

THE LAW OF BLASPHEMY: INDIA AND THE WORLD

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ABSTRACT

Blasphemy is one of the world's most abused law when it comes to suppressing the voices of minorities, rationalists as well as at many times scientists & often comes under a rain of questions over its legality in the present modern establishments of the world. While often it is regarded as a reasonable restriction over the freedom of speech and expression, it many a times is also regarded as a hindrance in the development of a scientific temper among people and also a methodology of imposing the religious beliefs and virtues of one community over other. In this modern world where Freedom of Speech as well as Freedom of Religion are widely considered as fundamental and human rights, India despite being a pluralist country with an incomparable diversity in its population, having a vast ocean of varied conflicting opinions has the Section 295-A in Indian Penal Code, 1860 which is a law against blasphemy under the guise of Hate speech.

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1. INTRODUCTION

“All human rights are universal, indivisible and interdependent and interrelated. Yet nowhere is this interdependence more obvious than in the discussion of freedom of expression and incitement to racial or religious hatred”².

The term blasphemy means ‘Irreverence toward God, religion, a religious icon, or something else considered sacred’³. It has been held to be a common-law crime [in the United States] because of its tendency to stir up breaches of the peace. It is expressly made punishable by some of the statutes⁴. However the rationale behind declaring blasphemy a crime is not only applicable in common law countries but throughout the world.

Multiple countries across the world have blasphemy laws in their penal system despite having different demography and legal systems. Whether it is Christian states like Greece⁵ or Iceland⁶, Islamic States like Iraq⁷ or Egypt⁸, Jewish majority state Israel⁹, state emphasising on Buddhism, Sri Lanka¹⁰ or secular states like Canada¹¹ or Germany¹², countries across the globe have laws against blasphemy. The offense of blasphemy may relate to a particular religion like in Qatar¹³ or may be towards all religions like in Denmark¹⁴ and may carry penalty ranging from a mere fine in Italy¹⁵ to death penalty in Pakistan¹⁶.

However many countries do not have blasphemy laws in their penal system. The United States of America ruled out Blasphemy law as unconstitutional as it was a violation of the Freedom of Speech.

India being a pluralist country & secular just like America, had no provision against blasphemy until the year 1927 when the Section 295(A) was incorporated in the Indian Penal Code, 1860 stating that “Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [three years], or with fine, or with both”.

The question however is, is blasphemy law in modern India justified?

² Philip Alston & Ryan Goodman, *International Human Rights*, (1st Ed OUP 2012) pg.677

³ Byran A. Garner (ed.), *The Black's law dictionary*, (9th Ed. West Group 2009) pg. 193

⁴ Ibid; Rollin M. Perkins & Ronald N. Boyce, *Criminal Law*, (3rd Ed. Foundation Press 1982) pg. 474-475

⁵ Greek Penal Code, 1950 c.7 art.198

⁶ General Penal Code, Act no.19 of 12 Feb 1940, art.125

⁷ Iraqi Penal Code, 1969, Ch.8 §2 Art.372

⁸ Egypt Penal Code, 1937 as amended till 1992, art.161

⁹ Israeli Penal Code, 1977, art.7 ¶170; ¶173

¹⁰ Srilanka Penal Code, 1885, c.15 §291A; §291B

¹¹ Canadian Criminal Code, 1985, Art. 296

¹² German Criminal Code, 1998, c.7 §166

¹³ Qatar Penal Code, law no. II of 2004, Part 7 c.1 art.256(2); art.256(3)

¹⁴ Danish Penal Code, 1930, c.15 §140

¹⁵ Italian Penal Code, 1930, art.724

¹⁶ Peter R. Blood (ed.), *Pakistan: A country study*, (6th Edition, Federal Research Division, Library of Congress 1995) pg.312

2. HISTORY

Being a Society with mostly Hindu population, India never saw a legislation against blasphemy till 1927 as "Hinduism faces no fetters on intellect: Man may think as far as he can; there is no blasphemy in investigation. There is nothing too sacred to be tested or questioned".¹⁷ Prior to independence, in the fog of communal tensions, a Pamphlet named RangilaRasul was published by MahashayRajpal¹⁸. The Pamphlet upon its release in the year 1926 sparked controversy, with the members of Muslim community seeking punishment for Rajpal as it was a violent attack over the religious sentiments of Muslims. Eventually Rajpal was acquitted because of the lack of any blasphemy law in India, only to be murdered in 1929. The British colonial government eventually in the time of need, amended the Indian Penal Code, 1860 and added the Section 295(A) in the year 1927¹⁹. The Section even after the partition of India, is present in the Indian Penal Code, 1860, as well as in Pakistan and Bangladesh.

3. WHY ANTI-BLASPHEMY LAWS?

There have been numerous reasons for act of blasphemy to be outlawed throughout the history in the world. Being a part of the same, most of the reasons regarding why blasphemy is outlawed can be associated with India. Mostly accepted reasons can be understood as below-

(A) The Sacrosanctity Of Religions-

Most of the religions establish in the mind of people, the sacrosanctity of God as well as the religion itself. Scholars in the past have held that the God is above and beyond the scope of any question or doubt and acts such as impunity, apostasy and blasphemy have been held to be grievous offense, penalty of which at many times can be death.

According to one of the most celebrated Jurist and theologian, St. Thomas Aquinas, when we "compare murder and blasphemy as regards the objects of those sins, it is clear that blasphemy, which is a sin committed directly against God, is graver than murder, which is a sin against one's neighbour. On the other hand, if we compare them in respect of the harm wrought by them, murder is the graver sin, for murder does more harm to one's neighbor, than blasphemy does to God".²⁰

He also declared that "Heretics... by right can be put to death and despoiled of their possessions by the Secular, even if they do not corrupt others, for they are blasphemers against god, because they observe a false faith. Thus they can be justly punished more than those accused of high treason"²¹.

Other noted jurists such as Augustine and Calvin were also of similar opinion.

¹⁷ John R. de Lingen, *An introduction to the Hindu faith*, (Sterling publishers' pvt. Ltd. 2008), pg. 2

¹⁸ Koenraad Elst, In favour of Freedom of Expression: Section 295A as cornerstone of censorship, 2016, Vol.1, Dialogue, no.1

¹⁹ Criminal Amendment Act of 1927, No.25

²⁰ St. Thomas Aquinas, *Summa Theologica*, Vol.3 Part-II (2nd Ed. Cosimo, Inc. 2013) pg.1226

²¹ Leonard Williams Levy, *Blasphemy: Verbal offenses against the sacred, from Moses to Salman Rushdie*, (UNC Press books 1995) pg.52

(B) Enforcement Of Religious Sanctions-

For example in Afghanistan the Constitution declares Islam to be the official "religion of the state," stating that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam," and that "the provisions of adherence to the fundamentals of the sacred religion of Islam and the regime of the Islamic Republic cannot be amended." For issues on which the Constitution and Penal Code are silent (including conversion and blasphemy), courts rely on Shari'a.²²

Therefore states that have an official religion, tend to keep religious laws as penal laws or draft their penal laws on the basis of religious laws, outlawing blasphemy if prescribed in the religious laws itself.

(C) Stable Governance-

As noted by the Greek Supreme Court, "Religious insult encroaches upon the religious feelings and the religious freedoms of others, both of which are protected as moral-social value, as social & legal interest worthy of protection to the benefit of civilisation and the polity. According to this decision, religion is not a purely personal affair, a wholly inner relationship of the soul of god, irrelevant to the state, but is the foundation of the state, a vector of spiritual civilisation affecting not only the feeling and thoughts, but also the actions of human beings".²³

Hereby it can be understood that Religion affects the actions of human beings, thus requires a protection legally as a moral & social value that drives a human, leading to a stable society and better governance. The responsibility to protect religious sentiments of others later transforms in to a legal duty when the state recognises the 'Right to Religion'.

(D) Reasonable Restriction For Harmony-

Most of the countries implement Blasphemy laws as a reasonable restriction for the maintenance of communal harmony. Not to forget the fact that the Section 295(A) was introduced in the Indian Penal code, 1860 to put a hold on a series of communal violence provoked by the use of blasphemous statements. The pamphlet Rangila Rasul was also allegedly written as a response to another pamphlet written to attack Hindu sentiments²⁴. Thus the British government's aim of introducing 295(A) was to put the reasonable restriction of the freedom of speech for the maintenance of order in the society.

²² U.S Department of State, International Religious Freedom Report (2008) Afghanistan, Section-II, <<http://www.state.gov/j/drl/rls/irf/2008/108497.htm>> accessed 16 Oct 2016

²³ European Commission for Democracy through Law, *Blasphemy, Insult and Hatred: finding answer in a Democratic Society*, (Vol.47, Science and technique of Democracy, Council of Europe 2010) pg.65

²⁴ Supra note 18

The German criminal law also states that ‘whosoever publicly or through dissemination of written materials... defames the religion or ideology of others in a manner that is capable of disturbing the public peace, shall be liable to imprisonment not exceeding three years or a fine’.²⁵

The penal laws of South Sudan makes contempt of any religion in such a manner as to be likely to lead to a breach of the peace²⁶ a punishable offense. Turkey makes public denigration of a religion, punishable with a year of imprisonment if the act is likely to distort public peace²⁷ and for six months if not.

Thus the purpose hence is to maintain an order in the society which blasphemous statements undoubtedly can disturb if the society is sensitive towards their religious beliefs.

Reasons for holding blasphemy as outlawed are often interlinked, difficult to distinguish and at times may complement each other. For example, a state that holds a particular religion as its official religion in most probable ways hold the sacrosanctity of religion.

When a state recognises that the religion acts a moral code of conduct that drives a human being and shapes his & his society’s way of thinking, it is very well evident that any verbal attack on such moral code that denigrates will lead to an unrest that may or may not be violent in nature.

4. WHY NOT ANTI-BLASPHEMY LAWS?

Throughout the world there have been numerous oppositions against blasphemy laws which at points have succeeded at points have not. Most recently, Malta abolished its laws against blasphemy. Many countries have either abolished, or reduced the penalty for blasphemy on various grounds.

The Organisation of Islamic Cooperation, also “moved away from the anti-defamation language of the previous OIC sponsored resolutions to a clearer acceptance of freedom of expression and focused on upholding the rights of the individuals against discrimination in an effort to foster international cooperation”²⁸ which had earlier been a voice for formulating an international anti-blasphemy law.

Some of the arguments to decriminalise blasphemy can be understood as below-

(A) Lack Of A Definition For The Term Religion

Blasphemy has been described as irreverence towards God or Religion, however the term ‘Religion’ itself lacks a proper definition for itself. Belief in God which may unite Judaism, Islam and Christianity, is clearly insufficient as a definition, because some religions, such as Hinduism

²⁵ Supra note 16

²⁶ Penal Code of South Sudan, 2008, c. XV, §201

²⁷ Criminal Code of Turkey, Law Nr.5237, 2004, Art.216(3)

²⁸ Ambassador Ufuk Goksen, The Reality of Freedom of Expression in Muslim World, The Hill’s Congressional Blog, (2012) < <http://www.oicun.org/71/20121023050752932.html> > accessed 16 Oct 2016

are arguably, Polytheistic. Definition that depends upon a belief on God or Gods would similarly fail to include Buddhism, as it doesn't include belief in a God²⁹.

The United States has developed two main approaches, first is identifying the core contents of belief and an alternative method is identifying religion by analogy. Both of the methods are neither definite nor conclusive³⁰.

Hence a law to protect religion from blasphemy falls short when the term religion finds no conclusive meaning.

(B) Freedom Of Religion

Many jurisdictions have tried to define the term religion through commentaries or judgements. The Universal Declaration of Human Rights in its article 18 also protects Atheistic and Non-Theistic views in order to broaden the term 'Religion'³¹.

If the term 'Religion' is broadened enough to include Atheism as a religion, then Atheism also comes under the purview of Freedom of Religion and the practicing Atheism may fall under the category of Blasphemy at many instances. The Act of 1650 against Atheistical, Blasphemous and Execrable, derogatory to the honor of God and destructive to humane society³² is one such example.

Apart from Atheism, many religions also come a lot of time in conflict with other religions, at many times which may lead to blasphemy.

(C) Freedom Of Speech And Expression

Freedom of Speech and expression is a fundamental right in the constitution of various countries including India and also is a Human Right³³. Many international documents have given the Freedom of Speech and Expression a right which cannot be limited due to elements of Blasphemy.

The International Covenant on Civil and Political Rights³⁴ in its article 19 states that Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice and the right to hold

²⁹ Lucy Vickers, *Religion and Belief Discrimination in Employment* (Europe Commission 2007) pg.26

³⁰ *ibid*

³¹ CCPR General Comments No.22, Article 18: Freedom of Thought, Conscience and Religion (UN Human Rights Committee 1993) CCPR/C/21/Rev.1/Add.4

³² H Firth and R S Rait (ed.) *Acts and Ordinances of the Interregnum, 1642-1660*, ed. (London, 1911), pp. 409-412. <<http://www.british-history.ac.uk/no-series/acts-ordinances-interregnum/pp409-412>> accessed 14 Oct 2016

³³ Constitution of India, 1949, Art.19; Universal Declaration of Human Rights, *UN General Assembly Resolution 217A (III)* 1948, Article 18

³⁴ International Covenant on Civil and Political Rights, (United Nation, Treaty Series, Vol.999 1966), p.171

opinion without interference. Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant³⁵.

There are only two situations in which it is restricted, when it's a war propaganda or national, racial or religious hatred which has the element of discrimination, hostility or violence³⁶.

(D) A Tool For Oppression

Blasphemy for a very long time has been seen as a tool for the majority to oppress the minority. One of the best example for it is in Pakistan.

Despite incorporating freedom of speech and Freedom of religion in the Constitution³⁷, the Pakistan Penal Code has incorporated Sections that state that Any person of the Qaudiani group or Lahori group (who call themselves "Ahmadis" or by any other name) who by words, either spoken or written, or by visible representation to, or names, or calls, his place of worship a "Masjid"³⁸ & the mode or form of call to prayers followed by his faith as "Azan", or recites Azan as used by the Muslims³⁹ and that who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations⁴⁰ is liable for punishment.

The ratio of Muslims to non-Muslims among blasphemy defendants illustrates the extent to which these laws are used to persecute religious minorities. Pakistan's minister for minority affairs, Shahbaz Bhatti, had publicly argued that "the blasphemy law is being used to terrorize minorities in Pakistan." Ahmadis are the most affected, followed by Christians⁴¹.

Also in 1991, the Federal Shariat court of Pakistan had ruled that any blasphemy against Prophet Mohammad will result into death penalty and nothing else⁴².

The blasphemy laws of Pakistan is contradictory to International laws and can even fall under the category of crime against humanity under the Article 7(h) of Rome statute as a 'Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender... or other grounds that are universally recognized as impermissible under international law'.

³⁵ General Comment No.34, *Article 19: Freedom of Opinion and Expression*, (Human Rights Committee, 102nd Session 2011) para. 48

³⁶ Supra Note 34 at Art.20(2)

³⁷ Constitution of Pakistan 1973, Art.19; Art.20

³⁸ Pakistan Penal Code, 1860 Art. 298-B(1)(d)

³⁹ Ibid at Art.298-B(2)

⁴⁰ Ibid at Art.298-C

⁴¹ Freedom House, *Policing Belief: The impact of Blasphemy law on Human Rights* (Freedom House Special Report 2010) pg.77

⁴² Supra Note 16

(E) Promotes Violence

The allegations of blasphemy at multiple occasions leads to violence and extremism and have been used by vigilante groups and non-state actors to justify and instigate incidents of interreligious violence⁴³.

The Constitutional Court review of Blasphemy laws in Indonesia led to mass protests with hard lined Islamist groups threatening the petitioners⁴⁴.

The petitioners had asserted that the law had played an instrumental role in creating sectarian tensions and religious conflict rather than preventing them⁴⁵ and has been the umbrella under which various militant groups attack, burn and destroy others⁴⁶.

The lawyers of Younus Sheikh, a convict under the blasphemy law of Pakistan, were reportedly threatened so much that the proceedings had to be moved to the central jail in Rawalpindi⁴⁷.

In the Infamous case of Asia Bibi, a Christian woman convicted under the Pakistan's blasphemy law, the supporters of Asia, the Minister of minority affairs, Shahbaz Bhatti, as well as Governor of Punjab, Salman Taseer were assassinated due to their extended support to Asia Bibi and oppose towards the blasphemy laws of Pakistan.

The Above mentioned cases are only the tip of iceberg and there are innumerable cases where allegations under blasphemy laws have caused violence and mob justice.

(F) A Hurdle In Development Of Scientific Temper

A large number of incidents have taken place across the world where a rationalist has faced a threat for questioning religious doctrines and has been persecuted under the blasphemy laws.

Is it to be noted that astrologer Galileo Galilei was put under house arrest for supporting Heliocentrism as opposed to Geocentrism in the Bible⁴⁸.

These were some of the arguments against Blasphemy laws in various countries, which may or may not applicable in other countries as well.

⁴³ Supra Note 41 at pg.6

⁴⁴ Supra Note 41 at pg.47

⁴⁵ Supra Note 41 at pg.54

⁴⁶ Supra Note 41 at pg.55

⁴⁷ Supra Note 41 at pg.79

⁴⁸ Giorgio de Santillana, *The Crime of Galileo*, (University of Chicago Press 1955) pg. 306-310
<<http://law2.umkc.edu/faculty/projects/ftrials/galileo/condemnation.html>> Accessed 16 Oct 2016

5. BLASPHEMY LAW AND INDIA

The Indian Penal Code, 1860 has an entire chapter for offenses against religion, Chapter 15 from section 295 to 298. However no section qualifies to be held as a section for blasphemy except Section 295(A).

It is often argued that Section 295(A) is not a section for blasphemy but a section against Hate Speech. Though keeping in mind the events because of which the section was introduced in the penal code, and the chapter under which the section is, the intention of the legislators can be clearly understood that the section 295(A) is a section for the purpose of criminalising Blasphemy and stopping incitement of violence through blasphemous acts.

There have been numerous debates over the validity of section 295(A) in the post-independence India, where a secular setup has been established and freedom of speech & expression as well as Freedom to practice and propagate religion has both been guaranteed as a fundamental right under the constitution⁴⁹.

Keeping in mind the arguments favouring & opposing blasphemy laws across the world and the impact of its present or absence, the validity of the blasphemy law in India can also be discussed with arguments discussed as below-

(a) Nature of the State and Society

‘It is not the business of the government to suppress real or imaginary attacks upon a particular religious doctrine’⁵⁰.

India is a secular state by the virtue of its constitution. A secular state is neither a supporter of religion nor irreligion⁵¹. However the imposition of a penal provision that acts as an anti-blasphemy law is a biasness against the irreligious as, as discussed earlier the practice and propagation of irreligion may amount to blasphemy for few religions.

Also the Indian society is very complex in nature. There are numerous religions with numerous sects and among them are very conflicting ideas. The controversy over the celebration of Mahishasur Divas⁵² is one such example where the idea of the celebration was very conflicting with the traditional Hindu belief and the celebrators were alleged of spreading hate maliciously.

Being a secular state, with such a pluralist society, it is unethical for a state to interfere in to the religious matters of the society with such conflicting ideas, as it will be very difficult to keep a neutral approach.

⁴⁹ Constitution of India, 1949, Art.19

⁵⁰ Joseph Burstyn, Inc. v. Wilson 1952, 343 U.S. 495

⁵¹ John T.S Madeley & Zsolt Eyendi, *Church and State in Contemporary Europe: The Chimera of Neutrality*, (Illustrated, Annotated Ed. Psychology press 2003) pg.14

⁵² S.N Vijetha, *Student Groups come to Blows over Mahishasur issue at JNU Once again*, The Hindu, 11 Oct 2014, <<http://www.thehindu.com/news/cities/Delhi/student-groups-come-to-blows-over-mahishasura-issue-at-jnu-once-again/article6491346.ece>> accessed on 16 Oct 2016

The complexity in the viewpoint of the Indian society can be understood from the fact that a F.I.R was filed against two women under section 295(A) over their remarks relating to a Hindu nationalist leader⁵³, equating him to religious figure.

(b) Violation of Freedom of Speech and Expression

Throughout the history of Independent India, the section has been defined as a reasonable restriction over freedom of speech to secure public order.

In the Ramji Lal Modi⁵⁴ case the court had held that the Constitution in Article 19(2) permits the state to restrict freedom of speech and expression 'in interests of public order'. The court stated that the term 'In interests of' gave it a very wide ambit and state can make any law for it. The court also stated that the law is for an aggravated form of speech intended to disturb public order. However the court discarded the idea of proximity between the speech and the violence that the state fears⁵⁵.

However the court in Ram Manohar Lohia's case⁵⁶ held that the 'limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order, but not one far- fetched, hypothetical or problematical or too remote in the chain of its relation with the public order.' Further the court in the case of S. Rangarajan Etc⁵⁷ stated that the alleged expression should be like a 'Spark in the powder Keg' & 'intrinsically dangerous to the public interest'.

Further in the Arup Bhuyan's case, Justice Markandey Katju under the light Clarence Brandenburg vs. State of Ohio⁵⁸ that a speech cannot be restricted unless it provokes imminent lawless action.

In the light of above state case laws, Free speech gets a wider scope. However, in practical approach, the idea of an 'imminent lawless action' makes it very difficult in the case of Blasphemous acts. It is quite unpredictable as to what statement containing elements of blasphemy has the capability to spark off violence.

When it comes to blasphemous statements, one cannot assume or predict how the community members will react. A blasphemous act by a Christian professor in Kerala, India led to his hands being chopped-off by members of an Islamic extremist group⁵⁹, but a blasphemous statement in

⁵³ Mumbai Bureau, *Mumbai shuts down due to fear, not Respect*, The Hindu, 24 Nov 2012, <<http://m.thehindu.com/news/national/other-states/mumbai-shuts-down-due-to-fear-not-respect/article4111814.ece>> Accessed 16 Oct 2016

⁵⁴ Ramji Lal Modi Vs. State of U.P, 1957 AIR 620; 1957 SCR 860

⁵⁵ Gautam Bhatia, *The Constitutional Case against India's Blasphemy Law*, The Wire, 18 Jan 2016, <<http://thewire.in/19508/the-constitutional-case-against-indias-blasphemy-law/>>

⁵⁶ The Superintendent, Central Prison, Fatehgarh Vs. Ram Manohar Lohia, 1960 AIR 633; 1960 DVR(2) 821

⁵⁷ S. Ranga rajan ETC Vs. P. Jagajivan Ram, 1989 SCR(2) 204

⁵⁸ Arup Bhuyan Vs. State of Assam, Criminal Appeal No. 889 of 2007

⁵⁹ Lizzie Dearden, *Islamists jailed for Chopping off Teacher's Hand 'Because Exam paper insulted Prophet Mohamed*, The Independent, 10 May 2015, <<http://www.independent.co.uk/news/world/asia/islamists-jailed-for-chopping-of-teachers-hand-because-exam-paper-insulted-prophet-mohamed-10238701.html>> accessed 16 Oct 2016

the year 2016 by a Hindu leader led to Kaliachak Riots in West Bengal, India⁶⁰. However a large number of blasphemous statements go without receiving a public reaction. 'There isn't a parameter by which it can be measured that which statement may lead to 'imminent lawless action'.

Thereby a person may restrict himself from exercising his right of free speech, under the fear of being charged under Section 295(A), which might or might not cause any disturbance at all. It creates a fear in the mind of rationalists, critics of religious doctrines, which forces them, not to exercise their rights, under the fear of over-reaction by the society.

One of the best example of the above mentioned argument is the Wendy Doniger's case. Author Wendy Doniger wrote a book titled *The Hindus: An Alternate History*. Subsequently, a lawsuit by filed against the book under section 295(A) and Penguin India decided not to release the book in India and opted for out of court dispute settlement. The key point to be noted is that the court's verdict on the book had not come. The book was withdrawn solely because the publishers feared losing the case in the court and being held guilty under Section 295(A) of the Indian Penal Code, 1860⁶¹.

(c) Promotion of Violence & Victimhood

The Indian Penal Code "incites" the display of wounded feelings. More than this, the law encourages or generates specifically violent displays of wounded feelings⁶². The provision's main objective was to prevent violence. As noted by Adcock, a ban on a book under section 295(a) requires a strategy and being violent is the first part of it as it is the clearest proof that the sentiments of a 'class of citizens of India' has been outraged. Further Adcock noted that "Violence thus becomes part of a legal strategy. Instead of simply responding to hurt feelings, the law has given strategic value to invoking or mobilizing wounded religious feelings in controversies of all kinds."⁶³

Adcock brings into notice a lot many cases where the violence played a very substantial role in getting an assumed act of blasphemy banned.

Like the Removal of the essay 'Three Hundred Ramayanas' by A.K Ramanujan from the syllabus of Delhi University, and the protest against the book 'Shivaji: The Hindu king in Islamic India' by James Laime, all were preceded by a display of violence.

The book 'The Satanic Verses' by Salman Rushdie was banned in India even before any Islamic country. American musical group Slayer's album *Christ illusion* got called off from India because of a Mumbai based Christian group, Christian Secular Forum protested against the album cover

⁶⁰ABP News Bureau, Communal Tension prevails in Malda after Muslim protest turning Violent, 5 Jan 2016 <www.abplive.in/india-news/communal-tension-prevails-in-malda-after-muslim-protest-turning-violent-269938> accessed 16 Oct 2016

⁶¹ Supra Note 18

⁶²Asad Ali Ahmed, *Specters of Macaulay: Blasphemy and Indian Penal Code, and Pakistan's post-colonial predicament*, Censorship in South Asia: Cultural Regulation from Sedition to Seduction (Indiana University Press 2009) pp.172-205

⁶³C.S Adcock, *Violence, Passion and the Law: A Brief History of Section 295-A and Its Antecedents*, Journal of American Academy of Religion (Oxford University Press 2016) pp.1-15

and songs offending Christians as well as Muslim sentiments⁶⁴. The Same Group had earlier protesting against the Indian screening of the movie 'The Da Vinci Code'⁶⁵. Also the play 'Jesus Christ Superstar', which was banned by the Kerala government on the ground of hurting religious sentiments received international reception and was screened even at the Vatican⁶⁶.

It is to be noted that these works of art were well received across the globe, but eventually outraged the religious sentiments in India.

(d) A Hindrance in reform and development of Scientific Temper.

The Constitution of India states it as a fundamental duty of a citizen to develop scientific temper⁶⁷. However as stated earlier, the development of scientific temper may conflict with the religious sentiments of people.

One of the most popular incident is of Sanal Edmaruku, a Rationalist who was quite active in denouncing superstitions and as a result had got a charge of 295 (A) pressed against him for blowing out a miracle as fake⁶⁸. Apart from this, in HulikalNataraj's case⁶⁹, the accused was charged under the said section for questioning the miracle of Aiyappa Temple in Sabrimala.

Along with development of scientific temper, seeking reform, questioning old customs also at points violate the religious sentiments. Rashid Jahan's Urdu write-up 'Angarey' which questioned the Islamic customs was banned on the ground of hurting religious sentiments⁷⁰.

Another example is Dr. D' Avoine's article 'Religion and Morality' that outraged the religious feelings of Roman Catholics⁷¹. The editor of Karavali Ale, was charged under the said section for outraging the religious feelings of Jains for writing against the nudity of Digambar Monks⁷².

The murder of rationalists M.M Kalburgy and N. Dabholkar⁷³ are examples of how rationalism if conflicts with religious beliefs may lead to unrest in the society. Not everyone is as lucky as Ramaswami Naicker to break a religious statue⁷⁴ and do not get brutalised for it.

⁶⁴'Offensive' album pulled in India, BBC News, 11 Oct 2016 <news.bbc.co.uk/2/hi/entertainment/6039976.stm> accessed 11 Oct 2016

⁶⁵Monica Chadha, *India Catholics target Da Vinci*, BBC News, 10 May 2006 <news.bbc.co.uk/2/hi/south_asia/4759111.stm> accessed 11 Oct 2016

⁶⁶Legal Correspondent, *SC lifts 1990 ban on play Jesus Christ, Superstar*, The Hindu, 9 April 2015 <www.thehindu.com/news/national/kerala/sc-lifts-1990-ban-on-play-jesus-christ-superstar-/article7080209.ece> accessed 11 Oct 2016

⁶⁷Constitution of India, 1949, Part IV-A, Art. 51A(h)

⁶⁸India, *The Freedom of Thought Report 2015*, (International Humanist and Ethical Union 2015) p.302, available at <freethoughtreport.com/download-the-report/> accessed on 11 Oct 2016

⁶⁹HulikalNataraj Vs. State of Karnataka, W.P. No. 1750/2008

⁷⁰Kuldeep Kumar, *Rebel with a cause*, The Hindu, 11 July 2014 <www.thehindu.com/features/metroplus/rebel-with-a-cause/article6201124.ece> accessed 16 Oct 2016

⁷¹Johannes Quack, *Disenchanted India: Organised Rationalism and Criticism of Religion in India*, (Illustrated Oxford University Press, USA 2011) pg.94

⁷²Mr. B V Seetharam Vs. The State of Karnataka, CRL.P. No. 5873 of 2012

⁷³Supra Note 68

⁷⁴S. VeerbadranChettiar Vs. E.V RamaswamiNaicker, 1958 AIR 1032; 1959 SCR 1211

(e) India's International Responsibility

As stated earlier, the International Covenant for civil and political rights in its article 19 makes it a duty of every country to ensure its citizen's right to freedom of Speech and expression and also as stated earlier, any sort of blasphemy law is a clear violation of the Article 19.

Hence, since India has ratified the above mentioned Covenant it is its duty to abolish any such laws.

(f) The question of Malice

The section 295 (A) has put emphasis on the Mensrea of the act and makes only those act which are done with an element of malice in it, punishable. However what is to be looked into is the fact that, when it comes to the malice, proving it is a complex and difficult issue, and in India the disposal rate of cases are very slow. Most of the times, such cases take a very long time & surpass the duration of the punishment itself.

The element of 'Malice' was added to make sure that any necessary or constructive criticism doesn't get restricted. However as noted above, works of literature, history, and constructive criticism all have got affected because of the fear of prosecution that the publishers, authors & artist at many times have faced. Most of the authors of such constructive criticism fear the lengthy court trials and hence do not become as vocal as they could be with the laws on their side.

6. CONCLUSION

To conclude, these words by Ludwig Feuerbach are appropriate, "God is not liable to offence; and even if he were offended, He would not under any circumstances wish the punishment of his offenders."⁷⁵

It has to be kept into mind that the concept of blasphemy was a concept developed and fit for a pre-modern society, led by a government which is not secular and democratic. Any such law which restricts the freedom of speech and expression on the basis of how much others react leaves a person's freedom on the whims of a particular section of the society only.

As Thapar points out⁷⁶, there isn't a quick way to measure if the sentiments of a particular religious community as a whole is hurt, or only of few people who were unable to accept a dissent. People who become vocal, get to censor other's freedom in the name of attack on religious sentiments and those who aren't, simply ignore it.

As the Supreme Court noted in the case of Shreya Singhal⁷⁷ there exists a difference between 'incitement' and 'advocacy'. The court had opined that any such incitement that disturbs the

⁷⁵Supra Note 23 at pg.113

⁷⁶Romila Thapar, *Banning Books*, India Review (Vol.13 No.3 2014) p.283

⁷⁷Shreya Singhal Vs. Union of India, W.P(Cr) No.167 of 2012

public order only can be censored. Hereby the only incitement that has to be there is an incitement of violence. This is where the laws of Blasphemy and hate speech differs. For hate speech, the speech itself should contains elements that incites violence, or propagation of violence for example the speech of Jean Paul Akayesu⁷⁸ that played a role in infuriating the Rwandan Genocide.

However, Blasphemous statements are that doesn't contain elements of hate or violence is left at the level of tolerance for a section of society, which as discussed earlier becomes even weaker due to the presence of Blasphemy laws. If the speech or statement or work of art has an element of incitement of hate, or direct violence against a religious group, it should be treated as a hate speech under section 153(a) of the Indian Penal Code, 1860 & not as Blasphemy.

Violence against a private meeting of rationalists and atheists⁷⁹, Outraging over a satirical comic act of a comedian⁸⁰ is not a sign of a tolerant, secular and progressive society like India and government instead of giving a tool to the society to legally oppress the freedom of others and sort out enmity, should try and develop a spirit of tolerance among the citizens through various institutions, decriminalise blasphemy and should not allow people to hold their religious sentiments as a sword over the tongue of others. As can be noted for examples across the world, stricter the blasphemy law, graver the human right violations.

These lines will finally sum up the conclusion, “*Believers must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith*”⁸¹ & “*It is the function of Free Speech to free men from the Bondage of Irrational fears*”⁸²

⁷⁸Wibke Kristin Timmermann, *The Relationship between Hate Propaganda and incitement of Genocide: A New Trend in International law Towards Criminalisation of Hate Propaganda?*, Leiden Journal of International law, 18 (The Foundation of Leiden Journal of International Law 2005) p.266

⁷⁹Mohammad Ali, *Hindutva Activists Attack, force cancellation of Private meeting of Atheists in Mathura*, The Hindu, 14 Oct 2016 <<https://t.co/PB5YuE58ML>> accessed 14 Oct 2016

⁸⁰PTI, *Comedian Kiku Sharda arrested for mocking Dera chief Gurmeet Singh*, The Hindu, 13 Jan 2016 <www.thehindu.com/news/national/other-states/comedian-kiku-sharda-arrested-for-mocking-dera-sachasauda/article8102131.ece> accessed 15 Oct 2016

⁸¹Otto-Preminger-Institut V. Austria, (13470/87)[1994] ECHR 26 (20 Sept 1994)

⁸²Supra Note 77 at para.12