

# OUTRAGING AND DEFILEMENT OF RELIGIOUS BELIEF IN DEMOCRATIC INDIA: AN ANALYZE

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*“Be proud that you are an India, proudly claim I am an India, every Indian is my brother”*

Swami Vivekanand Ji.

**Abstract-** Freedom of religion is ensured as one of the fundamental right under Art. 25 to 28 of the Indian Constitution and insult of any other religion is made punishable under section 295 and 295A Indian Penal Code. A number of instances of insult of religious feelings have been reported in various part of the country. This paper is limited to section 295 and 295A of Indian Penal Code and explains offence relating to religion and suggests effective measures to solve the problem in the furtherance to the unity and integrity of India with the aid of doctrinal research methodology.

**Key Words:** Secularism, Place of worship, Place of veneration, Class of persons, Outrage religious feelings, Insult of religion, Insult of religious beliefs and feelings, Hate speech

## 1. INTRODUCTION

India is a multi-religious country. At the time of framing of the Constitution, to provide equal protection to all the religions Article 25 to 28 have been incorporated under the Indian Constitution by the constitutional framers as one of the fundamental rights [1]. On the other hand, a separate Chapter *i.e.* Chapter XV dealing with offences relating to religion incorporated to penalise the insult of the religious feeling of any individual under Section 295 to 298 of the Indian Penal Code [2].

Chandragupta Mourya, who established a strong Hindu empire, gave equal protection to all the religions and very few religious conflicts had been reported at that time [3]. At the time of Pushyamitra, in spirit of division of the country into many small independent kingdoms, religious and cultural unity of the country remained safe [4]. Offences relating to religion have been traced during the in the period of Mughal empires, when several Hindu temples were demolished [5]. However, Mughal Emperor, Akbar waved all kinds of restrictions on the construction of worship places and started initiative to stop the practice of converting Hindus to Muslim religion [6].

### 1.1. Secularism in India

India is a ‘Secular’ state concerned with the relation between Man and Man, not between Man and God. ‘Secular’ states are concerned with the relationship between man and man and not to matters between man and god. God and men relationship is a matter of individual conscience, without influencing state on the basis of religion. Moreover, in such state no discrimination has been found on the bases of religion[7].

However, secularism is not a new phenomenon. Ashoka’s 12th Rock Edict declares, “His sacred majesty the king does reverence to men of all sects, whether as ascetics or householders”[8].

It is interesting fact that without having the word “secular” in the Constitution, the idea of secularism was running through the various provisions of our Constitution. Moreover, it was only Forty Second Amendment to the Constitution by which the word secular found place the Constitution of India [9].

In *S.R. Bommai v. Union of India* [10] and *Dr. M. Ismail Faruqui v. UOI*, [11] it was observed that equal treatment of all religious groups, protection of their life and property was essential part of secularism enshrined in the Constitution of Indian.

## 2. OFFENCES RELATING TO RELIGION AND INDIAN PENAL CODE

A separate Chapter XV *i.e.*, ‘offences relating to religion’ have been incorporated under the Penal Code. Section 295 to 298 the Code had been framed on the principle of freedom to follow their religion without insulting other person’s religion. All the intentional acts of damaging or defilement of places of worship or sacred object to insult the religion [12], disturbing a religious assembly[13], trespassing to a place of sculpture or at the place of funeral ceremonies with a intention the religious feeling[14] and outraging the religious feelings of any class by words, (spoken or written) or by signs or visible representations have been declared criminal offences in India[15].

### 2.1. Intentional Injury or defile place of worship to insult the religion

Section 295 deals with the destruction of the places of worship. These acts are offence not merely against an individual but against a ‘class of person’ amounting to sacrileges or a sin against the Almighty. All the **acts of destruction, damage or defilement acts of** place of worship and veneration or sacred religious objects and act likely to **destruction, damage or defilement of such places and** objects with **the** intention or knowledge to insult religion and religious feelings are declared offence in India[15].

**(a) Destruction, damage or defilement**

Defile is not limited to an act to make an object of worship unclean but it extends to doing of an act making such object ritually defiled. For example: entering into a Temple of Hindu's with boots[16]. However, entry into the boundaries of a temple which was specifically open for Brahmins by the lower cast ( Moothan cast) was held not an act of defilement[17]. Further, deliberate entering of an untouchable into a temple was not found to be an offence [18]. Thereafter, untouchability was abolished in India and was declared an offence [19].

**(b) Place of worship**

'Place of worship' is not defined under the Code. Temples, Gurudwaras, Mosques, Churches, Mosques, kyaungs are example of place of worship. Any place set apart or consecrated for the worship of a deity considered a place of worship like steep hill, peepal tree, stone painted with any colour etc. Apart from this, burial grounds, cremation grounds and the churchyards have been considered as objects of veneration[18].

**(c) Object held sacred by a class of persons**

The word is not limited to 'idols in temples' or idols carried on any occasions or sacred books viz., the Bhagwat Gita, the Guru Granth Sahib, the Quran, the Bible. The term also includes objects which have been considered sacred by a person's class irrespective of the fact that they are actually worshiped or not. However, the question about the sacred nature of any object had been a question of fact decided upon the fact and circumstance and evidence in a case [20].

**(d) Class of persons**

The phrase 'class of persons' means a sect of group or persons belonging to different religious sets and sub sets. The Hindus, the Mohammedans, the Christians, Parsees and Jews considered as a class of persons each with different sub sets attached thereto [21]. The term 'any class of person' includes religious sects irrespective of their size. For example, a distinct group may be formed by two persons only.

**(e) Intention and knowledge to insult the religion**

Intention and knowledge to insult a particular religion is very essential element to hold a person liable under the section. Element of *mens rea* is very deeply engrained in the provision of the code[22]. Intention is usually expressed by the words i.e., "intentionally", "intention", "voluntarily", "wilfully", "deliberately" and "knowingly". Moreover, knowledge is state of awareness about the consequences of an act [23]. However, intention to insult a particular religion may be traced upon the fact and circumstances in case. Moreover, such intention may be gathered by the act itself or word uttered or gestures or any other means whether there had been actual intention to commit the offence relating to religion [22].

In *Sheo Shankar v. Emperor* [24] sacred thread worn by a person ( Sudra) was destroyed by a upper cast person. According to accused Sudra's were not entitled to wear the sacred thread and it was only right of upper cast to wear the sacred thread. It was held by the court that to wear such sacred thread was not an essential part of religion hence the act of the accused was not brought under the ambit of the section. The act of destroying the thread was also not held an intentional act to insult the religion. The act of mere carrying away an idol by the shebait from his temple to some other place without any intention to injure the religious feelings or without the knowledge of the nature of the act that such act is likely to hurt the religious feelings of others was not brought under the penal provision of the code[25].

All the acts coming under the ambit of the provision are provided with the punishment of imprisonment which may extend to two years, or with fine, or with both. Such offences are cognizable, non-bailable, non compoundable and summarily triable by any of magistrate[15].

**2.2. Deliberate and malicious acts, intended to outrage religious feelings and beliefs**

Section 295-A was firstly inserted into the Code by the Criminal Law Amendment Act XXV of 1927. Prior to 1927, the act of intentional malicious writing to insult a religion or outrage the religious feelings of any person and class had been punished by the section 153-A of IPC [26].

The story started from the *Raj Paul Case* popularly known as the 'Rangila Rasul' case. In the case accused published a pamphlet entitled 'Rangila Rasul' (Amorous Prophet) sexual incontinency of the prophet Mohammed. Raj Paul was convicted under Section 153-A of the code. But, his conviction was quashed by the Lahore High Court in the absence of cause of enmity hatred between different religious communities which was gist of the offence under Section 153-A. However, such act was accepted an act offensive to the Muslim community. Therefore, as a result of outcry of the community, the provision of section 295 (A) was inserted into the Indian Penal Code. All the acts outraging the religious feeling of any class, insulting or attempt to insult, religion or religious beliefs by words spoken/ written/ visible representation with deliberate and malicious intention are recognised as offence in India [27].

**(a) Deliberate and malicious intention**

"Deliberate and malicious intention" to do an offensive act is an essential ingredient of the section. In the legal sense 'Malice' means "wrongful act done intentionally without just cause or excuse" [28]. In *Shiva Ram Das v. Punjab* it was observed that "malice being a state of mind is not capable of proving by direct and tangible proof. It can be gathered from the language and behaviour of the accused" [29] or circumstances depending upon the fact and circumstances in each case[30].

**(b) Insult or attempt to insult the religion and religious belief**

Insult means 'defamation and abuse' with deliberate and malicious intention to defame the religion and religious belief of a class of citizen of India. Such act must done by words spoken, or written or visible representation deliberately and maliciously to outrage the religious feelings, belief or faith of a class of person. It is to be noted that truth has not been considered as defence as true statement can equally hurt the religious feeling of any person.

In *Lalasingh's case*, book entitled "samman ke liye dharma parivartan kare" was in question, court held that rational criticism of religious tenets in restrained language cannot amount to an offence under the section [31]. However, the publication in question to be judged as a whole, any isolated passages picked from here and there cannot be used to draw the conclusion [32].

**(d) Constitutional validity : Section 295-A**

Constitutional validity of Section 295-A IPC, was questioned in *Ramji Lal Modi* on the ground of infringement of fundamental rights to freedom of speech and expression under Art. 19(1)(a) of the Constitution. While upholding the constitutionality of the section, the Supreme Court observed that "the section is in the interest of public order, only penalises the aggravated form of insult to religion, when it is perpetrated with the deliberate and malicious intention of outraging the religious feeling of the class of citizens, not each and every act of an individual" [33]. However, the section has prospective effect but, new edition of the book previous published book and new publication after the incorporation of section 295 A has been covered under the section and author of the book may be held liable [34].

**(f) Forfeiture of publications**

The law of Criminal Procedure Code authorised state government to issue order for forfeiture of a publication and every copy of such publication containing the material to insult the religion and religious belief of person. The publication in form a newspaper, or book or any document [35] deliberately and maliciously intending to outrage the religious feelings of any class. These acts have been punishable under IPC, 1860 [36]. Further, such publication and copy thereto were confiscated on issuance of notification by the concerned state government with stated reasons. Thereafter, such publication were searched and seized by the police officer from any part of the country on the order of the magistrate [37].

**3. HATE SPEECH**

Act of hate speech is also considered as an offence relating to offence. As per Law commission report, "hate speech is an incitement to hatred primarily against a group of persons in terms of race, ethnicity, gender, sexual orientation, religious belief and the like". All the statements hurting religious feeling have been recognized as an offence punishable with the imprisonment which may extend to three years, or with fine, or both [38].

**4. CRITICAL APPRAISAL**

Religion is one of the oldest serving social institutions of humanity. Elbert Hubbard stated that, "Religions are many and diverse, but reason and goodness are one" [39]. Being a secular country right to freedom of religion has been incorporated under the Indian Constitution. However, a number of instances injuring the religious feeling of the people reported despite of provisions to punish such acts under the IPC 1860 in India. Being citizens of India, certain fundamental duties viz., (i) oblige with the provision of the Constitution, (ii) protection of the sovereignty, unity and integrity of the country, (iii) promote the spirit of harmony and brotherhood amongst all the population of the country and (iv) cherish and preserve the rich heritage and culture of the country are imposed on all the citizen. Therefore, it becomes out duty to protect the sovereignty and integrity of the nation and promote the feeling of the brotherhood while showing respect for all the religion and cultural diversity of the country [40]. Moreover, the fundamental principle of all the religions is the same, yet they differ only in ritualistic garbs. Hence, it submitted that it is requirement of the time that greater responsibility lies not only on the solders of political leaders and general people as well to show more importance to national interest rather than to their regional and local interests in the furtherance to unity and integrity of the country. Dr. S. Radhakrishnan stated that "I want to state authoritatively, that secularism does not mean irreligion. It means we respect all the faiths and religions". Further, we must show the great respect and feeling of brotherhood towards all the part of the nation. On this point, Swami Vivekanand stated that "be proud that you are an India, proudly claim I am an India, every Indian is my brother".

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