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The varied facets of Legalising Blasphemy in India

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Blasphemy is a rather controversial topic when it comes to India due to its huge diversity, but it is still important to understand that blasphemy is curtailing our right to free speech and expression. Some critics against blasphemy label it as hate speech, but it is essential to know that blasphemy and hate speech are two completely different categories of speech that should not be mixed. Several countries have legalized blasphemy in the interest of free speech so why can't India learn from them? It is rather important to criticize religion to identify and eliminate the evils that creep into them from time to time, like the practice of indulgences in catholicism and the practice of Sati in Hinduism. If people didn't question such heinous acts that were being carried out in the name of religion, then who knows, maybe these would still be in practice today. Question one's belief system doesn't have to be disparaging but could also be seen as constructive criticism.

Keywords: *blasphemy, hate speech, free speech, freedom of speech.*

INTRODUCTION

In India, blasphemy—the act of saying or writing something that is deemed disrespectful or hurtful to a religion or its fundamental beliefs¹—has long been a difficult topic. The nation, which is renowned for the variety of its faiths and beliefs, has seen several blasphemy instances

¹ Bryan A. Garner, *Black's Law Dictionary* (10th edn, 2014)

that have stirred up controversy and created tensions between different communities. Although the Indian Constitution guarantees the right to free speech², there are laws in place that punish comments or deeds that are judged to be blasphemous.

As religion is frequently entwined with culture and identity, blasphemy in India is highly sensitive. Any perceived insult to religion can elicit strong feelings and cause violent reactions. Blasphemy-related tensions have been made worse by India's history of interreligious strife, which includes the partition of India and Pakistan in 1947 and the destruction of the Babri Mosque³ in 1992. In India, there have been several high-profile blasphemy cases in recent years, including the killing of Narendra Dabholkar⁴, a nationalist activist who opposed religious customs, and the incarceration of a comedian for allegedly insulting a religious authority. The discussion about the restrictions on free expression and the defense of religious emotion in India has been reopened in light of these instances. Ultimately, blasphemy in India is a sensitive and complex topic that poses significant concerns about the proper balance between the right to free speech and the defense of religious convictions.

INDIAN LAWS ON BLASPHEMY

Blasphemy is a sensitive subject everywhere, including in India. Article 19(1)(a)⁵ of the Indian Constitution ensures the right to free speech⁶. This right, however, is not unqualified and may be curtailed in certain situations, such as those involving public order, morality, and the interests of India's sovereignty and integrity⁷. Blasphemy is one of the topics in which the Indian Constitution's guarantees of freedom of speech and expression have been put to the test. India is a multicultural nation with many different religions, each with its own set of principles and customs. Blasphemy can be defined as any action that is viewed as derogatory towards a

² Constitution India 1950, art 19(1)(a)

³ 'Babri masjid: The Timeline of a Demolition' (*The Wire*, 06 December 2021)

<<https://thewire.in/communalism/babri-masjid-the-timeline-of-a-demolition>> accessed 17 February 2023

⁴ Chandan Haygunde & Shushant Kulkarni, 'Explained: The Narendra Dabholkar murder case, seven years on' (*The Indian Express*, 23 August 2020) <<https://indianexpress.com/article/explained/explained-the-murder-case-of-narendra-dabholkar-seven-years-on-6561748/>> accessed 17 February 2023

⁵ Constitution of India 1950, art 19(1)(a)

⁶ Bryan A. Garner (n 1)

⁷ Constitution of India 1950, art 19(2)

particular religion or its tenets and customs. Thus, the main goals of India's blasphemy laws are to safeguard religious sensibilities and suppress hate speech.

There is no national law in India that expressly addresses blasphemy. Nonetheless, the topic is covered by several rules in Indian law. Acts that are maliciously and purposefully done with the intent to offend religious sentiments or beliefs are prohibited by Section 295A of the Indian Penal Code (IPC)⁸. This clause has been utilized to bring legal action against those who are accused of disparaging religious figures or items. Such an offense carries a penalty of up to three years in prison, a fine, or both. Acts that incite hostility between various groups based on religion, race, place of birth, residence, language, etc. are illegal under Section 153A of the IPC⁹. This clause has been applied to prosecute those who have delivered provocative statements or participated in hate speech directed at a certain religious group.

In addition to these clauses, there are several blasphemy statutes at the state level. For instance, several governments have passed legislation making it illegal to butcher cows, which Hindus regard as sacred¹⁰. If these laws are broken, there may be jail time, fines, or both. These rules have come under fire for being utilized improperly to limit free speech and expression, even though they are intended to protect religious emotions. People have been jailed or convicted for expressing their opinions on religious issues on several occasions. For instance, two girls were detained in Bombay in 2012 over a Facebook post that criticized the city's closure following the passing of a well-known politician. The well-regarded politician was viewed as having been disrespected by the appointment¹¹.

Another incident involved a professor in West Bengal who was detained for uploading a cartoon on social media that Chief Minister Mamata Banerjee found objectionable. The professor was

⁸ Indian Penal Code, 1860, s 295A

⁹ Indian Penal Code, 1860, s 153A

¹⁰ Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act 1977

¹¹ Ram Parmar, '21-year-old girl held for Facebook post questioning Mumbai's 'Bal Thackeray Shutdown'' (Times of India, 20 November 2012) <<https://timesofindia.indiatimes.com/india/21-year-old-girl-held-for-facebook-post-questioning-mumbais-bal-thackeray-shutdown/articleshow/17276979.cms>> accessed 17 February 2023

accused of cybercrime and slander.¹² Blasphemy laws are criticized for frequently being used to target minorities and stifle dissenting voices. They draw attention to the fact that people have frequently been detained for expressing their opinions on religious issues, even when they had no intention of offending anyone. They contend that this violates the Constitution's enshrined fundamental right to freedom of speech and expression.

India's blasphemy laws are a complicated problem that needs serious consideration. The freedom of free speech and expression must not be restricted, even while it is crucial to safeguard religious sentiments. To guarantee that the rights of all citizens are safeguarded, the government must find a balance between these two conflicting interests. Any limitations on the right to free speech and expression must be strictly crafted and only used when there is a clear and present risk to the public's well-being, morality, or India's sovereignty and integrity.

HATE SPEECH

When someone communicates hatred or hostility towards another person or group of people because of their race, ethnicity, national origin, religion, sexual orientation, gender identity, or any other characteristic, that person or group is engaging in hate speech. Aside from verbal abuse, hate speech can also be expressed through writing, visuals, gestures, and other media.¹³ Hate speech can have a big impact because it can incite fear and intimidation, advance prejudice and discrimination, and fuel social and political unrest. Because it can cause emotions of anxiety, melancholy, and isolation, hate speech can also directly affect the mental and emotional health of those it targets.

There are limits to this protection, especially when hate speech is used to instigate violence or to foster an unfriendly atmosphere for particular groups of people, even though hate speech is frequently protected under freedom of speech rules in many nations. The United Nations and

¹² Soudhriti Bhabani, 'Professor Held for Caricature of Mamta Bnerjee on social networking sites' (*India Today*, 14 April 2012) <<https://www.indiatoday.in/india/east/story/professor-caricature-mamata-banerjee-social-sites-99118-2012-04-13>> accessed 17 February 2023

¹³ 'What is Hate Speech?' (*United Nations*) <<https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech#:~:text=Hate%20speech%20calls%20out%20real,sexual%20orientation%2C%20among%20many%20others>> accessed 18 February 2023

the European Union have urged more efforts to counteract hate speech and advance tolerance and diversity. Many nations have laws that forbid hate speech. To combat hate speech, a variety of tactics can be employed, such as education, awareness-raising initiatives, and legal action¹⁴. Campaigns for education and awareness-raising can help to offset the harmful effects of hate speech by fostering empathy and understanding between various groups of people. Hate speech can result in legal action being taken against those who use it, especially if it crosses the line into inciting violence or other unlawful actions.

It's crucial to understand that governments and law enforcement organizations are not the only ones who must deal with hate speech. People can help spread tolerance and understanding by speaking out against hate speech when they hear it and by encouraging others to do the same. Together, we can build a more welcoming and peaceful society for all by fostering respect and understanding among various groups of people and by not tolerating hate speech in any form.

DIFFERENCE BETWEEN HATE SPEECH AND BLASPHEMY

Blasphemy and hate speech are two speech categories that have the potential to be divisive and harmful, but they are not interchangeable. Blasphemy and hate speech are both potentially offensive, but they are two separate sorts of speech with different objectives. Hate speech is when a person or group of people is disparaged because of their race, ethnicity, religion, gender identity, sexual orientation, or any other characteristic. Hate speech can take many different forms, including gesticulations, violent imagery, written messages, and verbal abuse. Because it can stir up fear and hostility, promote discrimination, and heighten social and political tensions, hate speech can have a significant effect.¹⁵

On the other hand, speech that is deemed to be insulting or offensive towards a religion or religious belief is referred to as blasphemy. Blasphemy can be expressed in a variety of ways, including words, writing, pictures, gestures, and images. Although some people may find blasphemy upsetting, it is not meant to belittle a particular group of people because of their

¹⁴ 'Engage-How to Deal With Hate Speech' (*United Nations*) <<https://www.un.org/en/hate-speech/take-action/engage>> accessed 19 February 2023

¹⁵ What is Hate Speech? (n 13)

traits. Although being separate speech categories, blasphemy, and hate speech may overlap. For instance, members of a particular religious group may view hate speech that targets them as blasphemous. However, several nations have laws that make both blasphemy and hate speech illegal, frequently to safeguard religious sensibilities or stop prejudice.

It's crucial to remember that although blasphemy and hate speech are both potentially offensive, they are not always prohibited by law or the constitution. The distinction between free speech and blasphemy or hate speech can be blurry and challenging to define, yet it is a fundamental human right that is safeguarded by numerous national and international laws.¹⁶ Generally speaking, the difference between blasphemy and hate speech comes down to the speaker's intention and the effect of their remarks. While it's crucial to uphold the right to free speech, it's also critical to acknowledge the harm that hates speech can do and fight to build a community that is welcoming, courteous, and accepting of all individuals and worldviews.

GLOBAL LEGALITY OF BLASPHEMY

While some people find blasphemy objectionable, its legality varies greatly around the globe, with some nations criminalizing it and others safeguarding it as a fundamental right to free speech. Blasphemy is a serious offense that carries harsh consequences, such as incarceration, fines, or even death, in some jurisdictions. For instance, blasphemy is punishable by death in Pakistan, where there have been several instances of people being falsely accused of the crime and suffering as a result of violence and discrimination.¹⁷ Similarly to this, blasphemy is regarded as an offense against Islam in several nations with a majority of Muslims and is punishable by harsh punishments.

Blasphemy is protected as a fundamental right to free speech in other nations, and people are free to express their disagreement with or criticism of religious views without worrying about facing repercussions. For instance, in the United States, the First Amendment to the Constitution

¹⁶ Criminal Code Act 1995

¹⁷ Devika Bhattacharya, 'Pakistan's new Blasphemy laws may be weaponised against minorities, says rights group' (*India Today*, 26 January 2023) <<https://www.indiatoday.in/world/story/pakistan-new-blasphemy-laws-may-be-weaponised-against-minorities-2326730-2023-01-26>> accessed 20 February 2023

guarantees the freedom of speech, which includes expressions that can be construed as offensive or profane. While some religious organizations may find particular speech offensive, people are typically free to express their views and opinions without worrying about facing repercussions from the law. Blasphemy's legality is a controversial topic, and viewpoints on it differ greatly around the globe. Some contend that to safeguard religious sensibilities and avoid offense, blasphemy should be made a crime, while others assert that upholding free expression is more crucial than upholding religious convictions.

How one feels about whether or not blasphemy is legal, it's crucial to understand the potential harm that blasphemy laws can do, especially in nations where the legal system might be influenced by political or religious factors. Blasphemy laws can be used to crush dissent and stifle free speech, and by encouraging intolerance and discrimination, they can exacerbate social and political unrest. It's crucial to encourage a culture of tolerance and respect for different faiths and opinions as the world gets more interconnected. We may fight to create a more inclusive and peaceful society for everyone by defending the right to free expression and encouraging empathy and understanding amongst various faith groups.

CONCLUSION

The issue of blasphemy has generated discussion all across the world, particularly in India. The act of disparaging or displaying disdain for religious or sacred activities, beliefs, or things is referred to as blasphemy. India has blasphemy laws that make it illegal to intentionally offend someone's religious feelings. But the question still stands: Should blasphemy be permitted in India? Blasphemy should be made a crime, according to those who favor it, to safeguard religious unity and stop the spread of hate speech. They contend that tolerating blasphemy would promote religious disdain and disparagement, which might result in bloodshed and civil upheaval.

The rule against blasphemy goes against the concepts of free speech and freedom. Some contend that everyone has the right to their own opinion, regardless of whether it is offensive or challenges religious convictions. Blasphemy laws are frequently applied unfairly to target

minorities and marginalized groups and are frequently used to repress dissent and criticism of religious organizations. Furthermore, there is evidence that blasphemy laws may have unexpected effects, such as restricting academic freedom and preventing scientific research. If they are concerned about retaliation or being prosecuted for violating blasphemy laws, academics and scientists who study religion may be reluctant to disclose their findings. It is a difficult decision to make whether blasphemy should be legal in India given these considerations. It is crucial to remember that blasphemy is no longer a crime in many nations around the world as of late. For instance, Ireland's blasphemy law was abolished from the constitution in 2018¹⁸. Blasphemy should be made legal in India to safeguard the Right to free speech. Even the father of the Indian constitution, Dr. B.R. Ambedkar also has previously stated that religion can be and should be criticized. If you don't criticize something you cannot expect it to improve.¹⁹

¹⁸ 'Ireland becomes 8th country to abolish Blasphemy Laws since 2015' (*Humanists International*, 21 January 2020) <<https://humanists.international/2020/01/blasphemy-laws-abolished-in-ireland/>> accessed 22 february 2023

¹⁹ Dr. Bhimrao Ramji Ambedkar, *Annihilation of Caste and Other Essays* (1st edn, Maple Press 2021)