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## Anti-blasphemy laws of India: A Critical Analysis

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*The current article focuses on anti-blasphemy laws and their impact on human rights and society, with a particular emphasis on the Indian context. The article proceeds while explaining the fundamental human rights that are affected by such laws. There have been numerous instances in the past where the law of blasphemy has been used to stifle dissent and choke out emerging voices against tyranny committed in the name of religious customs. This article will look at various cases where anti-blasphemy laws have been used and how their interpretation has evolved in Indian society, as well as the history of such legislation's enactment. It is argued that anti-blasphemy laws have disastrous consequences for individual liberty and undermine the fundamental principles upon which the constitution of India is founded, as well as fuel the religious divide in India. As a result, the article focuses on demonstrating how there is an imperative need to repeal anti-blasphemy laws.*

**Keywords:** *blasphemy, undermining human rights, intent, section 295A.*

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### INTRODUCTION

**Human Rights under siege -**

*“Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status”.<sup>1</sup>*

Everyone has an equal right to human rights. And every state has to respect these human rights; no state has the authority to interfere with them. They are inalienable and cannot be taken away in any circumstances except in a few cases and even then, only through a procedure established by law. However, many nations interfere with such rights through legal means, one of which is **ANTI-BLASPHEMY LAWS**. Researchers discovered several criminal blasphemy law enforcement cases with reported state due process violations, such as no access to counsel, illegal detentions, including detentions without charges or trial, and unfair trials,<sup>2</sup> which not only violate our inviolable rights but also lead to the violation of due process against the alleged blasphemers. The rights which mainly gets affected by anti-blasphemy laws are Religious Freedom and Freedom of Speech & Expression.

### **Religious Freedom**

*“Religion is like a pair of shoes.....Find one that fits for you, but don't make me wear your shoes.”*

- George Carlin

The world's trends seriously suggest that religious freedom is under threat these days; however, before we get into that, let us first grasp What exactly does religious freedom implies? As per article 18 of the Universal Declaration of Human Rights:

*“Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”<sup>3</sup>*

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<sup>1</sup> 'What are human rights' (OHCHR) <<https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>> accessed 10 November 2021

<sup>2</sup> Fiss and Gategun, 'Violating Rights: Enforcing the World's Blasphemy Laws' (USCIRF) <[https://www.uscirf.gov/sites/default/files/2020%20Blasphemy%20Enforcement%20Report%20final\\_0.pd](https://www.uscirf.gov/sites/default/files/2020%20Blasphemy%20Enforcement%20Report%20final_0.pd)> accessed 10 November 2021

<sup>3</sup> 'Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 18

*"Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief."*<sup>4</sup> So, in essence, **freedom of religion is a human right that involves the freedom to proclaim, practice, and propagate a religion of one's choosing, free from coercion and force**, either in the community or individually, subject to public order and morality. It also includes the freedom not to associate with any religion and hence can be referred to as freedom from religion. India is known as the world's largest democracy, and religious liberty or freedom of religion is a significant aspect of this title. When the constituent assembly was debating what should be included in our constitution, there was a debate about how to interpret the term "secular."

As Loknath Misra said in a debate on December 6, 1948 -

*"I accepted this secularism in the sense that our State shall remain unconcerned with religion, and I thought that the secular State of partitioned India was the maximum of the generosity of a Hindu dominated territory for its non-Hindu population. I did not, of course, know what exactly this secularism meant and how far the State intends to cover the life and manners of our people. To my mind, life cannot be compartmentalised, and yet I reconciled myself to the new cry, do we really believe that religion can be divorced from life, or is it our belief that in the midst of many religions we cannot decide which one to accept? If religion is beyond the ken of our State, let us clearly say so and delete all reference to rights relating to religion,"*<sup>5</sup>

Since there were numerous viewpoints of the term, and Western interpretations could not be applied to Indian society because India has always been a land of various religions also politics and religion have always been intertwined here. A lot of benefits given to minority religions for their upliftment had to be withdrawn if western interpretation had to be incorporated, hence a total separation of religion from the state was not possible. As a result, the assembly decided to abandon the idea of including the term in the constitution. However, the Indian

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<sup>4</sup> 'Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 18' (OHCHR) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23938&LangID=E>> accessed 15 November 2021

<sup>5</sup> Adrija Roy Chowdhury, 'Secularism: Why Nehru dropped and Indira inserted the S-word in the Constitution' (*The Indian Express*, 27 December 2017) <<https://indianexpress.com/article/research/anant-kumar-hegde-secularism-constitution-india-bjp-jawaharlal-nehru-indira-gandhi-5001085/>> accessed 14 November 2021

constitution has always adhered to the concept of secularism, even though it was not explicitly stated in the constitution or in India's preamble. Later on, it was incorporated into India's preamble as part of the 42nd constitutional amendment in 1975. And the preamble's terms were altered from sovereign democratic republic to the sovereign, socialist secular democratic republic.

## CONSTITUTIONAL PROVISIONS

Article 25-28 of the Indian constitution deals with Freedom of Religion-

*Article 25 - Freedom of conscience and free profession, practice, and propagation of religion.*

*(1) Subject to public order, morality, and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice, and propagate religion.*

*(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law – (a) regulating or restricting any economic, financial, political, or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.*

*Article 26 - Freedom to manage religious affairs: – Subject to public order, morality, and health, every religious denomination or any section thereof shall have the right –*

*(a) to establish and maintain institutions for religious and charitable purposes;*

*(b) to manage its own affairs in matters of religion;*

*(c) to own and acquire movable and immovable property; and*

*(d) to administer such property in accordance with the law.*

*Article 27 - Freedom as to payment of taxes for promotion of any particular religion – No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated*

*in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.*

*Article 28 - Freedom as to attendance at religious instruction or religious worship in certain educational institutions. –*

*(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.*

*(2) Nothing in clause (1) shall apply to an educational institution that is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.*

*(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto".<sup>6</sup>*

## **FREEDOM OF SPEECH AND EXPRESSION**

Speech is the greatest gift to mankind; it is what distinguishes humans from other animals. It is critical to safeguard free speech and expression in order for democracy to function properly. If there is no criticism of the government and everyone remains a sycophant, the entire concept of a democratic nation is jeopardized. We all understand how important constructive criticism is, and freedom of speech and expression allows for it. Article 18 of the Universal Declaration of Human Rights deals with it -

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>7</sup> This freedom is a fundamental right in India

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<sup>6</sup> Constitution of India 1950, art 25-28

<sup>7</sup> 'Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 18

(Article 19), subject to reasonable restrictions, and its scope has evolved through various judgments. the constitutional provisions dealing with the relevant right-

*“Article 19 - Protection of certain rights regarding freedom of speech, etc. –*

*(1) All citizens shall have the right –*

*(a) to freedom of speech and expression;*

*(b) to assemble peaceably and without arms;*

*(c) to form associations or unions [or co-operative societies];*

*(d) to move freely throughout the territory of India;*

*(e) to reside and settle in any part of the territory of India;*

*(g) to practice any profession, or to carry on any occupation, trade or business”.*<sup>8</sup>

This is not an absolute right and is subject to reasonable restrictions, there is no exhaustive and conclusive list of the restrictions that can be imposed and it is up to the interpretations of respective courts. They are to be imposed in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offense as per Article 19(2) of our constitution.

## **BLASPHEMY**

Blasphemy is defined as **disrespecting or ridiculing God and divine or sacred objects**, as well as hurting the religious sentiments of others through such activities. Although many countries have criminalized blasphemy, there is **no universal definition of the term**. Whether or not a given act falls within the “infamous” border of blasphemy is mainly determined by the interpretation of the court. This may sometimes result in the conviction of innocent speech

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<sup>8</sup> Constitution of India 1950, art 19

(apparently falling under the umbrella of free speech), often to appease public outrage or to respond to the majority view of the particular nation. In addition, the punishment for such a crime varies greatly, from a simple fine in Italy to the death penalty in Pakistan. Anti-blasphemy laws intrude on religious freedom by protecting the majority religion while punishing minority religions for proclaiming and propagating their religious beliefs, as well as freedom of speech and expression, and restrict these essential human rights. **Individuals, not abstract ideas or belief systems, are protected by human rights.** Individual's religious emotions are not a valid argument for restricting our fundamental rights. Blasphemy legislation may safeguard some people's beliefs, but it will undoubtedly limit the beliefs of others.<sup>9</sup>

## BLASPHEMY LAWS IN INDIA

One of the countries where blasphemy is criminalized in India. The history of such a law is as worrying as it can be. Even though there was no law specifically punishing blasphemy in the Indian Penal Code of 1860, there has always been a section, 153A, that punishes:

*"Whoever (a)by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community, or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or (b)commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity".<sup>10</sup>*

However, the '**Rangila Rasul**' book controversy occurred, and the dreadful section 295A, which refers to blasphemy, found its way into our statutes. In the 1920s, when Pakistan was still a part of India, communal tensions between Arya Samaj and Muslims were high in Punjab, and in the midst of this, a writer, **Pandit Chamupati**, wrote a book called **Rangila**

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<sup>9</sup> Marie Juul Peterson, 'Blasphemy laws and human rights: a match made in hell' (*OpenGlobalRights*, 13 January 2021) <<https://www.openglobalrights.org/blasphemy-laws-and-human-rights-a-match-made-in-hell/>> accessed 17 November 2021

<sup>10</sup>Indian Penal Code 1860, s 153A

**Rasul** in retaliation to anonymously published books that were considered "derogatory" to Hindu religious sentiments. The publisher, **Mahashay Rajpal**, kept the author's name a secret, and the author was recognized as someone who could do "**doodh ka doodh aur paani ka paani.**" The book's content was considered offensive by Indian Muslims since it presented some intimate parts of Prophet Muhammad's life, including details about his marriages and sex life. The release of such a book sparked significant outrage in the Muslim community, and the publisher was charged under Section 153A but was acquitted by the court since it did not incite hostility or hatred between religious communities. However, after his acquittal, he was assassinated by IIm-ud-din, a 19-year-old carpenter, and this murder helped IIm-ud-din gain the titles of "ghazi" and "shaheed" he is still revered in Pakistan. Later, IIm-ud-din was prosecuted for murder, and in his defense, Muhammad Ali Jinnah attempted to have the death sentence commuted to life imprisonment, but the court upheld the death penalty, and he was executed.

Because no law could penalize religious insult, Muslims demanded legislation that could be invoked to penalize insult to religious feelings, hence in 1927, the British government enacted Section 295A. However, Muhammad Ali Jinnah cautioned against the arbitrary use of the section: *"I thoroughly endorse the principle, that while the measure should aim at those undesirable persons who indulge in wanton vilification or attack upon the religion of any particular class or upon the founders and prophets of a religion, we must also secure this very important and 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 criticism of a religion shall be protected."*<sup>11</sup>

This is why, in order to punish someone for blasphemy, Section 295A requires **deliberate and malicious intent**. The most frequently reported section for blasphemy is 295A, but it is not the only one; there is a distinct chapter in the IPC that deals specifically with the offence. It is addressed under Section 295-298 of IPC Chapter XV:

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<sup>11</sup> Ajit Warriar, 'India: Section 295A IPC And The Slippery Slope of Outrage' (*Mondaq*, 07 December 2020) <<https://www.mondaq.com/india/broadcasting-film-tv-radio/1013784/section-295a-ipc-and-the-slippery-slope-of-outrage39#>> accessed 17 November 2021



Section 295: *“Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both”*.<sup>12</sup>

Section 295A: *“Whoever, with the deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [three years], or with fine, or with both.”*<sup>13</sup>

Section 296: *“Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”*<sup>14</sup>

Section 297: *“Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of the sepulchre, or any place set apart from the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both”*.<sup>15</sup>

Section 298: *“Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of*

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<sup>12</sup> Indian Penal Code 1860, s 295

<sup>13</sup> Indian Penal Code 1860, s 295A

<sup>14</sup> Indian Penal Code 1860, s 296

<sup>15</sup> Indian Penal Code 1860, s 297

*that person or places, any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.*"<sup>16</sup>

## **SOME CASES PERTAINING TO BLASPHEMY LAWS OF INDIA**

The constitutional validity of Section 295A was first challenged in **Ramji Lal Modi vs State of UP, 1957**. Ramji Lal Modi, the editor, printer, and publisher of the cow-protection journal Gaurakshak, published a contentious article in its 1952 edition that provided the basis for his prosecution. He was charged under Indian Penal Code Section 295A. The Court ruled that Section 295A of the IPC does not punish any act or attempt to insult any religion or the religious beliefs of a class of individuals. The Court stressed that *only acts of insult or attempts to insult that are committed with the deliberate and malicious goal of outraging the religious feelings of that class can be punished under this section*. The Court went on to say that the clause would *only apply to serious forms of religious insult likely to disrupt public order*. The Appellant cited the case of **Chintanman Rao vs The State of Madhya Pradesh**, which dealt with the issue of reasonable restrictions, wherein it was held that where the language used in the Statute is broad enough to cover restrictions on a fundamental right both within and without the limits of constitutionally permissible legislative action affecting the right, and the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, the law must be held totally void. But the five-judge constitution bench found the section **within the ambit of reasonable restrictions** to secure the public order and hence upheld the constitutional validity of Section 295A.<sup>17</sup>

Later, the Supreme court in **Superintendent, Central Prison Fatehgarh v Ram Manohar Lohia** (1960), held that *"there must be a proximate link between speech and public disorder, an not a far-fetched, remote or fanciful connection."*<sup>18</sup> which suggests that in order for a statement to be classified as blasphemous, a simple perception that such a speech could cause disruption in

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<sup>16</sup> Indian Penal Code 1860, s 298

<sup>17</sup> *Ramjilal Modi v State of Uttar Pradesh* AIR 1957 SC 620

<sup>18</sup> *The Superintendent, Central Prison, Fatehgarh v Dr. Ram Manohar Lohia* AIR 1960 SC 633

the public order or it might hurt the sentiments of some people would result in curtailing the freedom of expressing one's opinions.

**In Chandmal Chopra v The State of West Bengal, 1987:** The case concerns KORAN or QURAN, the petitioner, Chandmal Chopra, filed a writ petition in the Calcutta High Court, requesting a ban on the Quran, the religious book of Muslims. The argument was that the Quran contains verses that could incite hatred or enmity between communities, invoking section 153A and section 295A of IPC, and thus should be prohibited under section 95 of the CrPC, which states that a state can prohibit the publication of a book, newspaper, or document whose contents are punishable under section 153A or section 295A or section 124A or section 153B or section 292 or section 293 of the IPC. The high court denied the petition, ruling that the writ petitioners would violate the Constitution's preamble and the restrictions of Article 25. Any orders issued against the Koran would undermine India's secularism and deprive a segment of its people of their right to freely profess and practice their faith. In effect, the suggested measure would be tantamount to the abolition of the Muslim religion itself, which would not exist in the absence of the Koran. The Court could not rule on holy texts such as the Koran, Bible, Gita, and Granth Sahib. The actions undertaken by the writ petitioners could be considered to have violated Section 295A of the Penal Code.<sup>19</sup>

In **Mahendra Singh Dhoni v Yerraguntla Shyamsundra and Ors**, the Supreme Court maintained its position in the Ramji Lal Modi case. In this case, the complainant was dissatisfied by a photo of Ms. Dhoni on the front page of a business magazine with the caption "god of deals," which he deemed offensive to religious feelings because Ms. Dhoni was shown as Lord Vishnu in the picture. While upholding Ramjilal Modi's decision, the Supreme Court reiterated its position on the application of blasphemy law, and the case was dismissed.<sup>20</sup> Even though the supreme court has already established the intentional and deliberate intent, to outrage the religious feelings of a particular class and to disrupt the public order, a necessary ground for claiming section 295A, people have continued to invoke the law to appease their

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<sup>19</sup> *Chandmal Chopra v State of West Bengal & Ors* AIR 1986 Cal 104

<sup>20</sup> *Mahendra Singh Dhoni v Yerraguntla Shyamsundar & Ors* 2017 SCC OnLine SC 450

hurt religious sentiments. We frequently see the news in which blasphemy legislation is used against comedians, bloggers, human rights activists, students, writers, publishers, actors, and artists.

The arrest of Munawar Faruqui under different sections of the IPC, including section 295A, because he was "**going to**" crack certain jokes with malicious intent that would have injured the religious sentiments of Hindus might become bizarre the more we think about it. He was arrested for "the crime" that never happened. Not only was he arrested on absurd charges, but he was also denied bail on multiple occasions, along with the remark "such people should not be spared", thus violating the norm of "bail not jail". There have been numerous occasions when the flagrant misuse of such laws has undermined individual liberty while eroding the essence of the Indian constitution.

## CONCLUSION

After reading and examining different articles and publications, I believe that India's blasphemy laws should be repealed. Today, Indians' religious sentiments are too sensitive, making these regulations even more detrimental to society as a whole. Every other day, we wake up to the news of a few people's "religious sentiments" being harmed, and the purported person gets punished by the "hurt" individuals only. Through such legislation, the mobocracy is encouraged, people start threatening the alleged blasphemer with death threats, and if it's a woman they don't shy away from giving rape threats, and many a time the purported person gets killed for allegedly "offending" or "ridiculing" the faith of some "rational beings". According to the U.S. Commission on International Religious Freedom report, India was ranked among the "countries of particular concern" along with the countries such as Pakistan, Saudi Arabia, China, and North Korea, the group of countries where human rights violations are worsening by the day. The report says-

*"The national government used its strengthened parliamentary majority to institute national-level policies violating religious freedom across India, especially for Muslims." Also "national and various State governments also allowed nationwide campaigns of harassment and violence against religious*

*minorities to continue with impunity, and engaged in and tolerated hate speech and incitement to violence against them”.*

Though supporters of blasphemy laws have long supported them under the guise of preserving the religious feelings of all religions, this is true only in the papers. In actuality, the majority religion enjoys immunity and impunity, and these laws serve as a tool to further oppress minority religions. As if the existing blasphemy laws weren't enough to cause havoc in society, the Punjab government enacted Section 295AA, which punishes malicious damage, injury, or sacrilege committed against the holy books of Bhagawad Gita, Quran, Bible, and Guru Granth Sahib. Again, the argument proposed was that it safeguards the four "main" religious books, but what about Jainism and Buddhism, which are also vital parts of secular India, and have emerged from India only. If the Punjab government was serious about ensuring the safeguarding of religious scriptures, why were the scriptures of these two religions excluded from the definition of section 295AA? I would like to add a statistic herein, Buddhists constitute 0.8 percent of India's population, the second-smallest religious sect among the six major sects (Hindus, Muslims, Sikhs, Christians, Buddhists, Jains), while Jains constitute 0.4 percent of India's population, the smallest sect in India.

Positive criticism of religion and its scripture is fundamental for a society to evolve. The Manusmriti was burned by Dr. BR Ambedkar in an event during the Mahad Satyagraha as an act of rejection of the religious basis of untouchability. It is very difficult for anyone to undertake such a symbolic act in today's hostile society. The incidents such as of Munawar Faruqui demonstrate how fragile Indian society is, that we cannot even tolerate a few jokes about our faith in a light-hearted manner. Such restrictions severely limit an individual's creativity; today, every artist must ponder hundreds of times before showing their creation to the public; you never know whose feelings can get wounded. A joke, a performance, or a work of art may be amusing or entertaining to a large group of people, yet it may be offensive to others. Such laws are being used as a weapon to stifle dissent and criticism. If religious rituals had not been condemned, Hindus would have continued to practice Sati, the terrible tradition of a widow burning herself to death on her husband's pyre. If the Muslim custom of divorcing

one's wife by saying "talaq" three times, by her husband, had not been challenged, such an absurd practice would have continued to haunt Muslim women. Blasphemy laws limit such condemnation since such activities may offend some people's religious emotions and be considered "malicious," especially if the condemner is of a different religion and the blasphemy laws are brought against that person, which serves as a deterrent to speaking against such practices. With vague and broad definitions of blasphemy laws, they are being used as a political weapon to feed on the votes of the majority religion, which may benefit the political class in the short run but is highly destructive for society in the long run, and it appears to be a replication of "divide and rule." At the end of the day, we as citizens are the ones who suffer the most as a result of such laws and political misdemeanors, thus the onus is ultimately on us to be vocal against these laws that gravely violate our human rights.