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## The Offence of Blasphemy and Divine Law Theory

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*When it comes to stifling the voices of minorities, rationalists, and occasionally scientists, blasphemy is one of the most misused laws in the world, and its validity is frequently questioned in today's modern settings throughout the globe. While it is sometimes seen as an acceptable limitation on “the Right to free speech and expression”, it is frequently also seen as a barrier to the emergence of a scientific mindset among individuals as well as a strategy for imposing the religious values and virtues of one group on another. Today's society commonly recognises freedom of expression and freedom of religion as basic human rights. India still retains “Section 295-A of the Indian Penal Code, 1860”, a rule against blasphemy disguising as hate speech, despite being a pluralist nation with an unsurpassed variety in its population and a wide ocean of many opposing ideas.*

**Keywords:** *blasphemy, law, divine theory.*

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### INTRODUCTION

Human Rights are vital, unalienable, and interconnected. However, this dependency is best illustrated by the dispute over liberal speech and the provocation of racial or religious intolerance. Disrespect for God, belief, a spiritual icon, or whatever else that is deemed holy is what the word blasphemy means. Due to its proclivity for inciting peace breaches, it has been classified as a common-law offence. Some of the laws make it unlawful to commit crimes. Nonetheless, the reasons for blasphemy becoming a criminal are valid not only in common

law nations but across the world. Despite diverse demographic and legal systems, blasphemy is illegal in various nations across the world. "Blasphemy is prohibited in all countries, whether they are Christian, such as Greece and Cyprus, Islamic, such as Iraq and Egypt, Jewish, such as Israel and Sri Lanka, or secular, such as Canada and Germany. Such offences might be committed against a specific religion, as in Qatar, or against all faiths, as in Denmark, with penalties ranging from a modest fine in Italy to the death penalty in Pakistan. It could result in the death penalty in Pakistan."<sup>1</sup>

Other nations, on the other hand, do not have blasphemy laws in their legal systems. The United States ruled that the blasphemy act was unconstitutional and violated free expression.

Despite the fact that "Section 295(A)<sup>2</sup> of the Indian Penal Code" was enacted in 1860, India, up until 1927, America was incapable to care for heresy. According to the law, anyone who intentionally and malevolently tries to abuse the faith or spiritual beliefs of any Indian Citizen "by words, either spoken or written, by signs, by visible representations, or otherwise" will be penalized with either type of imprisonment for a term that may extend to [three years], a fine, or both. Blasphemy is punished in India under the rules of the "Indian penal code of 1860". Because India is a secular nation, blasphemy laws protect not just one faith, but all religions and even multiple denominations of that religion, unlike in countries like Iran and Pakistan, which protects only one religion that is Islam.

## **BLASPHEMY LAWS IN INDIA**

The Indian constitution guarantees everyone's freedom to practise, profess, and disseminate any and all forms of religion. Since the exercise of the same rights cannot endanger the nation's public order, morality, or national security, the same laws impose acceptable limitations on both the government and the persons. What happens if someone violates such rights? Under Article 32<sup>3</sup>, an Indian may protest to the Supreme Court if the state violates his right to practise

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<sup>1</sup> Aayush Akar, 'Critical Analysis of Blasphemy Law in India and UK: A Comparative Analysis' (*Latest Law*, 15 January 2020) <<https://www.latestlaws.com/articles/critical-analysis-of-blasphemy-law-in-india-and-uk-a-comparative-analysis-by-ayush-akar/>> accessed 17 June 2022

<sup>2</sup> Indian Penal Code, 1860, s 295A

<sup>3</sup> Constitution of India, 1950, art.32

his faith. In order to protect one person's rights from another person's rights, Chapter XV of the Indian criminal code was included as "offences connected to religion" in 1927.

**Section 295<sup>4</sup>:** Anyone who wilfully tampers with, destroys or defiles a religious object that members of any Indian religion consider sacred – other than idols and literature – is subject to punishment under this section. He might get a fine, a term of up to two years in jail, or both.

**Section 295A:** A person may be punished under this clause if they intentionally insult or try to offend the spiritual sentiments of Indian residents by spoken words, written words, signs, or visible representation. A person can get a term of three years in prison, a fine, or both if found guilty.

**Section 296<sup>5</sup>:** A person who knowingly makes a disruption to any legitimate religious gathering and rituals is subject to this section's penalties, which include a year in prison, a fine, or both.

**Section 297<sup>6</sup>:** It is criminal under this section if a person knowingly violates any funeral place knowing that his actions may offend the spiritual emotions of any class of people. Even deceased people's religious rights are claimed to be protected under this law. This clause carries a penalty of up to one year in jail, a fine, or both.

**Section 298<sup>7</sup>:** This is a unique provision in this chapter because whereas all of the offences in this chapter of the Indian criminal code are cognizable, bailable, and non-compoundable, the offence under this section is compoundable, non-cognizable, and non-bailable. Under this clause, anybody who knowingly utters any words, produces any sound or signs, visible or audible, as the case may be, to the aggrieved in order to damage the person's religious emotions may be penalised. It is starting to make sense why it is a compoundable and non-cognizable offence. It can only be compounded by the individual whose religious feelings have been damaged. Under this clause, an offender can face a year in jail, a fine, or both.<sup>8</sup>

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<sup>4</sup> Indian Penal Code, 1860, s 295

<sup>5</sup> Indian Penal Code, 1860, s 296

<sup>6</sup> Indian Penal Code, 1860, s 297

<sup>7</sup> Indian Penal Code, 1860, s 298

<sup>8</sup> Prashant Tiwari, 'Blasphemy laws in India and the contemporary world' (*Ipleaders*, 22 November 2020)

<<https://blog.ipleaders.in/blasphemy-laws-india-contemporary-world/>> accessed 17 June 2022

## DIVINE LAW THEORY

Divine law is any type of legislation that is thought to have originated from a transcendent source, such as the will of God or gods, as opposed to man-made or secular law. According to "*Angelos Chaniotis and Rudolph F. Peters*", the idea that the source of divine regulations has resources beyond human comprehension and reason often leads people to believe that they are better than laws produced by humans. Because they believe, for example, that human powers cannot change divine law, believers in divine laws may assign them greater authority than other laws. Chaniotis says that divine laws are notorious for their seeming rigidity. Because believers place high importance on exact conformity to the norm, it is controversial to include interpretation in divine law. Opponents of divine law often reject that it is entirely divine, pointing to human influences in the law. Such regulations, according to their critics, pertain to a certain cultural heritage. Those who believe in divine law, on the other hand, are sometimes hesitant to adjust unyielding supernatural precepts to cultural settings.

The presence of three types of rules was accepted by medieval Christianity: heavenly law, natural law, and man-made law. The extent of natural law has been hotly disputed by theologians, with the Enlightenment advocating more use of reason and widening the scope of natural law while marginalising divine law in a secularisation process. The origins and transmission history of divine law are significant because the authority of divine law is rooted[colloquialism] in its source.

## ARTICLE 124-A'S CONSTITUTIONAL VALIDITY

Section 295A penalises discrimination against any class of citizens' beliefs or religious convictions if such acts are committed in a deliberate and malicious way with the intent of offending the group's religious sensibilities. Section 295A is a cognizable offence, which means that the police have the authority to arrest offenders without the need for a warrant. In conjunction with the lengthy hearing and decision-making process in criminal cases, Section 295A's presence, as well as its addictive potential, has a chilling effect on free expression.<sup>10</sup>

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<sup>9</sup> Constitution of India, 1950, art.124A

<sup>10</sup> Aayush Akar (n 1)

The courts are the sole option because the parliament has shown little interest in amending or repealing the statute. Indeed, last year, Subramanian Swamy filed a plea for the pronouncement of un-constitutionality of many hatred-speaking provisions under the “Indian Penal Code”. Conversely, there is a serious issue with Section 295A: in *Ramji Lal Modi v State of U.P.*<sup>11</sup> in 1957, the apex court bench of five justices maintained its validity. This means that the Apex Court would require a minimum of seven-judge panel to overturn “Ramji Lal Modi’s” decision and establish the legislation.

In terms of Procedure, this would enable the 295A claimants to convince a two-judge panel (before which every case is initially heard) that there are enough reasons to cast doubt on “Ramji Lal Modi’s” validity. In the event that they were convinced, this two-judge panel would have to submit the issue to a panel of five judges, who would then have to state it to a panel of seven juries, who would ultimately resolve the case on its virtues. Though the entire method is procedurally complex and impractical to carry through, there are reasonable grounds for the court of law to consider and advise that Ramji Lal Modi’s verdict be overturned. Despite the fact that this is a procedurally demanding procedure that is unlikely to happen, the law presents a compelling case that the court should reconsider and examine the “Ramji Lal Modi” judgement.

The Supreme Court decided in *Ramji Lal Modi* that Section 295a was legally legitimate since it was a reasonable restriction on free expression in the interest of public order, as defined by Article 19(2)<sup>12</sup> of the Constitution. The Court’s principal conclusion was that, as required by Article 19(2), the in the interest’s language was quite broad, allowing the state to pass a variety of public-order measures. [Section 295A] only sanctions the aggravated form of insult to religion when it is committed with the premeditated and malicious goal of outraging the religious emotions of that class, according to the court. This aggravated form of insult has a calculated tendency to disrupt public order and the section that punishes such activities falls

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<sup>11</sup> *Ramji Lal Modi v State of U.P.* (1957), AIR 620

<sup>12</sup> Constitution of India, 1950, art.12(2)

well within the protection of Art. 19(2) as a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Art. 19(1)(a).<sup>13</sup>

Nonetheless, the Court in “Ramji Lal Modi” denied this allegation. The Law court ruling had a weakness in that it focused entirely on the purpose of and overlooked the limitations imposed by the word "reasonable constraints." Paradoxically, the court of law reversed its position three years later in the case of the “Superintendent, Central Prison, Fatehgarh v Ram Manohar Lohia”<sup>14</sup>, holding that there had to be a “close link between speech and public disorder”, not a "far-fetched," "distant," or "fanciful" link. In the ages that followed, the court of law concluded that the relationship between language and senselessness had to be comparable to a "spark in a powder keg," and that only the reinforcement of foreseeable unlawful conduct discussion had been impeached. As can be seen, a very high state threshold must be satisfied before the premise of speech limitation is invoked: public disturbance. In reality, the Supreme Court ruled in the case that "passive" participation in a bomber group was not a crime as long as the individual suspect had no means of provoking forcefulness.

Most newly, Supreme Court distinguished between 'advocacy' and 'incitement' in the contentious Shreya Singhal decision, holding that legislation restricting freedom of expression must be severely adjusted to only include the latter types of speech within their reach. As a result, the Apex Court has continually derided and overruled “Ramji Lal Modi's” main basis that there exists no provision of likeness amongst speech and disorder in the fifty years after Ram Manohar Lohia's judgement. If the relevant criteria are one of inducement to unlawful behaviour, then “Section 295A's” terms are just too ambiguous. It is never acceptable to say that purposefully offending someone's religious beliefs or sensibility qualifies as a provocation. The Apex Court clearly stated in “Shreya Singhal's Case<sup>15</sup>” that overbroad regulations, which included even lawful and acceptable speaking within their reach, would have to be ruled undemocratic. This is for the reason that they may potentially stifle important political and cultural discourse. It is important to remember that a panel of seven judges can only vote to reject Ramji Lal Modi's ruling and repeal Section 295A.

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<sup>13</sup> Aayush Akar (n 1)

<sup>14</sup> *Fatehgarh v Ram Manohar Lohia* (1960), AIR 633

<sup>15</sup> *Shreya Singhal v UOI* (2015) Writ Petition (Criminal) No. 167/2012

Time and changing circumstances have caused constitutional courts all around the globe to conclude that early historic decisions given by adjudicators during the previous age, with distinct compassions remained ignored. The removal of lengthy detained legal positions that are no longer reasonable to contemporary culture, on the other hand, is neither unusual nor humiliating. One such judgement is the “Ramji Lal Modi” ruling, which affirms the validity of the blasphemy statute.

## CONCLUSION

Blasphemy laws clearly limit a person's freedom of speech and expression, but it is debatable if the purpose is justifiable. Its main objective is to maintain peace and tranquility among the locals rather than to intimidate or threaten minority groups. If we give it some thought, someone who deliberately disparages religion aims to either hurt other people's sentiments or incite enmity in society. Instead of protecting religion from laws, laws should be enacted with the intention of penalising these people and restricting their goals. Making society tolerable is the only long-term solution, and education is the solution. This will lead to a society that respects all religions, minorities, and their points of view, as well as the freedom of expression and the right to speak. I do not think that criticism or challenge of religion should never occur. Although our traditions are not flawless and do have some socially undesirable elements, when society is enlightened, it will see this as an issue that has to be rectified rather than a slight against religion.