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# Disturbing Religious Assembly

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## ABSTRACT

*The chapter 15 of Indian Penal Code 1890 deals with offences relating to religion, is framed 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 the feelings of another. It makes any deliberate acts perpetrated by persons of one religious persuasion for the insult or annoyance of persons of another persuasion punishable. This chapter of the code seems to be in tune with the constitutional ethos of India. India is a secular state, the Indian constitution accords equal protection to all religion. Article 14 gives right to equality, Article 19(1) gives right to speech and expression, Article 21 gives protection of life and personal liberty and Article 25 of the constitution guarantees the right to freedom of religion. All persons are equally entitled to freedom of conscience and the right to propagate, practice and profess the religion of their choice. However, the freedom of religion is not an unlimited one. It is subject to public order, morality and health.*

## I. INTRODUCTION

The chapter 15 of Indian Penal Code 1890 deals with offences relating to religion, is framed 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>4</sup> It makes any deliberate acts perpetrated by persons of one religious persuasion for the insult or annoyance of persons of another persuasion punishable.<sup>5</sup> This chapter of the code seems to be in tune with the constitutional ethos of India. India is a secular state, the Indian constitution accords equal protection to all religion. Article 14 gives right to equality, Article 19(1) gives right to speech and expression, Article 21 gives protection of life and personal liberty and Article 25 of the constitution guarantees the right to freedom of religion. All persons are equally entitled to freedom of conscience and the right to propagate, practice and profess the religion of their choice. However, the freedom of religion is not an unlimited one. It is a subject to public order, morality and health.

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<sup>4</sup> Macaulay, Macleod, Anderson and Millett, A Penal Code prepared by the Indian law commissioners, Pelham Richardson, 1838, Note "J", p 136

<sup>5</sup> Gopinath Puja Panda Samanta v Ramchandra Dev, AIR 1958 Ori 220: (1958) Cr LJ 1207 (Ori)

The principle is that every individual should be allowed to profess his own religion and that no individual should be suffered to insult the religion of other. The question whether, insults offered to religion ought to be visited with punishment, does not appear at all to depend on the question whether that religion is true or false. The religion may be false but the pain which such insults gives to professors is real. It is often, as the most superficial observation may convince observation may convince us, as real a pain, and as acute a pain as is caused by almost any offence against the person, against property or against character. Nor is there any compensating goods whatsoever to be set off against this pain. Discussion, indeed, tends to elicit truth. But insults have no tendency. They can be employed just as easily against the purest as against the most monstrous superstition. It is as easier to argue against falsehood than against truth. But it is easy to pull down or defiles the temples of truth as those of falsehood. It is as easy to molest with ribaldry and clamour men assembled for purposes of pious and rational worship, as individual are engaged in the most absurd ceremonies. Such insults, when directed against erroneous opinions seldom have any other effect than to fix those opinions deeper, and to give a character of peculiar ferocity to theological dissension. Instead of eliciting truth they only inflame fanaticism- Morgan and Macpherson.

However, at the same time, the state has to ensure that religious beliefs of individuals do not become a matter of hostilities, controversies, and violence among people. Chapter 15 of the IPC ostensibly helps the state in maintaining religious harmony in the country. It is not intended by this chapter to make criminally punishable breaches of ritualistic observance committed by person of any creed against the canons of their own faith.<sup>6</sup>

## **II. SECTION 296: DISTURBING RELIGIOUS ASSEMBLY**

According to sec 296 of Indian Penal Code, “Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The offence under this section of the act is cognizable, bailable, can be tried by any magistrate and non-compoundable. The concerned ministry and concerned department are Minister of home affairs and Department of internal security respectively.

The essential ingredients of this section are: 1) there must be an assembly which is engaged in the performance of religious worship or religious ceremony, 2) such assembly and performance

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<sup>6</sup> 1 Wier 253

of religious ceremony should be lawful, 3) the accused must cause disturbance to such assembly and 4) the accused must do so voluntarily.

The section closely corresponds with the provision made by English law by the statute<sup>7</sup> against disturbances during the time of divine service. It was, however, explained that, in order to be punishable, the disturbance must be caused “voluntarily”. It was added that, as the missionaries would resent the intrusion of Hindus and Mohammedans to impugn their faith, so would not be any the less because the intruder had come to argue with them with calmness and moderation.<sup>8</sup>

This section only applies to disturbance caused to a religious assembly. A similar disturbance to a funeral party is punishable under the next section. Assemblies held for religious worship, or for the performance of religious ceremonies, and hereby protected from intentional disturbance under this section. The object of this section is to secure freedom from molestation when people meet for the performance of acts in a quiet spot vested for the time in the assembly exclusively, and not when they engage in worship in an unquiet place, open to all the as a thoroughfare.<sup>9</sup> In order that section 296 of the Indian penal Code, 1860 may be invoked the assembly must be actually engaged in the performance of religious worship or religious ceremonies when the alleged disturbance is caused. Disturbance during an interval in a worship or prayer is not covered by this section.<sup>10</sup> For the purpose of section 296, when three persons gather together for the purposes of worship it is sufficient to constitute an “assembly”.<sup>11</sup>

- **“Voluntarily causing Disturbance”**- In the first place, what is disturbance? It is evidently used here for the phrase molest, let, disturb, vex or trouble, or by any other unlawful ways or means disquiet or misuse any assembly. The word does not imply that the worship or ceremony should be actually stopped or interrupted, or prevented from being carried on.<sup>12</sup> All it means is that the peace or quiet of the assembly should not be interfered with, whether by discordant sound, noise or otherwise. And in order to constitute this offence such disturbance must be caused voluntarily i.e.; intention to insult the assembly or knowledge that is feel insulted is not necessary, beyond such intention and knowledge as is implied by use of the word “voluntarily”. A person can scarcely be said to do an act voluntarily unless he knew than the result caused was likely. Consequences no one can be said to disturb a religious assembly voluntarily unless at

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<sup>7</sup> 1 Mary, Sess. 2.c.3.Sec.2.

<sup>8</sup> 2<sup>nd</sup> Rep., Sec. 260

<sup>9</sup> VIJIARAGHAVA CHARIAR, (1903) 26 Mad 554,574 (FB)

<sup>10</sup> (1885) ILR 7 All 461.

<sup>11</sup> Emperor v Aftab Mohammad Khan, AIR 1940 ALL 291

<sup>12</sup> Selvarajulu Naicker, (1889) 1 Weir 259:

least there were circumstances for which it would be justifiable to infer that he at the same time his act was likely to cause the disturbance. But, probably, something more than a mere knowledge of the disturbance is required to complete the act as done “voluntarily”.

### **(A) Legislative approach towards section 296**

#### a. Practice and Procedure:

- i. Procedure: This section is cognizable, bailable but non-compoundable and is triable by any magistrate.
- ii. Proof: The points requiring proof are:
  1. That there was an assembly
  2. That it is engaged in the performance of religious worship or ceremonies.
  3. That it was lawfully engaged.
  4. That the accused caused disturbance to the assembly when so engaged.
  5. That he did so voluntarily.

#### iii. Charge: The charge should run thus,

“I (name and office of the magistrate, etc), hereby charge you (name of the accused), as follows:

“That on or about the.....day of....at....you.....voluntarily caused disturbance by(specify the act) to an assembly, to wit.....who were lawfully engaged in the performance of religious worship and you thereby committed an offence under Sec. 296 of the Indian Penal Code, and within my cognizance. ‘And I hereby direct that you be tried on the said charge’.”

### **(B) Right to freedom of religion**

Article 9: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for

the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Example case - R (Williamson and others) v Secretary of State for Education and Employment and others [2005]

A group of parents and teachers tried unsuccessfully to use Article 9 to overturn the ban on corporal punishment of children in schools. They believed that part of the duty of education in the Christian context was for teachers to assume the parental role and administer physical punishment to misbehaving children. The House of Lords rejected the case because the parents' rights under Article 9 were restricted by the need to protect children from the harmful effects that corporal punishment might cause – a punishment that involves deliberately inflicting physical violence. The House of Lords concluded that the vulnerability of children made the legislation necessary and that the statutory ban on corporal punishment in schools pursued a legitimate aim and was proportionate.

### **(C) Right of worshippers**

All worshippers have an equal right to recite mantras and that fact that the recitation of one is overheard by and causes disturbance to others cannot deprive the former of his communal right to join a worship. However, it would be difficult if the temple was a private one in which the priests had the exclusive right of chanting mantras. But apart from such privilege, which must be asserted and proved by those who rely upon it, no worshippers can arrogate to himself the right to controlling the mode of prayers by the others. But the fact that the disturbance is caused does not necessarily make the accused liable for it, for in order to fasten upon him the liability imposed by this section, it should be disturbance in every case caused voluntarily which according to English statute<sup>13</sup> means “willingly and on purpose, maliciously contemptuously or by any other unlawful ways or means.” Where therefore the district magistrate had ordered that during certain fixed hours no Hindu shall lead a procession playing music in front of mosque, but nevertheless the accused did play music during those hours, in convicting under this section, the court held that the accused had in fact disturb the assembly in their prayers and their act was voluntary as they had acted in spite of the previous warning.<sup>14</sup>

### **(D) Right to non-molestation**

This depends upon the legality of the right of worship in the assembly. If that right is challenged by another and the worship is held to test its legality or in defence of opposition, person who

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<sup>13</sup> Cited in 1 penal law (4<sup>th</sup> edition). P. 1467

<sup>14</sup> Public prosecutor vs Sunku , 7 M.L.T 430

challenge or oppose the worship cannot be condemned to the penalty under this section, if their action was bona fide and in the assertion of their right. This was this ratio decidendi of the Mahabodhi temple case in which one Dharmapala, a Buddhist from Ceylon failing to get possession of Buddhist temple at Gaya which had for a long time been possession of the shavati Nahant's, took with him an artistic image, obtained from Japan and entered the view of enshrine it in upper story of the temple. The mahants, helped by some Muslims turned him out. Dharmapala filed a prosecution against mahant's men but the court acquitted them, holding that the complaints were not engaged in a religious ceremony since their object was to establish their right to temple.<sup>15</sup> In the present case tazia procession was passing through a private grove belonging to a Braham who had leased it from the court of wards. Permission had been given by the grove holder Nankan to take the procession through the grove but somehow or other, friction arose between Hindu and Mohamman and the tazia procession was stopped and a fight ensued. Held that the Nankan had the right at any moment to withdraw the permission that he had granted under pressure and no offence under sec. 296 IPC had been clearly established.<sup>16</sup>

### **III. JUDICIAL APPROACH WITH CASE LAWS**

**In Re: Vijiaraghavachariar vs Unknown on 25 February, 1903**

**Equivalent citations: (1903) 13 MLJ 171**

Author: S Aiyar

**Bench: " A Addresses, T D Addresses, I C 705**

JUDGMENT Subrahmania Aiyar, J.

1. It is necessary first to consider the charges against the 3rd and 7th accused, whom the 11th accused has been charged with abetting.
2. Taking up the charge under Section 153 of the Indian Penal Code, the question on which practically the case turns is whether the recitation by the two accused during the procession in question of Prabandhams or Tamil hymns was illegal, not on the ground that it was against any usage of the institution, but with reference to the decision in O.S. No. 295 of 1886 in the District Munsif's Court of Conjeevaram. That decision only declared that the Tengalais were entitled to the Office of Adhyapakam, and in that capacity, as usual to recite the Prabandham on all the prescribed occasions of worship, without let or hindrance by the Vadagalais. It did not in the

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<sup>15</sup> Jaypal v Dharampala, I.L.R 23 Cal.60

<sup>16</sup> Bulgar singh vs Emperor, AIR 1933 196 at p.197

least affect the rights of the Vadagalais as ordinary worshippers. Having regard to the fact that that suit was entirely in relation to an office, it must, even if the decision had been silent as to the rights of the Vadagalais as ordinary worshippers, not office-holders, be taken that such rights were left untouched but the decision is not silent on the matter. It in express terms refers to and preserves the rights of the Vadagalais, as ordinary worshippers, to recite the Prabandhams even in the company of and jointly with the office-holders, whose duty it is to recite them on such occasions. The attempt on behalf of the prosecution to construe this reference in the decision to the right of the Vadagalais to so join in the recitation, as a declaration that the Vadagalais are disentitled from reciting except in conjunction with the office-holders is on the face of it untenable. The Tengalais as Adhyapakars are subject to a duty to recite Prabandhams the performance of such duty entitling them to the emoluments of the office. They cannot, in consequence of their being Adhyapakars, claim an exclusive right to recite them and as the recitation of Prabandhams is a recognised form of worship both with the Vadagalais and the Tengalais, every Vadagalai must prima facie be held entitled to recite them by way of worship otherwise than in conjunction with the office-holders. No doubt, if the Vadagalais join the office-holders at the recitation on occasions of worship, it stands to reason that they should do so without in any manner interfering with the due recitation by the office-holders. In such circumstances the office-holders would be entitled to insist that the Vadagalais should recite only those hymns which they themselves were reciting, as otherwise they would be interfered with in the due discharge of their duties. But there is nothing to prevent a Vadagalai by himself or Vadagalais in a body reciting the Prabandhams separately from the office-holders and in doing so reciting verses different from those which the Adhyapakars may be reciting, provided that that is done without interference with the Adhyapakars. The charge under SECTION 296 of the Indian Penal Code may now be examined. Presumably the object of the section is to secure freedom from molestation when people meet for the performance of acts which ordinarily take place in some quiet spot vested for the time in the assembly exclusively, and one cannot but feel serious doubts as to whether that section was intended to secure to persons who choose to engage in worship in an unquiet place open to all the public as a thoroughfare the immunity from disturbance due to those who meet to worship in a church, a mosque, or temple or other place appropriate for such a purpose. The practice of using the public highways for religious processions has existed in India for thousands of years, History, literature and tradition all tell us that religious processions to the village shrines formed a feature of the national life from the very earliest time. That alone is sufficient to raise a presumption that it is lawful and to throw on those who allege it to be unlawful the onus of showing that it is forbidden by law,



but this it admittedly is not. The law recognizes the use of the highway by processions as lawful, and gives the Magistrate and superior officers of Police power to direct the conduct of assemblies and processions through the public streets and to regulate the use of music in connection with them, and to prevent obstructions on the occasions of such assemblies and processions (Madras Police Act XXIV of 1859, SECTION 49). The law recognizes religious processions as lawful just as much as it recognizes other processions. If it were necessary to refer the the origin of the use of highways for religious processions to a dedication of the highway to such use, I should find no difficulty in presuming such a dedication, for it is unreasonable to suppose that the dedicator would make a reservation against religious processions which would be wholly opposed to the sentiment of the Community, and of which we can find no trace in the history or customary law of the country. It is more reasonable to suppose that he would dedicate the highway to the purposes for which, in accordance with the custom of the country, it would be required by the people. The penal law of India extends a special protection against voluntary disturbance to all assemblies lawfully engaged in religious worships. A procession is but an assembly in motion and if it is a religious procession it is, in my judgment, entitled to the special protection given by IPC to assemblies lawfully engaged in religious worship.

It may or may not be desirable to declare that religious processions on highway are unlawful, and that the processionists are trespassers, but this must be done, if at all, by the Legislature not by the Courts.

I think, then, that it cannot be said that the Tangalais were not lawfully engaged in religious worship within the meaning of sec. 296, but I am of opinion that the other element required to constitute the offence, viz., " disturbance " has not been made out. No doubt the courts below - have both held that there was " disturbance," but it is clear that this finding was based on the supposed illegality of the Vadagalais' action. That action, however, as we have seen, was not, in fact, illegal, and that being so, it was not, in my judgment, of such a character as to cause any disturbance within the meaning of the section.

For these reasons I concur with my learned brothers in holding that the conviction must be reversed, and the fines, if levied, refunded.

#### **IV. COMPARATIVE ANALYSIS WITH DIFFERENT COUNTRY**

Recently there was an uproar among the people of a community of Bangladesh as their religious feelings were wounded by the writings of a feminist and demands were made to try the writer under blasphemy law. Unfortunately, the law was not in use in Bangladesh and

thus pressure was made to introduce a Bill in the Parliament for blasphemy law. As seen above if the writer is tried under section 295A of the penal Code, she may be punished with imprisonment of either description for a term which may extend to one year, or with both, while if she is tried under blasphemy law, death penalty may be inflicted upon her and this latter type of punishment the uproarious people desire to be given to the writer. Now, what is blasphemy? The word blasphemy is a derivative of the Latin word 'Blasphemia' Baker, *Dictionary of Christian Ethics* has elaborated the meaning of the word as, "Blasphemy is a sin consisting of a verbal utterance or action grossly disrespectful of God, expressing an arrogant rejection of His Majesty or authority, or casting contempt upon this providence, words or works." The Basic sanction of Blasphemy is found in the Second Commandment which runs- stating, "Thou shalt not take the name of Yahweh, the God in vain or falsely to no good purpose." Blasphemy has been defined in *Shorter Oxford Dictionary* as profane speaking of God or sacred things. In the Christian religion blasphemy has been regarded as a sin by moral theologians. Among the Muslims it is blasphemy to speak contemptuously not only of Allah but also of the Prophet, Muhammed (Sm). Blasphemy in some form or another has been an offence punishable by law in most of the societies. The Mosaic law punished a blasphemer with death by stoning. Emperor Justinian decreed death penalty for it. In Scotland until the 18th century it was punishable by death, and in England it is both a statutory and a Common law offence. Usually, an attack on religion is regarded as an attack on the state. Probably for this reason death penalty has been laid down for blasphemy in most of the countries in whose legal codes its punishment is provided. Recently in Bangladesh a great controversy has arisen on an attempt to amend Section 295 of the Penal Code for providing punishment to the extent of imprisonment for life or death and fine. The proposed changes have been criticized and resented to, on the ground that the severe punishment will negate the constitutional guarantee of the rights of citizens and that it is a violation of the safeguards provided in Article 18 of the Universal Declaration of Human Rights 1948. It has been contended that Allah, the beneficent, the merciful has not empowered any one with the right of inflicting punishment for such an offence and Almighty Allah will punish those infidels in the world hereafter. There is little need to amend section 295 of the Penal Code. Whatever punishment is provided there that is sufficient to deter criminals from committing this crime. Death can never be the cure of a crime. What is needed in the society is to stir the morality in man and that can be done only through religion and its practice in everyday life. Lord Denning has observed:

"Religion concerns the spirit in man whereby he is able to recognize what is truth and what is justice; whereas law is only the application, however imperfectly, of truth and justice in our

everyday affairs. If religion perishes in the land, truth and justice will also. We have already strayed too far from the faith of our fathers. Let us return to it, for it is the only thing that can save us.

## **V. RECOMMENDATION AND CONCLUSION**

As it was explained, secularism, as a term rooted within religion, not only has not been against religion but it has come to create equality amongst religious groups. However, even when it gradually receded from its primary concept, it couldn't separate religion from politics. This became evident in the way that in most secular States, religious groups have had their freedom and pursued their rights as a group in society. In India, this concept of secularism, namely equality between religions and religious freedom, was accepted. Indeed, whether in British India with a politics of „religious neutrality“ or in independent India with „impartial secular state“, according to the constitution of India, an important secularist movement to marginalise religion and separating religion from politics has not been seen. Hence, religious groups in the past and until now have continued to exist in Indian society and religion, as a social structure, has played important role and also has been used in politics. Accordingly, in relation to the problem of this study and the questions raised, the political functions of the two major religions in India, i.e., Islam and Hinduism were examined.

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. As mentioned, the offences relating to religion may disturb the social harmony and the related laws should be implemented without any leniency. At the same times, the criminal justice system

should be empowered so that the investigation and trial are completed properly.

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