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Colonial Development of Anti-Blasphemy Laws in British India: A Comparative Analysis with Authoritarian Legislation

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The focus of this paper is an exploration of the development of anti-blasphemy laws in British India and how the legal regime perpetuated the Empire's rule by governing an ethnically and religiously diverse population. It examines the inclusion of section 295A in the Indian Penal Code (IPC) in 1927 as a result of the Rangila Rasul controversy, arguing that this was done not only to protect religious sentiments but also to pre-empt the problem of coalitions between religions that could translate into a challenge to British rule. By way of comparison, the study places this measure within the context of a larger body of colonial repressive laws, including press censorship, sedition and preventive detention, to highlight how these instruments of jurisprudence quashed both political and spiritual dissent. It also criticises the centre-based legal system of the IPC, which is an outcome of Bentham's utilitarianism, with reference to the Hindu Dharmashastra and Islamic Qada traditions before the colonial era. It states that the IPC, in limiting the freedom of expression, allowed the state to control religious matters, create social stability and most importantly, maintain the empire. Lastly, the paper evaluates how these colonial norms continue to affect the legal orders of India and Pakistan, and the barriers both countries face in the reformation of these laws. It consequently ends with recommendations on judicial oversight, legislative reform and social mobility strategies intended to bring the respective systems to meet the standards of international human rights and the modern legal systems.

Keywords: *blasphemy, Indian Penal Code, colonial legal system, Rangila Rasul, freedom of expression.*

INTRODUCTION

The codification of anti-blasphemy laws in British India also acted as the strategic aspect of a colonial legal machinery, which was meant to strengthen the control of the British over a diverse religious population. The measures were periodically rationalised as a defence against religious offence, but were part of a wider authoritarian approach by which political and social speech was controlled. Though apparently aimed at a larger goal of keeping order in the religion, the Indian Penal Code (IPC) 1860 and specifically these sections (Section 295-298), were the key to alleviating the existence of possible opportunities of coexistence between the religions that could become a viable alternative to imperial control.

Before British colonisation, India was a regime of legal pluralism where religious communities maintained their separate traditions of law. Muslims were covered by the Qada system, and the Hindus by the Hindu law, based on the Dharmashastra. Conflicts and religious crimes, such as blasphemy, were normally resolved flexibly by community leaders. The Warren Hastings Judicial Plan of 1772 was the first important program which changed this native system to a more centralised legal system. This was a step meant to introduce English forms of courts, slowly replacing community-based resolution with state-administered judicial systems and hence tightening the colonial grip on the legal sphere.

The codification of the Indian Penal Code (IPC) in 1860 by Thomas Macaulay is a crucial point in history as an aspect of British legal reform in India. Drawn up with specific reference to the ideas of a utilitarian philosopher, Jeremy Bentham,[1] the IPC aimed to rationalise and standardise criminal law throughout the sub-continent and consolidate the colonial rule at the same time. This was especially after the legal framework was expanded to include Sections 295-298[2], which provided offences based on the desecration of places of worship and the instigation of religious conventions and groups, which were supposed to curb religious hatred, as well as prevent communal violence that could pose a threat to British rule. It was used as a legislative measure to pre-empt the possible rise of unified nationalist groups, but was justified by the fact that it was necessary to maintain civic tranquillity.

[1] Jeremy Bentham and F C Montague, *A Fragment On Government (1891)* (Kessinger Publishing 2010)
[2] Indian Penal Code 1860, ss 295-298

The justification put forward by the colonial officials in favour of these statutory interventions was based on an understanding of the concept of 'public order', which defined religious expression as a possible source of social unrest. The British state portrayed itself as the impartial root, by using the law to bar any religious faction from allying against the colonial government. With this policy of religious control, the colonial regime developed a major tool of divide and rule as well as a way of strengthening its hegemony.

Through the arguments presented in this paper, it is purported to establish that the colonial anti-blasphemy laws that held during the times 1860-1947 in effect worked as both a specious defence of religious feelings and a strategic tool to maintain hold of British powers, by carefully ripping to shreds any political and religious unity that might have ensued. In order to clarify, this study runs a comprehensive historical and legal review of the anti-blasphemy laws coupled with a comparative review of the statutes surrounding other repressive practices, particularly crimes of sedition and press censorship.

The empirical evidence has been taken out of the archival holdings, as well as prime resources, including the IPC debates and original statutory codes, and contemporary literature. The methodological basis of qualitative research allows the simple evaluation of the mechanisms used by the British in order to impose social order and eliminate opposition. The discussion shows that colonial antipathy regimes represented not only retaliations against supposed religious offences but rather planned policies aimed at securing domination over administration. These tools worked hand in hand with other tools of repression to nullify any emerging political or religious threats to imperial rule.

PRE-COLONIAL CONTEXT & COLONIAL LEGISLATION

Before the advent of the British, the Indian legal tradition was quite diverse, and many systems based on local communities regulated a broad range of everyday activities. These systems were significantly different among different regions and local groups and were deeply rooted in the religio-cultural activities of the respective community. However, the regime revolutionised the social and legal framework of India, primarily legislating in favour of the colonial authorities, not the people, by importing foreign ideals and rules into a pluralistic society.

Pre-Colonial Legislative Context: The legal code governing the political affairs of Hindus was the Dharmashastra, or a body of religious law which formed the legal basis of the Hindu law regarding both private and public affairs. Manusmriti[3] and Yajnavalkya Smriti[4] governed marriage, property and family law as well as religious offences, including blasphemy. Religious offences such as sacrilege or the insulting of religion were also brought before community elders and local rulers to settle, even though there were no official state institutions to enforce the judicial decision. The punishment in Hindu society varied between being ostracised and incarceration.

The Muslims subscribed to the Qada system of Islamic law, which took care of the social, political, and personal matters.[5] Sharia did act as the basis of the determination of law regarding criminal, matrimonial and civil matters. Blasphemy may refer to criticism of the Prophet Muhammad or to blasphemy against Islamic traditions, which in some circumstances carried severe punishments, including death. These laws might then be imposed on the Muslim communities by the Islamic courts, which were often run by the religious scholars.

Different parts of India also had customary laws that were founded on regional customs and practices, in addition to these religious legal systems. Despite being less formal, these systems were crucial to preserving social order in tribal and rural communities.[6] In cases involving religious offences, local leaders usually served as mediators. Punishment was viewed as a way to restore social harmony rather than as a punitive measure, and disputes were frequently settled through reconciliation or restitution.

In the past, interreligious conflicts have been resolved in the majority of cases using social cohesion-based means as opposed to legal provisions introduced by the state. In this sense, religious leaders took central roles in negotiations of conflicts that saw alleged cases of blasphemy or other forms of faith-related offence. These conflicts were normally mediated based on religious arbitration and traditional practices that relied on reconciliation of interpersonal relationships at the expense of punishment.

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[3] Geoge Buhler, *Manusmriti* (Saraswat Prakashan 2024)
[4] Rai Bahadur Srisa Chandra Vidyarnava, *Yajnavalkya smriti. With the commentary of Vijnanevara called the Mitaksara and notes from the gloss of Balambhatta* (Allahabad Panini Office 1918)
[5] Mashood A. Baderin, *Islamic Legal Theory* (vol I, Routledge 2014)
[7] Ayesha Jalal, *The Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan* (CUP 1994)

The reactions to the offence of religion usually involved some form of public apology, financial reparations or ritual interventions aimed at restoration of communal relationships. The traditional methods successfully served to prevent communal violence and the spread of religious tensions. As time progressed, however, their salience waned as aspects of the responsibility of the state in ensuring the resolution of disputes over religion became institutionalised through British rule, even in cases related to crimes like blasphemy.

Colonial Legal Interventions: In order to understand the early British interference in India, it is essential to emphasise the era when the East India Company operated as a quasi-state participant. The said period also led to the formulation of a coherent approach to policy of legal pluralism, as the British governments embraced English legislation and amalgamated it with regional customary law. They tried to maintain the status quo and, at the same time, expand the customs of the British authority by combining innovative legal practice with the understanding of existing legal orders in marriage.

A turning point in this is the Regulation of 1772 by Warren Hastings. The court hierarchy (courts of criminal and civil jurisdiction) was aimed to be used to administer English procedures in criminal matters and local substantive rules in cases of local or civil disputes. As much as the laws appeared as impartial adjudicatory tools, they were not sensitive to religious crimes like blasphemy, and they mainly served as tools of political rulership and corporate interests. However, the judicial programme of Hastings paved the way to the subsequent success of the English law in the form of the Indian Penal Code (IPC) of 1860.

The Judicial Plan of 1772 is the momentous British attempt to bring a centralised legal system to India. The process was initiated by the Calcutta Mayor's Court, to whom all the powers of determining the cases of European residents in the state were granted. At the same time, District Courts were given the right to consider the cases regarding local Indian populations. Even though the system of criminal justice was governed by the English standards of procedures, the plan allowed the simultaneous use of Hindu and Muslim family law in familial issues. Such reforms led to the gradual Englishification of law and culminated in the completion of a common penal code, resulting in a landmark in the growth of British legal control in India.

At the same time, the colonial state initiated the conquest of the religious jurisdiction traditionally located in the domain of the local rulers or leaders through the introduction of British-like courts and the prioritisation of 'legal rationality'. This step paved the way to state control over the religious disputes and led to the appearance of the Indian Penal Code, which brought the possibility of controlling crimes like blasphemy.

THE INDIAN PENAL CODE

The Indian Penal Code (IPC), passed in 1860, was the milestone of British colonial legal reform in India. It was shaped in 1834 by the First Law Commission working under its chairman, the British barrister and scholar Thomas Macaulay, and was instructed to codify and consolidate the thousands of diverse criminal laws of India into a single, comprehensive text.[7] The IPC surfaced not as a bureaucratic convenience but as an effort to assimilate colonial India into the British thought of legal rationality,[8] with an emphasis on national order and imperial control rooted in the spirit of the utilitarian ideas, which focused on the rationality of punishment, intelligibility of the law and social good.[9] This influence is especially evident in the bias towards preservation of the public order and prevention of civil disorder.

The moving force behind this was to see the many local and religious legal systems replaced by a legal system that was homogeneous and secular. Macaulay and the rest of the commissioners relied heavily upon British jurisprudence, or what was then termed the Common Law tradition, as well as on the utilitarian theory and allied concepts. The maxim, advanced by Bentham, that the laws should be formulated to achieve the greatest happiness for the maximum number of people runs through the IPC, being designed to prevent crime, and in a sense, was in conformity with the directive of order and control practice by the colonial state. In this context, therefore, although the IPC was a technical reform of Indian criminal jurisprudence, it was also, in a fundamental sense, an instrument of imperial consolidation: with its common structure and content, formed as they were to standardize

[7] C M Campbell and P Wiles, 'The Study of Law in Society in Britain' (1976) 10(4) Law & Society Review <https://www.cambridge.org/core/journals/law-and-society-review/article/abs/study-of-law-in-society-in-britain/1A4A638D47E18672D90C50F08AA1057C> accessed 20 July 2025

[8] *Ibid*

[9] Mohammed Akinola Akomolafe, 'Jeremy Bentham on Equal Rights and Justice: An Overview' (2019) 24 Philosophia <https://philosophia-bg.com/archive/philosophia-24-2019/jeremy-bentham-on-equal-rights-and-justice-an-overview/> accessed 20 July 2025

the operations of the law, it also served now as a force in British consolidation of power within the Indian government and society.

ANTI-BLASPHEMY LAWS

The anti-blasphemy laws that are seen in the Indian Penal Code are those of Sections 295-298, which comprise some of the most controversial and historically significant parts of the code. These clauses, in the original, furnished the legal machinery by which blasphemy, sacrilege and various other modes of affront offered to religious symbols and religious ideals were repressed. The law of blasphemy and the law of sacrilege were not unknown before, but it was the British who gave their form, discipline and machinery of the law to the offence of blasphemy. Their inclusion in the IPC was not made by chance but by the sheer will of the British imperial state to ensure religious peace and prevent any form of inter-religious violence, which could threaten an otherwise stable colonial rule.

The first of these provisions makes profanation of a place of worship or an offence against a religious object a criminal act, under Section 295.[10] In so doing, it aimed to generate religious harmony within the plural society and at the same time repress the manner of behaviour that can generate communal tension. Section 296 criminalises any act of disrupting religious congregations[11], which, in practice, was actively used to target the development of inter-religious solidarity, by arbitrarily terming different acts of a group as an intervention in the congregation of the other. The third section, Section 297, forbids offending or defiling the burial grounds and lays on punitive acts any action that disrupts or pollutes the final residences of the dead.[12] Other than its purported emphasis on respecting the dead, this provision served the purpose of preventing sectarian unrest that might blow up into bigger confrontations, especially at a time when religious identification was becoming increasingly politicised. Section 298, the last section, is the most significant and the most controversial one. It makes it a crime to express the intent to incur a wound in the religious feelings through word of mouth or writing.[13] It mainly focused on controlling religious discourse in the

[10] Indian Penal Code 1860, s 295
[11] Indian Penal Code 1860, s 296
[12] Indian Penal Code 1860, s 297
[13] Indian Penal Code 1860, s 298

colonial polity and was concerned to prevent the mobilisation of politics based on religious identity.

Such laws were considered the tools of preserving the order and avoiding confrontations based on religious grounds; however, they seemingly served as an instrument of preserving the order and avoiding the escalation of conflict. Essentially, they promoted a deeper imperialism project of divide and rule: the enshrinement in the law of the idea that any single religious community was a self-governing unit, imposing legal and social constraints that divided communal unity and forestalled unification in any effort to resist colonial rule. Based on the public order model, the IPC aimed at preventing any upheavals that could destabilise the colonial state, hence recognising religion as a societal tool of influence.[14] As well as an agent of disruption. These measures were therefore multi-purpose as a regulation of the religious behaviour and as a control of the political rhetoric.

POLITICAL TENSIONS AND LEGISLATIVE CONTROL

The 1920s were a period that witnessed increased tension at the communal level, especially between the Hindus and the Muslims. These tensions were propagated by a marriage of religious revivalism, new political movements and ever-increasing expectations of Indian independence. The Arya Samaj, led by Swami Dayanand Saraswati, was at the forefront in advocating the Hindu values and challenging Islamic beliefs through aggressive criticism.[15] At the same time, the Muslim community was involved in a similar revivalist discourse driven by the efforts of the Khilafat Movement that aimed to protect the Ottoman Caliphate against European expansion after the First World War.[16] Political activism only contributed to the worsening of the communal rift as religious leaders representing both parties began to mobilise their respective communities using religious arguments.

This was the backdrop into which an anonymous author published Rangila Rasul in 1924, which served as a turning point in religious conflict. A pamphlet that mocked and made inflammatory remarks about the personal life of the Prophet of Islam was viewed as an attack on the sanctity of Islam, which led to mass protests and violent manifestations in the Muslim

[14] Gail Minault, *The Khilafat Movement: Religious Symbolism and Political Mobilization in India* (Columbia University Press 1982)
[15] Kenneth W Jones, *Arya Dharm: Hindu Consciousness in 19th-Century Punjab* (Manohar Publishers 1976)
[16] Minault (n 14)

society. This was not a unique event, but only one incident in a growing span of religious discourse, and an open contest among religious leaders. With communal politics becoming the order of the day, the boundary between religious expression and political action began to mingle, in what proved to offer a greater challenge to colonial authorities entrusted with ensuring harmony in a society that was increasingly becoming fractured.

Mahashe Rajpal, the publisher of the pamphlet, was released when the Lahore High Court acquitted him in 1927.[17] The court was of the view that, though the text had a blasphemous passage, it failed to meet the requirements to be charged with the existing laws. The decision consequently left a legal gap, implying that the available laws provided false security against the crimes that targeted religiosity. The judgment was construed by the Muslim community as a sign of failure of the colonial legal machinery in protecting the religious sentiment. This was followed by nationwide demonstrations in big cities, and there was increasing demand for establishing greater protection of religious sacrilege.[18] The major object of these demonstrations was legal reform.

Consequently, Section 295A was incorporated in 1927 when mounting communal frictions and growing calls to protect religious interests led to a legislative intervention. It was an addition to the Indian Penal Code, which penalised the malicious and wilful insult of the religious susceptibilities of any class, by words either spoken or written. The policy move was an attempt to equate the legal gap revealed by the 1926 scandal against perceived blasphemy in words. The introduction of Section 295A[19] led to a huge divergence from the prior model by extending the protection to cover the feelings of all religious communities. Such youth expansion was both political and social; protection now was not special in institutions or practices, but generalised in a kind of religious sentiment.

Owing to the communal tension and the rising pressure of nationalist movements, the British administration undertook a set of authoritarian actions to implement a strict legislative program with the intent of curbing the common protest in general and the protest within the religious or political opposition. Resultantly, the nascent section served as an instrument of

[17] *King-Emperor v Rajpal* [1927] Lah HC 590
[18] Richi Raj, 'A Pamphlet and its (Dis)contents: A Case Study of Rangila Rasul and the Controversy Surrounding it in Colonial Punjab, 1923–29' (2015) 9(2) History and Sociology of South Asia <https://journals.sagepub.com/doi/abs/10.1177/2230807515572213> accessed 20 July 2025
[19] Indian Penal Code 1860, s 295A

legislative control that criminalises both articulated freedom of expression and political challenge, as a part of a larger package of elements introduced together with the sedition, press licensing and detention law.

THEORETICAL ANALYSIS

The control of the British in India was institutionalised in various divides, which included the legal mechanisms specifically and the social mechanisms in general that governed the lives of the people. The British rule presented a history of a civilising mission where it was portrayed as an advanced power that brought order and sanity into a society characterised by chaos. The ideology, usually referred to as the 'White Man's burden'[20], in literature, the justification for the use of coercive legislation and institutions to impose discipline on the population is that it is believed not to be in a position to self-govern.

Orientalism and Legal Rationality: As part of its colonial project, the British sought not only to reorder Indian Society to conform to British visions of social order and utility, but also to provide a showcase of imperial powers to innovate and bend Indian society to British ideals. The colonial state tightened its hold over Indian people by the imposition of a centralised and rationalised legal system, but at the same time undermined the traditional legality upon which Indian life had been based in the preceding centuries. The offences that were to be codified and the ones associated with religion were a move by the empire to tame the religious feelings and also prevent any of the communal movements that could have been used to rally the force against British power.[21]

The notion of orientalism as an essential part of the British colonialist policy and practice could be analysed in terms of legal orientalism in a lucrative way. Throughout this time, the Indians were presented as subordinate objects of a backwards, primitive culture with no ability to continue to rule themselves successfully; thus, the British justified the need to take over India with a civilising mission, which would introduce the rational law based on secular principles to a legal environment of the indigenous, founded on superstition and traditional practice.[22] In these frameworks of thought and moral standards, Indian law was branded as

[20] Edward W Said, *Orientalism* (Vintage 1979)
[21] Bernard S Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton University Press 1996)
[22] Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (OUP India 1997)

inherently deficient, whereas British legal expertise was portrayed as an advanced model that could be applied everywhere.[23]

The regulations on religious crimes are the archetype of this incursion. The IPC does not simply represent an attempt to import a new law; instead, it endeavours to frame a law, backed by a reworking of Indian society in line with the metropolitan project of order, rationality and civilisation.[24] The process of criminalisation of religious practices, especially those that were thought of as transgressive acts (such as Sati), was a strategy that served the purpose of ensuring the religious modus operandi was regulated in such a way that it fit within the social order that the colonial state was concerned with upholding.

Utilitarian Philosophy and the Influence of Bentham: The idea of the utilitarian philosophy of Bentham had a definitive impact on the development of colonial law, based on the ideas of rational retribution, deterrent punishment, and the Greatest Happiness principle mentioned by Bentham. It not only served to maintain social harmony but also pre-empted any actions that would cause the fracture of social harmony, like religious wrangles or political defiance.[25] The anti-blasphemy clauses of the Code, in their turn, were based on this framework. The protection of religious orthodoxy was characterised by utilitarian reasoning, as religion was considered one of the greatest causes of instability, which was particularly true in the case of a religiously pluralistic polity such as India, where tensions between Hindus, Muslims, Sikhs and so on were commonplace. The utilitarian disposition was not limited to the regulation of religion and religious expression. It penetrated political speech, social conventions, and economic undertakings.[26] As an example, the Preventive Detention Act and the sedition laws were based on the social management perspective of utilitarianism, thus having the ability to prevent any chaos that could result in the instability of the imperial state.

Legal Pluralism and Legal Apartheid: There is an additional analytical perspective that can be applied, the legal pluralism. The British made an attempt to pave the legal system that was categorical and did not conform to the native traditions of India, along with the

[23] Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (University of Chicago Press 1999)
[24] Said (n 20)
[25] Thomas R Metcalf, *Ideologies of the Raj* (CUP 1995)
[26] Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (CUP 2011)

religiously influenced practices.[27] Through the passing of the anti-blasphemy elements, it actively signalled an emphatic break with the earlier, more pluralistic legal constitutions, as what replaced it was a centralised and secularised vehicle that meant to ensure the centralisation of control over the Indian religious and political life.

No legal system was more effective at reproducing racial hierarchies in colonial subjects than the British. The British judicial system was designed to grant Europeans privileges that were systematically denied to the Indians, and so, by way of law and administrative practices, a sort of legal apartheid was established where the Indians were essentially the second-tier citizens. Indians were tried on the grounds of offending the religious sensibilities; however, a lot of European actions of the same kind were permitted to go unpunished. The doctrine of divide and rule, based on a division of religion and society to solidify imperial control, echoed in the racially instigated use of the law. The colonial legal order was, therefore, deliberately designed to maintain racial injustices, as well as to maintain British control over the indigenous people.[28]

COMPARATIVE ANALYSIS

The creation of the colonial state in Indian was not merely a matter of the military or an administrative exercise but took the form of a project that tried to redefine India's legal order by replacing the pluralistic institutions of law that existed traditionally as a mixture of religious and customary law with a unified and secular legal system that could be modulated to suit the convenience of British rule in India.

Legislative Framework & Control: The IPC and the religious offences mentioned in it, particularly blasphemy, were not developed in a legal vacuum. In the British colonial time, the imperial state was supported by the repertoire of authoritarian legal tools that were used to regulate the discourse of the day, to limit political opposition, and restrain any challenge to the imperial policy. One should place sections 295-298 of the IPC in a larger context of the colonial law that was meant to maintain order and British rule over India. The IPC reflected the British legal rationalism, which was aimed at replacing the pluralistic and religiously diversified legal traditions of the subcontinent with the centralised code which would be

[27] *Ibid*
[28] Metcalf (n 25)

used throughout India equally. Even though this ambition was explained publicly as a quest to attain social utility, it was actually to strengthen the state of the colony by inserting the legalised structure that would neutralise possible sources of unrest, especially those attributed to the cultural and religious complexity of the people.[29] It presented a considered policy of religious amity and the prevention of communal violence and the mobilisation of religion, which might threaten imperial rule.

In light of the history, it is understood that among the main tools used in British colonial rule in India was the sedition law, which was issued following the 1857 Revolt. An amendment to the Penal Code in 1870, adding Section 124A, made it a criminal offence to utter an expression that tended to cause disaffection towards the government, thus exposing the guilty party to a life imprisonment term or the death penalty. This was a special measure taken to deter nationalist movements that insisted on Indian independence.

There are interesting similarities between the sedition clause and the parallel anti-blasphemy regulation. The two were based on ambiguously worded clauses with great discretionary powers given to colonial officials. Section 124A criminalised anything that had the effect of invoking the government into hatred or contempt that was itself broad enough to contain political criticism of many forms. A similar sort of elastic language was found in Section 295A, which made intentional wounding of the feelings of religious people punishable, thus allowing the state to criminally prosecute a wide variety of social commentary.[30] These laws were powerful tools in practice for cracking down on free speech and political opposition. Their use served to inhibit the lead towards the unification of anti-colonial forces based on common religious or political loyalty.[31] This served to limit the development of a nationalist movement by ensuring that the expression was criminalised by the British.

The act of press control was a primary component of the British policy of control over dissent and limiting the spread of anti-colonial moods. The Vernacular Press Act (1878) was also appropriately referred to as the Gagging Act and was enacted by the colonial government to curb the effect of the Indian-language press that had gradually become a mouthpiece of the

[29] Aziz Rahman et al., 'The British Art of Colonialism in India: Subjugation and Division' (2018) 25(1) Peace and Conflict Studies Journal <https://nsuworks.nova.edu/pcs/vol25/iss1/5/> accessed 20 July 2025
[30] Panchandas Mukherji, *Indian Constitutional Documents, 1773-1915* (Wentworth Press 2019)
[31] Mark Condos, 'Emergency, Exception, and the Colonial Rule of Law: The Case of British India' (2023) 14(1) First World War Studies 29 <https://doi.org/10.1080/19475020.2024.2307056> accessed 20 July 2025

nationalist and anti-imperial rhetoric. This law obliged the publishers to release their periodicals to be pre-censored by the authorities, and the publishing of material that was viewed as seditious by the colonialists was punishable with harsh penalties. The Indian Press Act (1910) later further expanded the censoring mechanism, where a huge security deposit on various newspapers was required, and the arbitrary bans on a publication that was deemed detrimental to the colonial regime were made permissible. Together, these actions aimed at controlling society and stifling its politics, especially in the media. The pre-emptive character of both the press control and anti-blasphemy laws may be seen to have represented measures that sought to quash the then relatively nascent dissent at its inception before it could have audaciously become an organised opposition. The press acts were used to limit nationalist writings just as much as the anti-blasphemy attempts were aimed at controlling religious polemic and avoiding religiously-charged political activism.[32]

The application of preventive detention falls within the category of the most repressive actions on the part of the colonial regime in India. The tradition began in Bengal Regulation III of 1818, which allowed the state to send into seclusion people believed to be dangerous to the welfare of society, devoid of any judicial intervention.[33] And the authority was broadened through the Defence of India Act (1915) even further in World War I, which allowed detention without charge and even the restriction of movement. The policy of repression went on even after the war through the Rowlatt Act (1919),[34] giving the state the power to go after individuals who engaged in political protests, religious activism, or anti-colonial agitation.

A comparative analysis of repressive strategies implemented by the British Raj illustrates a point that similar methods of repression are unified in various pieces of legislation. It is remarkable to note that the anti-blasphemy clauses of the IPC bear several key features in common with other colonial laws that incorporated legal terms that lack precision, so the judiciary and executive are left with broad discretionary power. All these acts were

[32] *Ibid*
[33] Troy Downs, 'Bengal Regulation 10 of 1804 and Martial Law in British Colonial India' (2022) 40(1) Law and History Review <https://www.cambridge.org/core/journals/law-and-history-review/article/abs/bengal-regulation-10-of-1804-and-martial-law-in-british-colonial-india/1A0A1EF41091C9713F5D7CA3FC8FD769> accessed 20 July 2025
[34] Rowlatt Act 1919

specifically designed to limit opposition and to prevent the solidity of nationalistic interests.[35] This architecture of legislation was supported by the logic of divide-and-rule, according to which, by strictly controlling the religious discourse and print media, the administration tried to prevent the emergence of an undifferentiated political opposition.

INSTITUTIONAL MECHANISMS OF COLONIAL RULE

One of the most important institutional instruments of control that was introduced by the British colonial state in India was the creation of the centralised police force that soon proved to be one of the key instruments of order and a suppressor of any discontent. The Police Act of 1861, which established an official police force in the entire country, was meant to maintain law and order, with the British government in charge. This act was the backbone of colonial policing and introduced the basis of the system.

It allowed the colonial authorities to use massive discretion in the application of the policing powers. The police had the authority to deal with any person or group which was deemed to cause a threat to the peace of the community. The act gave the colonial state a lot of authority to control the population and neutralise any prospective resistance, since the arrests, searches and seizures were not limited by a warrant.[36] The police also had a significant role in imposing the anti-blasphemy law. The law demanded that police forces avert the inception of religious violence and socio-political balances, but in practice, the police became an agent of state control by exercising their authority to imprison and arrest those who challenged the order of things.

The case of judicial complicity and resistance can be explained as multi-pronged in colonial India, especially when it comes to the deployment of repressive laws. Though the colonial judicial system featured a layer of due process, it was more often than not a tool that justified preserving imperial power. Colonial statues were interpreted in a manner which favoured British dominance by British judges who were mostly less sensitised to Indian customs and traditions. This institutional bias made local plaintiffs highly unlikely to get favourable settlements where the cases were related to state oppression. Still, judicial opposition existed

[35] Elizabeth Kolsky, 'The Colonial Rule of Law and the Legal Regime of Exception: Frontier Fanaticism and State Violence in British India' (2015) 120(4) The American Historical Review 1218 <https://doi.org/10.1093/ahr/120.4.1218> accessed 20 July 2025

[36] David H Bayley, *The Police and Political Development in India* (Princeton University Press 2019)

in certain circumstances. In particular, Indian judges of the lower-court level and the Indian jurists at times attempted to interpret the colonial legislation more broadly, thus resisting the presence of over-interference by the state.

The administrative machinery was an inseparable part of the state, where this set of authorities offered services together with the police and the judiciary in executing law and providing control in Indian society. Local officials, namely the District Magistrates and Revenue Officers, were in charge of smaller areas where they had the power to ensure the norms of the law were followed. Its bureaucratic structure was hierarchical, and it had a centralised administration, all of which helped to provide consistency of British policy throughout the subcontinent. District magistrates could not only put in place the local enforcement of legal requisites, such as arrest and detention of suspects, but also pass curfews and use other emergency measures at times of unrest.[37]

At the same time, an intelligence network existed to track the religious and political activity and to detect changes that are likely to cause tensions within the community. This network gathered news about controversial topics, such as the interreligious conflict and nationalistic undertakings. The ability to classify speech patterns and monitor remarks in the streets and open spaces allowed the British government to brand people or organisations as religious offenders or seditious elements.[38] This system of observation allowed the state to ensure compliance with the power, as the state could suppress possible manifestations of dissent through surveillance.[39]

POST-COLONIAL CONTINUITIES

India gained its independence in 1947, and as a result, it was established as a state. However, both states had a common legal system that had mainly been influenced by British colonial legislation. The Indian Penal Code, with its authoritarian provisions, figured as the beacon of criminal law in both jurisdictions. This is the continuity that epitomised during the colonial times and portrays the wide institutionalisation of the colonial rule that had influenced legal, social and political aspects of India and Pakistan. The persisting power of the IPC on both Indian and Pakistani soil was explained not only by the convenience of administration but

[37] Singha (n 22)
[38] Cohn (n 21)
[39] *Ibid*

also by the fact that it was a part and parcel of both the administrative and judicial systems of newly shaped polities.[40] Nonetheless, even after major attempts to eliminate the residues of colonial rule, many legal provisions remained unchanged, especially those concerning freedoms of religion, expression, and protests. Such norms expose the central difficulty of decolonising legal regimes.

In trying to negotiate the contradiction of having a secular constitution in a highly religious society, the Indian government found Section 295A useful as a tool of political and religious mobilisation. Sometimes it has been used to abridge the freedom of speech or place a minority under target.[41] A landmark case in this direction was the judgment by the Supreme Court of Indian in K.K. Verma v Union of India (1954),[42] In which the significance of Section 295A was recognised and upheld as being within the constitutional purview of the Union of India, as having been a valid constraint upon the freedom of speech guaranteed under the Indian Constitution, in view of the fact that due regard to the religious sentiment is considered essential to ensure a peaceful society. This ruling is, therefore, an example of the balance between the protection of secularism and maintenance of peaceful coexistence on one hand and the religious harmony in a country with strong communal divisiveness on the other.

After independence, the legal system in Pakistan was similar to that in India in terms of its parallel development, but Islamic identity played a more prominent part. The Pakistan Penal Code essentially replicated the Indian Penal Code. However, it is substantially characterised by Islamization tendencies, although changing over time, which have made the anti-blasphemy statutes highly restrictive and directly positioned in relation to the Islamic religion.

One of the most significant turning points came during the reign of General Zia-ul-Haq in the 1980s, when new blasphemy crimes were established, such as a death sentence for insulting the Prophet Muhammad or the Islamic religion, along with a comprehensive shariah-compliant legal regime. Such a legislative project was one of the most important components of the regime's program of Islamisation, which pursued the goal of establishing

[40] Marc Galanter and Rajeev Dhavan, *LAW AND SOCIETY IN MODERN INDIA* (OUP India 1993)
[41] Pratap Bhanu Mehta, *Burden of Democracy* (Penguin Random House India 2017)
[42] *Keshavan Madhava Menon v The State of Bombay* AIR 1951 SC 128

political control over the territory by using religion as an instrument of force. The prior Section 295A and the introduction of Sections 295B and 295C (criminalising the defamation of the holy Quran and the holy Prophet, respectively), therefore, became the means of religious politicisation and discouragement of differing opinion.

The modern use of the blasphemy laws is debatable. A great deal of these cases saw accusations against the members of the religious minorities, such as Ahmadis, Hindus and Christians, which were often followed by violence and extrajudicial reprisals, even up to mob lynchings and arson. This abuse is often activated to resolve individual conflicts or attack disadvantaged groups. The 2009 case of Asia Bibi,[43] A Christian woman, became the best illustration of this process, emerging as a topical symbol of the dangers of the laws and their vulnerability to abuse.[44]

The contemporary legal formation of blasphemy in both nations demonstrates the survival of the colonial layout, according to which the power of the state is based on the attribution of the feeling of religious belonging. India has held firmly onto a secular constitutional order; in contrast, Pakistan has placed its statehood in an Islamic context, thus making blasphemy a tool by which the rule of Islam as the character of the state is imposed. India and Pakistan are still struggling to overhaul the 19th-century laws on the expression of religion. In India, specific focus has been on Section 295A of the Indian Penal Code, a section that has aroused controversy since time immemorial. Though the legislation is not entirely abolished or revamped, civil rights organisations, secular bodies, and various political groups have urged its extensive reformation or dismissal. The religious minorities and human-rights activists assert that the clause overwhelmingly finds applications in minority groups, and it is often used to curb the freedom of speech and worship.

The contest has been even stronger in the case of Pakistan. Whereas a dwindling number of reformers support the repealing of such laws or the re-interpretation of the same, the political terrain has rendered substantive reforms a very hard nut to crack. Islamist political groups are particularly influential regarding state policy, and the fact that they see any attempt to revise any aspect of the blasphemy laws as a direct attack upon the Islamic nature of the state

[43] *Mst Asia Bibi v The State* [2019] PLD SC 1
[44] Muhammad Sadiq Kakar, 'Dissecting the Asia Bibi Case: A Critical Analysis of Blasphemy Law in Pakistan' (2022) 18(1) Manchester Journal of Transnational Islamic Law & Practice <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4325439> accessed 20 July 2025

and the sanctity of the religion. The protests that were caused on a national scale after the acquittal of Asia Bibi, as well as the murder of former Governor of Punjab Salman Taseer by his bodyguard Mumtaz Qadri, who is otherwise dubbed Ghazi by the people, show that there is no present possibility of any reform or abrogation of these laws.[45]

These statutes have also drawn a lot of criticism in terms of uneven enforcement since they are disproportionately used on minority groups. Besides, the passive reaction of the government to the cases of religiously-forced conversions and underage marriage of Hindu girls in Sindh, active development of the anti-Ahmadiyya and anti-Christian vigilantism by groups like TLP (Tehrik Labaik Pakistan) and ASWJ (Ahle Sunnat Wal Jamaat), highlights the fact that blasphemy laws, at the same time, facilitate the social conflict and provide the ground to aggravate the discrimination processes.

On the other hand, the anti-blasphemy regime in India is still stagnated in the pre-Independence phase, and most importantly, the regime has a secular inclination that secures and prosecutes all citizens similarly. Conclusive jurisprudence, consisting of the 1957 Ramji Lal Modi v The State,[46] has made it clear that criminal liability in section 295 is confined to those actions that are meant to cause religious offence and are deliberate and malicious. Indian judiciary thus considers the mental element of the crime or mens rea as an inseparable part of any prosecution exercise under these sections. Dissimilarly, in the institution of cases in sections 295B and 295C of the Pakistan penal code, the aspect of having a malicious intent is not material, even in cases of capital punishment, which sets a grave precedent.

STRATEGIC RECOMMENDATIONS

India and Pakistan still perpetuate colonial-era provisions against blasphemy and thereby represent constant threats towards religious freedom and freedom of expression. Originally used by the British colonial authority to control religious feelings and maintain rule, these are elements that are now serving primarily the purposes of political dictatorship and religious intolerance. To combat these deep-rooted issues, there should be a set of combined changes through legislation, policy remediation, and education of the population. The

[45] *Mumtaz Qadri v The State* [2016] PLD SC 17
[46] *Ramji Lal Modi v The State of UP* AIR 1957 SC 620

eventual goal is to influence the legal regulations that comply with modern-day concepts of human rights.

LEGISLATIVE AND JUDICIAL REFORMS

The immediate and direct solution is the reform of the abusive laws, in particular, Section 295-295A of the Indian Penal Code and 295A-295C in Pakistan, both of which have been used in discriminatory ways for the suppression of fundamental freedoms. Both nations need to embark on a serious reform journey by dislodging colonial legacies in favour of contemporary formulations that legitimately protect spiritual sanctity without impairing the freedoms of speech and expression. In India, Sections 295 and 295A have been traditionally used to oppress criticism of prevailing religious doctrine. Introduced to encourage a harmonious approach to the community, its indefinite and broad language encourages political foul play. Reform must therefore induce precision to replace probability and express avoidance of the violation of basic freedoms. Pakistan also needs to reconsider its legislation on blasphemy, especially the laws instituted since 1980, as these have been translated into oppressive mechanisms. The elimination of the death penalty clause in Section 295C will be a turning point in toning down the jurisprudence of Pakistan in line with global standards of human rights. At the same time, the mens rea component of criminal intent ought to be applied, bringing into consideration the personal responsibility.[47]

Another piece of advice is the strengthening of the court supervision of the cases of blasphemy and sedition. The powers bestowed by the judicial review doctrine, in both India and Pakistan, grant apex courts the significant ability to check constitutionality and to interpret legislation in their respective countries.[48] Nevertheless, there is a chance of abuse based on judicial complicity or disparity in practice.[49] The judicial review must be independent, thus ensuring that the anti-blasphemy laws are not twisted to limit the freedoms of speech and religion enjoyed by all, including minority groups. In India, the judiciary must develop a more proactive attitude in scrutinising these cases in order to curb

[47] Aayesha Rafiq, 'Section 295-C of Pakistan Penal Code: Controversy and Criticism' (2015) 6(3) Academic Research International 384 <http://www.savap.org.pk/journals/ARInt./Vol.6(3)/2015(6.3-38).pdf> accessed 20 July 2025

[48] Waris Husain, *The Judicialization of Politics in Pakistan: A Comparative Study of Judicial Restraint and its Development in India, the US and Pakistan* (1st edn, Routledge 2018)

[49] *Ibid*

their usage against the lawful mode of expression. Similarly, in Pakistan, the Supreme Court needs to be extra vigilant and check to ensure that the blasphemy provisions have not come to the service of oppressing the religious minorities, particularly Ahmadis, Christians, and Hindus, who disproportionately suffer the vengeance of these provisions.[50] The legal system in both jurisdictions requires the courts to uphold the basic rights where the secular values and democratic establishment stand above the religious appeal.

REVISION OF CURRICULA AND EDUCATION SYSTEM

The theme of curricular construction in Pakistan shows a lot of religious focus as compared to the Indian educational structure. Islamic Studies, Arabic and Quranic translation are compulsory subjects of both secondary and higher education, and the optional Ethics course (often strongly discouraged by schools) leaves very little room to inclusiveness. The replacement of the History curriculum with Pakistan Studies, along with the state-promoted Sunni Islamic values in textbooks, naturalises religious and sectarian tensions. On the other hand, the Indian educational system is characterised by the strong implementation of STEM curricula,[51] although certain schools still incorporate religion into their curriculum.

Religious hostility being ingrained in Pakistani culture, with intensive sensitisation of religious practices and concepts, drives on the part of the government to recode references to the blasphemy law and religious expression. Parallel processes can be seen in India, in which parallel laws are used to aggravate communal conditions.[52] Efforts in the field of public education that give more attention to tolerance, constitutional freedoms, and religious respect will be essential in transforming the discourse and reducing the abuse of such legal tools.

MEDIA AND INSTITUTIONAL CAPACITY-BUILDING

It is not unheard of for the media in India and Pakistan to be reprimanded internationally due to the evident prejudice and lack of transparency; however, in India, the alleged propaganda has taken a different turn in recent years.[53] Stringent measures to promote

[50] Kakar (n 44)
[51] National Education Policy 2020
[52] Amartya Sen, *Argumentative Indian: Writings on Indian History, Culture and Identity* (Penguin UK 2006)
[53] 'India: Press Freedom Index 2024' (*Reporters Without Borders*) <https://rsf.org/en/country/india> accessed 20 July 2025

openness in media and reduce the impacts of improper partisanship are essential. The special emphasis should be given to the prevention of speech that promotes hatred or discriminates against marginalised groups, which should be balanced with the notion of fundamental freedoms of speech and religion. The non-governmental organisations (NGOs) and universities can become major actors in fostering an informed national debate over the negative effects of anti-blasphemy laws. Particularly in Pakistan, where religion plays a central role in the life of the nation and the political arena, such efforts must enlist the participation of influential religious figures that would increase the merit and effectiveness of such efforts. Promotion of a long-term interfaith dialogue and peace-building efforts has been essential in reducing religious intolerance and developing a more pluralistic social order.

The foreign actors involved in the international arena have the opportunity to promote legal reform in India and Pakistan. The foreign governments, international organisations, human rights watchdogs, special agencies and mechanisms of the United Nations and regional conventions such as the South Asian Association for Regional Cooperation (SAARC) can use diplomatic means to pressure the countries into reforming their blasphemy laws in compliance with the international norms of human rights.[54] At the same time, it is essential that India and Pakistan not only agree to, but also ratify, mainstream international human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which protect the freedoms of religion and expression.[55]

Exploitation of the religiously inspired laws is possible only as long as the real secular values are not applied. The constitutional provision of secularism in India has to be rendered operative to protect religious freedom and the rights of free speech from the religious intrusion of the legislative process. The Indian government must take an active stand when it comes to interfaith harmony by curbing the growing trend of religious vigilantism. Pakistan, on the other hand, needs systematic changes within the framework of discrimination. Even though the national identity of the people cannot be fully separated from its Islamic strain, the identification should not serve the purpose of the marginalisation

[54] Malcolm D Evans, *Religious Liberty and International Law in Europe* (Cambridge University Press 1997)
[55] Heiner Bielefeldt, 'Freedom of Religion or Belief: A Human Right under Pressure' (2012) 1(1) Oxford Journal of Law and Religion 15 <https://doi.org/10.1093/ojlr/rwr018> accessed 20 July 2025

or persecution of other religions, which are in the minority. An enlightened national identity, to balance Islamic ideals with strong human-rights protection, is inevitable for a future where freedoms of religion and expression become universal norms.

CONCLUSION

This paper attempts a stringent analysis of the colonial origins of the anti-blasphemy law in British India and of its lasting effects on Indian and Pakistani law today. The analysis reveals that the blasphemy law, along with other authoritarian legislation, worked as the social and political tools of colonial control, which, at the same time, empowered and limited the structures of rule in post-independence India. The colonial regime systematically created the anti-blasphemy laws as a central apparatus of the administration in a schema where the religious regulation was put in a hub of attempts at hegemonic control of the heterogeneities of the subcontinental population. Even though the apparent reason was to stop the inter-communal violence, the underlying motive was to stop cross-religious political alliances, which could dislodge the British dominance. Such a legislative program is a perfect example of the so-called legal orientalism, the colonial assumption that local legal traditions needed rationalisation and reform.

The continuance of the blasphemy law in post-independence India brings a seminal schism within the secular constitutional framework of the country. The contemporary application of Section 295A is, in reality, an exercise that has been used more by the majority to quash the religious plurality of the minorities as well as political dissenters. At least, even in Pakistan, the course that has been taken since independence has been quite problematic. The Islamisation alchemised inherent anti-blasphemous laws into a tool of persecution of religions, and in the end, the capital punishment laws, which have particularly impacted individuals in the religious-minority groups. These developments expose the way colonial legal provisions can be modified towards the continuity of new types of authoritarianism.

The unwillingness of both India and Pakistan to change such laws indicates greater structural issues; such resistance indicates the extent to which colonial legal legacies can be locked into the post-colonial establishment. Regarding opportunities for reform, the possibilities in the two countries are very different. There exist possible ways in India based on a secular system of constitution, with potential court activism and mobilisation of civil society. The situation

in Pakistan is more challenging based on the Islamic constitutional identity and the unstable and often hostile political environment. However, strategic solutions, including revision of the education system, executive and legal efforts to combat the misuse of law, and pressure by human rights groups, have the potential to initiate a breakthrough.