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Crestfallen Actuality of Section 295(A) in India

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ABSTRACT

Indian Constitution is claimed to spread liberal democracy, and for the existence of the same, free speech needs to be the cornerstone. The Constitution of India gives every citizen of India the freedom of speech and expression under Article 19 1 (a). We are however restricted in the exercise of our rights by Article 19 (2), which permits the continued enforcement or enactment of any law impeding free speech, if it is on the grounds permitted under the clause. Thus, Section 295A has come into being. However, the existence of this section contradicts the concept of 'secularism' mentioned in our Constitution.

It reads:

S. 295A – Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

T. In a society, where secularism and the freedom of speech has been guaranteed, then a section like Section 295 A does not make sense. Because the so called liberal society then guaranteed freedom of thought and speech. There should not be any 'sanction' from the state merely because somebody's feelings are hurt or because someone is 'outraged'. This entire section is 'contrary' to the freedom of speech.

Keywords: *Democracy, Freedom, Speech, Secularism, law.*

I. INTRODUCTION

On August 15 1947, each and every citizen waking up in the territory of India, were gifted with a plethora of fundamental rights by the Indian Constitution. However, these rights were not absolute and came with certain restrictions. Such restrictions were not defined in Constitution, but were actually defined in the Indian Penal Code(IPC). Article 19(2) of the Indian Constitution lays down the right to freedom of speech and expression but with reasonable restrictions.

Sec 295 (A) of IPC lays down such restrictions relating to acts which spread religious enmity.

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Section 295A of the Indian Penal Code (IPC) aims at restraining acts of outraging religious sentiments. The section talks about deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs. Acts spoken, written, by signs, or by any visible representations, insulting or attempting to insult the religion or religious beliefs fall under the category of an offense under IPC.

The offense is classified as a cognizable offense, which means that the police can arrest anyone upon mere ‘suspicion’ or against a ‘complaint’ in furtherance of the investigation, or to prevent any further offense being committed. These provisions in tandem not only perpetuate the possibility for abuse of power by the police but also curb one’s freedom of speech. This section criminalizes insult to any religion. It allows up to three years’ imprisonment and fines for “whoever, with the deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of a class.”

India is famous for its diversity but as it is rightly said, “Too many heads, too many headaches.” With changing times, religious enmity is becoming numerous as well as the growing intolerance, sensitive incidents have been on rise too. Since the partition, there have been many riots like Godhra riots, Bengal riots, Muzaffarnagar riots etc. That have purely religious background. There is a growing presence of religious enmity in public with times. The Shri Krishna Committee which was constituted to report on the infamous Bombay riots held that the riots arose due to some articles in newspapers like ‘Saamna’ and ‘Navakal’. This report held a particular political group liable for inciting violence among the people. The advent of technology proved to be fuel for the already ignited fire and we had tweets and WhatsApp messages leading to disharmony. The Baduria riots in Bengal were incited by one such tweet by a class eleventh student who posted an objectionable post of Prophet Mohammed. Similarly, such incidents have led to mob lynching’s like in the Akhlaq incident where the victim was killed on mere suspicion.

It is interesting to know that section 295 A did not actually exist in the Indian Penal Code at the time of its enactment. Its existence came into being only after the infamous pre-independence case of Raj Paul v. Emperor. In 1927, a book called ‘Rangeela rasul’ was published which talked of the marital and sex life of the Prophet Mohammed. This book garnered a lot of hatred from the followers of Islam. The publisher was first arrested and then he was acquitted. When the publisher came out of jail, he was killed by a man called Ilm-ud-Din.

Muslims of the country demanded a law that would punish anyone insulting the religion or religious symbols. At that time, Section 295A was not in the statute book, and the case was filed under Section 153A of the Indian Penal Code. The accused was convicted under Section 153A by a magistrate court. On appeal, however, the conviction was reversed by the Lahore High Court, who held that the ambit of section 153A (as it then was) is only limited to prevent attacks on a particular community as it exists in the present time, according to the court the law was not intended to prevent controversial discourse against a mythical or historical figure regardless of the degree of obscenity or abuse.

The High Court, however, did declare that the act of vilification committed in the aforementioned case should have come under the ambit of Section 153A but owing to the lack of express provision in the law, it couldn't. Therefore, for the reasons given by the High Court, the then British Government decided to add section 295A in the Indian Penal Code. Thus came Section 295A of the IPC with the Criminal Law Amendment Act, 1927. Chapter XV of the Indian Penal Code highlights majority of the provisions associated with offenses relating to religion. As such Section 295 a is christened in the same.

However, as the country move towards an era of socio-economic progress, it is also actively moving away from religious harmony. As of lately, the infamous section 295 A has come to be viewed as a provision, which is muzzling peoples' right to "freedom of speech", in the light of protecting religious feelings. As such, there have been many continuous instances where, the misuse of this section has led to mishandling of justice by officers working at the bureaucrat level.

The constitutional validity has been time and again challenged of this draconian section in courts. In *Ramjilal modi Vs. The state of U.P* the constitutional validity of Section 295 A was challenged on the grounds that the provision did not constitute a reasonable restriction on free speech and expression within the meaning of Article 19(2) of the Constitution. Herein, the petitioner, the editor Section 295A of the Indian Penal Code 1860 is commonly known as the "Blasphemy" provision. Its origin story, while dark, is extremely interesting from a civilization perspective since it sheds light on the larger undercurrents that have been animating the civilization discourse for centuries now in this part of the world, which I will unpack in future pieces.

For the purposes of the current piece, I will start from the fact that subsequent to the coming into force of the Indian Constitution, the validity of Section 295A was challenged in *Ramjilal Modi v. The State of U.P.* on the ground that the provision did not constitute a reasonable

restriction on free speech and expression within the meaning of Article 19(2) of the Constitution. The factual matrix of the decision itself is strikingly relevant to the times we live in. The Petitioner, the editor and publisher of a monthly magazine called “Gaurakshak”, was acquitted of a charge under Section 153A of the IPC, the “sister” provision of Section 295A which is usually invoked along with it. However, he was found guilty under Section 295A by the High Court of Allahabad for publishing an article “with the deliberate and malicious intention of outraging the religious feelings of Muslims”. Apart from challenging the verdict of the High Court, the Petitioner also challenged the constitutional validity of Section 295A in his petition under Article 32.

It was contended on behalf of the Petitioner that in order for Section 295A to pass muster on the anvils of Article 19(2), the only limb of the Article that could be relied upon was “in the interests of... public order”. However, according to the Petitioner, since likelihood of public disorder did not constitute a necessary ingredient of Section 295A, the provision could not be supported as one intended to preserve public order and therefore, ran afoul of Article 19(2). It was further contended that since not all acts intended to hurt religious feelings would lead to public disorder, the proscription under Section 295A amounted to an unreasonable and over broad restriction.

A Constitution Bench of five Judges of the Supreme Court rejected this argument and took the view that the import of “in the interests of. public order” in Article 19(2) was wider than “for the maintenance of public order”, which was the language of Article 19(2) prior to its amendment through the Constitution (First Amendment) Act, 1951. Consequently, according to the Supreme Court, a law which penalized activities that had a “tendency to cause public disorder” could not but be held to be a law imposing reasonable restriction “in the interests of public order” although in some cases those activities may not actually lead to a breach of public order.

However, the Supreme Court critically clarified that the provision did not penalize any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens, but penalized only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which were committed with the deliberate and malicious intention of outraging the religious feelings of that class. In other words, it 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 that class”. This calculated tendency, according to the Court, was well within the realm of those activities which may be reasonably restricted by law under Article 19(2). While this clarification might seem like a safeguard

against abuse of the provision, it is unclear from the judgement whether the airing of even a genuinely held opinion, based on facts and scholarship, which is indifferent to the religious sentiments of a community, would attract Section 295A.

However, in case of, *Sudheer Rikari Vs. State of Goa*. An FIR was lodged against the members of the Dastaan Live under Section 295A & Section 34 of the IPC. They were called to the police station and were informed that a complaint was lodged against them. The reason stated in the FIR was that they had outraged the feeling of the people belonging to the Hindu Religion. As per the complaint, it mentions that they have hurt the religious sentiments of the Hindu Community by pronouncing the word 'OM' with 'Ullu ka patha'. According to the Hindu religion, the word 'OM' is sacred. The members of the band were apprehended when they refused to apologize. Some of the members had managed to get anticipatory bail to avoid the arrest of the police.

Mr. K. Venkat Krishna is an Advocate, Supreme Court of India, was in Goa on leave where he saw the band performing the 'Mantra Kavita'. Then he complained about them in the Panaji Police Station. In his complaint, he stated that they insulted the sentiments of the Hindu religion for which he had registered the complaint against them. Other people had also complained about them. The Bombay High Court held that the police did not specify the reason for arresting these members. And the court observed that the facts mentioned in the report do not comply with Section 295A of IPC, 1860.

According to the prosecutor, the word 'OM' and the phrase 'Ullu ka patha' were said by relating with each other which offends the religious sentiment of the Hindu Community. He also stated that the burden of proof is on the accused to state the reason for choosing this composition. He also contended that the accused have the chance to claim the trial and also, to prove their innocence. The defense counsel stated that the allegations are not disclosed against the band members.

Eventually it was found that, the police had not complied with the guidelines mentioned in the *Arnesh Kumar vs. State of Bihar* and also in the *Joginder Kumar vs. State of U.P.* In *Arnesh Kumar vs. State of Bihar*, it was mentioned that the police must state the reason for arrest based on the registered complaint. In *Joginder Kumar vs. State of U.P.*, the court held that the police are not authorized to apprehend the person based on suspicion. And, so it is not justified to do so. The police are empowered to arrest the person. But, they could not do so without giving a valid reason. Initiating the arrest based on the complaint would amount to infringement of rights and freedom of the citizen. After examining the report, the allegations against them were not

true. So, the court held the members of the band haven't hurt the feelings of the Hindu Community. The court had observed that the police officials are not authorized to call the persons in the police station to issue an apology. Therefore, the Bombay High Court held that the facts alleged against the accused do not comply with the ingredients of Section 295A of the Indian Penal Code, 1860. The members of the band had denied issuing an apology and so, police arrested them. Thus, the court had directed to quash the FIR against them.

We can take another example wherein which, an FIR was lodged against Mahendra Singh Dhoni. The image of Dhoni was portrayed as Lord Vishnu in the magazine with a heading "God of Big Deals" which had led to the insult of the religious sentiment of people belonging to the Hindu Community. The court held that the accused is liable under Section 295A of the Indian Penal Code, 1860 if he intentionally hurts the religious sentiment of the people belonging to other religions. The allegations mentioned in the report did not meet the ingredients of the offense. And, so the Supreme Court had passed an order to quash the FIR against him.

Section 295A, the wannabe variant of blasphemy law, has been thoroughly criticized, because of having a vague definition. Since it has not been explicitly defined, it has been more political rather than religious, curbing people's freedom and rights. To maintain peace and tranquility among the citizens is its prime objective and, not to threaten and intimidate minorities. If we contemplate over this, a person deliberately making derogatory comments over religion aims, to either hurt the sentiments of the other or to spread hate in the society. Due to the lack of clarity in this section, people have taken advantage of the same and has painted the judiciary in a negative light. Blasphemy laws or any variant of it puts restrictions on the holy trinity of Fundamental rights, Constitution and Directives of State Policy. Section 295A has put a dent on the concept of 'Secularism' mentioned in the Book of the law of the land, "Constitution".

Because of this, this section has been used by hypersensitive groups as a tool of intimidation. Whenever there is registration of a case, there needs to be application of judicial mind so that it does not isolate any kind of legitimate speech. Next, this section must only be used only in cases of aggravated insults. The sentiment which the provision seeks to protect must be protected, but not by gagging free thought, speech and expression.

Laws should be made with an objective to punish these people and curb their objective and not to protect the religion from them. One and only one sustainable solution to this is to make the society tolerable, and for that education is the key.
