



**THE RIPPLE EFFECT OF SECTION
295A IPC**

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Introduction:

India is a secular country. Different religion lives together with peace by communal harmony. The hurting of religious sentiments and forceful conversion is unlawful which curtails the freedom of people. The dissertation on religion in India has become progressively ubiquitous. Not a week goes by where we find headlines and news channel controverting centred on some disagreement over religion, whether it is associated to elections, statements made by celebrities, outrage over cinematic portrayals hurting religious sentiments, nationalism etc. Religion is an all-inclusive aspect of the lives of Indian people so it becomes quite relaxed to raise the aspect of religion in the majority of the things happening around the country. Certain laws are implemented to protect the community from any form of attack. Section 295A of the Indian Penal Code is the Indian version of a blasphemy law. It penalises “acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs” with the only necessary ingredient being “deliberate and malicious” intend. Classified as cognizable offence, it allows the police to make arrest without the judicially endorsed warrant. This means that the police can arrest anyone upon mere *suspicion* or against a *complaint* in prolongation of investigation or to avert any further offence being committed these

provisions not only consents scope for exploitation of power by the police, but also cast a chilling upshot upon the exercise of once freedom of speech.

Need for the provision:

Section 295A was not found within the original draft of Indian Penal Code of 1860. It was introduced in the Code by Section (2) of the Criminal Law (amendment) act of 1927 with the view to punish deliberate and malicious acts intended to outrage the religious feelings. The provisions intend in the section are similar to common law crimes of blasphemy. Blasphemous words are punishable because of their tendency to endanger the peace, to deprave public morals, to shake the fabric of society and to be a cause of civil strife.¹ This section was inserted to rectify the deficiencies of the original iteration of Section 153A, in light of a couple of cases which led to a great outbreak of public anger of a communal nature across the nation.

Importance of ‘malicious intent’

The prime variance between Section 153A and Section 295A is the prerequisite of malicious intent, which is restricted to the concluding. This jurisprudential development credits its inception as a consequence of the extensive blowout agitation by the Mohammedans subsequent to the verdicts of the Lahore High Court in 1927 where a pamphlet published and circulated and its criticism was authored by Gandhi, popularly known as “*Rangila Rasul*” case.² The accused had published a pamphlet entitled *Rangila Rasul* (Amorous Prophet) in which he labelled the sexual incontinency

¹ Whitehouse vs Gay news limited and lemen (1979) AC 617(HL)

² Raj paul vs Emperor, AIR 1927 Lah 590



(lacking self-control) of the Prophet Mohammed. Rajpaul was condemned under Section 153A IPC by the Magistrate, but Lahore High Court quashed his conviction holding that Section 153A of the Code was intended to prevent person from making attacks on a specific community as it exists in the present time and was not meant to stop polemics (controversial discussions) against a deceased religious leader however scandalous (vulgar) and in depraved perception such an attack might be. The court however envisioned the lacuna in law and realised that the scrape (a scathingly censorious utterance) of religious feelings, as was the case here, should have come within the tenor of provisions relating to prevention of offence against religious sentiments and beliefs, but because of the absence of an express provision the magistrate's decision could not have been otherwise. It is to fill this gap that Section 295A, IPC was added in the Code.

Constitutional validity

The validity of Section 295A was challenged in Ramji Lal³ on the ground that it oversteps the fundamental right to freedom of speech guaranteed under Article 19(1)(a) of the Constitution while upholding the constitutionality, 'Section 295A only punishes the intensified form of abuse of religion when it is executed with the deliberate and malicious intention of infuriating the religious feeling of that class. The calculated propensity 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 freedom of speech and expression guaranteed by Article 19(1)(a). Having regard to the constituents to the offence created by the queried section, there cannot, in our opinion, by 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 widespread adequate to conceal restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(a)'. The Court notified that **lone** those acts of invectives or shots to so insult can be penalised under this provision which are perpetrated with the deliberate and malicious intent of infuriating the religious feelings of that class. The Court further illuminated that the proviso would **solitary** apply to such intensified forms of insult to religion, that is designed to interrupt the public order. Further, the intention to offend the Indians citizens of a certain faith must both be deliberate and malicious and must be meant for the Indian citizens of that class⁴.

Judicial Pronouncements

More recently, in 2017, the Supreme Court provided relief to applauded Indian cricketer M.S. Dhoni when he was charged under the said provision for a canvas carried on the focal page of a business magazine along with his picture with a slogan "God of Big Deals"⁵.

³ Ramji Lal Modi vs State of Uttar Pradesh, AIR 1957 SC 620

⁴ Sujata Bhadra vs. State of West Bengal 2005 SCC Online Cal 516

⁵ Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar and another (2017) 7 SCC 760



In *Secy. Ministry of Information and Broadcasting, Govt. of India vs. Cricket Assn. of Bengal (1995) 2 SCC 161 (para 75)*, the Court amplified the opportunity of the fundamental right of speech and expression to include the right to educate, inform and entertain and to the right to be educated, informed and entertained. The Court opined that the former is the right of the telecaster and the latter that of the viewers.

In *Kartar Singh vs. State of Punjab (1994) 3 SCC 569* (cases dealing with constitutional challenge to the TADA laws), the Supreme Court cautioned that ambiguous laws not only ruse the guiltless by not providing reasonable cautioning, but also impermissibly represent basic policy matters to policemen and judges for resolution and idiosyncratic basis, with associated perils of illogical and biased submission.

Added recently, in *Shreya Singhal vs. Union of India (2015) 5 SCC 1*, the Apex Court detected those terminologies which are equivocal, in the intellect that there is no untroublesome standard by which an individual can be said to have stanch a felony, present complications as even judicially proficient minds may come to absolutely opposite assumptions on the same set of facts.

Therefore, the barbarity of an individual citizen with reverence to certain online content which is, in his/her subjective verdict, obnoxious and punishable under Section 295A IPC will have to be aptly well-balanced by the authorities with the rights of not only accused individuals, but also that of spectators allowed to admittance of such content by choice. Currently, under Section 196(1) Cr.P.C., such legal scrutiny is delayed

until the phase when a Court is obligated to take cognizance of such an offence under Section 196(1) Cr.P.C.

In practicality, the constitutional ideologies offered downcast by the Apex Court have botched to check the undiscerning entreaty of this provision by the law implementation apparatus. The sobering realism is that a hefty number of persons in innumerable fields, including actors (Salman Khan, Shah Rukh Khan, Akshay Kumar, Aamir Khan, television actor Kiku Sharda), writers (Taslima Nasreen, Salman Rushdie, Wendy Doniger) and artists (M.F. Hussain), have endured the brunt of this exorbitant provision heedless of the political philosophies avowed by the concerned State Governments.

In the short term, it is domineering that the judiciary not rivulet any misapplication of this law, predominantly in cases originated or determined by or at the occurrence of sanctimonious or political bigmouths and where the constituents of the offence are not stringently contented. Further, the law should be corrected to deliver for (i) erstwhile jurisdictional contemplation of any grievance to be wedged under this provision, and (ii) restraining prosecution to only intensified acts of abuses or efforts to affront which are deliberate and malicious and are made through the intent of infuriating the religious spirits of any class of citizens of Republic of India and premeditated to interrupt the communal order.

Pendent such modifications, if the Courts fail to workout proactive and astute judicial omission over such cases, it is quite likely that occurrences of similar embattled attacks at online content on web-based stations will see an increase. This will likely provide an



pretext and impetus to the Government to progress more restraining ways and means of variable online content and conceivably even pre-censoring it.

Lacunae

While the intent of preservation of public order is validated in respect of Section 295A, the ample ambit of the law and the theological essence of the society makes things intricate. The law absolutely does assist its intent in grueling miscreants who studiously perpetrate acts to slander the theological perception of a particular league of citizens. However, the same law develops into a tool of massacre with the following group of people:

1. Prolific depictions of cult by artists, actors;
2. Fanciful depictions by novelists;
3. Empirical narrative given by historians;
4. People who enlist in level headed criticism of theological practices.

Although the above-mentioned list is by no aid a comprehensive one, it canvas the majority of the people who find themselves facing the gratuitous brunt of Section 295A.

- Superstition is a phrase that is hard to delineate. Legal experts, jurists, sociologists, and theologians have so far re-examined from giving an irrefutable interpretation as to what can be considered a cult. It is an implausible responsibility to come with a rationale that can be comprehensive of all the notorious cults of the world and still be open to take-in any cult that has been missed out or has been newly forged. It is only instinctive that a law that safeguards theological perceptions will have a tremendous ambit. The vagueness surrounding the word 'cult' also finds its way into Section 295A. The

obscure and indefinite purview of what is portend by 'cult' and 'theological perception' makes it prone to squandering by busybodies and tame palpable appraisal of aspect of cult.

- The obscure words used in the law are susceptible to an ample perception by both the judicial and non-judicial mind alike which makes it easier to be comprehensive of anything which is even remotely abhorrent to the theological feelings of a class of citizens.
- In inclusion to it being exploit as a tool for persecution, Section 295A prima facie seems paradoxical of the fundamental right to freedom of speech furnished by Article 19(1)(a). This is primarily due to the nebulous jargon it employs. The IPC which encloses a unified chapter upon "Offences Related to cult", which includes 295A, does not construe the phrases "cult" or "religious", even though they materialize no less than nineteen times. The Constitution too declines to cater for a irrefutable definition of the phrases. The Supreme Court, somewhat than providing lucidity upon the issue further shroud the waters, vis-à-vis decree such as the one delivered in the *SP Mittal vs Union of India* case, where a seven-judge constitutional bench held cult to be a phrase which cannot be construed and further intensify mist the vagueness surrounding it by articulate it to be a "matter of notion and axiom concerning the human vigour expressed evidently in the form of liturgy and adoration".
- Confidential as a cognisable misdemeanour, the Section persuade the application of Section 41 of the CrPC. It charters the police to arrest any person without a Magistrate's sanction at the sheer precedent of an FIR or at the complaint being presume as the police



officer as merely “prudent” This squandering was pre-empted by the Section’s devising committee which formidable that it valor be used to objectify not just the “scurrilous scribbler”, but also any form critique or sheer remark upon theological matters.

- In light of the jurisprudential advancements as well as academic appraisal of the prior section, Section 295A unquestionably exhibit its constitutional untenability. Further, the eerie effect it has upon any statutory assessment of anything which can be casually related to “cult”, a phrase yet to be given a categorical depiction, and “sentiments”, a phrase which is intrinsically personal and adaptable to an individuals will manifest it being bad in law. This preposterous restraint on speech is expedite by its susceptibility to be used a tool for molestation in light of it accredit criminality.
- Among the disparate instances of the Section’s dubious wordings being engaged as a tool of persecution, the most recent one pertains to the arrest of television actor Kiku Sharda for merely masquerade as Gurmeet Ram Rahim Singh, the chief of the Dera Sacha Sauda creed currently serving a 20-year jail sentence for perpetrate rape. With no categorical depiction of cult, the Section’s applicability as of now prolongs to cults such as the one in question, and drive to the listing of FIRs and Sharda’s ensuing arrest, which was later on quell by the Punjab and Haryana High Court, due to its legal untenability.

Recommendations

The time span, when Section 295A turn into a law, was rampant with communal turmoil’s and partisan strife. It was a communally charged atmosphere with a substantial number of zealot organizations taking births

and each community contend for a larger stake of influence in the stakes of functioning the country. Presently in the 21st century, although cult still debris a paramount facet of civilization, the atmosphere is not as overblown as it was in the era of cult and therefore the vindictive facets of law urgency a relook.

- Theological Cults and metaphysical organisations should be kept out of the purview of Section 295A. cults or theological progress can be cleverly left out of the purview of Section 295A and any kind of disparagement or insult to its notions can be handled with under the law of defamation. If the rationale of such establishments is not to start a new cult itself then they need not be given the preservation of a law like Section 295A, and as cited above they can take remedy to the law of disparagement.
- It will be more vigilant to create severity of theological misdemeanours and earmark forfeiture according to their consequences, but if alteration is to be made just to Section 295A alone then the intent can be served by curtail the sentence to a maximum of six months as specific exemption also needs to be taken into situation.
- Other measures which could be combined to the laws is that instead of incarcerate the accused to incarceration, he/she could be given the preference to delicate a public amends and be required to do community service for the people exasperated, though the strife of sectarian dogma must be kept in mind while giving the option of the type of community service.
- Next, the sin should be madeailable, customarily, offences are restricted as



bailable and non-bailable confer to the solemnity of the sin and the retribution it necessitates, on that ground alone the provision should be made bailable. Also, there is very little chance of an accused under the law to tinker any deposition or domination witnesses as the sin generally comprise the society at substantial

- Intentionally the accused could also be taught about the prevalent values and the good facet of the cult which he/she exasperated by persons of high social standing or the intellectual of that cult. The aid of this quota is that not only does the accused fend off incarceration, it also helps to propagate a feeling of reciprocal respect and calms down magnified emotions.
- Another quota that could be combined to avoid exploitation of the law is to add budgetary punishments in the essence of fines and/or damage to the accused. This would keep a control on the mala fide exercise of the law by busybodies and constrain revenge-seeking demeanour.
- Regardless of the prerequisite, the stride of the country and the society is served exceptional if there is confidence as compared to vagueness.
- It will be exceptional if the legislature eradicates Section 295A and devises a separate Act altogether covering the argument of cult, religious feelings and its ancillary facets in a more meticulous manner.
- The embargos should be nominal so that the gaffe of a ample interpretation of Section 295A are not repeated. The language should be uncomplicated abundant for the scholarly

and the parishioner alike and should be well-defined to fend off possible squandering.

- Assimilate the raised measures will make the law a restrained one and will also avert gratuitous litigation and conflicts in society. The implied and educative measures recommended above need to be given more gravity rather than retribution, as it will act as an aid to foster sorority among various clerical groups.

Conclusion

Though hate speech and acts that indorse religious or cast hostility need to be cramped, it should not ensue at the cost of conciliatory Freedom of Expression. Additionally, the law should be crystal clear with no dodges with exact particulars. The provision of life incarceration on the affront of scriptures/ books is not a comprehensive resolution to the problem. The unclear classification of which acts expanse to an offence under this regulation will open more ways for the act to be distorted. Disparagement should be esteemed and should be crumpled with such laws. The steps aimed at agreeing the glitches should not end up giving channel for the birth of new ones.
