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COMPARING BLASPHEMY LAW: A STUDY OF THE LEGAL SYSTEMS OF INDIA, PAKISTAN AND UK

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LLM (Criminal Law) I

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THE SCHOOL OF LAW, GALGOTIAS UNIVERSITY

TABLE OF CASES

S. No.	Name of the case	Citation
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Abstract-

“Freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of the political truth.”- Justice Louis Brandeis

Blasphemy law is said to be the most abused law when it comes to suppressing the voice of the people and violating their freedom of speech and expression and to practice any religion without fear. Yet at least 95 countries currently have laws which punish Blasphemy in one way or the

other.¹ Blasphemy is an act of insulting or defaming god which is considered sacred as per the human beliefs for which the punishment may vary from a simple fine to death penalty. It is a common belief that God protects us from the evil but when it comes to Blasphemy, it is the people who become the protector of God and that is what becomes problematic with politics involved in it.

This paper traces the footprints of Blasphemy law from its origin to its existence till date. The objective is to understand the concept of Blasphemy law and compare the existing laws in different legal systems of the world including India, Pakistan and UK. The aim is to comprehend whether Blasphemy law is justified in this modern world since many western countries have already repealed the laws related to it. In order to do a detailed study, the scope of this paper is limited to understand the existing blasphemy law in India, Pakistan and UK and to analyze its significance in today's world.

Keywords- *Blasphemy, Freedom of Speech and Expression, hate speech, Comparative law, India, Pakistan, United Kingdom.*

1. INTRODUCTION

Blasphemy means defamation or insult of the God or something which is considered as sacred according to the human beliefs.² Many countries across the world has Blasphemy laws which makes the act of showing reverence to a deity a criminal offence. Blasphemy laws are covered under the laws of many countries in one way or the other. Some consider it as defamation of religion while the others consider it as a restriction to the freedom of speech and expression. The existence of Blasphemy law can be traced from the times of ancient Roman civilization.³ During those times, it was possible for an individual to stand against the State but was impossible for one to speak against the superior power. Such laws were not introduced with an intention to protect a religion against defamation but to protect the honour of the sacred God. The purpose of Blasphemy law kept changing with the emergence of different faiths. Today, many countries have

¹ Karuna Nundy, *On Religious Freedom and Discontent: Report on International Standards and Blasphemy Laws*, HUMAN RIGHTS INSTITUTE, accessed from <https://mediafreedomcoalition.org/wp-content/uploads/2023/05/HLP-Blasphemy-Laws-report-2023.pdf>.

² Mohd. Rameez Raza & Shereen Abdin, *The Law of Blasphemy vis-à-vis the modern world: Violation of Freedom of Speech and Expression*, Jun 29, 2020, Manupatra 2020, accessed from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3893122.

³ Olivia Robinson, *Blasphemy and sacrilege in Roman Law*, IRISH JURIST (1966-), vol. 8, no. 2, 1973, pp. 356–71. JSTOR, <http://www.jstor.org/stable/44027907>. Accessed 20 Dec. 2023.

introduced Anti-Blasphemy laws and there are some secular countries which have abolished the same. While there are the others who have brought reforms and added hate speech or defamation in their criminal laws. Blasphemy in Islam is taken as an action against Prophet Muhammad.⁴ The holy Quran encourages Blasphemy but does not specify any punishment for the same. However, Hadiths (a source of Islamic law) do talk about Blasphemy as a crime. Islamic states provide for stricter laws in case of Blasphemy. Amongst the Muslim majority countries, Pakistan has the second strictest law related to Blasphemy after Iran. Article 2 of the Constitution states that Islam is the religion of the state⁵. Blasphemy of any kind is prohibited under the law and the penalty may vary from fine to death sentence. India being a secular country does not directly use the term 'Blasphemy' but do talk about it indirectly under different provisions of law. Earlier blasphemy as an offence was a part of canon law. In the 17th century it was declared as a common law offence by the Court of King's Bench, punishable by Common law courts. The United Kingdom is a unitary sovereign state made up of four constituent countries- England, Northern Ireland, Scotland and Wales.⁶ Blasphemy law was abolished in England and Wales in 2008 and from Scotland in 2021.⁷ Northern Ireland remains the only country within the Union which still maintains Blasphemy law.

The first part of the Research Paper discusses about the meaning of Blasphemy law. Secondly, it talks about the law of Blasphemy in India, Pakistan and the United Kingdom respectively. Lastly, a comparison has been done in between the laws of these states.

1.1. Literature Review

Holzaepfel⁸ in his article discusses about the dangerous impact of Blasphemy law on the society by tracing the roots of such law and by comparing it with the present scenario. The article contains a very precise information regarding the Blasphemy laws in accordance to different countries. The first part of the article talks about the history and current usages of the Blasphemy

⁴ Javaid Rehman, *Freedom of expression, apostasy and Blasphemy within Islam: Sharia, criminal justice systems and modern Islamic states practices*, CENTER FOR CRIME AND JUSTICE STUDIES, accessed from [https://www.crimeandjustice.org.uk/publications/cjm/article/freedom-expression-apostasy-and-blasphemy-within-islam-sharia-criminal#:~:text=Blasphemy%20connotes%20the%20insult%20of,and%20have%20always%20remained\)%20unaacceptable](https://www.crimeandjustice.org.uk/publications/cjm/article/freedom-expression-apostasy-and-blasphemy-within-islam-sharia-criminal#:~:text=Blasphemy%20connotes%20the%20insult%20of,and%20have%20always%20remained)%20unaacceptable).

⁵ Article 2, The Constitution of Pakistan (1973).

⁶ End Blasphemy Laws, accessed from <https://end-blasphemy-laws.org/countries/europe/united-kingdom/>.

⁷ *Id.*

⁸ Caleb Holzaepfel, *Can I Say That?: How an International Blasphemy Law Pits the Freedom of Religion Against the Freedom of Speech*, 28 EMORY INT'L L. REV. 597 (2014). Available at: <https://scholarlycommons.law.emory.edu/eilr/vol28/iss1/1> last accessed on 19-12-2023.

laws and the third chapter talks about implementation of Blasphemy law in the Islamic states. The Author is of the opinion that there is no need for Blasphemy law today because it curtails the right to free speech. According to the Author, usage of Blasphemy law to suppress the voice of the people is not acceptable because for a free society, we need transfer of knowledge. Transfer of knowledge is only possible if free speech is allowed. Critics have the right to share their point of view. Furthermore, right to religion and freedom of speech and expression can co-exist without restricting one another unnecessarily.

Widelitz⁹ in the Article discusses about the Blasphemy law in relation to the United States while comparing the states of Saudi Arabia, Pakistan and Indonesia. In 1999 the Organization for Islamic Cooperation introduced a resolution before the United Nations Human Rights Council to create an international blasphemy law. However, the author is of the view that the United Nations shall follow the path of United States and not introduce blasphemy law because the countries having such laws curtail the rights of their citizens by restricting the freedom of speech and restrict the rights of religious minorities.

1.2. Scope and Objectives

The scope of the Research Paper is limited to understanding the concept of Blasphemy law and compare the existing laws in different legal systems of the world including India, Pakistan and UK. The aim is to comprehend whether Blasphemy law is justified in this modern world since many western countries have already repealed the laws related to it.

1.3. Research Questions

1. What is Blasphemy law?
2. Discussing and analysing Blasphemy law with respect to different legal systems of the world.

1.4. Research Methodology

The Researcher has used explanatory, comparative and analytical type of research for better understanding of the topic. Further, Doctrinal type of research has been adopted to collect proper data with the help of secondary resources including various articles, journals and textbooks.

⁹ Widelitz, Kiley (2013) "A Global Blasphemy Law: Protecting Believers at the Expense of Free Speech," *Pepperdine Policy Review*: Vol. 6, Article 2. Available at: <https://digitalcommons.pepperdine.edu/ppr/vol6/iss1/2> last accessed on 19-12-2023.

1.5. Hypothesis

Blasphemy is one of the most abused law when it comes to suppressing the voice of the people in the modern times; suppressing the voice of the minorities and the rationalists. It is often regarded as a reasonable restriction over the freedom of speech and expression; and sometimes works as a hindrance in diverse countries by imposing the religious beliefs of one community over the other.

2. AN INTRODUCTION TO THE BLASPHEMY LAW

Blasphemy means defamation or insult of the God or something which is considered as sacred according to the human beliefs.¹⁰ The act of blasphemy is basically an action or gesture towards God which is insulting in nature. Many countries across the world has Blasphemy laws which makes the act of showing reverence to a deity a criminal offence. Blasphemy laws are covered under the laws of many countries in one way or the other. Some consider it as defamation of religion while the others consider it as a restriction to the freedom of speech and expression. Different countries have different punishments for the offence of insulting a God which varies from imprisonment to death penalty. While there are other countries which never had such laws or have repealed the same, after a period of time.

The existence of Blasphemy law can be traced from the times of ancient Roman civilization.¹¹ During those times, it was possible for an individual to stand against the State but was impossible for one to speak against the superior power (God). Such laws were not introduced with an intention to protect a religion against defamation but to protect the honour of the sacred God. The purpose of Blasphemy law kept changing with the emergence of different faiths. Today, many countries have introduced Anti-Blasphemy laws and there are some secular countries which have abolished the same.¹² While there are the others who have brought reforms and added hate speech or defamation in their criminal laws. In the contemporary times, freedom of speech and expression is given more importance as it is a fundamental right of an individual.

¹⁰ BYRAN A. GARNER, THE BLACK'S LAW DICTIONARY (West Group 2009) 193.

¹¹ *Id* at 4.

¹² 8, RECENTLY ABROGATED BLASPHEMY LAWS (J. Temperman & A. Koltay ed., Cambridge University Press) (2017) 551.

As a result, many countries have abolished laws related to Blasphemy. While the other countries face criticism as such laws are abused by the Government in power to suppress the voice of one community over the other.

3. BLASPHEMY LAW IN INDIA

Blasphemy as a concept was not introduced by God. It is human, the protector of God who introduced Blasphemy as an insult towards his/her religion, God or scriptures. The term Blasphemy comes from the Latin word 'Blasphemare' where 'Blas' means injury and 'phemy' means utterance, talk and speech.¹³

India being a secular country does not directly use the term 'Blasphemy' but do talk about it indirectly under different provisions of law. Section 295 of the Indian Penal Code talks about defiling, destroying or damaging a place of worship or a sacred object with an intention to hurt the sentiments of the people. This clause was adopted to oblige people to respect each other's religion.¹⁴

Section 295A of the Indian Penal Code also prohibits a conduct done with malicious intent to offend the religious sentiments or belief of a person. It was added to the Indian Penal Code in 1927.¹⁵ Throughout the history of India, this section has been defined as a reasonable restriction over the right to freedom of speech and expression to maintain public order.

This particular provision of law was upheld by the Supreme Court of India in the case of *Ramji Lal Modi v. State of Uttar Pradesh*¹⁶ as legal. A magazine's editor was accused of posting offensive articles related to religion. However, it was held that his right was duly protected under Article 19(1)(a) of the Indian Constitution¹⁷. However, it was held in the case of *The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia*¹⁸ that the limitation imposed in the interests of public order to be a reasonable restriction should have a proximate connection and not something which is too remote.

¹³ CRAUN, EDWIN D, *Inordinata Locutio: Blasphemy in Pastoral Literature, 1200–1500, Traditio*, vol. 39, 1983, pp. 135–62. *JSTOR*, <http://www.jstor.org/stable/27831131>, accessed on 20 Dec. 2023.

¹⁴ Section 295, Indian Penal Code, Act No. 45 of 1860, Imperial Legislative Council.

¹⁵ Criminal Amendment Act of 1927, No.25, Act of the Parliament (India).

¹⁶ *Ramji Lal Modi v. State of U.P.*, 1957 AIR 620; 1957 SCR 860

¹⁷ Article 19(1)(a), The Constitution of India (1950).

¹⁸ *The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia*, 1960 AIR 633; 1960 DVR (2) 821

In the light of above-mentioned cases, it can be said that right to freedom of speech and expression is given more importance in India. But the fact cannot be ignored that there has to have some kind of law which prohibits the insult of God or religion because in a diverse country like India we never know what sparks violence in between the communities.¹⁹ It cannot be predicted how people may react on Blasphemous statements. Sometimes it leads to the cases of mob-lynching, riots or mass protests; and sometimes Blasphemous statements are ignored by the general public. Therefore, in order to save themselves from being charged under the relevant provisions of law, people restrict their views. It basically curtails their right to freedom of speech and expression as it creates fear in the minds of critics/rationalist/minorities which forces them not to exercise their rights under the fear of over reaction by the society.²⁰

4. BLASPHEMY LAW: ISLAMIC STATE PERSPECTIVE- WITH SPECIAL REFERENCE TO PAKISTAN

Blasphemy in Islam is taken as an action against Prophet Muhammad. The holy Quran encourages Blasphemy but does not specify any punishment for the same. However, Hadiths (a source of Islamic law) do talk about Blasphemy as a crime and prescribes death penalty as well. But it has been specified that death penalty can only be given in case of treason involving harm to the Muslim community. There are different traditional schools of Muslim law which talks about Blasphemy but the punishment varies depending on the Blasphemer. The punishment is different for men and women and also depends on the fact that the Blasphemer is a Muslim or non-Muslim. In the contemporary times, different countries have different laws related to Blasphemy. However, the different Muslim school of laws have different things to say on Blasphemy and its punishment. Hanafi school of law provides for punishment for those who renounce their religious beliefs.²¹ People have a choice of returning to Islam and if they don't then they can be punished with death penalty or can be fined. Maliki school of Muslim law defined Blasphemy as a serious offence.²² It provides for different punishments for male and females. A Muslim woman is never provided death penalty, she is punished till she does not repent and returns to Islam. Shafi'i school provides for the provision of repentance while Hanbali does not.²³ Ja'fari school of law has

¹⁹ Navjosh Singh Atwal, *Blasphemy-Legal status in India*, accessed from <file:///C:/Users/DELL/Downloads/SSRN-id3800192.pdf>.

²⁰ *Id.*

²¹ THE PRINCETON ENCYCLOPAEDIA OF ISLAMIC POLITICAL THOUGHT (Gerhard Bowering ed., Princeton University Press 2013) 71.

²² *Id.*

²³ *Id.*

different provisions for Muslims and non-Muslims.²⁴ A Muslim committing blasphemy can be punished with death penalty but a non-Muslim is asked to convert into Islam. And if one doesn't then the person is killed. That's all about the different schools of Muslim law. Islamic states provide for stricter laws in case of Blasphemy. Sharia law is the basis of the legal system in Islamic states like Saudi Arabia. There is no separation between the State and the religion. It has been stated in the Constitution of Saudi Arabia that the kingdom of Saudi is sovereign Islamic state with Islam as its religion; God's book and the Sunnah of the Prophet are its Constitution. Fine, imprisonment or lashing by whip, torture and even death penalty is given as a punishment for blasphemy in Saudi Arabia. In 2015, a court in Bukairia found Muhammad Al-Harbi, a high school chemistry teacher, guilty of blasphemy. All he did was talked to the students and the faculty about the Christianity and the causes of Terrorism around the world. The court sentenced him with 40 months of imprisonment and 750 lashes.²⁵ Similarly, Egypt's legal system also works as per the Sharia law. There penal laws talk about Blasphemy and provides with confinement or penalty as a punishment. Coming to the state of Pakistan. The official name of Pakistan is 'The Islamic Republic of Pakistan.' Amongst the Muslim majority countries, Pakistan has the second strictest law related to Blasphemy after Iran. Article 2 of the Constitution states that Islam is the religion of the state.²⁶ Blasphemy of any kind is prohibited under the law and the penalty may vary from fine to death sentence. According to the Reports, around 1500 people have been punished for Blasphemy in between 1987-2017.²⁷ The roots of the provision of Blasphemy in the Pakistan Penal Code can be traced from the Indian Penal Code which was drafted by the British as per their convenience.

The Blasphemy law of Pakistan states that any kind of direct or indirect derogatory remarks on Prophet Muhammad shall be punished with death; imprisonment for life and fine. Section 295 to 298 of the Pakistan Penal Code talks about offences related to religion. It includes offences such as defiling a place of worship; insulting religious beliefs; disturbing religious assembly; trespassing on burial grounds; utterances wounding religious feelings respectively. In 1980, Section 298A was inserted making use of derogatory words or gestures in respect of persons

²⁴ *Id.*

²⁵ *Saudi teacher sentenced to 750 lashes*, 18, Nov 2005, accessed from <https://www.telegram.com/story/news/local/north/2005/11/18/saudi-teacher-is-sentenced-to/53158518007/>.

²⁶ Article 2, The Constitution of Pakistan (1973).

²⁷ Julia Altmann, *Blasphemy laws in middle east leave minorities holding their tongues*, 8 Jun 2019, accessed from <https://www.jpost.com/middle-east/blasphemy-laws-in-middle-east-leave-minorities-holding-their-tongues-591885>

revered in Islam a criminal offence.²⁸ Section 295B was added in 1982 which made defiling of Quran as a punishable offence.²⁹ In 1986, Section 295C was added to the Pakistan Penal Code making defiling of the name of Prophet Muhammad a punishable offence.³⁰ Such person defiling the name of Prophet Muhammad can be provided death penalty or life imprisonment under the provisions of the law. Thus, the laws of Pakistan have been amended several time to make Blasphemy a criminal offence punishable by death sentence.

Recently, a court in Pakistan's Rawalpindi awarded death sentence to four individuals for sharing content on social media, insulting Prophet Muhammad.³¹

Another infamous case is of *Asia Bibi*, a Christian living in Pakistan.³² She was convicted in 2010 with death sentence after being accused of insulting Prophet Muhammad. Many protests took place by different Muslim parties against her acquittal and she became the first woman to be sentenced to death under the Blasphemy laws. However, she was acquitted by the Supreme Court of Pakistan in 2019 after which she flew to Canada. It is a matter of distress that her supporters which included the Minister of minority affairs as well as the Governor of Punjab were assassinated just because they extended their support to her.³³

5. BLASPHEMY LAW IN THE VIEW OF WESTERN COUNTRIES

Now that we have discussed about the Blasphemy laws in India and Pakistan, this chapter covers the law of Blasphemy as it exists in the western countries, focusing on the United Kingdom. Islam, Judaism and Christianity are the three major religions followed in the west. Committing blasphemy is taken as an unforgiveable sin in Christianity. It is condemned in Christian theology. If we look at the words of Saint Thomas Aquinas, he says that, if we compare blasphemy with murder then blasphemy is more serious crime than committing murder because blasphemy is against the God.³⁴ In Christianity there is also a provision for reparation of blasphemy. Reparation

²⁸ Section 298A, Pakistan Penal Code, Criminal Law Amendment Act (1980).

²⁹ Section 295B, Pakistan Penal Code, Criminal Law Amendment Act (1982).

³⁰ Section 295C, Pakistan Penal Code, Criminal Law Amendment Act, Act No. 3 of 1986.

³¹ Aamir Saeed, *Pakistan Court sentences four to death for Blasphemy*, Sept 05, 2023, accessed from <https://www.arabnews.com/node/2367886/pakistan> .

³² Dawn Staff, *Blasphemy: What you need to know about Asia Bibi's Trial*, DAWN NEWS (May 19, 2020, 11:10 AM) <https://www.dawn.com/news/1289700> .

³³ *Id.*

³⁴ St. Thomas Aquinas, *Summa Theologica*, Vol.3 Part-II (2nd Ed. Cosimo, Inc. 2013) pg.1226.

basically means to repair something which has gone wrong.

There are specific prayers through which one can come back to Christianity and confess his/her sins with all his heart. Special prayers are also held at the Catholic Church for reparations in case anyone commits the offence of Blasphemy. Capital punishment can be awarded for the same which may be in the form of hanging or by stoning.

5.1 Blasphemy law in United Kingdom

Earlier blasphemy as an offence was a part of canon law. In the 17th century it was declared as a common law offence by the Court of King's Bench, punishable by Common law courts.³⁵ Blasphemy against the Christian religion was seen as blasphemy against common law in the United Kingdom. Atheists were also punished at that point of time. Any kind of insult of the holy book or the God by any action or gesture was punishable by the court.³⁶ The punishment included death penalty, imprisonment and fine. But in 1676, the death penalty was abolished.³⁷ Later on, in 2008 Blasphemy laws were abolished in England and Wales as well.³⁸

It is not illegal to Blaspheme in the United Kingdom. This indicates that there are no legal restrictions on the expression of opinions deemed disrespectful or derogatory to religious beliefs. It does not imply that actions or words committed in the name of religion are unrestricted. For instance, inciting religious hatred- which is defined as harbouring animosity towards an individual or group of individuals because of their religion is prohibited.³⁹ Additionally, it is forbidden to treat someone abusively on the basis of their religion. This includes threatening someone with harm or making derogatory remarks online. Furthermore, the United Kingdom is committed towards allowing people to express themselves freely, including the ability to hold opinions that are disrespectful to the people belonging to other religion. However, there are restrictions on what people can say and do in the name of religion.

³⁵ Dr Gerald Parsons, review of *Blasphemy in Modern Britain: 1789 to the Present*, (review no. 115), accessed from <https://reviews.history.ac.uk/review/115> on 20 December, 2023

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Abolition of English and Welsh Blasphemy laws*, accessed from <https://humanists.uk/campaigns/successful-campaigns/abolition-of-blasphemy-laws/>.

³⁹ *Id.* at 13.

6. A COMPARATIVE ANALYSIS OF BLASPHEMY LAWS IN INDIA, PAKISTAN AND UNITED KINGDOM

Blasphemy laws got emerged across the globe when different religions were introduced. Every individual was over-protective towards their religious practices. As a result, Blasphemy laws were the need of the hour to make people bound by the rules and regulations to avoid widespread protests and to avoid communal disturbances. But this was during the ancient times when people were not as adaptive as we are today in the 21st century.⁴⁰ Today, we have a habit of living with diverse cultures, traditions, religion etc. Also, we have become civilized and are bound by the law of our land. Therefore, the question is pertinent whether we still need Blasphemy laws? Because the Constitution of India empowers its citizens with the Fundamental Right to freedom of speech and expression.⁴¹ Although the right comes with reasonable restrictions; can Blasphemy be covered under the same? If putting forward someone's view hurts the religious sentiments of other's, then does it mean that the fundamental rights of other can be curtailed? It is a matter of debate and as a result there are many countries in the world which have the strictest laws in case of Blasphemy while there are the others who have abolished such a law. In India, we do not directly use the term Blasphemy but we do have laws in this regard.

In this paper, since we have discussed about the Blasphemy law of India, Pakistan and United Kingdom; let's analyse the laws to come to a conclusion whether we still need such laws or not! The United Kingdom is a unitary sovereign state made up of four constituent countries- England, Northern Ireland, Scotland and Wales.⁴² Blasphemy law was abolished in England and Wales in 2008 and from Scotland in 2021. Northern Ireland remains the only country within the Union which still maintains Blasphemy law.⁴³ When Blasphemy as a law was introduced in the United Kingdom, it was punishable with death because it was taken as an offence towards Christianity. In 1949, it was declared as a dead letter law.⁴⁴ However, many people were convicted for the same in 1977. Therefore, a renewed call for abolition of this law was taken in 2008 where under the Criminal Justice and Immigration Act, 2008 Blasphemy law was abolished in England and Wales.⁴⁵ In 2021, it was repealed by Scotland as well. The reason behind abolition of Blasphemy

⁴⁰ *Id* at 8.

⁴¹ Article 19(1)(a), The Constitution of India (1950).

⁴² END BLASPHEMY LAWS, accessed from <https://end-blasphemy-laws.org/countries/europe/united-kingdom/> .

⁴³ *Id*.

⁴⁴ *Id*.

⁴⁵ *Id*.

law from the States of United Kingdom was simply that the law was contrary to the principle of free speech and the Human Right laws adopted by the United Kingdom, which protects freedom of expression.⁴⁶

In addition to that, almost all the Muslim-majority countries have Blasphemy laws where the punishment varies from fine to death sentence. Pakistan inherited the Blasphemy law from the former British colonial rule who introduced it to decrease the Hindu-Muslim violence in the Indian Subcontinent. The law was introduced in 1860 and further strengthened in 1927. Then India and Pakistan got divided into two different countries but the origin of their laws remained the same. As a result, Pakistan further amended the law related to Blasphemy to introduce stricter punishment for those who in any way hurt the religious sentiments of Islam. Let's not forget the fact that Pakistan as a country was formed to protect the interest of Muslims and as a result it is not a secular country like India.⁴⁷

So, Pakistan as an Islamic State derived the basis of Blasphemy law from the former British colonial rule. The United Kingdom except Northern Ireland has already abolished Blasphemy law on the pretext that it violates the freedom of speech and expression. Then the question arises that on what basis India is still continuing with the age old law which has been abolished by its own makers?

The question is pertinent to the whole issue because India is a secular country where everyone is allowed to practice, propagate and profess the religion of their choice. Above that Article 19 (1) (a) of the Indian Constitution guarantees right to freedom of speech and expression with reasonable restrictions.⁴⁸ Blasphemy law curtails this fundamental right of a citizen of India.

In a case, comedian Kiki Sharda, known for his work in the Kapil Sharma Show was arrested under Section 295A of the Indian Penal Code for hurting the religious sentiments of a Sirsa, Haryana based religious sect Chief Gurmeet Ram Rahim. However, he was granted bail after 14 days of judicial custody since his intention was purely to entertain people and not to hurt the religious sentiments of a particular community.⁴⁹ In the case of *Mahendra Singh Dhoni v.*

⁴⁶ Paul Kearns, *The end of Blasphemy law*, accessed from https://sas-space.sas.ac.uk/2064/1/Amicus76_Kearns.pdf

⁴⁷ Smruti S. Pattanaik, *Islam and the ideology of Pakistan*, accessed from https://ciaotest.cc.columbia.edu/olj/sa/sa_98pas02.html.

⁴⁸ *Id* at 14.

⁴⁹ *Freedoms only for the outraged*, Jan 18, 2016, accessed from <https://www.thehindu.com/opinion/editorial/Freedoms-only-for-the-outraged/article59782350.ece>.

Yerraguntla Shyamsundar (2017), the Court held that Section 295A does not criminalize every act which in any way insult the religious feelings of others.⁵⁰ It only criminalizes those acts which are done intentionally with malicious intent to hurt the religious feelings of others.

Section 295A was held Constitutional by a five-bench judge in the case of *Ramji Lal Modi* as discussed in the previous chapter. So, it is a monumental task to struck it down or overturn the ruling. However, keeping in mind the idea of free speech, such laws need to be abolished because having a different opinion than others is not a crime. Contrasting opinions shall be welcomed otherwise it will make a mockery of Democracy.

In addition to that, International Covenant for Civil and Political Rights has been acceded by India which states that it is the duty of every country to protect the right to freedom of speech and expression of its citizens.⁵¹ So, India shall keep in mind the provisions of International Covenants as well.

7. CONCLUSION

The term Blasphemy comes from the Latin word ‘Blasphemare’ where ‘Blas’ means injury and ‘phemy’ means utterance, talk and speech.⁵² It basically means defamation or insult of God or something which is considered as sacred according to the human beliefs.

The concept of Blasphemy was introduced in those times when God was considered as the only sovereign; therefore, the insult of God was not accepted by the followers who thought of themselves as the Protector of God. Any gesture or word against God would spark violence amongst the Communities and as a result the law of Blasphemy was introduced to maintain peace. It was introduced to create fear in the minds of the people that if they say, or do anything which hurts the religious sentiments of others, then it will be considered as a crime for which punishment may vary from fine to death sentence. The concept was developed in those times when the concept of secularism and democracy were not established. Therefore, different legal systems of the world had different laws related to Blasphemy.

⁵⁰ Mahendra Singh Dhoni v. Yerraguntla Shyamsundar, 2017 SCC OnLine SC 450, accessed from <https://www.sconline.com/blog/post/2017/04/21/complaint-against-ms-dhoni-for-allegedly-hurting-religious-sentiments-quashed/>.

⁵¹ International Covenant on Civil and Political Rights, accessed from https://treaties.un.org/pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&clang=en.

⁵² *Id* at 8.

United Kingdom had laws related to Blasphemy which were abolished by England and Wales in 2008 and Scotland in 2021.⁵³ India and Pakistan adopted the old laws enacted by the British during the Colonial rule. Pakistan being an Islamic State is stricter when it comes to the matter of religion and therefore, even death sentence is provided in cases related to Blasphemy. The biggest concern is about India. India is a secular country where the State has no religion of its own. Its citizens are allowed to profess, propagate and practice any religion of their choice. The Supreme Court of India safeguards the Fundamental Rights of its citizens where one such right includes the Right to Freedom of Speech and Expression. In such a case, there is no need for the existence of Blasphemy law in India because it curtails the Fundamental Rights of its citizens. Rationalists, minorities, atheists have an opinion of their own. Being the largest democratic country in the world, every citizen of the country has a right to speak freely without the fear of being charged for an offence. Furthermore, if the country from which we adopted such laws have done away with it then there is no point for India to still continue with such laws because such laws are not made for a secular country like ours. Instead, the government shall work towards sensitizing people and making them tolerant as tolerance is biggest weapon for diversity.

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