although Section 295A's primary objective is to preserve religious peace, it risks suppressing democratic criticism and fostering religious extremism. It is essential to avoid interpreting it in a way that restricts



productive discussions about spiritual topics, as this goes against the principles of secularism and democratic values.

## V. IMPLICATIONS OF SECTION 295A ON THE CONSTITUTIONAL RIGHTS OF ATHEISTS

The Indian Constitution recognises the entitlements of atheists and non-believers to freedom of conscience and the autonomy to propagate their opinions, demonstrating a longstanding heritage of challenging religious conventions. Nevertheless, the broad interpretation of Section 295A is a substantial obstacle to fundamental basic liberties. The recent incidents, such as the act of violence targeting a meeting of atheists in Mathura, highlight the direct influence of Section 295A on the rights of atheists. In contrast, recent legal judgements, exemplified by the Hadiya case, emphasise the importance of personal autonomy and the right to select one's religious beliefs. Hence, the comprehensive interpretation of Section 295A conflicts with the fundamental principles of freedom of conscience and threatens the rights of atheists.

## VI. CONCLUSION AND SUGGESTIONS

**Conclusion:** It is imperative to acknowledge that blasphemy laws have their origins in pre-modern societies governed by non-secular and undemocratic systems. These regulations restrict freedom of speech and expression in response to societal reactions, diminish individual liberties, and allow specific parts of society to suppress opposing views. According to Romila Thapar, determining the level of offence caused by religious beliefs is a complicated matter that is sometimes influenced by the expression of a specific group rather than representing the overall mood. In the Shreya Singhal case, the Supreme Court distinguished between "incitement" and "advocacy." According to the court, only speech that incites violence and disrupts public order should be subject to restriction. Blasphemous comments, unlike hate speech, may not automatically involve hate or violence and hence should not be regulated by blasphemy laws, which specifically target speech that advocates violence. Instead, it is necessary to confront actions that provoke hatred or violence against religious groups using the appropriate hate speech legislation, such as Section 153(a) of the Indian Penal Code. The presence of violence against rationalists and atheists, as well as the expression of outrage towards humorous sentiments, is indicative of a societal deficiency intolerance. Instead of granting legal status to the act of oppressing others through blasphemy laws, governments should promote acceptance and discourage the use of religious beliefs to suppress opposing views. There is generally a correlation between stricter blasphemy laws and increased human rights violations worldwide. Ultimately, it is essential for persons with faith to fully embrace the idea of accepting and respecting other religious beliefs and being open to dissenting opinions. Additionally, freedom of expression is crucial in freeing individuals from unfounded anxieties and fostering a more inclusive and tolerant society.

**Suggestions:** While acknowledging the potential challenges in immediately repealing blasphemy laws, it is crucial to evaluate the extent of their consequences. While revising these laws cannot replace their complete removal, steps can be taken to align with global norms. Authorities might take various measures to alleviate the detrimental impact of blasphemy laws on journalists. First and foremost, having more specific and meticulously crafted blasphemy legislation is crucial. In civil sanctions cases, it is also necessary to demonstrate criminal intent and foreseeability.

Furthermore, it is imperative that these rules are not applied in a discriminatory manner to single out particular religions or minority groups and that they do not make distinctions based on religious beliefs. To prevent discrimination, law enforcement institutions and the judiciary must represent the spiritual variety of the people accurately. Furthermore, it is imperative to include provisions for exclusions regarding declarations of opinion and truth under blasphemy legislation, alongside defences such as public interest and fair criticism. States should also reject the recognition of blasphemy convictions with INTERPOL-triggered arrest warrants or assessments of journalists' visas. Moreover, it is imperative to uphold due process standards, which encompass principles such as the presumption of innocence and the speedy conduct of trials, arrests, and judicial actions concerning accusations of blasphemy. Before pressing charges for blasphemy, obtaining consent from higher authorities is necessary. Complainants should be obligated to prove tangible harm and present evidence of the alleged blasphemy's impact on them. The purpose of these suggestions is to guarantee equitable treatment in matters of blasphemy in India.

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