

A Critical Analysis on Sec. 295A of IPC and its Punishable Qualifications

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Abstract

Religion acts as a guide correctly to ensure discussion in every aspect of life. Dharma as used in Indian culture inscribes freedom of expression and artistic freedom. The non-cooperation movement along with a collaborative history is deducted with reference to the story of the IPC Sec. 295-A. Enmity and hatred increased at a time were the case of Rangila Rasal was in limelight, the paper analyses the consequential outrage as under Sec. 153 of IPC. Vichitra Jivan and Risala cases give a broad deliberation of the social hostilities against religion. Qualifications needed to punish according to the Sec. 295-A are analysed with due understanding of the bailable and non-bailable provisions. The paper concludes determining the historical story behind the IPC Sec. 295 and its punishable qualifications.

Key Words:Dharma, Rangila Rasul, hatred speech, enmity, Sec. 295-A.

1. Introduction

Religion, which is thought to guide correctly and ethically our all activities in every aspect, in today's world has become a topic of discussion. It is said that any religion, if properly understood or interpreted, can pave the way for the survival, sustenance and development of everyone including followers of other religions and other creatures also and, if misunderstood or wrongly interpreted, can lead to destruction of this universe. Here, it is important to note that religion is not the correct English translation of Dharma as mentioned in English dictionaries. Dharma, as used in Indian culture, is duty. The discussion on distinction in Dharma and religion is not our subject matter here but every individual has been allowed to follow any religion as per his/her choice and it has been guaranteed in various international, regional and national instruments including our Supreme law of the Land i.e. The Constitution of India (Preamble and Articles 25-28). Everyone is allowed to follow any religion paying due respect to other religions also. At the same time, it has been found that religion, which is related with faith of individuals, if being attacked/ disturbed in any form; there may be disastrous consequences in varieties of losses to individuals, community, society, nation and the world as whole. The present paper discusses the legal provisions in respect of offences related with religion in India. **The paper aims to quantify the qualifications required to attract penalty under the violations of the IPC sections.**

2. Review of Literature

Aristotle. *On Poetics*, trans. Seth Benardete and Michael Davis explain the efficacies of (Benardete 1969) ancient thought of the acquaintances with the sec. 295-A of the present Law. Indiana: St. Augustine's Press, 2002. Baron, Jane B. "Law, Literature, and the problems of Interdisciplinarity, explains the literature which was put to distress during the tough times of the Sec. 153. The Rangila Rasul case is a stand reference made to the law of (Burger and Goodin 2016) *YaleLaw Journal* 108 (1999): 1059-1085. Barrier, N. Gerald. *Banned: Controversial Literature and Political Control in British India, 1907-1947*. Columbia: University of Missouri Press, 1974, the exquisite law of the (Raj 2015) took limelight with the case above. Thapar, Romila. "Banning Books, is a life in literature given to the maximisation of the (Raj 2015; Surhone et al. 2011) Thursby, G. R. *Hindu-Muslim Relations in British India: A Study of Controversy, Conflict, and Communal Movements in Northern India*. Leiden: Brill, 1975. Thomas Babington Macaulay, "Introductory Report and Notes Upon the Penal Code," in *Miscellaneous Writings, Speeches and Poems of Lord Macaulay, Vol IV* (London: Longmans, Green, and Co, 1880), 104. Stephens, "The Politics of Muslim Rage", Thursby, *Hindu-Muslim: more information about the proliferation of these types of licentious publications like the Rangila Rasul and Vichitra Jivan*, see Charu Gupta, *Sexuality, Obscenity, Community: Women, Muslims, and the Hindu Public in Colonial India* (NY: Palgrave, 2002), is one which aims to target to finalise the structure the

(Kennedy 2003). Stephens, “The Politics of Muslim Rage”, Thursby, Hindu-Muslim: more information about the proliferation of these types of licentious publications like the Rangila Rasul and Vichitra Jivan, see Charu Gupta, Sexuality, Obscenity, Community: Women, Muslims, and the Hindu Public in Colonial India (Cederlöf and Gupta 2016).

3. Methods

The researchers used descriptive methods for this research paper. A descriptive study is one in which information is collected without changing the environment (ie., nothing is manipulated) it is used to obtain information concerning the current status of the phenomena to describe “ what exists” with respect to variables or conditions in a situations. The methods involved range from the survey which describes the status quo, the correlation study which investigation to find the relationship between variables, to development studies which seek to determine changes over time.

Materials

1. Books
2. Ebooks
3. Journals
4. Articles and essays.

Historical Perspective on IPC Sec. 295A:

Revolved around the publication of a scurrilous pamphlet entitled “Rangila Rasul,” Which was originally published in 1924 by a man named Mahashe Rajpal. The pamphlet, which was viewed as blasphemous and highly offensive to Muslims, stirred up a great deal of controversy between the Hindu and Muslim communities, particularly in the Punjab. The invective contents of the pamphlet talked about private life of the Prophet implying “sexual dalliance,” which prompted the government to press charges under section 153-A of nature of the Indian Penal Code. The height of communal agitation coincided with Rajpal’s acquittal on appeal in the Lahore High Court, which followed several years of court proceedings and two successful convictions by the lower courts.

The protests and intense criticism that erupted in the wake of the judgment influenced the government’s decision to enact a law that they hoped would prevent the repetition of such a ruling, and quell the rising tide of outrage that threatened to disturb public order.

Further exacerbating tensions during this period, the distinction between the political sphere and religious identity had blurred to the point of being largely indistinguishable. The British colonial administrators contributed to this coalescence by perpetuating essentialized, and distinctive, understandings of Hindu and Muslim identities.

In particular, the establishment of communally defined electorates reified the boundaries between the Hindu and Muslim communities, and challenged any lingering perception of the separation between religion and politics.

This created a particularly incendiary environment, which one opinion piece described as a “powder magazine of communal hatred,” into which was thrown the “bomb shell” of the Rangila Rasul judgment. Section 295-A found its home in Chapter XV of the Indian Penal Code, which covers offences relating to religion. The Code was formally enacted in 1860, with some revisions made during the colonial period, but many sections of the Code were retained by the various states on the Indian subcontinent, after they gained independence from colonial rule. In drafting the Indian Penal Code, Thomas Babington Macaulay stated in his notes that the principle upon which this chapter rested was that “every man should be suffered to profess his own religion, and that no man should be suffered to insult the religion of another”; he believed that should the British administration fail to accord with this principle, it would risk “the dissolution of society” in India. Macaulay remarked that such insults to religion served only to “inflame fanaticism,” and that in India, such dangers could “only be averted by a firm adherence to the true principles of toleration.”

(Thomas Babington Macaulay, “Introductory Report) (Butler et al. 1994) It was for this reason that Macaulay encouraged the British government to provide a punishment of “great severity” for religious offence, so as to avoid “tumult,” “sanguinary outrage,” and “armed insurrection. Due to the pivotal role of the Rangila case in the nascent story of section 295-A, the final judgment of Justice Dalip Singh of the Lahore High Court, which acquitted Rajpal of charges under section 153-A of the Indian Penal Code, is analyzed using methods derived from Linda Edwards’ work. In the course of this analysis, the archetypal tragedy narrative within the judgment, which includes the presence of a “tragic flaw,” is identified.

Rangila and other Primary Cases

The title, “Rangila Rasul,” has been translated by Julia Stephens to “the colourful Prophet,” and by Thursby to the “merry,” “jovial” or “libertine” Prophet; however, the connotations of this title “in Urdu and Hindi implied a strong insinuation of sexual dalliance.”¹ The writing in the pamphlet matched the salacious insinuations of its title, as it brazenly discussed the intimate relationships of the Prophet Muhammad.² Petitioner argued that the facts of the Rangila Rasul case “[did] not constitute an offence within the meaning of S. 153A, (Richards 1984)” on the grounds that “the word ‘classes’ does not

¹Stephens, “The Politics of Muslim Rage”, Thursby, Hindu-Muslim: more information about the proliferation of these types of licentious publications like the Rangila Rasul and Vichitra Jivan, see Charu Gupta, *Sexuality, Obscenity, Community: Women, Muslims, and the Hindu Public in Colonial India* (NY: Palgrave, 2002), 247.

²Thursby, Hindu-Muslim: 43-45.

include religious denominations but means ‘raes,’” and that “criticism or satire³ on a religious teacher is not within the purview of the section.” Although Justice Dalip Singh rejected the first contention on the grounds that accepting it “would put restriction in the meaning of the word ‘classes’ in a way not warranted by anything within the section itself,” he rapped with and ultimately accepted the second argument.⁴

The Vichitra Jivan and Risala-i-Vartman Cases:

Two other cases that influenced the British administration and the Indian Legislative Assembly in their decision to introduce section 295-A were being heard before the courts around the same time as the Rangila Rasul case: the Vichitra Jivan and the Risala-i-Vartman cases.⁵ Although Justice Dalip Singh’s ruling in the Rangila Rasul case was the primary catalyst for the creation of section 295-A, both of these cases reaffirmed the troubling ambiguity of the interpretation of the law with respect to insults on the founders of religion—in all three cases, the Prophet Muhammad. This section will provide a brief overview of the Vichitra Jivan and Risala-i-Vartman cases in order to bridge the gap between the judgment delivered by the Lahore High Court in the Rangila Rasul case and the administration’s decision to address the “tragic flaw” highlighted in Justice Dalip Singh’s ruling by amending the Indian Penal Code.

Although Justices Broadway and Skemp delivered a “favourable” judgment in the Vartman case in the eyes of Governor Hailey and the British administration, the ambiguity surrounding the interpretation of the law was not clarified in their ruling. As Thursby clearly points out, the “fundamental question at stake was whether or not it were possible for a person to intend to insult the religion or religious feelings of another without thereby intending to promote hatred and enmity between classes.”⁶ In the weeks following the Rangila case Rasul judgment, several other pamphlets critical of the Prophet Muhammad were to be published by newspapers sympathetic to the Arya Samaj, making it clear to the government that a solution to (thursby : hindu-muslim 64-65) the legal ambiguity would have to be found. The mounting tensions and increasingly prolific “gutter press” prompted Governor Hailey to recommend the introduction of a bill within the Legislative Assembly to amend the Code. (thursby: hindu muslim 65) The Home Department agreed, and a draft of the revised legislation was prepared “so that the prosecution would need to establish an intention to insult the religion or outrage the religious feelings of

³This analysis will conform most closely to the definition, elements and general tone of understanding of “tragedy” as outlined by Aristotle in Poetics. See, Aristotle, *On Poetics*, trans. Seth Benardete and Michael Davis (Indiana: St. Augustine’s Press, 2002).

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⁵For a thorough historical account of the original publications and legal proceedings that transpired in both of these cases, see Thursby, *Hindu-Muslim*:40-62.

⁶Thursby, *Hindu-Muslim*: 67.

a class and not to have to prove further that such insult or outrage feeling greatly was intended to produce feelings of enmity or hatred.

These amendments, once debated in the Legislative Assembly, would eventually culminate in the creation of section 295-A of the Indian Penal Code, which will be discussed in the final chapter of this study. The “gutter press,” along with various newspapers, such as the onset very interesting Hindustan Times, were actively engaged in reporting on and critiquing these court proceedings as they unfolded. The press followed the Rangila Rasul trial throughout its duration, but the height of public debate and discussion coincided with the delivery of Justice Dalip Singh’s controversial ruling. The next chapter will discuss the integral role played by the press following the Rangila Rasul case, as well as analyze the emergence of a “rescue narrative,” which characterized the narrative shift that occurred within the opinion pieces that were published on the topic.

Influence of Press and Assembly debates:

The engagement of the press played a critical role in the events that culminated in creation of section 295-A in 1927.⁷ Scholars, such as Julia Stephens, have described the “unprecedented level of virulence” that manifested in the “vicious campaigns of print warfare,” and “almost daily newspaper headlines about religious riots,” that characterized the⁸1920s. Or, as one article published in The Hindustan Times described it: “In this powder magazine of communal hatred was thrown the ‘Rangila Rasul’ judgment as a bombshell.” Between incendiary writings in the “gutter press” like the Rangila Rasul, Vartman and Vichitra Jivan publications, which served to inflame communal conflict, and the prolific coverage of current events in newspapers, the increasing number and diversity of print publications over the course of the 1920s created a platform for public debate and communal confrontation. In this way, the press played a vital role over the course of⁹ the Rangila Rasul affair, as it “not only reflected the mood of the people, but also was instrumental in shaping it.”¹⁰

As W. Jones explains, “Modern methods of communication and organization, coupled with rising literacy, created an increased potentiality for ideological debate. Books, pamphlets, and periodicals appeared in a widening stream which carried in it the rising consciousness of communal identity.”¹¹In the Punjab alone, the number of publications rose from 1923 to 661 in 1929, with reports of proscriptions, court proceedings and charges under section 153-A, among others, appearing frequently in the newspapers.

⁷ Stephens, “The Politics of] Muslim Rage”: 48.

⁸ “A Menacing Situation,” The Hindustan Times, August 3, 1927: 8.

⁹ Uprety, Religion and Politics: 94-104.

¹⁰ *ibid*:105.

¹¹ Jones, “Communalism”: 47.

The Problem of Punishable Qualification

The next amendment was tabled by Abdul Haye, who recommended that the offence be made “non-bailable,” as opposed to “bailable” to the Select Committee’s report, had made the offence bailable.¹² Haye argued for the return of this key provision, urging legislators to consider what would “naturally follow (Richards 1963)” such attacks on religion: “Once we have such attacks, or once we have such abusive publications, these publications and these attacks, I venture to submit may lead to breaches of the peace, to riots, murders, arson, and what is still worse to chaos and even to civil war.”¹³ Crerar lent his support to this amendment, due to the “gravity” of the offence, and the “public consequences that might flow from it.”¹⁴ He pointed out that a judge would have to issue a warrant in order for hence, the police to arrest someone under section 295-A, and that the court would have discretion over whether or not it was appropriate to issue bail under the circumstance.¹⁵ However, Crerar opined that he thought “it will be generally recognized that the kind of person most likely to commit an offence under this Bill will be some obscure and scurrilous scribbler writing from some obscure enor pot-house in a bazaar, whose appearance in court could by no means be relied upon.” Opposing the motion, Jayakar appointed out that many members were hesitant to support the Bill at all, but that it was a “necessary evil,” and amendments such as the one put forward by Haye would make the measure “more drastic than the necessities of the case require.” In his estimation, those charged under the proposed section would neither be likely to abscond, nor tamper with evidence, making such an allowance unnecessary.

The punishable nature and its Qualification turns head to view in the direction in the violent movement produced in Pakistan with the death of Sec. 295 C, about the defiling name of Prophet Mohammed. As the blasphemy laws¹⁶ backed view only end up destroying the democratisation structure.

4. Conclusion

The Indian Constitution offers the right to be artistic, indeed artistic freedom in terms to criticize, creative, satire, new technologies, given the Jurisdiction in this case where the content circulates. (Veena Das, 2011) it is important in contemporary context to view at historical evolution of law and surveyed the development of lesser qualification to pass the scrutiny test for Sec. 295-A. M.F Hussain in one of his judgements, made vital announcements that eruptions of

¹² Legislative Assembly Debates, September 19, 1927, in BL IOR V/9/79 Index to the Legislative Assembly Debates (Official Report) Volume V, 6th September to the 20th September 1927, First Session of the Third Legislative Assembly, 1927.

¹³ Ibid.

¹⁴ The paper freedom (Cardoza)

¹⁵ The story of 295-A, Univ of Calgary.

¹⁶ <https://edition.cnn.com/2018/03/01/opinions/pakistan-blasphemy-law-opinion-ispahani/index.html>

violence due to hurt make way for such destruction in public order and called indirectly for lesser qualifications.

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- [2] Raj Paul v. Emperor AIR 1927 Lahore 590.

Newspaper

- [3] "Rangila Rasul' Case: Mr. Upson's Views," The Tribune, July 3, 1927: 2.
- [4] "Risala Vartman' Case: Application for Transfer to High Court," The Hindustan Times, July 3, 1927: 3.
- [5] "Rangila Rasul' Storm," The Tribune, July 5, 1927: 3.
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- [9] Yale Law Journal 108 (1999): 1059-1085. Barrier, N. Gerald. Banned: Controversial Literature and Political Control in British India, 1907-1947. Columbia: University of Missouri Press, 1974.
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- [16] Thomas Babington Macaulay, "Introductory Report and Notes Upon the Penal Code," in Miscellaneous Writings, Speeches and Poems of Lord Macaulay, Vol IV (London: Longmans, Green, and Co, 1880), 104.
- [17] Stephens, "The Politics of Muslim Rage", Thursby, Hindu-Muslim: more information about the proliferation of these types of licentious publications like the Rangila Rasul and Vichitra Jivan, see Charu Gupta, Sexuality, Obscenity, Community:

- Women, Muslims, and the Hindu Public in Colonial India (NY: Palgrave, 2002), 247.
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- [20] Julia Stephens, "The Politics of Muslim Rage: Secular Law and Religious Sentiment in Late Colonial India," *History Workshop Journal* 77 (2014):45

