

Blasphemy - Legal Status in India

Navjosh Singh Atwal

BA LLB Student, University Institute of Legal Studies, Chandigarh University, Mohali, India

Abstract: Blasphemy is one of the most abused laws when it comes to suppressing the voice of minorities, rationalists as well as scientists and often comes under a rain of questions over its legality in the present modern establishments of the world.

While blasphemy is often regarded as a reasonable restriction over the Freedom of Speech and Expression, it 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 and Religion are widely considered as a fundamental and human rights, India despite being a pluralist country with an incomparable diversity in its population, has a vast ocean of varied conflicting opinions on Section 295- A of the Indian Penal Code, 1860 which is a law against blasphemy under the guise of Hate speech.

Keywords: Blasphemy

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”.

The term blasphemy means ‘Irreverence toward God, religion, a religious icon, or something else considered sacred.’ 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; whereas it is expressly punishable by some of the statutes. However, the rationale behind declaring blasphemy as a ‘crime’ is not only applicable in common law countries, but in many states throughout the world.

Multiple countries across the world have blasphemy laws in their penal system, despite having a varied demography and legal system. Christian states like Greece and Iceland, Islamic Republics like Iraq and Egypt, the Jewish majority state of Israel, states emphasizing on Buddhism like Sri Lanka or secular states like Canada and Germany; countries across the globe have laws against blasphemy. The offense of blasphemy may relate to a particular religion like in Qatar, or may be towards all religions like in Denmark and may carry penalty ranging from a mere fine in Italy to death penalty in Pakistan.

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 and secular state had no provision

against blasphemy until 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”.

However, the question is whether the law on blasphemy justified in modern India?

2. History

Being a Hindu dominant population, India had no 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”.

Prior to independence, in the fog of communal tensions, a pamphlet called “Rangila Rasul” was published by Mahashay Rajpal. The Pamphlet upon its release in 1926 sparked controversy, with the members of the Muslim community seeking punishment for Rajpal as it was a violent attack over their religious sentiments.

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 and added the Section 295(A) in the year 1927.

The Section even after the partition of India is present in the Indian Penal Code, as well as in the penal codes of Pakistan and Bangladesh.

3. Need for anti-blasphemy laws

There have been numerous reasons for act of blasphemy to be outlawed throughout the history of the world. Being a part of the same, most of the reasons regarding outlawing blasphemy can be associated with India. The most accepted reasons can be understood as follows,

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 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 neighbour, than blasphemy does to God”.

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”.

Other noted jurists such as Augustine and Calvin hold similar opinions regarding blasphemy.

B. Enforcement of religious sanctions

States that have an official state 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.

For example, the constitution of Afghanistan 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), the courts rely on the holy Shari'a law.

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 civilization 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 civilization affecting not only the feeling and thoughts, but also the actions of human beings”.

Hereby, it can be understood that religion does affect the actions of humans, thus there is a requirement of a legal protection as a moral and social value- that drives a human, leading to a stable society and better governance.

The responsibility to protect religious sentiments of others later transforms into a legal duty when the state recognizes 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 in the state. Ostensibly, Section 295(A) was introduced in the Indian Penal code 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 sentiments. Thus the British government’s aim of introducing 295(A) was to put a reasonable restriction on the freedom of speech for the maintenance of order in the society.

The criminal law of Germany 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’.

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

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

Overall, 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 recognizes that religion acts a moral code of conduct that drives a human being and shapes his and his society’s way of thinking, it is much 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. Opposition to anti-blasphemy laws

There have been numerous oppositions against anti-blasphemy laws throughout the world, which at points have succeeded and also not. Most recently, Malta abolished its laws against blasphemy. Many countries have either abolished, or reduced the penalty for blasphemy on various grounds.

The Organization 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” which had earlier been a voice for formulating an international anti-blasphemy law.

Some of the arguments to decriminalize blasphemy can be understood as below,

A. Lack of a definition for “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, Christianity and Islam, is clearly not sufficient as a definition, because some religions, such as Hinduism are arguably, polytheistic in nature. Definition that depends upon a belief on God or Gods would similarly fail to include Buddhism, as the religion does not include a belief in God.

The United States has developed two main approaches-identifying the core contents of belief and identifying religion by analogy. However, both methods are neither definite nor conclusive.

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'.

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 British Government Act of 1650 against Atheistical, Blasphemous and Execrable, derogatory to the honour of God and destructive to humane society 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 is also a Human Right. 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 Rights 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 opinion without interference". Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant.

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 violence.

D. A tool for oppression

Blasphemy for a very long time has been seen as a tool for the majority to oppress the minority. Pakistan poses as a leading example for the same.

Despite incorporating freedom of speech and Freedom of religion in the Constitution, 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" and the mode or form of call to prayers followed by his faith as "Azan", or recites Azan as used by the Muslims 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 representations 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 Christians.

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

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 collectively on political, racial, national, ethnic, cultural, religious, gender... or other grounds that are universally recognized as impermissible under international law'.

E. Promotes violence

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

An instance was the Constitutional Court review of Blasphemy laws in Indonesia, which led to mass protests with hard lined Islamist groups threatening the petitioners. The petitioners had asserted that the law had played an instrumental role in creating sectarian tensions and religious conflict rather than preventing them and has been the umbrella under which various militant groups attack, burn and destroy others.

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 Rawalpindi.

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.

There are many other cases where allegations under blasphemy laws have caused immense violence and mob justice.

F. A hurdle in scientific development

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 astronomer Galileo Galilee was put under house arrest for supporting helio-centrism as opposed to geo-centrism in the Bible.

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

5. Anti-blasphemy law in India

The Indian Penal Code has an entire chapter for offenses against Religion (Chapter 15) from section 295 to 298. However, no section qualifies to cover 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 section 295(A) is a section with 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 and expression as well as Freedom to practice and propagate religion has both been guaranteed as a fundamental right under the constitution.

Keeping in mind the arguments favouring and 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 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.

India is a secular state by the virtue of its constitution. A secular state is neither a supporter of religion nor irreligion. However, the imposition of a penal provision that acts as an anti-blasphemy law is 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 Divas 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.

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 leader, 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 Modi 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 fears.

However, the court in Ram Manohar Lohia's case 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 etc. stated that the alleged expression should be like a 'Spark in the powder Keg' and 'intrinsically dangerous to the public interest'.

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 group, but a blasphemous statement in the year 2016 by a Hindu leader led to Kaliachak Riots in West Bengal, India.

However, a large number of blasphemous statements go without receiving a public reaction. There is no parameter by which it can be measured whether a statement may lead to any '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.

C. Promoting violence and victimhood

The Indian Penal Code "incites" the display of wounded feelings. More than this, the law encourages or generates

specifically violent displays of wounded feelings. 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."

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, 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 and songs offending Christians as well as Muslim sentiments. 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 Vatican.

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

D. 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 the right to freedom of speech and expression to its citizens and also as stated earlier, any kind of a law for blasphemy is a clear violation of the Article 19.

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

6. Conclusion

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

It has to be kept into mind that the concept of blasphemy was a concept developed 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 are merely based on the reaction of a particular section of the society on an issue.

As Thapar points out, there is no 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 are not,

simply ignore it.

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

For hate speech, the speech itself should contain elements that incite violence, or propagation of violence for example the speech of Jean Paul Akayesu that played a role in infuriating the Rwandan Genocide.

However, in my opinion, blasphemous statements are that do not contain elements of hate or violence are left at the level of tolerance for a section of society, which as discussed earlier, becomes 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 and not as Blasphemy.

References

- [1] Philip Alston & Ryan Goodman, International Human Rights, (1st Ed OUP 2012) p.677.
- [2] Byran A. Garner (ed.), The Black's law dictionary, (9th Ed. West Group 2009) p.193.
- [3] Ibid; Rollin M. Perkins & Ronald N. Boyce, Criminal Law, (3rd Ed. Foundation Press 1982) p.474-475.
- [4] Peter R. Blood (ed.), Pakistan: A country study, (6th Edition, Federal Research Division, Library of Congress 1995) p.312.
- [5] John R. de Lingen, An introduction to the Hindu faith, (Sterling publishers" pvt. Ltd. 2008), p. 2
- [6] Koenraad Elst, In favour of Freedom of Expression: Section 295A as cornerstone of censorship, 2016, Vol.1, Dialogue, no.1
- [7] Criminal Amendment Act of 1927, No.25.
- [8] 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) p.65.
- [9] 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.
- [10] C H Firth and R S Rait (ed.) Acts and Ordinances of the Interregnum, 1642-1660, ed. (London, 1911), pp. 409- 412. accessed 14 Oct 2016.
- [11] Constitution of India, 1949, Art.19; Universal Declaration of Human Rights, UN General Assembly Resolution 217A (III) 1948, Article 18.
- [12] General Comment No.34, Article 19: Freedom of Opinion and Expression, (Human Rights Committee, 102nd Session 2011) para. 48
- [13] Constitution of Pakistan 1973, Art.19; Art.20.
- [14] Pakistan Penal Code, 1860 Art. 298-B(1)(d).
- [15] Freedom House, Policing Belief: The impact of Blasphemy law on Human Rights (Freedom House Special Report 2010) p.77.
- [16] Giorgio de Santillana, The Crime of Galileo, (University of Chicago Press 1955) pp. 306-310.
- [17] Constitution of India, 1949, Art.19.
- [18] S.N Vijetha, Student Groups come to Blows over Mahishasur issue at JNU Once again, The Hindu, 11 Oct 2014.
- [19] Ramji Lal Modi Vs. State of U.P, 1957 AIR 620; 1957 SCR 860.
- [20] The Superintendent, Central Prison, Fatehgarh Vs. Ram Manohar Lohia, 1960 AIR 633; 1960 DVR (2) 821.
- [21] S. Rangarajan ETC Vs. P. Jagajivan Ram, 1989 SCR (2) 204.
- [22] Shreya Singhal Vs. Union of India, W.P(Cr) No.167 of 2012.