

“HOW FAR IS TOO FAR – A CRITICAL ANALYSIS OF BLASPHEMY LAWS IN INDIA”

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INTRODUCTION

John Milton, a famous poet of the seventeenth century once said ‘Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties’. According to the Black’s law dictionary, the word ‘Blasphemy’ is defined as ‘speaking or writing evil of the deity with a purpose to derogate someone from following certain commandments of god and alienate the minds of others from the love and reverence of god.’¹ In simple terms, blasphemy means an insult of a god or religion. It may differ from country to country but that is the general meaning understood by a layman. The definition of blasphemy may differ according to the religious ideology of a country. For example, Pakistan has blasphemy laws which say that no religious feelings of the people of Pakistan shall be hurt. According to its constitution, Pakistan is an Islamic State and not a secular state. Precedent judgments show that the Pakistani courts have always been biased towards Islamic ideology and ignorant of other religions. When we talk about Indian blasphemy laws, it is very subjective as to what will amount to blasphemy. India has a religiously diverse population. As India is a formally secular state and the Constitution of India guarantees secularism in the country, blasphemy becomes very subjective in nature. Section 295A of the Indian Penal Code imposes fine or imprisonment up to three years to any person who deliberately and maliciously insults a religious belief of a religious community.² The insult may be oral, written or in any other form of expression. The debatable question is what amounts to an insult to religious belief because a religious belief is nothing but an idea; and ideas can be ridiculed. Section 296 of Indian Penal Code punishes whoever voluntarily disturbs a religious assembly.³ Section 298 of the Code prohibits uttering words to hurt religious feelings of any person.⁴ Blasphemy laws are similar to defamation laws. The only difference is that defamation is towards known persons and blasphemy is towards religious ideas or beliefs. According to human psychology, it is a kind of defense mechanism to not let anyone express their opinions about the beliefs so that the beliefs are never in question. For example, if a scientific formula is questioned

¹ Bryan A. Garner, *Black’s Law Dictionary* 181 (9th ed. 2009).

² Section 295A, Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.

³ Section 296, Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.

⁴ Section 298, Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.

and criticized, after some discussions, the formula may change but when a religious belief is questioned, the people following it will have a problem because if the belief is found to be false, the belief cannot change as the basic foundation of a religion is blind faith. In the recent years, many people have been accused of blasphemy and are usually presumed to be guilty by the society. The accused have to face death threats, insults and alienation. A recent example was Aasiya Noreen from Pakistan who was a Christian and accused of blasphemy. Though the Supreme Court of Pakistan acquitted and reversed the decision of lower courts which gave her a death penalty, she had to face a lot of difficulties and trauma. Moreover, her appeal was heard only after her case was brought in front of world media. Hence it is important to draw a scale to measure blasphemy.

HISTORY

Blasphemy laws are existent since there is a concept of religion in the society. It was mainly dealt with by the Church Courts. All religions including Islam and Hinduism punished blasphemers till the sixteenth century. In the Taylor's Case⁵ of 1676, the accused was convicted of blasphemy as he said that the god of Christianity, Jesus Christ, is a whoremaster and that religion was a cheat. This is one of the oldest recorded cases of England's blasphemy laws. While giving the ratio of the judgment, Sir Matthew Hale said that English laws are based on the Christian beliefs and so, speaking evil of Christianity would mean to disobey the law of the state. After the separation of the church and the state, the secular criminal courts recognized these laws in the seventeenth century. By then, the Queen had established English business foundation in India and took total control of the Indian laws. After introduction to Christianity, English laws were imposed on Indians as well and blasphemy was no exception. Section 295A was inserted in the Indian Penal Code by the British in the year 1927 to prevent hate speech and maintain public order.⁶ When we talk about hate speech crimes in India, blasphemy laws were made to prevent discord among its many ethnic and religious communities. Though India is a Hindu majority state, the Supreme Court has kept the secular nature of its constitution alive. This could be seen in the case of *Ramji Lal Modi v. The State of Uttar Pradesh*⁷ where Ramji was sent to 12 months imprisonment and also fined for publishing a cartoon and an article which insulted the religious beliefs of Muslims. In a later *Henry Rodrigues Case*,⁸ the accused was found guilty of insulting the religious beliefs of the Roman Catholics by publishing and printing an article criticizing some beliefs of the Roman

⁵ *R v. Taylor* (1676) 3 Keb 607.

⁶ *Supra* note 2.

⁷ *Ramji Lal Modi v. The State of Uttar Pradesh*, AIR 1957 SC 620.

⁸ *The State of Mysore v. Henry Rodrigues And Anr.*, 1962 CriLJ 564.

Catholic Church which were contrary to the teachings of the Bible. In a recent *R. V Bhasin Case*,⁹ a book called 'Islam – A Concept of Political World Invasion by Muslims' was banned as it was hurting religious feelings of the Muslim community. There have also been cases where the accused has been held not guilty. But according to the World Annual Report of 2019, there are a majority of false blasphemy cases than genuine ones filed in India.¹⁰

ARTICLE 19(1)(a) VIOLATED BY BLASPHEMY LAWS

Article 19(1)(a) of the Indian Constitution gives freedom of speech and expression.¹¹ The scope of Article 19(1)(a) is very wide to interpret. In the *Justice Puttaswamy Case*¹² freedom of speech and expression was interpreted as a fundamental right of the citizens of India and guaranteed as the natural rights inherent in the status of the citizen of a free country,¹³ Freedom of speech goes to the heart of the natural right of an organized freedom-loving society to impart and acquire information about that common interest. In the Indian context, not letting someone express his views on an idea curtails Article 19(1)(a) of the Indian Constitution. Article 19(1)(a) can be interpreted from the case of *Romesh Thappar v. State of Madras*¹⁴ where the petitioner was a printer, publisher and editor of a weekly journal in English which was printed and published in Bombay. For the interpretation of Article 19(1)(a), Patanjali Sastri, J. said that "there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation."¹⁵ That means that not only can one express his views on any issue but he can also circulate it. In the case of *Indian Express Newspapers v. Union of India*¹⁶ where freedom of speech and expression was interpreted in a view that it is a right of the people to get informed and discuss about the burning issues in the country. "During the struggle for freedom, Indian leaders were moved by the American Bill of Rights containing the First Amendment to the Constitution of the United States of America which guaranteed the freedom of speech and expression. Pandit Jawaharlal Nehru in his historic resolution containing the aims and objects of the Constitution to be enacted by the Constituent Assembly said that the Constitution should guarantee and secure to all the people of India among others freedom of thought and expression."¹⁷ In a recent case of *Anuradha Bhasin and Ors. v. Union of India* and

⁹ *R. v. Bhasin and Ors. v. State of Maharashtra*, 2010 (112) BomLR 154.

¹⁰ 29th Annual World Report, 2019, available at: <https://www.hrw.org/world-report/2019/country/chapters/india>.

¹¹ India Const. art. 19, cl. 1(a).

¹² *Justice K.S. Puttaswamy and Ors. v. Union of India and Ors.*, 2018 (9) SCJ 224.

¹³ Supra note 12.

¹⁴ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

¹⁵ Supra note 14.

¹⁶ *Indian Express Newspapers (P) Ltd. And Ors. v. Union of India and Ors.*, AIR 1995 SC 965.

¹⁷ Supra note 16.

Ors.,¹⁸ it was said that the freedom of speech and expression is a fundamental right and should be allowed on the medium of internet. If any restrictions are to be put on this right, the government can do on the internet but only to the extent that it does not stop people from expressing their opinion peacefully on any burning issue in the country.

INTERNATIONAL LAWS ON BLASPHEMY

Article 19 of ICCPR¹⁹ says that every person shall be given freedom of speech and expression. It also says that the freedom extends to expressing personal opinion without interference. However, no Covenant gives freedom to exploit one's right to freedom of speech.²⁰ Hatred towards any religion, race or war propaganda are the only restrictions for this freedom.²¹ The Office of the United Nations High Commissioner for Human Rights (OHCHR) commented on Article 19 of ICCPR by saying that the blasphemy laws discriminate against atheists and non-theists by providing special protection for religious beliefs but not other deeply held views.²² OHCHR has also said that the restriction on freedom of speech and expression, including hate speech legislations are rarely used to protect against abuses but are often used by the states against the very minorities they are designed to protect.²³

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008 (ENGLAND)

England has done away with blasphemous libel after the Criminal Justice and Immigration Act 2008.²⁴ Section 79 of the Act specifically says that the law related to blasphemous libel is abolished.²⁵ Before that, English courts had to do a tiring sum of interpretation. First time in English law in the *Gay News Case*²⁶ where BBC had a show where the concept of virgin birth was discussed and the scientists were in denial to accept virgin birth, it was held by the court that the defendants had no intention to blaspheme. In the past sixty years for England, this was the only successful case where the accused was held not guilty. The revolutionary landmark case where the amendment to abolish blasphemy laws was made to the Criminal Justice and Immigration

¹⁸ *Anuradha Bhasin and Ors. v. Union of India and Ors.*, 2019, Writ Petition (Civil) No. 1031.

¹⁹ Article 19, UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>.

²⁰ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, available at: <https://www.refworld.org/docid/4ed34b562.html>.

²¹ Article 20. cl. 2, UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>.

²² *Supra note 19.*

²³ *Supra note 19.*

²⁴ Criminal Justice and Immigration Act, 2008, Chapter 4, Part 5.

²⁵ Section 79, Criminal Justice and Immigration Act, 2008, Chapter 4, Part 5.

²⁶ *Gay News v. United Kingdom* (1983) 5 EHRR 123.

Act of 2008 was *Green v. the City of Westminster Magistrates' Court*.²⁷ After this case, there were committees set up in the parliament to discuss the case and hence, blasphemy laws were abolished in England. However, England has laws which prohibit any act that instigates violence in the public which includes hatred against any religion, race or nationality.

TRUTH NOT A DEFENSE UNDER SECTION 295A IPC

In the case of *State of Maharashtra v. Sanghraj Damodar Rupawate*²⁸ where a book titled 'Shivaji – Hindu King in Islamic India' was published. Despite the fact that the book was historically accurate and there was no denying that India was ruled by Muslim rulers until Shivaji, the book author of the book was held to be guilty of Section 153A of Indian Penal Code for spreading enmity among religious groups.²⁹ It shows that even in the modern era historians are restricted to limit their research just because some people's ideologies may get affected. In the above mentioned book, though the author was speaking the truth but D. K. Jain. J has commented that truth is not a valid defense under Section 153A. There are many such cases which limit the freedom of speech and expression of such authors who want to speak the truth.

BLASPHEMY UNDER INDIAN CYBER LAW

Section 3(2)(b) of the Information Technology Cyber Rules of 2011 says that the intermediary in the internet sources shall specify the terms and conditions regarding the publication policy. The section specifies the word 'Blasphemy' but it does not define it.³⁰ This gives the court total discretion to interpret as to what is blasphemy. Hence there is a need to give blasphemy a proper and definite definition. For example, if someone publishes a cartoon which shows an imaginary face of Prophet Mohammed without any objectionable comment, some extremists may take it as offensive comment. But in reality there is nothing but the face of Mohammed in the cartoon. This creates confusion in the judge's mind and he may act according to his religious beliefs. He may also be charged under Section 295A of Indian Penal Code which is a cognizable offence and the police officer can arrest the accused without any warrant. This process will create hatred for the accused in the society and will eventually result in mob riots.

²⁷ *Green v. the City of Westminster Magistrates' Court* [2007] EWHC (Admin) 2785.

²⁸ *State of Maharashtra v. Sanghraj Damodar Rupawate*, (2010) 7 SCC 398.

²⁹ Section 153A, Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.

³⁰ Section 3, cl. 2(b), Information Technology (Electronic Service Delivery) Rules, 2011.

CONCLUSION

With time change the laws. The laws should be changed according to the social changes around the world. This is the time where we can see drastic changes in the India laws. For example, adultery, homosexuality, rape and various civil laws are the burning topics in the 21st century in India. India has changed these laws according to the dynamic changes of behavior in the society. Blasphemy laws were made by the religious clerics to control the masses in the ancient times. Modern society has no room for such a barbaric law. The reason it can be called as a barbaric law because sensitivity is subjective in nature. Blasphemy has different definitions according to different individuals. One may say that questioning the existence of god is blasphemous whereas, atheism is the non-belief in the existence of god. Agnosticism is an idea that there is not enough evidence for the existence of god and till it is proved, the agnostics deny the existence of god as well. If a subjective sensitivity of religious people is hurt just because someone does not have the same ideology as theirs, then there will not be freedom of expression and freedom of thought in this world. Asking someone for a proof for their ideology is acceptable but asking someone not to question their ideology is not. It is the basic human right to question and it is the only force for scientific development. For example in India, some people worship Ram and some worship Ravana. It is very subjective if worshipping Ravana is blasphemy because by the majority of the Indians, Ravana is considered as an evil force. Moreover, in an era of internet, it is highly impossible to stop people from questioning one's idea. One needs to understand that sarcasm and humor are the key elements on social media discussions. We can agree that the social media has become a platform of discussion in this modern era but we should also agree that the discussion should not turn into an abusive session. The laws should be liberal when it comes to freedom of speech and expression as it is the only way for human development. We can track down the history and see that different religious ideologies of the rulers have been the reason for majority of the wars. Starting from the ancient times till today, millions of people have been killed in wars over religion and blasphemy. There are around 4300 religions around the world. All the religions may not be true but they can all be false. Hence, doubting and questioning religious beliefs cannot be made an offence. "Psychiatrists say that religion reduces the ability of critical thinking. Questioning self religious beliefs is also considered a sin by the religious people. Hence empirical studies have proven the fact that religion reduces thinking abilities as faith is the basic norm of religion."³¹ Religious people claim that morality is subjective and hence the religious texts should be followed as a moral code. For example, if a religious text says 'thou shall

³¹ Alexander Moreira-Almeida, *Religiousness And Mental Health: A Review*, 28 Brazilian Journal of Psychiatry, 242-250 (2006).

not kill' and the follower of that religion is not killing people just because it is written in the text not to kill people, then that person's moral bar is so low that he cannot think for himself. If the written code is what is stopping him from committing murder, then his bar of morality is infinitely low. Morality does not need religion. What one needs is the common law of the country. Hence, it is high time for India to do away with the blasphemy laws because questioning harshly about one's ideology is the first step for progressive development. It is for the court to interpret the law but the question still remains '*How far is too far.*'