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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of

International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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SACRED OR SECULAR? NAVIGATING BLASPHEMY LAWS IN A PLURALISTIC SOCIETY

AUTHORED BY - GARVITA MATHUR

2nd Year BA LLB

ABSTRACT

This research paper rigorously explores the complex dynamic between secularism and the criminalization of blasphemy in India's constitutional and socio-political context. It starts with a critical evaluation of the philosophical foundations of secularism as a cornerstone of liberal democracy and its controversial integration into the Indian constitutional process. The discussion covers ideological divisions between Nehruvian secularism and political realignments under Indira Gandhi, especially under the 42nd Amendment. The research also examines the evolution of India's constitutional interpretation of religious freedom and the state's responsibility to maintain religious neutrality, as contained in Articles 14, 15 and 25–28 of the Constitution. A unifying thread is Section 295(A) of the Indian Penal Code¹, a vestige of colonial law intended to prevent communal violence, which continues to shape the legal concept of blasphemy in modern India. The article criticizes the lack of specialized legislation dealing with blasphemy in a secular and democratic context, emphasizing the need to reconcile free expression and public order. It also undertakes comparative analysis with international practices, evaluates existing challenges, and suggests a future-oriented approach that focuses on education and tolerance as key mechanisms for social cohesion. It calls for reconsidering outmoded legal frameworks to realign with modern constitutional principles that promote pluralism, freedom, and justice.

INTRODUCTION

“Religion is like a pair of shoes Find one that fits for you, but don't make me wear your shoes.”

Secularism as a political and philosophical doctrine has come a long way. It is driven largely by the Enlightenment values that uphold the ideals of reason, personal freedom, and the separation of church and state. Developing in the West in reaction to theocratic rule and

¹ https://www.ijresm.com/Vol.2_2019/Vol2_Iss5_May19/IJRESM_V2_I5_106.pdf.

religious strife in post- Reformation Europe, scholars such as John Locke and Voltaire set the stage for contemporary liberal democracies by calling for the neutrality of the state on religious issues and the safeguarding of individual conscience.

Secularism today takes varied forms, ranging from strict religion-state separation to a more pluralistic cohabitation of several religions within a constitutional setup. Identity politics and religious nationalism pose challenges to the durability of secularism, weaving a web of complexity around freedom of expression and coexistence. This conflict is especially apparent in debates over the criminalization of blasphemy, which poses questions regarding the boundaries of free speech in highly religious societies.

Proponents of laws against blasphemy contend that religion is of high personal and communal importance, and assaults on revered beliefs can instigate social upheaval and violence. Making extreme blasphemy a crime, they argue, does not demolish secularism but supports an even-minded approach where freedom of speech is guaranteed without sacrificing respect, dignity, and public order. This vision emphasizes retaining interfaith respect and averting hate-induced discussions in secular societies so that nations will remain united and live in harmony.

A. CONSTITUTIONAL DEBATES SURROUNDING THE INCLUSION OF 'SECULARISM'

When, on 17 October 1949, the preamble was being discussed by the constituent assembly, the topic surrounding secularism was most contentiously deliberated upon. There were advocates of secularism who proactively wanted to add the same in the preamble since its very inception. On the other hand, a significant group of opposition led by the soon-to-be PM. Nehru propagated the granting of a broad right to freedom. Still, it resisted providing political rights to minorities based on the same.

The linkage between secularism and the smooth operation of democracy had already been well-established in Europe. Since India would emulate the principles of democracy, secularism was considered necessary. Indeed, debates in the Constituent Assembly made clear the ambiguity inherent in this terminology when it was applied to the Indian scenario. Questions remained regarding the character of its application and to what extent it was even possible. The session started with an amendment moved by HV Kamath to start the preamble with the

phrase 'in the name of God'. This idea was supported by backing it with the Irish constitution, with the reasoning that it starts with the name of God. However, opponents of Kamath advocated that the matter of religion should be an individual choice and should not be something to be imposed as a collective will. Kamath's amendment was defeated by 68 to 41. Therefore, the assembly did not accept adding the term 'secular' in the preamble.

Despite the divergent views among members regarding the explicit inclusion of the term "secularism" in the preamble, there was a unanimous consensus that India ought to embody the principles of a secular state, either explicitly or implicitly. The Constituent Assembly collectively recognised establishing a secular framework as essential for effectively functioning in a democratic state like India.

B. WHY NEHRU DROPPED AND INDIRA INSERTED THE S-WORD IN THE CONSTITUTION

B.1. NEHRUVIAN SECULARISM:

For Nehru, 'secularism' was a tool of modernization in the post-independence era. Ironically enough, it was Nehru and the chairman of the Constitution's drafting committee, B.R. Ambedkar, who was also most against the inclusion of the word 'secular' in the preamble of the Constitution. A closer look at the conditions under which the Constitution of India was created, and subsequently, the period during which the term 'secular' continued to be added to the preamble, will reveal several political and historical factors involved in implementing secularism in India.

Nehru and Ambedkar were deeply devoted to the ideal of secularism. "It is an ideal to be aimed at, and every one of us, whether we are Hindus or Muslims, Sikhs or Christians, whatever we are, none of us can say in his heart of hearts that he has no prejudice and no taint of communalism in his mind or heart,"² declared Nehru. But when it came to the use of 'secular,' both were cautious about its application.

Making it clear where he stood concerning the State on the lines of secularism and steering clear of including it within the Preamble, Ambedkar stated, "What should be the policy of the State and how the society should be organized on its social and economic side are matters that the people themselves must decide according to time and circumstances³." It cannot be

² Nehru, J. (1949). *Speech in the Constituent Assembly of India*. In B. Shiva Rao (Ed.), *The Framing of India's Constitution: A Study*. Indian Institute of Public Administration.

³ Ambedkar, B. R. (1948, November 15). *Constituent Assembly Debates, Vol. VII. Government of India*.

enshrined in the Constitution itself because t h a t is killing democracy entirely." Accordingly, the Constituent Assembly passed Articles 25, 26 and 27 of the Constitution with the aim of advancing secularism. Although not formally added to the document, secularism was enshrined in the constitutional philosophy.

B.2. SECULARISM IN 42nd AMENDMENT:

The 42nd Amendment followed shortly. This 20-page-long, detailed amendment provided unprecedented authority to the Parliament. Nearly all aspects of the Constitution, including the preamble, were altered through this amendment. After that, the preamble description of India was altered from a "sovereign, democratic republic" to a 'sovereign, socialist, secular, democratic republic.'

The Constitution (42nd Amendment) Act, enacted during the Emergency period in 1976, added the word 'secular' to the Constitution. However, Indira Gandhi's approach to secularism sharply contrasted with that of Nehru. Eminent lawyer A. G. Noorani, in his article *Indira Gandhi and Indian Muslims* (1990), pointed out that Gandhi's image as the 'protector' of Muslim interests persisted even as the community became more of a vote bank. Despite leveraging their support, she resented their rights as independent of her or her party, he said. The core and sole reason to add the said word in the Constitution of India was to imply the idea that the government would not intrude upon the "personal" religious matters of the public.

C. CURRENT LEGAL SPHERE OF SECULARISM IN INDIA

C.1. Article 14⁴ of the Indian Constitution is a basic right provided to all the citizens of India, which states that all the citizens of India are equal before the law and have equal protection of the law. The article guarantees that no one or group of individuals is discriminated against on the grounds of their religion, race, caste, sex, or place of birth. This article illustrates the concept of secularism and advocates for it. But as mentioned earlier, the state does not interfere with religious matters however, in some situations, such as for the interest of public welfare, the state will intervene, such as in the well-known Temple case **Indian Young Lawyer's Association v. State of Kerala⁵**, this case was a close religious affair, but it also concerned virtue and equality and women empowerment; hence, the state did intervene for the interest of public welfare and virtue.

⁴ *INDIA CONST. art 14.*

⁵ *Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.*

C.2. Article 15⁶: Forbiddance of Discrimination—Article 15 of the Indian Constitution is an inherent right bestowed upon all the citizens of India, which defines how the state forbids discrimination based on religion, race, caste, sex, or place of birth in the spheres such as access to public places. This article guarantees that all people are treated equally and that nobody is deprived of any rights or opportunities based on their religious teachings and beliefs, reiterating the secularity of India.

C.3. Articles 25-28 of the Indian Constitution provide freedom of religion and protection of fundamental rights. Article 25 provides for the freedom to practice, profess, and propagate religion with reasonable restrictions. Article 26 permits religious denominations to administer their own affairs, constitute institutions, and acquire properties, further upholding a secular approach as held in the case of the TMA Pai Foundation. Article 27 forbids the state from forcing people to pay taxes that benefits any specific religion so that all religions are treated equally. Lastly, Article 28 enshrines the right to receive religious instruction in schools, where religious bodies can teach without violating personal choice, as established in the Aruna Roy case.

C.4. Kesavananda Bharti v. State of Kerala⁷: Through this historic case of the year 1973, the Supreme Court formally adopted the doctrine of basic structure and held that the term "secular" cannot be altered, or any other piece of legislation that modifies the basic framework of our Indian Constitution. The court also stressed that the term "secular" fosters harmony but depicts India's diverse and pluralistic society. Secular, socialist, and democratic are the fundamental components of India. Thus, this judgment rendered secularism and sovereignty immune to legislative alteration or amendments.

C.5. S.R. Bomani v. Union of India⁸: The court also ruled that all religions must be treated with due regard and consistency, and if there is favoring or discrimination against any specific religion, then the state government would be dismissed under *Article 356* for violating laws. This judgment strengthened the secularistic idea of inclusive ethics.

C.6. Aruna Roy v. Union of India⁹: In this landmark case, the Supreme Court dealt with the fact that there must be a balance between religion and secularism. Being secular does not imply enmity or hostility towards religion but acknowledges, appreciates, and treats it with justice. In this respect, the role of religious teachings within schools and circles was called into question; the court thus put greater importance on the religious teachings that were impartial

⁶ INDIA CONST. art 15.

⁷ *Kesavananda Bharati v State of Kerela (1973) 4 SCC 225.*

⁸ *S.R. Bommai v. Union of India, (1994) 3 SCC 1.*

⁹ *Aruna Roy v. Union of India, (2002) 7 SCC 368.*

and objective and ushered in values within society that did not breach any constitutional legislation and were to be encouraged. This case confirmed distinctness within the integration of secularism and religious and moral principles that engendered respect towards all denominations.

D. BLASPHEMY: A BLOT ON SECULARISM IN INDIA

“All human rights are universal, indivisible, 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.¹⁰”

Blasphemy means “irreverence toward God, religion, a religious icon, or something else considered sacred.” It has been considered a common-law crime due to its propensity to provoke breaches of the peace, whereas it is expressly criminalized under some statutes. Nevertheless, the reason why blasphemy has been declared a 'crime' is not only true in common law nations but in most states across the globe.

Blasphemy laws exist in the criminal codes of many nations across the globe, encompassing a heterogeneous range of demographic and juridical environments. Christian nations like Greece and Iceland, Islamic republics like Iraq and Egypt, the Jewish nation of Israel, countries with a focus on Buddhism like Sri Lanka, and secular nations like Canada and Germany all have legal sanctions against blasphemy. These laws could be aimed at individual religions, as in the case of Qatar, or applied to all religions, as is the case with Denmark, and the punishments vary greatly—from a fine in Italy to the death penalty in Pakistan. On the other hand, many nations, particularly the United States, have spurned blasphemy legislation as unconstitutional since it violates the principle of freedom of speech.

As a secular and pluralist state, India did not have blasphemy laws until 1927, when Section 295(A) was inserted into the Indian Penal Code of 1860. According to this section, it is a criminal offence to intentionally outrage the religious feelings of any class of citizens by any words spoken or written, by signs, or by representations, punishable with imprisonment up to three years, a fine, or both. The modern rationale behind India's blasphemy laws is still a debatable issue.

¹⁰ Philip Alston & Ryan Goodman, *International Human Rights*, (1st Ed OUP 2012) p.677.

The question is, is the legal stance of India on blasphemy law enough for the contemporary world, or is it a direct attack on the basic structure of the constitution?

E. BACKGROUND OF BLASPHEMY AND ITS LEGAL COURSE IN INDIA

India, which is largely a Hindu country, did not see the passage of any blasphemy laws until 1927. Before independence, amidst growing communal tensions, there was a **significant incident when Mahashay Rajpal printed a pamphlet, which caused a huge controversy**. The Muslim community requested legal retaliation against Rajpal for what they considered to be a violent assault on their religious feelings. Finally, Rajpal was acquitted because India did not have any law of blasphemy during that Period, however, he was assassinated in 1929, marking the explosive intersection of religion and politics in colonial India.

To counter mounting communal unrest, the British colonial administration amended the Indian Penal Code of 1860 and added Section 295(A) in 1927. The change was intended to meet the mounting tensions by instituting a legal framework for penalizing actions that were considered offensive to religious sensibilities. Interestingly, this section continues to be part of the Indian Penal Code, 1860 and is even incorporated into the legal frameworks of Pakistan and Bangladesh, indicating the lasting impact of colonial legal reforms on post-partition South Asia.

F. NEED FOR BLASPHEMY LAWS IN INDIA:

- **The sacrosanctity of religions** emphasizes the faith in the absolute sovereignty of God and the holiness of religious beliefs, resulting in the belief that such offences as impunity, apostasy, and blasphemy are most heinous, frequently deserving very harsh punishments, including death. Respected scholars, such as St. Thomas Aquinas, have contended that blasphemy, as a direct insult to God, is a more serious sin than murder, which injures one's neighbour; yet, in the sense of the actual harm done, the crime of murder is considered to have more serious repercussions for society. Aquinas went on to state that heretics, being blasphemers who hold to erroneous doctrines, can rightly be put to death and have their property seized by secular governments even if they are not corrupting others—a view mirrored by other leading jurists of the time, including Augustine and Calvin, who likewise highlight the gravity of blasphemy in

the context of religious orthodoxy.

- **Enforcement of Religious Sanctions:** Nations that formally support a state religion often incorporate religious legislation into their criminal codes or couch their penal law in accordance with religious doctrine, especially regarding bans on blasphemy. A salient example of this phenomenon is outlined in the Constitution of Afghanistan, which designates Islam as the “official religion of the state.” It explicitly asserts that “no law can be contrary to the beliefs and provisions of the sacred religion of Islam”. It stipulates that “the provisions of adherence to the fundamentals of the sacred religion of Islam and the regime of the Islamic Republic cannot be amended.” In instances where both the Constitution and the Penal Code remain silent—particularly concerning matters such as conversion and blasphemy—judicial bodies often defer to Shari-a’s law, thereby underscoring the profound influence of religious doctrine on legal interpretation and enforcement within such states.
- **Stable Government:** The Greek Supreme Court has defined religious insult as violating both the religious feelings and freedom of individuals, acknowledging these as moral and social values worthy of legal protection for the sake of civilisation and governance of society. This viewpoint emphasizes the fact that religion is not just a personal or individualistic affair but a building block of the state that affects not just personal beliefs and ideas but also human conduct. Therefore, understanding the influence of religion on human conduct necessitates setting up legal protection as a moral and social necessity, which is necessary for creating a secure society and efficient governance. This needs to safeguard the religious feelings of others, and becomes a legal one as the state recognizes the inherent 'Right to Religion.'
- **Reasonable restriction for harmony:** Most countries adopt blasphemy laws as a tool for maintaining communal peace in the country. In India, for example, Section 295(A) of the Penal Code was enacted as a response to persistent communal violence brought on by blasphemous utterances.

The pamphlet 'Rangila Rasul,' containing controversial content, was allegedly penned as revenge after another book was deemed to have outraged Hindu sentiments. This reflects the struggle between freedom of expression and religious sensitivity. There are similar legislative provisions elsewhere in the world, as seen in German legislation, which criminalises public insult of religions or ideologies that disturb public peace with a prison sentence of three years or a fine. In South Sudan, contempt of a religion likely to cause a breach of the peace is an offence punishable by law.

Turkey also criminalizes public insult to religion, laying down imprisonment, subject to the extent of the resultant effect on the public order. Such laws draw on the notion that blasphemous utterance can upset communal order, most particularly in a society where religious ideology is deeply established. The rationalisations for its prohibition are ordinarily complex and reciprocal, frequently depending on a government's acknowledgement of religion as an essential system of morals defining individual conduct and civic organization. When a blasphemous action is viewed as an onslaught on this moral underpinning, it could trigger turbulence, which may be expressed in violent form, thus calling for reasonable limitation of freedom of speech to ensure coexistence in society.

G. DEBATES AGAINST THE CRIMINALIZATION OF BLASPHEMY

- **Nature of the State and Society:** The state should not repress criticism of religious teachings. India's constitution declares it a secular state, refraining from prejudice against irreligion, which some may consider blasphemous.
- **Violation of Freedom of Speech and Expression:** Historical restrictions on India's free speech, defended in the interest of public order (e.g., the R a m j i Lal Modi case), make blasphemy laws problematic due to the unmethodical nature of provoking violence.
- **Fostering Violence & Victimhood:** Indian Penal Code provisions can trigger violent responses rather than prevent them. For instance, prohibiting a book under Section 295(a) frequently depends upon proof of such violence.
- **India's International Responsibility:** The signed International Covenant on Civil and Political Rights requires guarding free speech and is against laws of blasphemy, which makes India obligated to do away with them.
- **Question of Malice:** Section 295(a) deals with actions done with malice, though establishing malice is tricky and tends to give rise to protracted legal procedures that may exceed the intended punishments intended to safeguard constructive criticism.

H. LEGAL SCENARIO OF BLASPHEMY

The Indian Penal Code is devoted to crimes against religion (Chapter 15), namely sections 295 to 298. Of these, only Section 295(A) is most cited in debates regarding blasphemy, although others contend that it is more properly described as a provision against hate speech. But

looking at the historical background behind the enactment of this section and its position in the penal code, the lawmakers wanted Section 295(A) to make blasphemy criminal and avoid violence resulting from acts of blasphemy.

Therefore, there is no explicit law targeting blasphemy separately, and legislating the same is a need of the hour. If not, it can directly attack the spirit of secularism and perhaps hamper the very basic structure, the very fundamental core of India as a country.

I. CONCERNING THE INCREASE IN HATE SPEECH AND BLASPHEMY IN INDIA, ANTONY BLINKEN

He said that even in the US, reports of hate crimes and other incidents targeting Muslims and Jews have increased. In its latest report on religious freedom abroad, the United States has raised serious concerns over the increase in hate speech and the destruction of houses and places of worship of minority groups in India. U.S. Secretary of State Antony Blinken pointed to the alarming increase in anti-conversion legislation and the effect of such actions on the security and rights of religious minorities. He added that these actions substantially threaten religious pluralism and fundamental freedoms enshrined in democratic systems.

Additionally, Blinken highlighted the fact that targeting individuals based on religious beliefs is not limited to India alone; it is an international phenomenon. He pointed out that governments across the world are increasingly resorting to measures such as the closure of mosques and other houses of worship, forced displacement of communities, and imprisonment of people for their religion. This unwelcome trend is being seen even in the United States, where there has been a significant rise in the number of reports of hate crimes and other assaults on Muslims and Jews.

J. WAY FORWARD

The evolution of societal norms demands the making of laws that aim at punishing culprits instead of safeguarding religious beliefs from criticism or opposition. This change in legal thinking is imperative for establishing a more equitable society where responsibility outweighs the protection of dogma.

Sustainable solution to intolerance and social conflict lies in developing a culture of

tolerance, and the key to such a paradigm shift has been identified as education. Through the promotion of critical thinking, empathy, and free discussion, education can allow people to value different outlooks and promote mutual respect for diverse religious and cultural groups. This approach would enable the development of a society that respects the universal right to free expression and speech and actively accommodates and respects the beliefs of all religions and minority groups.

Both this respect for expression and this expression of respect are crucial to maintain social harmony in ever-plural societies. In addition, it is necessary to situate the idea of blasphemy, which was born in a pre-modern environment of authoritarian rule and the absence of secular and democratic institutions. An awareness of the historical constraints of this idea is necessary for modern-day discussion, as it highlights the necessity of reconfiguring legal and societal structures to accommodate contemporary values of freedom and inclusivity. By so doing, we can create a more just society that values justice and compassion over retribution and segregation.

CONCLUSION

In a highly diverse and religiously sensitive nation such as India, where religion tends to become the foundation of individual and collective identity, the criminalization of blasphemy is a legal protection that comes as a natural check. Freedom of speech is indeed a fundamental right. Still, it is not an unlimited one, particularly when such expression is hate-inspiring, breaches communal harmony, or is specifically aimed at offending the religious feelings of communities. Blasphemy, when deployed to instigate, humiliate, or defame, can break the fragile thread of social coexistence.

Criminalization of blasphemy does not equate to stifling dissent or clamping down on academic or creative freedom; rather, it is concerned with achieving constitutional equipoise between free and responsible expression. Respecting all faiths is a moral responsibility and a civic responsibility in a plural country. By classifying blasphemy as an offence whose punishment should not be taken from the individual by removing it through decriminalization, the state can protect liberty from abuse to the detriment of others' right to dignity and belief.

Therefore, the law needs to change not to safeguard dogma but to safeguard social stability,

religious respect, and human dignity. A graduated and well-structured law on blasphemy— if enforced with judicial restraint and oriented towards averting abuse—can help in advancing mutual respect, averting communal strife, and maintaining the country's secular atmosphere in its genuine, most congenial sense.

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