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Section 295A: Can blasphemy laws be justified in modern India?

Shobhanjana^a

^aNational Law University, Odisha, India

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There have been endless debates on right to freedom of speech and expression. Whether it's the case of depicting people of any community in a movie to voicing your opinion on tweets. There is hardly a medium of communication that has not been questioned on its expression. And one facet of it relates to blasphemy. Although many countries have already kept the freedom of speech above any issue related to blasphemy, some have penalised it and some have placed a reasonable and objective restriction on it. It's in this reasonable restriction that the problem lies. Who decides what is reasonable? What kind of things can be said to be offensive? Are there even any objective criteria? When the understanding of religious expression is itself changing can laws made long back to prevent offensive language be considered relevant. And thus, the question can blasphemy laws be justified? This paper deals with this question and provides suggestions to address the issue at hand. The paper discusses the circumstances under which this law (section 295 A) came into place. The famous (infamous?) case of Doniger is mentioned to further the argument and a brief discussion over the play of respect and fear in the name of religion in society.

Keywords: *section 295a, blasphemy, freedom of speech and expression, wendy doniger, religion.*

INTRODUCTION

"Sticks and stones will break my bones, but words will never harm me"

But what if words incite people to use sticks and stones? What if words become the reason for broken bones, peace, and communal harmony? This was exactly what happened in the case of Rangila Rasul. When the ambiguity of law and insufficiency of law (section 153-A) was questioned. But more than that the situation between Hindus and Muslims worsened with threats in the name of protecting religion started a new section was created namely- section 295A. However, the validity of this section is still being debated.

In *Ramji Lal Modi vs the State of UP*, the editor of an article, which triggered a protest from Uttar Pradesh's Muslim community, had filed a petition in the Supreme Court challenging the constitutional validity of Sec 295a of the Indian Penal code.¹ He claimed that the contested section violated the fundamental right to freedom of speech granted by Article 19(1)(a) of the Constitution.² this was something a lot of journalists and researchers have repeatedly said- the arbitrary restriction on a fundamental right in the interests of public order needs to be changed.

The Court upheld the constitutionality of the section by saying that it had been adopted in the interest of public order. This brings certain questions about- whether every criticism of religion destroys or threatens public order and peace. Why the burden of not offending anyone is solely imposed on artists or writers? Aren't there certain groups who would take offence to any article which shows or questions a religious practice? In a country where religion is embedded and a part of society, how can social progress take place without questioning socio-religious practices? Is trusting the state with the responsibility of deciding what kind of text constituted an offence under section 295A right?³

Questions of such nature are discussed in this paper along with cases revolving around section 295A. The paper ends with some suggestions on the topic. The Case of Doniger and Various Viewpoints of Religion. A petition started by numerous academics in response to Penguin's decision to pull Wendy Doniger's book, *The Hindus: An Alternative History*, demanded that

¹ *Ramji Lal Modi v State of UP* 1957 AIR 620

² Constitution of India, art 19(1)(a)

³ Indian Penal Code 1860, s 295(a)

there be reform of **Sections 153A and 295A** of the **Indian Penal Code**⁴ - governing intellectual and artistic freedoms and the right to self-expression, as well as protecting against insult and injury to communities, and the incitement of communal hatred. We ask that the lawmakers, jurists, and the legal bureaucracy include necessary provisions in these laws to protect works of serious academic and artistic merit from motivated, malicious, and frivolous litigation.⁵

Doniger's book brought about various topics to the fore, one of the key ones being that of perspectives. It is clearly shown that people experience religion differently and thus have a different understanding of it. However, this does not mean that every viewpoint gets equal attention. Hierarchy is present here as well and the dominant view of a section of people often is in contrast with others. Thus, any other viewpoint gets side-lined or is fiercely opposed to keeping the currently dominant view of a section prevalent. This is where a distinction arises between whose speech was intended to be stopped and who it is actually stopping- that of a person with the malicious intention of mocking religion or that of a person whose viewpoint is just different from the current dominant section of the population. But there is not only a distinction in who is or should be accused under this section but also on who gets offended. This is discussed in the next part.

WHO IS AN "ORDINARY CITIZEN"?

Often the discussions around section 295A involve '*harm or hurt caused to religious feelings*'. This 'hurt' or 'harm' is to be prevented to preserve public order. It is assumed that when someone's religious feelings are hurt, they would behave irrationally and disturb the public order. The notion that certain segments of the public are '*ordinary citizens*' as opposed to '*informed individuals*', often comes up in discussions on Section 295A. Ordinary citizens are citizens who are unable to constantly follow the rules or laws when religious feelings are involved. For example-

⁴ *Ibid*

⁵ Editorial Team, 'Signing For Freedom' (*The Hindu*, 2014) <<https://www.thehindu.com/opinion/op-ed/signing-for-freedom/article5690399.ece>> accessed 25 June 2021

In Yulitha Hyde vs the State of Orissa it was said that '*Threat of divine displeasure numbs the mental faculty; more so of an undeveloped mind and the actions of such a person thereafter, are not free and according to conscience.*'⁶

This somehow suggests that citizens cannot be expected to behave rationally when it comes to the matter of religion and hence the law is needed to regulate the speech. This also indicates that the responsibility to not incite irrational response or behaviour is on the writer or artist and not on the ordinary citizen who doesn't treat speech as speech and behaves irrationally. This however changes in the following case-

In a landmark judgement of 2010, the Supreme Court reversed the ban in the case of James Laine whose book on Shivaji had been banned under Section 153A and 295A. Noting that "*the effect of the words used in the offending material must be judged from the standards of reasonable, strong-minded firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.*"⁷ While section 295A had been enacted to safeguard the religious feelings of ordinary citizens so that they do not disrupt public order the judgement now shifted the subject from ordinary citizens to reasonable and courageous men. This gives more scope for religious critics as compared to before when religious criticism was narrowed down to great extent.

WHO IS MORE OFFENSIVE?

*"If someone makes a cartoon of the prophet Mohammad, Muslims are outraged around the world. So why should anyone write anything against Hinduism and get away with it? It matters because this book is hurting the sentiments of Hindus all over the world. I am a Hindu. When I read the book. I felt hurt. It hurt my sentiments."*⁸

⁶ *Yulitha Hyde v State of Orissa* AIR 1973 Ori 116

⁷ Satya Prakash, 'Stray Lines can't be Used to Ban Book: SC' (*Hindustan Times*, 2010) <<https://www.hindustantimes.com/delhi/stray-lines-can-t-be-used-to-ban-book-sc/story-lzX7c3Zg7KJxjNPFsWzEKK.html>> accessed 25 June 2021

⁸ 'Sex, Lies and Hinduism: Why a Hindu Activist Targeted Wendy Doniger's Book' (*Time*, 2014) <<https://time.com/6601/sex-lies-and-hinduism-why-a-hindu-activist-targeted-wendy-donigers-book/>> accessed 24 June 2021

Here a valid question is raised that of equality of religion. Equality of religion also includes equal protection of all religions. So, if one religion is protected against religious criticism or mockery then it should be the same for other religions as well. However, this has created a drift in the two groups. If one cannot openly read, discuss and analyse other religions, animosity between the groups instead of decreasing increases.

If one is aware of other religions, their practices, and beliefs, he/she is less likely to believe rumors or half-truths that induce hatred towards a particular religion. But the lack of articles, speech, or debates on different points of view on religion leaves people to be vulnerable to false information. This growing divide is often misused by power-hungry people to disrupt public order and gain political or financial power. But of course, that's not all, this divide damages both parties however due to some groups being more dominant (either due to more numbers or due to more financial wealth) us vs them mentality created favours the majority groups on various occasions. Reports of people from a minority religion or people criticising the majority religion are increasing day by day.

RESPECT OR FEAR?

All religions are equal and should be equally respected, which is something that has been taught to us since childhood. However, it is seen nowadays those religions instead of being respected are creating fear. That anything spoken against or even suggesting a different viewpoint from what is commonly prevalent in society is something that can make one receive threats. And instead of getting protection from state or law, one can even get prosecuted. Unsurprisingly this has the effect of deterring or even stopping altogether any discussions on religion. Religions have a varied and rich history and have given society much-needed values, but this has also led to the idea that religions are ideal and cannot be questioned. Some alternative viewpoints are immediately shot down merely because it opposes a religious belief. There are various reasons given, like- it is practised by a minority of people or is an exceptional case or they have misinterpreted a religious verse, etc. All these might be true but this implicit bias stops questions on the religious origin of the practice. It denies criticism even if it is logical.

The fact that law has been used to suppress speech is no new thing and has been done for years in many countries. The powerful people can create public disorder by fuelling the already hostile feelings between different religious groups. Sometimes the public disorder is not because of any actual publication but rather manufactured by misrepresenting or telling half-truths to people. This can be seen from the attacks on writers by people who have not even read the book and are angry over a certain part of the book which has deliberately been posted out of context on social media. Further various movies even before getting released are protested on the grounds of rumours that they have something offensive in them.

This is why the courts often have repeated that one cannot be punished without reading the offending part along with the whole context. This however is not true for people out of court and often some take the law into their own hands. Thus, threatening writers and artists with not only law but also violence. Although the law was made to stop the violence however in today's time the same section is used to bully people and violence has still not ceased, instead, it has become stronger with the law being misused.

However, there are cases where the freedom of expression and safety of the artist or writer is protected-

In the case of *Rangarajan v. P. Jagjivan Ram*, the court said- "*freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would be tantamount to...surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem*".⁹

Here the word blackmail is aptly used to show what is happening under the guise of "*religious hurt*". The responsibility of preventing violent outbursts or public disorder is also shifted from the artist and writer to the state. This will prevent dominant or groups with large numbers from bullying minority opinion in the name of religious hurt. This will further encourage the state to take action and responsibility for public unrest instead of banning publications or

⁹ *Rangarajan v P Jagjivan Ram* 1989 SCR (2) 204

stifling the voices of people. However, all the judgments have not followed the same route, thus it remains to be known who is responsible- the artist, state, or the hostile audience.

SUGGESTIONS

1. Truth as a defense

A truth that is against the currently mainstream beliefs can and will be seen as offensive by some. Truth spoken or written calmly and rationally may still be offensive to someone. But these uncomfortable truths are what are needed for removing inhumane practices against women, LGBTQIA+, and neurodivergent people. For people to collectively fight against this, one needs to be aware of such things which knowingly or unknowingly function in the name of religion or culture.

2. More power needs more accountability.

Criticism of religion is often seen as more problematic and offensive than criticism of political identity or social status. This however makes criticism and alternate views on religion equally if not more important than other criticism. Religion plays such a huge role in the behaviour of people and their social relations that any form of social progress or reform is impossible without religious reform. The recent debates on gay marriage are often met with religious opposition because it is anti-religion or goes against what religion teaches. To counter these arguments we need more analysis, discussions, debates, and possibly criticism on religion. This can only be possible when such speakers and critics are protected from threats and legal action.

3. Do we actually require such a provision?

This section was given various names during debates, one of them being "*necessary evil*". The arguments made by people stressing the temporary nature of the circumstances during the time of the drafting of section 295-A need to be revisited. Something interesting to note is that even though some people thought that the section would interfere with the freedom of speech and is regressive, they still agreed that it is necessary for example- "*the Punjabi Hindu*

representative Lajpat Rai thought the bill 'retrograde' although he considered it to be a 'necessity under the prevailing emergency'"¹⁰

Probably removing the restriction on freedom of speech on account of public order and not hurting religious sentiments will result in actually reducing public disorder. Once the restriction is removed more writers can write about religion, opening people's minds to different viewpoints. Reading and discussing religious issues will also lead to less hostility between groups and contribute to social progress by adopting practices that are in the interest of everyone instead of fighting over whose religion is better. The consequences of free speech may be less harmful than the consequence of stifling free speech.

CONCLUSION

Writers and artists are an important pillar of society as they show the different aspects and perspectives of any practice, ritual, or tradition. Religion is made as per a particular belief system, but the sole purpose of it is to live in harmony with all our fellow members of society. No religion propagates intolerance or violence, if it is done to anyone in any form then the soul of religion is not respected. Most of the time people who protest or attack the critics are not aware of the purpose of practice or misinterpret the holy books or verses. Again, criticizing or analysing something should be done sensitively, the main focus should be on the solution or a positive outcome for society. It doesn't need one to be harsh or disrespectful to others' beliefs. Creativity in any form of art is always done with an evolved mindset and not a regressive one.

At the same time if and when someone points out an alternative view, or says why one might find a better solution than the one would find in any religion, it should not be seen as something threat-worthy, but rather as an opportunity to learn and change.

¹⁰ Neeti Nair, 'Beyond The Communal 1920s: The Problem of Intention, Legislative Pragmatism, and the Making of Section 295A of the Indian Penal Code' (*Academia.edu*, 2013)
<https://www.academia.edu/4965256/Beyond_the_Communal_1920s_The_Problem_of_Intention_Legislative_Pragmatism_and_the_Making_of_Section_295A_of_the_Indian_Penal_Code> accessed 20 June 2021