

# 'THOU SHALT NOT BLASPHEME'

Shradha Sharma\*

*'Everyone must respect the religious susceptibilities of persons of different religious persuasions or creeds and desist from hurting the religious sentiments of others'.<sup>1</sup>*

## INTRODUCTION

The general meaning of the term 'blasphemy' is 'the action or offence of speaking sacrilegiously about God or sacred things.'<sup>2</sup> Blasphemy is irreverence toward holy personages, religious artefacts, customs, and beliefs. It must be uttered in the presence of another person or persons or published in order to be an offence. Mere use of profanity is not considered blasphemy.<sup>3</sup>

The term 'blasphemy' is derived from the Middle English term '*blasfemen*', which in turn is related to the Greek term '*blasphemein*', from *blaptein* ("to injure") and *pheme* ("reputation"). It means a "contemptuous or profane act, utterance, or writing concerning God or a sacred entity"<sup>4</sup>.

Blasphemy is a common-law offence and also an offence by statute in certain jurisdictions. In English Law, it is the offence of 'speaking disparaging words about God, Jesus Christ, the Bible, or the Book of Common Prayer with the intent to undermine religious beliefs and promote contempt and hatred for the church as well as general immorality'.<sup>5</sup> It involves irreverent denial or ridicule of the Christian religion or contumelious reproaches of Jesus Christ, or scurrilous and profane scoffing at the Holy Scriptures or exposing any part thereof to hatred and ridicule.<sup>6</sup> Blasphemy laws in the United Kingdom were specific to blasphemy against Christianity but such common law offences of blasphemy and blasphemous libel were abolished<sup>7</sup> in England and Wales by the amendment to the Criminal Justice and Immigration Act, 2008<sup>8</sup>.

\*Student, Year 4, Chanakya National Law University

<sup>1</sup>Mukherjee, B.K. '*The Hindu Law of Religious and Charitable Trust*', Tagore Law Lecture, 2<sup>nd</sup> Ed.(1962), 2-4 for the meaning of religion.

<sup>2</sup>< <http://oxforddictionaries.com/definition/english/blasphemy>>

<sup>3</sup><<http://legal-dictionary.thefreedictionary.com/blasphemy>>

<sup>4</sup><[articles.tutorialonline.biz/portal/language-en/Blasphemy](http://articles.tutorialonline.biz/portal/language-en/Blasphemy)>

<sup>5</sup>The Gale Group, *West's Encyclopedia of American Law*, (edition 2. 2008)

<sup>6</sup>*R v Bradlaugh*, (1883) 15 Cox 21; Russell on Crime (Vol II, 12<sup>th</sup> Ed. First Indian Reprint, 2001) . 1519

<sup>7</sup>Ruth Geller, 'Goodbye to Blasphemy in Britain'. (2008) Institute for Humanist Studies. <<http://web.archive.org/web/20080607204857/http://humaniststudies.org/eneews/?id=348&article=0>>. accessed Sep 32012

<sup>8</sup>Criminal Justice and Immigration Act 2008, Section 79 and Part 5 of Schedule 28.

Blasphemy is also an offense by statute in certain other jurisdictions. It is made punishable because of its tendency to endanger peace and to deprave public morals which could be a cause of civil strife<sup>9</sup>. Pakistan, for instance, has a legislation which makes execution a penalty for blasphemy. Offenders may be vigorously prosecuted.<sup>10</sup> However, in some countries, blasphemy is not a crime. In the United States of America, for example, a prosecution for blasphemy would violate the Constitution.<sup>11</sup>

Since Hinduism, India's dominant religion, does not have the concept of blasphemy<sup>12</sup>, such laws are absent in tradition<sup>13</sup>. Thus blasphemy laws in India are still in the process of development and the contemporary situation and judicial decisions determine the scope of such laws.

## THE INDIAN LAW

India is a secular state, i.e., there is no state religion<sup>14</sup> and the Indian Constitution accords equal protection to all religions. All persons are entitled to freedom of conscience and the right to propagate, practice and profess the religion of their choice.<sup>15</sup> However this freedom of religions is subject to restrictions like public order, morality and health.

The State ensures that religious beliefs of individuals do not become a matter of violence and hostility among people. Chapter XV of the Indian Penal Code, 1860 deals with 'offences relating to Religion' which is broadly classified into three divisions namely:

- Outraging the religious feelings of persons.<sup>16</sup>
- Defilement of places of worship or objects of veneration.<sup>17</sup>
- Disturbing religious assemblies.<sup>18</sup>

Enactment of the above sections in the IPC (Indian Penal Code) to curb the factors responsible for inciting religious animosity and hostility is in accordance with the averred declarations of religious toleration of the government, which, as such, is

<sup>9</sup>Smith and Hogan, *Criminal Law*, (6<sup>th</sup> Ed.,1988) 737-739.

<sup>10</sup>Chapter XV of Pakistan Penal Code deals with OFFENCES RELATING TO RELIGION-<<http://www.fmu.gov.pk/docs/laws/Pakistan%20Penal%20Code.pdf>>

<sup>11</sup>*Joseph Burstyn, Inc v. Wilson*, [1952]343 U.S. 495

<sup>12</sup>Lingen, John; Ramsurrun, Pahlad, *An Introduction to The Hindu Faith*.(Sterling Publishers Pvt. Ltd). p. 2. ISBN 9788120740860..

<sup>13</sup>Murthy, *BSPuppets of Faith: theory of communal strife*,(2003). p. 7. ISBN 9788190191111

<sup>14</sup>Bachal, V.M., *Freedom of Religion and the Indian Judiciary*,(1975), p 1-37

<sup>15</sup>Article 25 of the Indian Constitution

<sup>16</sup>Section 295 A and 298 of the Indian Penal Code, 1860

<sup>17</sup>Section 295 and 297 of the Indian Penal Code, 1860

<sup>18</sup>Section 296 of the Indian Penal Code, 1860



necessary to prevent religious riots and crusaders<sup>19</sup>. It is based on the principle that 'every person has full freedom to follow his own religion and that no one is justified to insult religion or religious feelings of another.'<sup>20</sup> As per the principle any deliberate acts perpetrated by persons of one religious persuasion for the insult or annoyance of persons of another persuasion is punishable.<sup>21</sup>

## THE PROVISIONS- AN ANALYSIS

### I) Outraging the religious feelings of persons

Section 295A deals with the deliberate and malicious acts by words, either spoken or written, or by signs or by visible representations or otherwise, intended to outrage religious feelings of any class by insulting its religion or religious beliefs. The provisions contained in this section are similar to common law crimes of blasphemy. It is a cognizable, non-bailable and non-compoundable offence, subject to trial by Magistrate of the first class.

### Reason behind enacting the provision of Section 295A

The main reason behind enacting the above section was the widespread agitation by Mohammedans subsequent to the decision given in the *Rajpaul case*<sup>22</sup>, popularly known as the 'RangilaRasul' case. In this case even though the accused had published pamphlets describing sexual incontinency of Prophet Mohammed, the Lahore High Court quashed his conviction holding that Section 153A of the Code was intended to prevent person or persons from attacking a particular community by words spoken, written or by visible representations and not to stop polemics against a deceased religious leader, however scurrilous that attack might be. Later the court realized the lacunae in law and considered that such excoriation of religious feelings should come within the ambit of provisions aimed at prevention of offences against religious sentiments and beliefs. Thus, Section 295A was added in the Code to fill this loophole. Later, in subsequent judgments given in *Devi Sharan Sharma v Emperor*<sup>23</sup> and *Kali Charan Sharma v King Emperor*<sup>24</sup> any vituperative and abusive attack on a religion or its founder was held to come within the purview of Section 153A, IPC.

The term 'malicious' denotes 'wicked', 'perverse' and 'incurable disposition'. A person is said to act 'maliciously' when he wilfully does an injurious act to another without lawful excuse.<sup>25</sup> It implies an intention to do an act which proves detrimental

<sup>19</sup>*Queen Empress v Imam Ali*, (1888) ILR 10 All 150(FB)

<sup>20</sup>Draft Penal Code, Note p, 136

<sup>21</sup>*Gopinath Puja Panda Samanta v. Ramchandra Deb* [1958] AIR 1958 Ori 220

<sup>22</sup>*Rajpaul v Emperor*[1927] AIR 1927 Lah 590

<sup>23</sup>AIR 1927 Lah 504

<sup>24</sup>AIR 1927 All 654

<sup>25</sup>*Trustees of SafdarHashmi Memorial Trust v. Government of NCT of Delhi* [2001] Cr LJ 3689(Del).

to the other. It is a state of mind, incapable of direct and tangible proof. It is inferred only from circumstances having due regard to the setting, background and connected facts.<sup>26</sup> Moreover, malice can also be presumed on the part of a person if he has done any injurious act without any lawful and just excuse.<sup>27</sup> Thus any argument or expression by a person, with no intention of insulting a different creed but in good faith for vindicating his own, therefore does not fall under Section 295A.<sup>28</sup>

Any unwitting remark or rational criticism of religious tenets of any particular religion for its inculcation of any social evil is perfectly legitimate<sup>29</sup> and such a criticism falls outside the arena of Section 295A.<sup>30</sup>

### Constitutional validity of Section 295A

The constitutional validity of Section 295A was challenged on the ground that it infringes the fundamental right guaranteed under Article 19(2) of the Indian Constitution. The Supreme Court in *Ramji Lal Modi v State of Uttar Pradesh*<sup>31</sup> upheld the constitutional validity of Section 295A stating that the said provision is enacted in the interest of the public order, and it penalizes only the aggravated form of insult to religion, when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of a class of persons. Such a penalization falls within the ambit of Article 19(2) as being a law imposing a reasonable restriction on exercise of the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution.

Moreover Section 295A does not contravene the letter and spirit of Article 25<sup>32</sup> and Article 26<sup>33</sup> of the Indian Constitution and thus, it cannot by any stretch of imagination, be said to be *ultra vires* of the Constitution.<sup>34</sup> Thus Section 295A does not come into conflict with either of the above sections and if it does impose any restrictions, it is within the four corners of the expression subject to public order, morality and health.

### Provisions under Code of Criminal Procedure, 1973

Section 95, CrPC, gives power to the State Government to forfeit any newspaper

<sup>26</sup>*In re Ratanmala* (1962) Cr LJ 146 (Mad)

<sup>27</sup>*Baba Khalil Ahmad v. State*[1960] AIR 1960 All 715

<sup>28</sup>*Ashok Singhal v. State of Uttar Pradesh & Another* [2005]Cr LJ 2324(All)

<sup>29</sup>*Lalai Singh v. State of Uttar Pradesh*[1971]Cr LJ 1773 (All) (FB)

<sup>30</sup>*Ramlal Puri v. State of Madhya Pradesh* [1971]AIR 1971 MP 152

<sup>31</sup>AIR 1957 SC 620.

<sup>32</sup>Article 25(1) states: "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and right to free profession, practice and propagation of religion".

<sup>33</sup>Article 26 states: "Freedom to manage religious affairs subject to public order, morality and health".

<sup>34</sup>*Sant Das Mahesari v. Babu Ram Jodoun*[1960] AIR 1960 All 436



or document, which, in its opinion, is punishable, *inter alia* under Section 295A. However, no prosecution under Section 295A is possible, except with the prior sanction of the Central Government or of the State Government under Section 196, CrPC.<sup>35</sup>

Such an order of forfeiture, being an infringement of fundamental rights, is liable to be quashed if it fails to provide the grounds on which such forfeiture orders were made.<sup>36</sup> Moreover, a notification by a government exhibiting non-application of its mind deserves to be nullified.<sup>37</sup>

The Law Commission has recommended and proposed certain reforms which suggest that the requisite *mensrea* for Section 295A should be indicated by the words 'with deliberate intention of wounding religious feelings'.<sup>38</sup>

Section 298 of the IPC deals with punishable deliberate acts of verbal or visible representation intending to wound the religious feelings of another<sup>39</sup>. It is a non-cognizable, bailable offence, subject to trial by any Magistrate compounded by the person whose religious feelings are intended to be wounded.

The deliberate intention can be inferred from the acts done<sup>40</sup>, words spoken, the place where they were spoken and the person to whom they were addressed and the other surrounding circumstances<sup>41</sup>. In *Mir Chittan v Emperor*<sup>42</sup>, intention was construed in such a way that if a man knows that a certain consequence will follow from his act, it must be presumed in law that he intended that consequence although he may have had some quite ulterior motive for performing the act. In another case it was held that mere knowledge with no deliberate intention will constitute no crime<sup>43</sup>.

## II) Defilement of places of worship or objects of veneration

Section 295, IPC, deals with the offence of injuring or defiling a place of worship with intent to insult the religion of any class. It is a cognizable, non-bailable and non-compoundable offence subject to trial by any Magistrate.

The original Draft Penal Code had provided for more severe punishment for destroying or defiling a place of worship than the present Section, due to the gravity

---

<sup>35</sup>*Shalibhadra Shah v. Swami Krishna Bharati* [1981] CrLJ 113 (Guj)

<sup>36</sup>*Harnam Das v. State of Uttar Pradesh* [1961] AIR 1961 SC 1662

<sup>37</sup>supra, note 26

<sup>38</sup>Law Commission of India, 'Forty-Second Report: The Indian Penal Code', Government of India, 1971, para 15.2.

<sup>39</sup>*Chakra Behera v Balkrushna Mohapatra* [1963] AIR 1963 Ori 23

<sup>40</sup>*Q.E. v Rahman*, [1893] 13 AWN 144

<sup>41</sup>*Narayan Das v State* [1952] AIR 1952 Ori 14

<sup>42</sup>AIR 1937 All 13

<sup>43</sup>*Kirpal Singh v R.*, [1912] PWR No. 29

of the offence.<sup>44</sup>

This section compels people to respect the religious susceptibilities of persons of different religious persuasion or creeds.<sup>45</sup> Section 297 which pertains to the places treated as sacred, is an extension of Section 295. It deals with the offence of trespassing upon a burial place, etc and is a cognizable, bailable and non-compoundable offence, subject to trial by any Magistrate. Hence, it punishes a person who with intent to insult religion of another, commits trespass in any place of worship, or any place of burial or disturbs funeral rights against the dignity of human corpse.<sup>46</sup>

The section only punishes an aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of a class.<sup>47</sup> For a charge under this section, the prosecution must prove that writing<sup>48</sup> anything or any act<sup>49</sup> or was done with a malicious intention of insulting the religious feelings of a class of persons.

The 'intention' to insult is a question of fact which can be gathered by the act itself, or by words uttered or gestures, or any other circumstances that might have accompanied the act. A person cannot be convicted in the absence of intention to insult a particular religion<sup>50</sup>. Dismantling of a mosque by a Hindu with the help of some Muslims with no intention to insult any religious group was not said to be within the purview of the Section and so the conviction under Section 295 was unwarranted.<sup>51</sup> Alternative provisions can also be applied to convict the accused like in the case of *Re RatnaMudali*<sup>52</sup> where a Hindu had sexual intercourse with a woman within an enclosure surrounding the tomb in secret and at night. The court held that having regard to the secrecy and time, Section 295 would not be applicable but the accused was convicted under Section 297 for trespassing the place of worship.

On the other hand, in *Srivokti Swami*<sup>53</sup>, the act of the accused, a goldsmith by caste, of performing a religious ceremony was held to be an offence under the Section as the idol for performing the ritual could only be touched by Brahmins and thus the object of the accused in performing the ritual was to ridicule openly the established custom and he had intention of insulting the religious notions of the general body

<sup>44</sup>Note J. of the Law Commissioners quoted in *Nelson's Penal Code*, (6<sup>th</sup> ed. Vol. 2,1968).1360

<sup>45</sup>*VeerabhadraChettiar v. E V RamaswamiNaicker* [1958]AIR 1958 SC 1032

<sup>46</sup>*Mustaffa Rahim v.Motilal* [1909] Cr LJ 160

<sup>47</sup>*Siva Ram Das v. State of Punjab*[1955] AIR 1955 Punj 28

<sup>48</sup>*Baba Khalil Ahamad v State of Uttar Pradesh*[1960]AIR 1960 All 715

<sup>49</sup>*King v Nag ShewHpi* [1939]AIR 1939 Rang 199

<sup>50</sup>*Soban Ram v Crown* 67 IC 686, 3 LLJ 247

<sup>51</sup>*Jan Mohammad v Narain Das* [1883] All WN 39

<sup>52</sup>(1886) ILR 10 Mad 126

<sup>53</sup>*Weir's Criminal Rulings*, Vol.1 , p 253 quoted in *Gopinath Puja Panda Samanto v. Ramchandra Deb*,[1958] AIR 1958 Ori 220(223)



of worshippers.<sup>54</sup> Again throwing away of a sacred thread worn by the complainant (Sudra) by the accused would not amount to insulting to the complainant's religion since the Sudras were not entitled to wear the sacred thread. Thus, the court held that the act of the appellant in the case did not injure the religious sensibilities of the complainant but his dignity and therefore conviction under Section 295, IPC was not sustainable<sup>55</sup>. In another case<sup>56</sup> where a Mohammedan was accused of insulting the religious sentiments of Hindus by his act of throwing a burning cigarette on a sacred object held by the Hindus, the court held that when the burning cigarette was thrown so as to defile the 'sacred object' of the Hindus, it cannot be said that the act of the accused was unintentional, or that he did not have the guilty knowledge as contemplated under Section 295. In any case, the accused was supposed to have knowledge that the Hindus were likely to consider such defilement as an insult to their religion.<sup>57</sup>

Unwitting insults without any deliberate or malicious intention of outraging the religious feelings of a particular class does not come within the purview of Section 295.<sup>58</sup>

### **Destruction, Damage or Defilement**

The meaning of the word 'defilement' is not just confined to physical destruction, but also includes situations wherein the place of worship or the object of worship would be rendered ritually or ceremonially impure.<sup>59</sup> Mere entry by a person of lower caste into precinct of a temple open only to Brahmins was not held to be defilement as the term 'defilement' has been given a wider meaning under the Section extending to ceremonial pollution but it is certainly necessary to prove such pollution.<sup>60</sup>

### **Place or Object to be sacred**

Whether a particular place or an object is a sacred one, is a question of fact. For example any attempt made to bring into existence a public mosque on a plot in the possession of an agricultural tenant with no permission from the landlord, could not make it a place of worship as contemplated by the section.<sup>61</sup> Running of a charitable dispensary in the premises of a church without hurting the feelings of any class of person would not amount to offence under the above section.<sup>62</sup>

<sup>54</sup>Ibid, p 255

<sup>55</sup>*Sheo Shankar v Emperor*, [1940]AIR 1940 Oudh 348

<sup>56</sup>*Saidullah Khan v State of Bhopal*, [1955]AIR 1955 Bhopal 24

<sup>57</sup>Ibid ,p 24

<sup>58</sup>*Chandanmal v State of West Bengal* [1986] CrLJ 182(Cal)

<sup>59</sup>*Atmaran v King Emperor*[1924] AIR 1924 Nag 121

<sup>60</sup>*KuttiChanmmiMoothan v. Rama Pattar*, [1918] 19 Cr LJ 960

<sup>61</sup>*Bechan]ha v Emperor*, [1941]AIR 1941 Pat 492

<sup>62</sup>*D.P. Titus v L.W Lyall*, [1981] Cr LJ 68 All

In *Joseph v State of Kerala*<sup>63</sup> the accused got possession over a property, by the order of the court, which was used as a place of worship by some people. The accused was not convicted for the act of taking away the pictures of Hindu gods as he was under the bona fide impression that he had the right to use the property in any manner he liked and there was no knowledge or intention on his part to hurt the religious feelings of others.

In *S Veerabhadran Chettiar v EV Ramawami Naciker*<sup>64</sup> the accused expressly stated that he intended to hurt the religious feelings of the Hindu community and he broke an idol of God Ganesa in public. He was charged with offences under Section 295 and 295A, IPC. The trial court held that the mud figure of Ganesa idol cannot be considered to be a sacred object held in veneration and if an idol is abandoned by the people, it loses its sanctity and is thereby rendered unworthy of worship. The High Court interpreted and gave meaning to the terms 'object held sacred' as only those idols which are kept inside the temples and when they are taken in procession on festive occasions. The Supreme Court, on appeal, held that the High Court had given a very narrow and restricted meaning to the words in the Section. The Court interpreted the words 'objects held to be sacred' as any object, however, trivial or destitute of real value in itself, if regarded as sacred by a class of persons, would come within the meaning of the Penal Section. An object may be held to be sacred by a class of persons without necessarily being worshipped by them.<sup>65</sup>

### Trespass into Place of Worship or Place of Sepulchre

Trespass implies 'any violent or injurious act committed with the intention of wounding feelings or insulting the religion of any person'.<sup>66</sup> For the purpose of the Section, trespass need not necessarily be 'criminal trespass'.<sup>67</sup>

### III) Disturbing religious assemblies

Section 296 deals with the offence committed by 'disturbing religious assemblies'. It is a cognizable, bailable, non-compoundable offence subject to trial by any Magistrate. The section ensures protection to congregational worship and does not cover individual worship. The object of this section is to secure freedom from disturbance when people meet for performance of acts which ordinarily take place in some quiet spot in the assembly exclusively.<sup>68</sup> Moreover, the assembly must be lawfully engaged in such worship or ceremonies i.e., they must be doing what they

<sup>63</sup>AIR 1961 Ker 28

<sup>64</sup>supra, note 46, p 1035, para 7

<sup>65</sup>Ibid

<sup>66</sup>*Mastan v Emperor* [1924]AIR 1924 Pat 349

<sup>67</sup>*Ram Prasad v State of Uttar Pradesh* [1952]AIR 1952 All 878

<sup>68</sup>*Vijairaghava Chariar v Emperor*[1903]ILR 26 Mad 554



have a right to do.<sup>69</sup>

The word 'disturbance' is not defined in the Penal Code. It is a question of fact which depends on the meeting and character of each particular kind of meeting and the purpose for which it was held. Disturbance does not mean that the worship of a religious assembly should actually be stopped or interrupted, or prevented from being carried out. It means that the peace of the assembly should not be interfered with any sound, noise or otherwise.<sup>70</sup>

'Disturbance' must be voluntary<sup>71</sup>, substantial one<sup>72</sup> and need not necessarily involve interruption of service<sup>73</sup>. Disturbance caused to the congregation engaged in prayer in a mosque by procession with music is held to be an offence under the Section.<sup>74</sup> However, disturbance caused to a private group or persons not engaged in the performance of religious worship will not warrant conviction under Section 296<sup>75</sup>. To attract the provisions of this section an assembly of three is sufficient.<sup>76</sup>

## RECENT DEVELOPMENTS OF BLASPHEMY LAWS IN INDIA

### The Sabarimala Controversy

India's version of a blasphemy law came under flak with the major issue in the Sabarimala temple controversy in which the Kannada actress Jaimala was charge sheeted for having 'outraged' religious sentiments.

In 2006, Jaimala created a stir when she revealed that she had entered the sanctum sanctorum of Lord Ayappa in the Kerala temple in her youth, when she was 18 years of age and had touched the idol's feet. Religious leaders and the temple authorities were highly affronted by Jaimala's act because females in the age group of 10-50 years as the temple dedicated to Lord Ayyappa dictates that women who have attained puberty but have not reached menopause are barred from entry.

The actress and two others, P. Unnikrishna and his assistant Reghupathy, were charge sheeted under the Section 295A of the Indian Penal Code for being involved in a 'deliberate and malicious act intended to outrage religious feelings intentionally outraging religious sentiments'.

---

<sup>69</sup>*JaipalGir v Dharna Pal*, [1895] ILR 23 Cal 60

<sup>70</sup>*Ata-Ullah v Azim-Ulla*, [1890] ILR 12 All 494

<sup>71</sup>*Queen Empress v Ramazan* [1885] ILR 7 All 461

<sup>72</sup>*KolimiMahabub v Sri Sideswarswami Temple at Devalumpata*, [1945] 2 Mad LJ 200

<sup>73</sup>*In re Krishnachari* [1889] 1 Weir 259

<sup>74</sup>*Public Prosecutor v. SunkuSeethalah* [1910] 11 Cr LJ 400 (Mad)

<sup>75</sup>*Bulgar Singh v Emperor* [1933] AIR 1933 Oudh 196

<sup>76</sup>*Emperor v Aftab Mohammad Khan*, [1940] AIR 1940 All 291

## Debate on blasphemy laws in India

The actress's revelation in 2006 sparked a furious debate, primarily led by women's groups, on discriminatory practices in religious institutions. The debate undertook the question as to whether or not Section 295A is an archaic law that goes against the concept of freedom of expression or freedom of worship as guaranteed by the Indian Constitution. As per social activists belief 'the law is indeed an anachronism'. After the Sabarimala incident it was evident that Section 295A of the IPC has enough room for abuse.

Section 295A is the closest to what can be regarded as a blasphemy law in India. Earlier too, cases have been filed under the law on flimsier grounds. One of the instances is the incident when a Muslim organization in Hyderabad filed a case at a local court under this section, accusing tennis star Sania Mirza, her then prospective husband Shoaib Malik, and his alleged former wife Ayesha Siddiqui of misleading the community about their marriage and divorce proceedings thereby 'hurting religious sentiments'. Such laws violate the very spirit of the Indian Constitution as every individual has the freedom or the constitutional right to practice religion in whichever way she or he chooses. "A woman has the right to offer prayers to the deity at a temple like Sabarimala, Of course every religion has to be respected, but a group of people controlling any particular religion or putting restrictions on the ways of worshipping is simply not acceptable. All these archaic laws tend to be misused by the select groups of people who try to control religious practices, thereby trampling upon an individual's religious freedom".<sup>77</sup>

Section 295A was invoked by the West Bengal government by means of a notification, seeking a ban on a book on account of its "deliberate and malicious intention of outraging the religious feelings of Muslims in India and insult or attempt to insult religion and religious beliefs". The legal battle over Taslima Nasreen's autobiographical novel *Dwikhandita* is a case in point. Calcutta High Court bench observed,

*"if an insult is inflicted in good faith by an author in his/her endeavour or object to facilitate some measure on social reform by administering such a shock to the followers of the religion, as would ensure notice being taken by any criticism so made, it would not attract the mischief of Section 295A of the reason of the phrase 'deliberate and malicious intention.'"*

In fact, legal experts contend that Section 295A and the right to free speech and not necessarily mutually exclusive. But a woman not being allowed to touch the idol is an overtly discriminatory. Similar curbs on artistic freedom should also not be tolerated. However, that does not necessitate doing away with this section

<sup>77</sup>Ranjana Kumari, women activist and Director, Centre for Social Research, New Delhi.



altogether as it can be a safeguard against deliberate acts calculated to create religious disharmony, riots etc.

Nevertheless, in civil society, opinion continues to be divided on Section 295 A and the ease with which it can be used to charge a person with having 'outraged' religious sentiments

## CONCLUSION

Blasphemy laws in India are not very well defined and it depends on recent judgments and upcoming legislations for determination of its scope and effectiveness in India. The analysis of the provisions and case laws throws light on both the positive and the negative effects which such laws have in our society.

The positive impact of such laws is that it provides a framework and a set of rules to deal with situations where protection of the religious sentiments of a particular group is required i.e. where a person or a group of persons intentionally, deliberately and maliciously perform an act which hurts the religious feelings of another person or class of persons. This act is done either by defilement, destruction or damage of places/objects held to be sacred, or by words spoken, written or by visible representations in order to outrage the religious sentiments of a class of persons or by disturbing religious assemblies. Thus, laws on blasphemy are required in order to protect the religious sentiments from being outraged, thereby ensuring peace and harmony among people from different religions. By respecting religious susceptibilities and tolerance towards each other's religious commitments the object of a peaceful society can be achieved which is the need of the hour for a secular country like India.

The negative dimension of such laws on blasphemy pertains to the discriminatory practices which are followed against the weaker sections of the society. As discussed above, the weaker sections of the society like the backward classes, untouchables etc. have been severely punished since ancient era for entering into the places of worship or touching the objects of veneration of the higher class. Such laws can be abused by the higher caste for discriminating the weaker sections of the society Even though India claims to be a 'secular' country; yet people from different religions are punished for entering into the places of worship of one another. Hence, in a way such laws support the old age system of stratification and social inequalities based on the basis of religion, caste etc.

Again, analysis of the Sabarimala controversy depicts the discriminatory practice followed against women under the pretext of protecting religious sentiments. In case where criticism is done on any such unfair practice and on social evils sanctioned by any religion, it is then made to fall under the purview of 'blasphemy' due to abuse

of such laws.

Thus, blasphemy laws in India have acted as a 'boon as well as bane'. The loopholes and errors in the existing laws should be corrected in order to prevent abuse of such laws. In this way the object of having a peaceful Indian society where people from different religions would be at harmony with each other, can be achieved.