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Critical Analysis Of Blasphemy Law In

India And UK

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Examination Of Master Of Law (LL.M)

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Introduction

All human rights are inalienable, fundamental, and interconnected. However, nowhere is this connection more apparent than in the discussion surrounding free speech and incitement to racial or religious intolerance.

"Irreverence to God, religion, a religious image, or anything else that is deemed sacred" is what the word "blasphemy" connotes. It has been regarded as a common-law felony [in the United States] because of its propensity to cause disturbances of the peace. Certain laws expressly make crime illegal. But the justification for blasphemy being a crime is true everywhere, not just in common law nations. Despite having diverse populations and legal structures, many nations have blasphemy laws. All nations have laws against blasphemy, whether they are Christian nations like Greece and Cyprus, Islamic nations like Iraq and Egypt, Jewish-majority Israel, Buddhist-majority Sri Lanka, or secular nations like Canada or Germany. Such crimes may concern one specific religion, as in Qatar, or all religions, as in Denmark, and they may carry punishments ranging from a straightforward fine in Italy to the death penalty in Pakistan. In Pakistan, it may result in the death penalty. However, blasphemy is not a crime in many nations' legal systems.

The United States of America declared the blasphemy legislation unlawful and a violation of the right to free speech. Although Section 295(A) was a part of the Indian Penal Code in 1860, India could not address heresy until the year 1927 despite sharing the same pluralistic democracy as America. According to the law, anyone who "insults or attempts to insult the religion or the religious beliefs of that class by words, either spoken or written, by signs, by visible representations, or by other means, with the deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India] shall be punished with imprisonment of either description for a term which may extend to [three years], with fine, or with both."

The Criminal Justice and Immigration Act of 2008 has a variety of clauses addressing many facets of criminal law, but Section 5 concludes a protracted discussion in England and Wales on the subject of blasphemy legislation. The common law in England and Wales abolishes acts of blasphemy, according to Section 79(1). Although many have already said that the crime of blasphemy is dead or at least dying, the subtle elimination of these ancient offences has caught many people by surprise. In 2008, the common law penalties of treason and blasphemy were formally abolished in England and Wales. Scotland and Northern Ireland have similar laws, but they haven't been upheld in decades.

Historical Background

India, a country with a large Hindu population, did not have a blasphemy law until 1927 because, according to the Indian Constitution, "Hinduism faces no fetters on the intellect: a man may think as far as he can; there is no blasphemy in the investigation; there is nothing too sacred to be checked or questioned." In the midst of religious tensions before independence, Mahashay Rajpal wrote a pamphlet called Rangila Rasul. Muslim community leaders sought retribution for Rajpal as a result of the Brochure's harsh attack on Muslim religious sensibilities when it was published in 1926, which sparked controversy. Rajpal was ultimately found guilty due to the absence of blasphemy laws in India, only to be killed in 1929. The Indian Penal Code of 1860 was eventually revised by the British colonial authority, and Section 295 was added in 1927 as needed (A). Even after India was divided, the Section continues to be part of the Indian Penal Code, 1860.

In the UK, the crime of blasphemy was essentially a natural consequence of canon law. Pope Gregory XI ordered the prosecution of John Wycliffe and the Lollards to continue throughout the year 1378. But at that time, the bishops had only the option of excommunication. Unhappy with this, the clergy, without the Lords' or Commons' permission, created a parliamentary act that permitted the arrest and imprisonment of the heretics. The Act was attempted to be defunded by Parliament the next year, but the measure failed and a series of criminal investigations ensued.

They did not like the new powers that King Henry IV granted them in 1400. With this newfound authority, the Bishops were able to arrest and imprison any heretical religious authorities, as well as all heretical teachers, owners, and writers. Failure to abjure (sternly renounce) or revival after abjuration might result in the heretic being given over to public employees, carried in front of

the public, and burned so that their punishment would instil dread in other people. William Sawyer was sentenced to atonement in April 1399 after his bishop declared him guilty of heresy. On February 12th, 1400, he was once more accused of being a relapsed heretic, and the Archbishop of Canterbury passed judgement. On March 2, eight days before he received the power to exact such punishment, Sawyer was burned to death. There is a lengthy list of individuals who were burned and beheaded between 1414 and 1506. Heresy was deemed a common-law felony by the Court of King's Bench in the 17th century and was prosecuted by common law judges.

The Second Parliament of Protectorate accused James Naylor of the Quakers of fleeing, plundering, flashing a red-hot poker in his face, fracturing his tongue, and ultimately imprisoning him permanently on hard labour in 1656. In convicting Naylor, the judge, Lord Commissaire Whitelock, makes a distinction between heresy and blasphemy. From the 16th century through the middle of the 19th century, blasphemy against Christianity was considered a crime under common law. Henry VIII believed that it was wrong to publish or express any opinion that went against the Six Articles before he began enforcing the principles of his new Church of England in the 1530s (1539).

Blasphemy has also been used as a political tool to target Christians, Unitarians, and others for persecution. Since 1838, blasphemy has been considered a sin against the Church of England. All accusations against God, including the denial of His existence or providence, all of Jesus' repugnant warnings, all profane mockery of the Holy Scriptures, and all of their parts that were disregarded or mocked, were to be punished by the temporal courts with death, incarceration, corporal sanctuary, and fine. In Wiltshire in 1656, two weavers named William Bond and Thomas Hibbard were detained on atheist charges.

The first known case of the common law offence of blasphemy was Taylor's Case in 1676. It's unclear if earlier occurrences went missed or not. "Taylor's instance is the central pillar of this area of the law," Lord Sumner concluded. The Court of Exchequer Chamber ruled that the publication of such beliefs constituted blasphemy in the case of *Cowan v. Milbourn* (1867), where the claimant failed to fulfil his duty to provide the appellant with a seminar-room because the planned lessons were intended to demonstrate that Christ's integrity was compromised, that his preaching was false, and that the Bible was no more motivated than any other text; On that day, the court reaffirmed Lord Chief Justice Hale's statement that the foundation of English law is religion.

Lord Sumner expressed the position in *Bowman v. Secular Society*, 1917, by repeating Hale's arguments from Taylor and using the Latin phrase *deorum injuriae diis curae*, which means "The sins against the gods are dealt with by the gods": Because it tends to harm (Christian) civilization, blasphemy is an offence against the (Christian) state and is therefore illegal; yet, an offence against God in and of itself is outside the purview of the (Christian) state. On December 9, 1921, John William Gott became the last person in Britain to be imprisoned for blasphemy. He had three prior blasphemy convictions when he was sued for publishing two pamphlets titled *Rib Ticklers*, or *Questions for Parsons and God and God*.

Gott parodied the biblical account of Christ arriving in Jerusalem in these booklets by comparing him to the carnival muppet. He was sentenced to nine months of hard work since he had an autoimmune condition, and he passed away soon after it was over. The episode grew to be the centre of the public's outrage. In a speech in 1949, Lord Denning introduced the blasphemy laws of the past, asserting that "This law was enacted because it was thought that the social structure, which was based on religion itself, could only be shaken by ignorance of Christianity. The threat to society has passed, and the crime of blasphemy is no longer an issue."

According to the 1998 Human Rights Act, judges must interpret the law in a way that is consistent with both the Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms. Blasphemous libel is seen by some to be in conflict with the Convention's restrictions on free speech. Additionally, a claim that the blasphemy statute violates Article 10 of the Convention (allowing for freedom of expression) was rejected in the case of *Wingrove v. UK* (1997), brought by attorney Mark Stephens soon before the passage of the Human Rights Act 1998. The Court determined that it fell within the State's acceptable range for limiting free expression. More than 63,000 emails from angry Christian viewers criticised the series' presentation of religious iconography when the BBC agreed to screen *Jerry Springer: The Opera* in January 2005. (including one sequence showing Jesus pretending to be "a little gay"). The BBC was the target of a private blasphemy criminal complaint by the Christian Voice fundamentalist organisation, but the case was dismissed by the City of Westminster magistrates court.

Christian Voice requested that the High Court reverse that decision, but the request may not have been granted because the court determined that stage shows and transmissions were specifically exempt from common law blasphemy offences (section 2(4) of the Theatres Act 1968). (section

Constitutional Validity Of Article 124-A

If such offences are committed in a deliberate and malicious manner with the intent to offend the religious emotions of any class of citizens, they are punishable under Section 295A. Because of the fact that Section 295A is a punishable infraction, the police may detain defendants without a search warrant. The very presence of Section 295A, along with its potential for addiction, has a chilling effect on free speech, in addition to the protracted hearing and decision-making of criminal cases.

The parliament doesn't seem to want to change or repeal the law, thus the courts are the only option. In fact, Subramanian Swamy filed a request last year asking for the Indian Penal Code's several rules against hate speech to be declared unconstitutional. However, Section 295A has a significant flaw: in the 1957 case of Ramji Lal Modi v. State of UP, a five-judge Supreme Court panel upheld its validity. This implies that in order to overrule Ramji Lal Modi and establish the legislation, the Supreme Court would require at least a bench of seven magistrates.

The 295A claimants would then be able to convince a bench of two judges (before whom every case is originally heard) that there are enough grounds to contest Ramji Lal Modi's validity. If persuaded, this bench of two judges would have to submit the matter to a bench of five judges, who would ultimately refer it to a bench of seven judges to decide the case on its merits (assuming they were satisfied).

There are legitimate arguments for the court to review and propose reversing the verdict of Ramji Lal Modi, despite the fact that the entire process is cumbersome from a procedural standpoint and is not viable to carry out. The Ramji Lal Modi judgement needs to be reviewed by the court, and this is a good case even though the Ramji Lal Modi process is intimidating and unlikely to succeed.

According to Article 19(2) of the Constitution, the court found that Section 295a was a "reasonable restraint" of free speech "in the interest of public order" in the case of Ramji Lal Modi. The primary justification offered by the Court was that, as required by Article 19(2), the expression "in the interests" was quite broad and gave the state wide latitude to enact a number of public order-related laws. According to the court, "[Section 295A] only sanctions the aggravated form of insult to religion when it is committed with the intentional and malicious goal of upsetting the religious sentiments of that class.

This aggravated form of insult clearly has a calculated tendency to disturb public order, and the section that penalises such behaviour is fully protected by Art. 19's clause (2) because it is a law that places reasonable restrictions on the exercise of the freedom of speech and expression that is guaranteed by Art. 19(1). (a). "The court contends that it should be limited to circumstances in which the prohibited communication is somewhat close to the possibility for public disruptions in order for a legislation to be a properly restrictive limit on freedom of speech in the interest of public order (For instance, inviting an army to demolish public property, yet publishing a piece in This defence was based on prior court rulings, where it was decided that the "reasonable" standard required that the phrase be proportionate to the real harm that the state feared.

Nevertheless, the Court in Ramji Lal Modi rejected this contention. The decision's weakness was that the Court ignored the limitations imposed by the phrase "reasonable constraints" and instead concentrated only on "for the sake of." Ironically, the court reversed course within three years, ruling that there must be a direct relationship between speech and public disorder rather than a "far-fetched," "distant," or "fanciful connection" in the case Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia.

The court concluded this examination in the years that followed, ruling that the relationship between speech and insanity had to be comparable to the "spark in a powder keg," and that only discussion that "encouraged eventual lawless conduct" had been prosecuted. As we can see, a very high state threshold must be reached before the public disorder may be used as justification for limiting communication. In reality, the Supreme Court ruled in the case that mere passive membership in a terrorist organisation was not a crime as long as the accused did not have the ability to instigate violence.

The Supreme Court most recently made a distinction between "advocacy" and "incitement" in the contentious Shreya Singhal decision, concluding that legislation restricting freedom of expression must be strictly adjusted to only include the latter types of speech within its purview. Ramji Lal Modi's fundamental premise—that there is no requirement of likeness between expression and disorder—has thus been repeatedly mocked and rejected by the Supreme Court in the more than fifty years since Ram Manohar Lohia's decision. It is clear that the language of Section 295A is clearly too ambiguous if the correct criterion is one of inducement to unlawful behaviour.

Under no circumstances can it be stated that a deliberate offence against a religion or religious sentiments constitutes "incitement." In the Shreya Singhal Case, the Supreme Court made it very apparent that "overbroad laws"—those that included even legal and respectable speech within their purview—would have to be ruled unconstitutional due to their propensity to stifle fundamental political and cultural conversation. It should be noted that a seven-judge court can only decide to simply reject Ramji Lal Modi and repeal Section 295A.

Constitutional courts around the world occasionally concur that time and new circumstances have circumvented old, antiquated decisions made by judges in a different time with different sensibilities. The elimination of long-standing judicial positions that are no longer feasible for modern society is not, however, exceptional or embarrassing. One judgement that has outlived its usefulness is the Ramji Lal Modi ruling, which upholds the validity of the blasphemy statute.

Why Not Anti-Blasphemy Laws

For a variety of reasons, the majority of countries have eliminated or reduced the penalties for blasphemy. Using the word "religion" without identifying it: Blasphemy has been described as disrespect for God or religion; nevertheless, the word "religion" itself needs to be defined. As certain religions, like Hinduism, may be polytheistic and rely on believe in God or Allah, as they do not include the faith in God, it is apparent that belief in God, which can unify Judaism, Islam, and Christianity, is not sufficient. Religious liberty: Numerous courts have attempted to define the term religion through remarks or rulings. The Indian Constitution also guarantees the freedom of conscience, religious practise, and propagation.

In accordance with the Universal Declaration of Human Rights, Article 18 also defends atheistic and non-theistic viewpoints in an effort to enlarge the definition of "religion." Atheism is also entitled to religious freedom and, in many cases, the atheism itself can be considered as blasphemy if there are enough variations on the word "faith" to include it as a religion. Freedom of speech and expression is protected as a fundamental right in the constitutions of many nations, including India. These rights are also known as human rights. Free speech and freedom of expression are protected rights under numerous international agreements that cannot be constrained by blasphemy laws.

The right to obtain freedom of expression, to receive and transmit information and ideas without regard to boundaries, whether orally, in writing, through the visual arts, or through any other

means, is guaranteed by Article 19 of the International Covenant on Civil and Political Rights.

However, the majority has long viewed this right as a means of oppressing the minority.

Blasphemy is defined as disrespect for God or religion, however there is no precise meaning of the word "religion." Given that other religions, like Hinduism, are debatably Polytheist, it is obvious that the description that we use—that we believe in a God who may join Judaism, Islam, and Christianity—is insufficient. Buddhism is not a concept that depends on the existence of a Deity because there is no belief in a Deity. Two main strategies have been developed in the US: one to identify fundamental principles and the other to identify religion by analogy. Not every strategy is clear-cut or conclusive.

Why Anti Blasphemy Laws In UK?

The four nations that make up the United Kingdom are Scotland, Wales, Northern Ireland, and England. 2008 saw the repeal of the "blasphemous libel" and "blasphemous words" laws in England and Wales. The laws governing books are still the same in England and Northern Ireland. Blasphemy is a common law crime that historically developed from canon law and solely derided Christianity. In the Middle Ages, "blasphemy" was punishable by death. According to Edward Moxon, a magazine publisher in Percy Bysshe Shelley's *Queen Mab*, a "blasphemous libel" was declared guilty in 1841. The poet received a prison term.

In 1949, Lord Denning concluded that the "blasphemy" Act had become a "mortal letter" offence. It was successfully revived in 1977 with the publication of James Kirkup's *The Lord Who Dares to Say His Name*, a poem that brutally sexualizes the figure of Jesus Christ. The *Gay News* magazine's publisher was found guilty and given a deferred jail sentence. It was originally made available in 1976. In the UK, this would be the most recent successful "blasphemy" case. The Criminal Justice and Immigration Act of 2008, which abolished the "blasphemous libel" laws of England and Wales and went into effect on July 8, 2008, was supported by Prime Minister Gordon Brown on May 8, 2008. Nevertheless, the Criminal Justice and Citizenship Act's "blasphemy"-repealing provisions were only enforced in England and Wales. Scotland and Northern Ireland continue to be governed by regulations. The last successful "blasphemy" case resulted in a 15-month prison term for a librarian named Thomas Paterson in 1843. Till 1825, "blasphemy" carried a death sentence; Thomas Aikenhead was the most notable survivor. Commentators concur that the Human Rights Act (1998) effectively nullifies the "blasphemy" laws in Scotland and Northern Ireland. This is due to the requirement that all courts in the United Kingdom interpret the Act on Human Rights law in accordance with the Convention on Fundamental Freedoms and Human Rights, which includes the freedom of expression guaranteed by Article 10. However, before the introduction of the Human Rights law, it had been argued in *Wingrove v.*

UK (1997) that "blasphemy" restrictions were incompatible with the right to free expression on the basis that the state's free speech protections might include such restrictions. Therefore, it is unclear if they could be charged under current Scottish and Northern Irish law. It's unclear.

The Humanist Society of Scotland asked that the Scottish government repeal the blasphemy law once more in December 2016. They acknowledged the existence of various "blasphemy" laws that are still in use around the world, citing the Freedom of Thought Study, and stated that having these statute laws "should be a badge of shame for any progressive nation," noting the brutality with which those accused of breaking them are frequently punished by state agents or non-state actors, including neighbours and relatives.

(Punjab Amendment) Bill, 2018 Relating To Blasphemy Law

According to section 295A of the Indian Penal Code, "deliberate and malicious acts, intended to outrage religious emotions of any class by insulting its religion or its beliefs will be punished with imprisonment extending to three years." According to the proposed amendment, anyone found guilty of "injuring, damaging, or sacrileging Sri Guru Granth Sahib, Srimadbhagwatgeeta, Holy Quran, and Holy Bible with the goal to offend the sensibilities of the people" will receive a life sentence. The 2016 Punjab Amendment law enacted by the Akali Dal, which specifically addressed only acts of sacrilege against the Guru Granth Sahib, is intended to be replaced with the proposed Penal Code bill. On a legal level, the bill's drafting has drawn criticism for the impressive way in which sacrilege has been defined; it should have been explicitly stated as a physical desecration sacrilege otherwise, even for writing a book or an article, making a speech, sketching a cartoon, or painting, a person can be falsely accused of blasphemy despite the rights guaranteed by article 19 and article 25 of the constitution.

Criminal Justice And Immigration Act 2008

Dr. Evan Harris proposed a new section to the Criminal Justice and Immigration Bill on the House of Commons floor on January 9, 2008, to remove what he called "the archaic discriminatory, useless, illiberal, and non-human rights compliant offences of blasphemy and blasphemous libel." Dr. Harris explained the standard concerns of legal ambiguity, discrimination, and purported conflict with the ECHR without mentioning *Green v. The City of Westminster Magistrates' Court*,

but there were also a few additional reasons made. According to Dr. Harris, the removal of these two charges won't result in a rise in general outrageous behaviour in public because there are already "enough statutes dealing with outraging public decency and public order violations" on the books. Furthermore, Dr. Harris said that the statute ought to be abolished because, despite the fact that it had not been utilised in a long time, it had "a chilling effect" that led to self-censorship, which is especially telling considering the High Court's recent remarks. Dr. Harris claimed that there was no longer "an excuse for prevarication" because "religious hatred was dealt with two years ago," in reference to the arguments made against outlawing blasphemy at the time the Racial and Religious Hatred Bill was being discussed. Dr. Harris, however, was persuaded of the benefits of dithering, and he withdrew his new section in response to a promise by the Government to introduce its own new clause to the same effect in the Lords, provided that negotiations with the Church of England produced a suitable result. The Government claimed that the ruling in *Green v. The City of Westminster Magistrates' Court*, which involved the Theatres Act, confirmed the impression that the offences appear to be dead and that it was "about time that Parliament reached a settled judgement on the subject." The Government introduced a motion in the House of Lords on March 5, 2008, to eliminate the offence of blasphemy. First, the law "has gone into disuse," which "runs the risk of bringing the law as a whole into discredit," and second, there is now "new legislation to protect individuals on the grounds of religion and belief," according to the government's justifications for the revision. While it is true that there haven't been any convictions since 1979, the *Green* judgement clearly demonstrated that the law was being applied. This first justification appears dubious.

Regarding its second justification, the Government was on much firmer basis because *Green* demonstrated that, notwithstanding blasphemy's continued existence, the offences had been severely restricted. The amendment was approved by the House of Lords by a vote of 148 to 87 and the House of Commons by a vote of 378 to 57.

Conclusion

British India passed legislation making it illegal to "disturb a religious assembly, trespass on burial grounds, insult religious beliefs, or intentionally harm or degrade a location or an item of worship, punishable by up to 10 years in jail" in 1860. The Indian Penal Code's Section 295A has been utilised as a blasphemy statute to forbid disparaging Hinduism, Islam, and Christianity.

The anti-blasphemy law contained in section 295A of the penal code from the British era, which was enacted by Christians who ruled India, is still in effect and has not been repealed.

The fundamental goal of Section 295A, which was first introduced in 1927, has been to uphold "public order in a multireligious and religiously sensitive society," by prohibiting hate speech that intentionally and maliciously attempts to offend the faith or religious beliefs of any class of citizens. The need that the defendant have a "deliberate and malicious intention of outraging religious emotions" in the Indian Penal Code, unlike in English common law, is a significant distinction between the offences under English common law and the Indian Penal Code. However, Section 295A has frequently been invoked to suppress open and sincere debate on religious matters and continues to pose a danger to the right to free speech. The identical section 295A is employed as a blasphemy statute in Pakistan and Myanmar and may be found in those countries' penal codes as well. Hindus in India have made several appeals to do rid of the outdated British code.

Before 2008, the UK's blasphemy laws had previously been reviewed in the 1970s, following protracted and divisive campaigns against homosexuality by some Christian organisations. After a poem about Jesus was published in a gay magazine, Christian activists brought the issue to a climax in the court case *R. v. Lemon*. After then, the blasphemy laws were abandoned as unworkable and were forgotten.

But the public was shocked to learn about the antiquated concept of blasphemy in the news once more in 2008. As part of their campaign against homosexuality, a Christian pressure organisation attempted to revive it¹⁵. As a result, the UK's blasphemy laws were repealed on May 8, 2008.

A spokeswoman for Prime Minister Gordon Brown declared in January 2008 that the Government will take the removal of the blasphemy laws into consideration while the Criminal Justice and Immigration Bill was being passed. Before making a decision, the government sought input from the Church of England and other churches. The action was taken in response to a letter to *The Daily Telegraph* that was prepared at the National Secular Society's and MP Evan Harris's request and signed by prominent individuals, including Lord Carey, a former archbishop of Canterbury, and demanded the repeal of the legislation.