

A Re-evaluation of Hate Speech Laws



Lekshmi Parameswaran



भारत नीति प्रतिष्ठान
India Policy Foundation

A Re-evaluation of Hate Speech Laws

Lekshmi Parameswaran



भारत नीति प्रतिष्ठान
India Policy Foundation

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

Published by:

India Policy Foundation

D-51, Hauz Khas,

New Delhi -110016 (India)

Tele: 011-26524018

Email: info@ipf.org.in, indiapolicy@gmail.com

Website: www.ipf.org.in

© India Policy Foundation

Edition:

First: March, 2023

Introduction

Blasphemy laws or laws against hate speech have been contentious topics in many countries. For a long time, there has been debates and discussions on whether these laws are in line with democratic values of a nation. India which has stayed true to its secular spirit does not have any blasphemy laws per se but it has laws to counter hate speech and incitement to violence. While a section of society has been arguing that the existence of these laws is against the fundamental rights guaranteed by the Indian Constitution, it has also become important to view this issue in the current socio-cultural and political contexts.

This is arguably a time when religion is increasingly being weaponised and the syncretic culture of India is getting attacked in both covert and overt ways. Freedom of expression is central to a democracy and the identity of Indian culture lies in the continuous exchange of ideas. But when this freedom is being open to multiple interpretations, it has become important to critically analyse the circumstances in which laws against hate speech were formulated in India, the current scenario and what the future holds for these laws. Are these laws an impediment to freedom of expression or are these laws required to maintain peace and harmony in a society that is coming under the threat of divisive forces?

This paper touches upon the laws against hate speech in India, whether the concept of blasphemy forms a part of India's Sanatan culture, how South Asia views blasphemy laws with focus on Pakistan, the existence of blasphemy laws in the West and the way forward for India in determining whether the laws dealing with hate speech should form part of its legal code or not.

Laws against hate speech in India

In India, hate speech is defined as any speech, gesture or conduct that promotes hatred or violence against a particular individual or group based on their religion, caste, race, ethnicity, language, or gender. The Indian Penal Code (IPC), 1860 has several provisions that deal with hate speech. Two major provisions include:

- i) **Section 295A:** Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

“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.”

- ii) **Section 153A:** Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

“Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or (c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence,

against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

The other provisions in IPC that deal with hate speech include:

- i) **Section 298:** Uttering words, etc., with deliberate intent to wound the religious feelings of any person.
- ii) **Section 505:** Statements conducing to public mischief.
- iii) **Section 124A:** Sedition – Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India.

These provisions are enforced by law enforcement agencies and can result in imprisonment, fine, or both. However, there have been criticisms that these laws are sometimes used to suppress legitimate dissent or criticism, and there have been calls for their reform.

Origin of Section 295 A and its interpretations

From the very beginning, Section 295 A has been divisive. The incident that is often cited which led to the enactment of this law does not take into account the historical context, especially the communal tensions that had become a constant at that point. It is worth noting that in the early 1920s, communal tensions were flaring in the subcontinent. Between 1921-22, the Moplah Rebellion happened in Kerala which was marked by a series of

Hindu-Muslim clashes that took the lives of over 10,000 people. It was in this backdrop that in 1924, a pamphlet titled *Sitaka Chinala* was published by members of the Muslim community which had a nude painting of Lord Ram's wife, Sita and depicted her as a prostitute. However, no action was taken against this work.

Following this, publisher Mahashay Rajpal released *Rangila Rasul*, a booklet which was a satire on the personal life of Prophet Muhammad. Using the style of Bhakti poetry, the booklet took out sections from Quran which spoke about the many marriages of Prophet Muhammad and presented it in a humorous way. It also had references to the conditions of Muslim women. The booklet was first published in Urdu and it was written by a member of the Arya Samaj sect, Pandit Chamupati. However, Rajpal published this work anonymously and despite the political and legal pressures put on him, he chose not to reveal the author's name. The work was later translated into Hindi. This work led to protests by the Muslim community and further flared up the communal tensions. There were calls to prosecute the publisher and he was arrested. He was tried under Section 153 A of the IPC which was the only law prevalent at that time for blasphemy. It covered any written material disturbing communal harmony and this particular case, Mahashay Rajpal v. Emperor, AIR 1927 was its earliest application.

Mahashay Rajpal was convicted by the lower court under Section 153A and the sessions court found it promoting "feelings of enmity or hatred between" Hindus and Muslims. But the sessions court granted leave to Rajpal to appeal against the conviction order. So, he filed an appeal in the Lahore High Court wherein it was ruled that the intention to create hostilities between Hindus and Muslims within the meaning of Section 153 A could not be proven and acquitted him of all charges. The court ruled that Section 153A could only be used for causing hatred among religious groups and did not apply in this case where a religious leader was seen to be targeted. However, Justice Dalip Singh in his judgement did make the observation that the publication hurt the feelings of the Muslim community and termed it a "tragic flaw" of the law and stated that he is "reluctantly" acquitting the petitioner.

The acquittal did not douse the flames of enmity between both the communities. There were widespread calls for beheading of the publisher according to the Sharia law. The communally charged atmosphere led to the killing of Mahashay Rajpal. He was stabbed by a 20-year-old Muslim man named Ilam ud Din on 6 April 1929 in his shop. He died on the spot and the young man was convicted of murder and sentenced to death on 22 May 1929. He was hailed as a hero by many Muslim organisations at that time. It is interesting to note that *Rangila Rasul* remains banned in India, Pakistan, and Bangladesh till today.

Since Rajpal was acquitted due to lack of provisions in the IPC that would hold him liable for having committed an offence, it led to widespread demands for a law that specifically deals with cases where religious sentiments are hurt. The Muslims met the then Punjab Governor, Malcolm Haile and told him that they were “justifiably offended” by the pamphlet and called for a “legal weapon by which its repetition could be prevented in the future.”

The British accepted this demand and formulated Section 295 A to enable the prosecution of those spreading “religious hatred.” On 22 September 1927, the Indian Legislative Assembly approved an amendment to the IPC. Section 295-A was inserted in the IPC by an amendment and it criminalised any wanton acts of insulting any religion, religious feeling of any community or the prophets and deities of any community in India. It is evident that in a society that was inclusive, it was the British who brought in the religious divisions and clearly demarcated between the Hindus and the Muslims. Even though it was not stated in the exact terms but Article 295A took the form of a “blasphemy” law in India.¹

It also needs to be observed that Section 153 A was used by the court prior to this judgement in the trial of cases relating to hate speech. On 24 February 1927, in *Kali Charan Sharma v. Emperor* case, a full bench found the accused Kali Charan Sharma guilty of promoting Hindu feelings of hatred against Muslims under Section 153A. Here, Sharma had written a book

¹ M J Aslam. ‘How India’s ‘Insult To Religion’ Law Evolved And Why It Must Be Protected? Kashmir Life. 2-volume Law of Contract, that was published by Thomson Reuters Publication in 2017.

encouraging Muslims to embrace Hinduism which the court termed as “propaganda in furtherance of the *Shudhi* movement”. His appeal was rejected by the Allahabad High Court.

It is worth noting that Section 153 A was challenged before the Supreme Court in 1951 for being in contravention of Article 19(2) of the Indian Constitution. It was on the verge of being deleted from the Constitution when the First Amendment added the words “in the interest of public order” and the section was retained.

Following the enactment of Section 295 A, there have been heated debates on how this section should be interpreted, especially in an independent India that guaranteed the fundamental right of freedom and expression to all its citizens. The constitutionality of Section 295 A was first contested in 1957 in the case of *Ramji Lal Modi v. the State of UP*. The ruling of the five-judge constitutional bench is considered a landmark decision and continues to be important even to this day in interpreting this section.

In this case, *Ramji Lal Modi*, the petitioner who was editor, printer and publisher of an Allahabad-based monthly magazine called *Gaurakshak* published an article that was accused of fanning communal sentiments in the November 1952 issue of the magazine. The Allahabad High Court ruled that his actions were found to be in violation of Section 295A of the Constitution. In his appeal, *Modi* argued that Section 295A was ultra vires to the fundamental right of freedom and expression that was guaranteed to all citizens of the country under Article 19 (1) (a) of the Constitution.

The Supreme Court rejected this rationale and observed that Article 19(2) imposes reasonable restrictions on the exercise of right to freedom of speech and expression “in the interest of public order.” However, the court also held that those acts that are committed unwittingly without any malicious intent do not classify as an offence. Upholding the constitutionality of the law, the court stated that that it can be used to punish only aggravated forms of insult and cannot be evoked for every statement that is made against a religion. The Supreme Court judge observed:

“Section 295A only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalises such activities, is well within the protection of clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(a).

“Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. In other words, the language employed in the section is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(a).”²

Following this judgement, in the *S Veerabhadra Chettiar* case, 1958, drawing upon the conclusions of the *Ramji Lal Modi* case, the court asserted that Section 295A respects the religious susceptibilities of persons of different religions, persuasions or creeds and the feelings of persons belonging to different religions should be taken into consideration while deciding whether the action committed is an offence or not. The importance of this law has been reinforced time and again in the decisions of the Indian courts.

Despite these observations, staying true to the spirit of the *Ramji Lal Modi* case, the court also recognised the importance of dissent. In the *RV Bhasin* case, 2010, on a question of the imposition of Section 153A, the Bombay High Court ruled that pure and simple criticism that does not intentionally hurt the feelings of any religious community and any writing in the nature of historical research are allowed. Here, the court clarified that adherence to the strict path of history cannot be used as a complete defence to protect oneself from the provisions of Section 153A.

² *Ramji Lal Modi v. State of UP*, AIR 1957 SC 620
<https://indiankanoon.org/doc/553290/>

The Supreme Court has time and again through its observations and assertions made it clear that the right to speech and expression cannot be considered an absolute right. In a country like India which is known for its plurality, it is important to protect the rights of all sections of society.

Over the years, Section 295 A has come to cover any form of writing, both in print and social media. While it is legitimate to raise any questions on religion, the courts have in their subsequent interpretations of the law made it clear that the founders of a religion or the prophets cannot be defamed in any manner.³

In 1960, in *The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia*, the Supreme Court took the view that a proximate connection or nexus with public order was an important criterion to invoke Section 295A. In this, the appellant was prosecuted for delivering speeches which provoked other farmers into not paying enhanced taxes to the government. The court held that the speech prohibited must have a link with disruption of public order and such disruption must not be remote. One man's decision to not pay taxes is too remote to be held liable. However, in 2007, in the *Sri Baragur Ramachandrapa v. State of Karnataka* judgement, the apex court overturned this judgement by abolishing the need of proximity to public disorder.

The court held that no individual has the right to hurt the sentiments of others in the process of exercise of their right to freedom of speech and expression. It stated that the diverse languages, cultures, rituals and religions in a country like India must be taken into consideration. Using this rationale, the court prohibited a recorded anecdote of the life of Basaveshwara.

As was made clear in the *Ramji Lal Modi* case and also in the *Sri Baragur Ramachandrapa* case, the comments do not even have to provoke public disorder to qualify under this law. Even a malicious intent to cause public disorder when making their views public can fall under the purview of this law. This also means that questions raised against unfair religious practices of communities are also liable to be punishable offences.

³ Soli Jehangir Sorabjee. *The Indian Express*, June 25, 2006

In recent times, the courts have taken an even wider interpretation of Section 295 A. In the Mahendra Singh Dhoni v. Yerraguntla Shyamsundar case, the petitioner objected to a picture of cricketer, Mahendra Singh Dhoni, being displayed as Lord Vishnu which was circulated in a magazine with the words “Divine Force of Big Deals” and argued that it was insulting to the religious sentiments of the devotees of Lord Vishnu. The court ruled that Section 295A2 does not criminalize every act which insults religious sentiments, but those acts which are said or written with the malicious intention of hurting religious feelings of that class. Throughout the years, “malicious intent” has been the key factor in deciding whether the act committed can be treated as an offence under Section 295A.

In March 2021, the Tripura High Court while quashing an FIR registered against the petitioner for hurting the sentiments of the Hindu community through a Facebook post of Bhagavad Gita held that insults to religion made without any deliberate or malicious intention to outrage the religious feelings of a class would not amount to an offence under Section 295A of IPC.⁴ To charge someone under this section, one needs to prove ‘mens rea’ i.e., the intention. The crimes committed under both Section 153A and Section 295A should be intentional.

With time, multiple concerns have been raised about the possibility of misuse of Section 295 A. The governments that were in power after independence chose to continue this regressive law, mainly due to the politics of appeasement that was prevalent at that time. This is one law which despite its draconian nature has not had any amendments.⁵ The most worrying part of this law is that it is a cognizable offence, which

⁴ Careless Insults To Religion Without Deliberate Intention To Outrage Religious Feelings Not Offence Under Sec 295A IPC : Tripura High Court <https://www.livelaw.in/news-updates/careless-insults-to-religion-without-deliberate-intention-outrage-feelings-not-offence-sec-295a-ipc-tripura-high-court-170815>

⁵ Utsav Kumar. Freedom of Expression, Muslim appeasement and a brief history of 295(A). OpIndia <https://www.opindia.com/2017/12/freedom-of-expression-muslim-appeasement-and-a-brief-history-of-295a/>

means that the police have the power to register a First Information Report (FIR) on a complaint lodged by a private citizen. It is also non-bailable and non-compoundable. A criticism that has often been raised against Section 295A as well as Section 153A is that they are “thinly disguised blasphemy law”.⁶ It is argued that ambiguous terms like “outraging religious feelings” and “insult” can be used arbitrarily to frame people.

The legal argument that has been used against Section 295A is that actions taken under this law are dangerously based on the subjective views of the officers in charge. According to the Ramji Lal Modi case, the law is enforced when there is an assumption that a particular piece of writing may cause public disorder and it has to be banned. It needs to be noted here that the doctrine of “in the interest of public order” is a vague and ambiguous term and has wider scope than the expression, “for maintenance of public order.” This gives unbridled power in the hands of the police to ban any written material or to arrest anybody who has authored such content.⁷

Moreover, the actions taken under it by invoking Section 41 of the Criminal Procedure Code (CrPC) do not require any prior judicial oversight and police has the power to arrest any accused person without a warrant. These complaints can be lodged anywhere in the country. There have been numerous instances of multiple FIRs being registered for the same allegations. Considering the pendency of cases in Indian judiciary and the time taken to pronounce the final judgement, this essentially means that the arbitrary power that this impugned section gives to the lawmakers and law enforcers can have lasting consequences. It has the power to become a potent weapon to silence any dissent in society. However, the conviction rate under this remains abysmally low in the country.

The biggest problem with enacting this provision effectively can be found in the nature of the police force itself. The police personnel are not given sufficient training to understand the

⁶ Tale of two sections: On vexatious criminal prosecution. The Hindu <https://www.thehindu.com/opinion/editorial/tale-of-two-sections/article18195720.ece>

⁷ The Live Mint, March 19, 2016

context and nuances behind what is said. In most cases, they go by what is written in the law books and fail to understand the social context in which a speech is made. This results in many wrongful convictions because of which many see this law as a draconian measure. It defeats the purpose of establishing peace and harmony in a society, which are goals that such a law like this should ideally encompass.

An example of how dangerous this law is and how it can be misused was seen in the case of the Mumbai resident Sanal Edamaruku, who proved that the “weeping Christ” was no miracle and was in fact a result of an overflowing drain. For saying this, at least 33 cases were registered against him in different police stations and he eventually had to flee the country as there was a mob that was baying for his blood. It is unfortunate that this law is often used to intimidate the common man while politicians make hate speeches without facing any consequences.⁸

The existence of several laws has further contributed to the confusion surrounding what exactly is hate speech. This has led to instances where there has been an over criminalisation of speech. This question was brought before the Supreme Court in the *Pravasi Bhalai Sangathan v. Union of India* case in 1997 where the petitioners called for peremptory action against makers of hate speech. The court in its ruling observed that the existing laws are enough to address the problem of hate speech and what is needed is its proper implementation.⁹

An observation of the Supreme Court made in the *Kartar Singh v. State of Punjab* which dealt with the constitutionality of the TADA laws can also be applied in this context. The court opined that vague laws can not only harm the innocent but it also gives the power in the hands of policemen and judges to apply it in an arbitrary and discriminatory manner. This is particularly true for

⁸ For an India of blasphemers. Rediff.com
<https://www.rediff.com/news/column/for-an-india-of-blasphemers/20150112.htm>

⁹ Satya Mule. Re-evaluating hate speech laws in India. Zee News
<https://zeenews.india.com/india/re-evaluating-hate-speech-laws-in-india-2489963.html>

Section 295 A as it can bring in a subjective bias. In the age of social media where there is an information overload and there can be multiple viewpoints, this becomes a major challenge and it becomes difficult to keep a check on the indiscriminate use of this provision.¹⁰

Over the years, the courts have narrowed down the scope of this law while taking a more lenient interpretation. In the Arup Bhuyan v. State of Assam, the Supreme Court held that only those speeches and expressions can be held blasphemous, which can incite imminent lawless action. It is also worth taking into account that striking down Section 295A is not an easy process. Since its constitutionality was upheld in the Ramji Lal Modi case by a five-judge bench, it would require a seven-judge bench to strike down the ruling. The argument which made this law constitutional was that Article 19(2) allows placing reasonable restrictions upon speech and expression in the interests of public order. The courts interpreted “in the interests of public order” in a wide manner and has placed the power in the hands of the state to enact laws to impose restrictions on speech and expression.

The difference between blasphemy and hate speech

It is pertinent to make a clear distinction between blasphemy and hate speech. While the former deals with damage to religious signs or symbols with malicious intent, hate speech can have long lasting repercussions in a society. Hate speech refers to any form of speech or expression that promotes or incites hatred or discrimination against an individual or group based on their race, religion, nationality, ethnicity, gender, sexual orientation, or any other characteristic.

Hate speech undermines the stability of a nation. It can create divisions, can pave the way for abuse and discrimination of those who seemingly do not conform to the norms of any religious community.¹¹ It can lead to instances of violence and completely

¹⁰ Ajit Warrier. India: Section 295A IPC And The Slippery Slope Of ‘Outrage. <https://www.mondaq.com/india/broadcasting-film-tv-radio/1013784/section-295a-ipc-and-the-slippery-slope-of-outrage39>

¹¹ <https://www.un.org/en/hate-speech/impact-and-prevention/why-tackle-hate-speech>

disturb the harmony of a society. It provokes reactions from people immediately which makes it a potent weapon for forces who want to strike at the unity of a nation. It has often been used by political parties to spread divisions in society and the dangers of it need to be taken into consideration.

Hate speech calls for discrimination against a group of citizens of individuals based on their religious affiliation and calls for their exclusion from mainstream society. It leads to both discrimination and violence against the targeted group. An example of this is the hate speech by Hutus against Tutsis leading up to the Rwandan genocide. Undoubtedly, the most devastating consequence of hate speech is the systematic othering of communities. It can cause marginalisation of communities and completely keep them away from any social, political or economic processes. There is no proper enforcement of laws that deal with hate speech because of which there is no accountability on the part of those who engage in hate speech. So, it is important that it be countered with appropriate measures.

India has many examples of the dangers of hate speech. The Shri Krishna Committee which was constituted to report on the Bombay riots observed that some articles in newspapers like ‘Saamna’ and ‘Navakal’ contributed to aggravating the already existing tensions between the two communities. In January 2023, the Supreme Court directed the Centre and states to take instances of hate speech seriously, and observed that it was nothing short of a “menace” that if left unchecked, could become a monster.¹²

As was previously mentioned, Article 19 (1)(a)(1) of the Constitution of India guarantees the right of freedom of speech and expression to all citizens of the country. But this freedom is not an absolute right. It comes with reasonable restrictions for safeguarding the sovereignty and integrity of the country. Here, it needs to be underlined that India has no specific law that defines hate speech. This becomes a challenge in the age of

¹² Supreme Court calls hate speech ‘complete menace’, cautions Centre, states. Hindustan Times.

<https://www.hindustantimes.com/india-news/supreme-court-calls-hate-speech-complete-menace-cautions-centre-states-101673636542025.html>

social media where it has become easy to incite feelings of hatred. Hate speech which disturbs public order is often confused with sedition which is a direct attack on the state. The two are not interchangeable. An effort was made to address this existing lacuna in the matter of *Shreya Singhal v. Union of India* where the Supreme Court differentiated between three forms of speech i.e., discussion, advocacy, and incitement.¹³ The court held that speech can only be limited on grounds of exceptions mentioned in Article 19(2) when it reaches the threshold of incitement. All other forms of speech, even if offensive or unpopular, must be protected under article 19(1)(a).

The laws that currently deal with hate speech in India are: The Protection of Civil Rights Act, 1955 prohibit hate speech promoting untouchability, The Religious Institutions (Prevention of Misuse) Act, 1988, The Cable Television Network Regulation Act, 1995, The Cinematograph Act, 1952, The Code of Criminal Procedure, 1973 and the Information Technology Act 2000.

In 2014, in the case of *Pravasi Bhalai Sangathan v. Union of India*, the apex court observed that that “the idea of discrimination lies at the heart of hate speech” and that it successfully and systematically marginalises a people. In its 2020 judgement in the *Amish Devgan v. Union of India*, the Supreme Court ruled that contextually “all speeches are not alike and warned of the dangers of hate speech against a vulnerable and discriminated group. It also observed that the harm caused by hate speech varies for each community.

Furthermore, social media platforms have made it possible for persons to spread hate speech to a larger audience. The safety net it provides for staying anonymous while disseminating opinions have made this a far bigger danger. It has led to more polarisation in the country. This calls for an immediate action to relook at laws dealing with hate speech in the country and tailor them to the needs of the changing times.

¹³ Report 267, Identifying criteria of hate speech.
<https://www.advocatekhoj.com/library/lawreports/hatespeech/21.php?>

Blasphemy laws in South Asia

In South Asia, Afghanistan, Bangladesh, India, Maldives and Pakistan have blasphemy laws whereas Bhutan, Nepal and Sri Lanka do not. In Afghanistan which is ruled by the Taliban, blasphemy is penalised under the Sharia law and is an offence that is punishable by death. The Constitution of Bangladesh upholds the country's secular principles even though Islam was declared the state religion in the 1980s. It contains blasphemy law in its penal code which prevents hurting of religious beliefs and sentiments. Even though there was a proposal by the radical Islamic groups to introduce the punishment of death penalty for blasphemous acts, it was rejected by prime minister Sheikh Hasina reasoning that the secular principles of the nation allow every religion to be practised freely. Maldives requires all its citizens to be Muslims and has apostasy laws.

Amongst all the countries of South Asia, Pakistan has the strictest blasphemy laws in the world, behind Iran. It has the maximum number of people serving life sentences or death row for the offence of blasphemy than any other country in the world. It has four sections of blasphemy laws in its penal code. Under these laws, blasphemy is a criminal offense punishable by death or life imprisonment, depending on the severity of the offense. Section 295 deals with blasphemy against Prophet Muhammad, while Section 298 deals with blasphemy against the companions of the Prophet Muhammad. Section 295C prescribes death as the punishment for blasphemy.

Interestingly, Pakistan's founding father Mohammad Ali Jinnah had cautioned about the indiscriminate use of Section 295 A in the Central Legislative Assembly on September 5, 1927. He stated, "I thoroughly endorse the principle, that while the measure should aim at those undesirable persons who indulge in wanton vilification or attack upon the religion of any particular class or upon the founders and prophets of a religion, we must also secure this very important and fundamental principle that those who are engaged in historical works, those who are engaged in the ascertainment of truth and those who are engaged in bona fide and honest criticism of a religion shall be

protected."¹⁴ It was on his suggestion that the protection clause was added to the blasphemy law which stated that such acts must be “with deliberate and malicious intention.”

According to the Human Rights Commission of Pakistan, there were at least 17 people on death row and 50 others serving life sentences for blasphemy in Pakistan as of 2020. However, these numbers are likely to be an underestimate, as many cases of blasphemy go unreported or are not documented. The blasphemy laws have been criticized for being used to target religious minorities, particularly Christians, who are often falsely accused of blasphemy. There have been cases where mobs have taken the law into their own hands and have lynched individuals accused of blasphemy. The laws have also been criticized for being incompatible with international human rights standards, particularly with regard to freedom of religion and expression. The United Nations and other international bodies have repeatedly called on Pakistan to reform or repeal the blasphemy laws, citing concerns about the misuse of the laws to target religious minorities and stifle dissent.

One of the most high-profile cases of blasphemy in Pakistan is that of Asia Bibi, a Christian woman who was accused of blasphemy in 2009 and sentenced to death in 2010. Bibi spent eight years on death row before being acquitted by the Supreme Court in 2018. Her case attracted international attention and highlighted the issues with Pakistan's blasphemy laws. In addition to this case, there have been several other cases of people being charged and convicted of blasphemy in Pakistan. These cases have often involved individuals from religious minorities, such as Christians or Ahmadis, who have been accused of insulting Islam or the Prophet Muhammad.

The issue of blasphemy in Pakistan have been a subject of controversy and criticism, both nationally and internationally. It is often used by political parties for their gains and vested interests. The lack of due process and safeguards in the blasphemy laws has also raised concerns about the fairness of

¹⁴ Ajit Warrier. India: Section 295A IPC And The Slippery Slope Of ‘Outrage’. Mondaq <https://www.mondaq.com/india/broadcasting-film-tv-radio/1013784/section-295a-ipc-and-the-slippery-slope-of-outrage>

trials and the risk of miscarriages of justice. The definition of blasphemy is broad and vague, leaving it open to interpretation and abuse. Moreover, there have been cases where false accusations of blasphemy have been made against individuals for personal or political reasons. Such laws have led to vigilantism and those from the minority get prosecuted only because they hold a set of views that is different from the majoritarian views. Because of this, there have been demands for reform and repeal of the laws to address these issues and uphold human rights standards. There have also been calls for a more nuanced approach to blasphemy in Pakistan, with some arguing that the laws should be reformed to better distinguish between genuine cases of blasphemy and those that are motivated by personal or political reasons. This could involve narrowing the definition of blasphemy and introducing safeguards to prevent false accusations and mob violence.

Despite these criticisms, there is significant resistance to reforming or repealing the blasphemy laws in Pakistan. Religious groups and political parties have been vocal in their opposition to any attempts to change the laws, viewing them as an attack on Islam and Pakistani culture. This has made it difficult for lawmakers to push for meaningful reform, with many fearing backlash from conservative religious groups.

However, there have been some efforts to address the issue of blasphemy in Pakistan. In 2020, the government introduced a new law aimed at tackling false accusations of blasphemy, which are often used to settle personal or political scores. The law provides for harsh punishments for those found guilty of making false accusations, including fines and imprisonment.

Blasphemy and the West

The roots of blasphemy can be traced back not just to the Greek word meaning to speak evil but also to the Judeo-Christianity culture in which any acts that involve verbal abuses or offences against sacred values and sentiments are considered blasphemous. The penalty for such acts used to be death. Blasphemy is defined as “the act of insulting or showing contempt or lack of reverence for God.” Blasphemy laws were mainly used to preserve the sanctity of a religion or its related

institutions. It is due to this aspect that rejecting the existence of God was also recognised as a crime under the common law.

From the 17th century, gradually the state gave the authority to the Church to prosecute cases involving blasphemy and the state dealt with only serious cases of dissent against deities as there was the widely held notion that religious unity was important to keep a nation united. After the beginning of the Enlightenment era, there was a decline in blasphemy prosecutions. The last blasphemy prosecution in the United States was in 1969 and in England, it was in 1977. Even though there are no longer any harsh punishments imposed in the West for blasphemy, it is still not acceptable to speak sacrilegiously about religion or God. It is also ironical to note that certain countries in the West that are championing the cause of free speech still have anti-speech laws in their legal codes which are in effect blasphemy laws.

America may have adopted the Bill of Rights but the fact remains that blasphemy laws remain on the books in about six states even though these laws are considered unconstitutional and unenforceable. In the District of Columbia which was the first state to prohibit blasphemy by adopting a law in 1801, the first offense was punished by the boring of the tongue of the offender, the second offense by branding of the forehead, and the third offense by death. In America, blasphemy encompassed not only any denial of God, but any denial of Jesus as “the Son of God” or the denial of “the Godhead of any of the three persons” of the Trinity. In many ways, religion is still considered a subject that is beyond any scrutiny or criticism.¹⁵

Sixteen countries in the Europe still have anti-speech laws where it is possible to be prosecuted for the offence of blasphemy.¹⁶ These include: Austria, Denmark, Finland, Germany, Greece, Italy, Malta, Netherlands, Norway, Poland, Russia, Spain,

¹⁵ Ronald A. Lindsay. The Importance of Blasphemy.
https://centerforinquiry.org/blog/the_importance_of_blasphemy/

¹⁶ Randeep Dahiya. An Analysis of Blasphemy Laws in India and Abroad. Legal Service India, E-journal.
<https://www.legalserviceindia.com/legal/article-1354-an-analysis-of-blasphemy-laws-in-india-and-abroad.html>

Sweden, Switzerland, Turkey and United Kingdom. Ireland repealed its blasphemy law only in 2018.

Recently, there have been instances where European countries have started enforcing their blasphemy laws which were lying dormant for a long time. In 2019, a man in Spain was sentenced to one year in prison for posting "offensive" messages about Catholicism on Facebook. In 2017, a man in Greece was arrested for blasphemy after he posted a photograph on Facebook that showed a religious procession accompanied by a humorous comment.

The aggravated reaction of the West has a direct connection to the increased incidents of radicalism in the European nations. In France, two terrorists forced their way into the offices of the French satirical weekly newspaper Charlie Hebdo in Paris in 2015 killing at least 12 people to avenge the portrayal of the Prophet in what they considered to be in a disrespectful manner. Blasphemy law ceased to exist by 1830 in France with the separation of the church and the state. The principle of secularism (laïcité) was enshrined in the 1905 law on the Separation of the Churches and the State, and in 1945 became part of the constitution. Under this, all public administrations and services are required to be religion-blind and the representatives are not allowed to display their religion in any form while private citizens and organisations have the freedom to practice and express their religion. However, in recent years, France is seen moving towards a stricter interpretation of laïcité where private citizens are barred from wearing "blatant" religious symbols and they are barred from expressing their religion in public. This has become a major point of contention in the country with the representatives of all the religions arguing that the existing law does not support such a narrow interpretation.

In the Netherlands in 2005, Dutch film director Theodoor van Gogh was murdered by Mohammed Bouyeri, a Dutch-Moroccan Islamist for his short film which criticised the treatment of women in Islam in strong terms. This incident reignited the debate in the country which is home to more than one million Muslims whether the blasphemy laws that have been lying dormant should be reignited or should it be scrapped altogether.

Though the country has a long history of religious tolerance and freedom of expression, hate speech and incitement to violence are not protected under the right to freedom of speech. The Dutch legal system has provisions that prohibit hate speech and incitement to violence, and individuals who engage in such activities can face legal consequences.

The double standards of the West where it calls for absolute right to freedom of speech and expression in other countries while strengthening its own anti-hate speech laws often go unnoticed and is symbolic of the problematic history it has had with balancing the powers of the church and the state. It is also an example of how current events continue to shape a nation's polity and there cannot be a universal interpretation of what exactly constitutes blasphemy or hate speech.

Concept of blasphemy in Hinduism

A debate on laws against hate speech in India will be incomplete if not seen in the context of the country's majority religion which is, Hinduism or *Sanatan Dharma*, if one views it in a broader sense. It is interesting to note that there is no Sanskrit word for 'blasphemy.' In fact, the roots of blasphemy lie in the Greek word for 'evil speaking.' It means to abuse or speak ill of something held to be sacred.

Blasphemy is a concept that is alien to the Indian culture which has always thrived on healthy debates and discussions. Hindu gods and goddesses are the human realisations of universal consciousness. Differences of opinion were always respected and there has never been any effort to deride a different viewpoint. In fact, Indian culture is known for its inclusivity and for creating a safe place to voice out concerns after an in-depth study of the religion. In the book, *An Introduction to the Hindu Faith* by John R de Lingens, he writes, "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." It is a diverse and pluralistic religion which has always put great stress on the freedom of thought and expression. An individual has the right to challenge any aspect of religion, including deities, scriptures, and traditions, so long as it is done in a constructive and respectful manner. This is not just true for Sanatan Dharma but also for other religions like Jainism

and Buddhism that have always propagated the concepts of peace and non-violence.

Hinduism with its diverse schools of thoughts and different sects never had the concept of divine blasphemy. It is viewed as an orthoprax religion which places more emphasis on right actions than on teachings of a monotheistic god or preacher. In the polytheistic nature of Hinduism, there was often a culture of posing difficult and challenging questions as the emphasis was always on discovering the greater truths of life. In fact, in various Puranas and Shastras, the gods themselves have raised pertinent questions signalling that continuous dialogue or *samvaad* was an important tenet of Sanatan Dharma. For example, in Shiva Purana, Lord Shiva asks Goddess Parvati, “What is the essence of the Vedas?” To this, Goddess Parvati replies that the essence of Vedas is to realise the ultimate reality which is beyond any established norms or concepts. In another instance, in Padma Purana, Lord Brahma asks Lord Vishnu, “Who are you?” To this, Lord Vishnu explains the complex philosophies of ultimate reality and the source of creation. In a school of thought where those venerated themselves have questions to which they don’t have any answers, it proves that it thrived on continuous dialogue and an openness to embrace new ideas.

An example that best proves that Sanatan Dharma was always meant to be a continuous quest in search of the higher truth is seen in Bhagavata Purana where Lord Vishnu asks Sage Bhrigu, "How do people in this world attain happiness?" With this question, Sage Bhrigu was forced to introspect and started exploring the different ways in which people sought happiness. At the end of this journey, he realised that true happiness comes from complete devotion to god. Because of this open culture, there cannot be any parallels that can be drawn between blasphemy in Hinduism as opposed to blasphemy in Islam or Christianity. Hinduism does not consider criticism as a sin unlike the Abrahamic religions. Instead, it welcomes differences of opinion and encourages open discussions on these views.

The views for and against laws for hate speech are also influenced by the opposing nature of the Sanatan Dharma and the Abrahamic religions. While the former has always been

welcoming of any questions being posed about religion, the latter does not have a culture that is open to any criticism. There are clear laws of blasphemy that exists in the religious texts of these religions and in certain religions, this is an offence that is punishable by death. Such diametrically opposite views become a bone of contention and can drive wedges in a society.

The western concept of rights being rooted in legal rights had also a part to play in the interpretation of Section 295A. For the Abrahamic religions which had to fight for survival in West Asia, it was important to build a sense of loyalty amongst its followers.¹⁷ Any direct challenge could threaten the existence of these religions, which is the concept of blasphemy, is so fundamental to these religions. Even though the images of Prophet Muhammad are not explicitly banned by the Quran, but many Islamic scholars have opposed the use of human images and consider such representation of the Prophet as blasphemy which is an offence punishable by death.

When the British came to India, they had difficulty in understanding a religion that was not monotheistic. So, there were efforts to draw parallels between Hinduism and Christianity and recast the former as a monotheistic religion. For this, they tried equating the Bhagavad Gita with the Bible and Krishna/Vishnu was tried to be portrayed as a monotheistic god.

Christianity, though is a tolerant religion as compared to Islam, but it was also not free from violence. The different sects of Christianity resorted to killing each other during the Ottoman Empire rule for heresy, which meant holding an opinion contrary to the religious doctrine. The biggest change in the Christian view came in the 18th century during the Era of Enlightenment when it embraced many of its secular values. However, it differs from the Indian values in a significant way. It talks about the concept of tolerance whereas a crucial element of Indian viewpoint is respect for all religions. Because of this, the West

¹⁷ Durga Nand Jha, Global Minority Report

could still justify blasphemy and it became an important legal right.¹⁸

Here, it is important to note that there is also an underlying and stark difference between blasphemy and censorship. Though initially the Section 295A was enacted to appease one community, it later took the form of a powerful censorship tool for the British. The law was used to sow seeds of hatred between the Hindus and the Muslims. Over the years, this particular law has been used to incite violence between different communities than to curb it.

While blasphemy is an alien concept in Indian culture, the latter is thought to be a necessary measure in the present times to ensure that religious sentiments are not hurt. Hindus have expressed concerns of late that in the absence of a law, there will be freedom for everyone to insult Hinduism and use this as an opportunity to incite communal feelings. Section 295 A acts a check but this also comes with an inherent contradiction. In a culture where there were no restrictions imposed on its peoples, Section 295 A in a veiled manner punishes blasphemy. This in a way accepts the notion that religion is above any questions or doubts which goes against the very grain of Indian culture. The truth remains that a part of Sharia law has been made part of the IPC and there have been little efforts from the subsequent governments to bring the country out of this regressive view. This has led to further radicalisation and polarisation of society.¹⁹

Two events bring out the stark differences in Indian society today. Nupur Sharma, a former national spokesperson of BJP was criticised both nationally and internationally for her comments on the Prophet but a documentary poster showing a woman dressed as Kali smoking a cigarette elicited only online trolling. The muted response to attacks on Sanatan Dharma may have to do with the negative stereotypes implanted by the

¹⁸ TVR Shenoy. Why Hinduism never developed a concept of blasphemy. Rediff.com <https://www.rediff.com/news/column/why-hinduism-never-developed-a-concept-of-blasphemy/20150204.htm>

¹⁹ Aarti Tikoo. Stop Supporting Punishment for Blasphemy. New Indian <https://newindian.in/stop-supporting-punishment-for-blasphemy/>

colonists in the Indian minds.²⁰ In a pluralistic society, it is important to curb all instances of hate speech. When something is said wilfully with the full knowledge that it will lead to chaos and violence, it cannot be overlooked and would have to be prosecuted under the appropriate laws. Along with this, critical evaluation of religion is necessary for a society to evolve with the changing times.

Views of two reformers on blasphemy

In a world where there is a continuous battle between different ideologies, the view of two reformers, one hailing from Christianity and the other from Islam are important in understanding the concept of blasphemy and its relevance in the current times.

The first reformer is Mohammed Abduh who lived in the late 19th and early 20th centuries. A leading figure of Islamic modernism, he called for the reinterpretation of Islamic doctrine with the changing times.²¹ He believed that principles of Islam including compassion, justice, and mercy, should guide human interactions. In his writings and speeches, he emphasised that Islam is a religion of peace and that the use of violence or hateful rhetoric to achieve political or ideological goals goes against the essence of its teachings. He argued that hate speech promotes animosity and hostility towards individuals or groups based on their beliefs or identity, is incompatible with the values of Islam.

Abduh believed that individuals and communities must work together to promote mutual understanding and respect, and to combat hate speech and intolerance. In his view, the use of hate speech is a form of oppression that undermines the dignity and humanity of those who are targeted. He believed that true Islamic values call for the protection of all human beings,

²⁰ Aravindan Neelakandan. Between Blasphemy And Hate: Sharpening The Hindu Response. Swarajya
<https://swarajyamag.com/culture/between-blasphemy-and-hate-sharpening-the-hindu-response>

²¹ Marie Juul Petersen. Islam and human rights: Clash or compatibility? LSE Blogs <https://blogs.lse.ac.uk/religionglobalsociety/2018/06/islam-and-human-rights-clash-or-compatibility/>

regardless of their religion, ethnicity, or nationality, and that hate speech is a violation of those values.

On the specific question of blasphemy in Islam, Abduh held the strong view that Islamic law must be interpreted and applied in a way that takes into account the changing times and social conditions. He urged that Islamic traditions should be open to new ideas and interpretations. According to him, blasphemy laws should not be used to stifle free speech or limit intellectual inquiry, and that accusations of blasphemy should be carefully examined to ensure that they are not based on mere differences of opinion or interpretation. He firmly believed a culture of tolerance and respect to diversity can be built while upholding the core principles of Islam and respecting its sacred texts and traditions.²²

The second reformer is Martin Luther King Jr., a prominent civil rights leader in the United States during the mid-20th century. While he is best known for his advocacy for racial equality and social justice, he was also deeply committed to his Christian faith and believed that it could be a powerful force for positive change in the world.

King believed that Christianity was a religion of love and compassion, and he felt that many Christians had lost sight of this fundamental principle. He called for a reform of the church that would bring it back to its true spiritual roots and inspire people to live more meaningful and ethical lives.

In his famous *Letter from Birmingham Jail*, King wrote, "There was a time when the church was very powerful--in the time when the early Christians rejoiced at being deemed worthy to suffer for what they believed. In those days the church was not merely a thermometer that recorded the ideas and principles of popular opinion; it was a thermostat that transformed the mores of society."

King believed that the church had a responsibility to work for social justice and to help create a more just and equitable society. He argued that Christians could not be indifferent to the suffering of others and that they must take action to alleviate

²² Mustafa Akyol. Islam, Blasphemy, and the East-West Divide. CATO Institute

poverty, discrimination, and other forms of injustice. Overall, King's vision of reform in Christianity was one that called for a return to the core values of the faith and a renewed commitment to social justice and compassion for all people.

On the issue of blasphemy, King did not speak extensively about it in Christianity, but he did touch upon the issue in a few of his sermons and speeches. In a sermon titled *A Tough Mind and a Tender Heart*, delivered at Detroit's Second Baptist Church in 1957, King spoke about the importance of having a tough mind that is able to think critically and analyse complex issues, while also maintaining a tender heart that is compassionate and empathetic towards others. He said, "We must combine the toughness of the serpent and the softness of the dove, a tough mind and a tender heart."

King also emphasised the importance of respecting the religious beliefs of others, even if one disagrees with them. In a speech delivered at the National Cathedral in Washington, D.C. in 1968, he said, "We must all learn to live together as brothers or we will all perish together as fools. We are tied together in the single garment of destiny, caught in an inescapable network of mutuality. And whatever affects one directly affects all indirectly."

The message that both these reformers gave were the same. It stressed on the importance of showing compassion and respect towards those who hold different religious beliefs and called for critical examinations of their own belief systems and traditions.

Conclusion

The question of whether India, a country that is known for its culture of respectful dissent should have an anti-hate speech law is a complex one. Today, 71 of the world's 195 countries have blasphemy laws and most of these are embedded in criminal codes. Penalties for violating blasphemy laws in these countries can range from fines to imprisonment and death. Most of the laws are vaguely worded and the vast majority carry unduly harsh penalties for violators.²³ An ideal society would be one

²³ <https://www.uscirf.gov/publications/respecting-rights-measuring-worlds-blasphemy-laws>

where there are no restraints to the right to freedom of speech and expression and people of all religions thrive by having healthy debates on beliefs and practices. Yet the India of today is far from that idealistic society. Religion is no longer seen as the private affair of citizens and is openly used by both internal and external forces to create divisions in society. Each religion is viewed with suspicion and there is a constant fear that if the restraints to speech are removed, there will be anarchy in society.

There is no doubt that blasphemy laws violate the human right to freedom of expression. It insulates many religious beliefs and practices from necessary criticism and most unfortunately, they legitimise violence and persecution of minorities. It also becomes a potent tool to attack the majority and creates an atmosphere of fear and retaliation. The dread of criticising religion or religious institutions also deter people from reporting crimes like sexual abuse and exploitation that happen within these institutions. Silencing opinions cannot be seen as a social good, as constructive criticism is necessary to correct errors.²⁴

Critical discussion is important for a religion to stay relevant in the changing times. Practices like child marriage, genital mutilation and triple talaq etc. cannot be justified in a civilised society under the garb of religious beliefs. Every society needs a safe space where important fact-based observations can be made on religion and questions can be raised. If not, there will be no evolution of ideas and such a society can become stagnant.

Considering the current divisions in Indian society where the line between blasphemy and hate speech is getting increasingly blurred, it has become important to have some checks and balances in place. This also means that the laws dealing with hate speech cannot be removed from the Constitution till there is harmony in society.

However, to find the right balance, there is an urgent need to avoid filing cases for trivial matters in the name of religion. The outrage felt by one person cannot be enough ground for filing a

²⁴ “Legitimizing” mob violence, vigilantism, and persecution of minorities

<https://end-blasphemy-laws.org/whats-wrong-with-blasphemy-laws/>

case under Section 295A or Section 153 A. According to the latest report of the National Crime Records Bureau cases registered under Section 153A has almost doubled in the last two years. To address this situation, mechanisms should be put in place to ascertain whether a complaint can be filed under the said sections.²⁵

What is needed is a wider reading of Section 295A where free speech is not left at the mercy for any person who takes an offence for even seemingly harmless statements. The words such as outrage, insult, the necessity of proximity to public order must be delineated and defined. There is also a need for a law that defines hate speech and clearly lays out the punishment. While it is true that distasteful comments should not be dealt with the force of law, it is equally important to ensure that this right does not become an assault on fundamental rights of the citizens. Addressing hate speech at an early stage, including through education, is thus one of the most important tools to prevent conflict.²⁶ It is important to teach the younger generation religious tolerance and to respect all religions equally.

In due course, if a society wants to be in complete harmony, the essence of each religion must be properly understood and efforts must be made to embrace the differences. As a civilisation, India has progressed on a culture of dialogue and debate and that remains an important factor in finding religious and social harmony. Till the time that perfect balance is not achieved, the laws against hate speech may continue to find a place in the country's legal system as a necessary evil.

²⁵ <https://blog.ipleaders.in/hate-speech-india-analysis-light-section-153a-295a-ipc/>

²⁶ Speech delivered by Assistant Secretary General for Human Rights Ilze Brands Kehris
<https://www.ohchr.org/en/statements/2022/06/role-education-address-root-causes-hate-speech-and-advance-inclusion-non>

Lekshmi Parameswaran is a Research Associate at India Policy Foundation. An alumna of Jawaharlal Nehru University, she has been writing on policy issues in South Asia for more than a decade.



भारत नीति प्रतिष्ठान
India Policy Foundation

D-51, Hauz Khas, New Delhi-110016 (India)

Tele : +91-11-26524018

E-mail : info@ipf.org.in, indiapolicy@gmail.com

Website: www.ipf.org.in