

The Need for a Distinction between Blasphemy and Hate Speech

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What is the history of Section 295 (A) of the Indian Penal Code? How should “blasphemy” be treated in the statute as opposed to hate speech?

While Mohammad Zubair of Alt News was arrested for tweeting a still picture from a movie that had some religious context attached to it, Nupur Sharma, a member of the BJP, has been absconding with no coercive action taken against her for her inflammatory remarks on a prime-time TV show. Have the inadequacies of free speech laws been exemplified in these cases? What regulations govern criticism versus hate speech?

What is the history of Section 295 (A)?

As far as laws in India go, there isn't formal legislation against blasphemy. The closest equivalent to a blasphemy law is Section 295(A) of the Indian Penal Code (IPC), which punishes any speech, writings, or signs that “with premeditated and malicious intent” insult citizens’ religion or religious beliefs with a fine and imprisonment for up to three years.

The history of Section 295(A) of the IPC can be traced back to 95 years. In 1927, a satire was published which had obscene parallels to the Prophet's personal life. It was indeed very offensive to the Muslim community but the erstwhile High Court of Lahore observed that the author of this cannot be prosecuted as the writing did not cause animosity or hostility between any communities. Thus, the offense did not fall under Section 153(A), which dealt with maintaining public tranquility/order. However, this incident gave rise to a demand that there be a law to protect the sanctity of religions, and thus, Section 295(A) was introduced.

The legality of Section 295(A), which had been challenged in the Ramji Lal Modi case (1957), was affirmed by a five-judge Bench of the Supreme Court. The apex court reasoned that while Article 19(2) allows reasonable limits on freedom of speech and expression for the sake of public order, the punishment under Section 295(A) deals with aggravated form of blasphemy which is committed with the malicious aim of offending the religious sensibilities of any class.

How has the legislation been interpreted?

Down the line, the apex court redefined the test it laid down in the Ramji Lal Modi case. It decided that the connection between speech and disorder must be like a "spark in a powder keg".

In the case of Superintendent, Central Prison, Fatehgarh vs Ram Manohar Lohia the Supreme Court stated that the link between the speech spoken and any public disorder caused as a result of it should have a close relationship for retrieving Section 295(A) of IPC. By 2011, it concluded that only speech that amounts to "incitement to impending unlawful action" can be punished. That is, the state must meet a very high bar before using public disturbance as a justification for suppressing expression.

Should there be a difference between blasphemy laws and hate speech laws?

The wording of Section 295(A) is considerably too wide. It cannot be stated that deliberate disrespect to religion or religious sensibilities is necessarily tantamount to incitement. The Supreme Court has said on several occasions that perhaps the goal of hate speech statutes in Section 295(A) is to prevent prejudice and ensure equality. Unfortunately, there is a huge disparity between this interpretation and the actual wording due to which the law is still being exploited at all levels of administration. Insulting religion or religious figures may be disputed or condemned but it should not be legally outlawed or prosecuted. The reason for this is because hate speech laws are predicated on the critical distinction between criticising or ridiculing religion and encouraging prejudice or aggression towards individuals or a community because of their faith.

Are hate speech cases rising?

As per the data given by the National Crime Records Bureau(NCRB), there has been a huge increase in cases registered promoting hate speech and fostering animosity in society. The data reads that while there were only 323 cases registered in 2014, it had increased to 1,804 cases in 2020.

However, this can also be due to the steep turns in the dynamics of our current society. Section 295(A) is now usually used to penalise religious dissent, satire, and any comedic content with religious references.

Bogus cases of 295(A) have been launched on certain web series like Tandav, which reportedly offended religious emotions. According to the filed FIR, the series purportedly presents Hindu gods in a demeaning manner.

There have also been incidents where citizens performing stand-up comedy have been arrested only because they had religious references in their script.

The inadequacies of the rules of free speech are further exemplified in the previously mentioned cases of Mohammad Zubair and Nupur Sharma.

These cases show how regulations don't draw a line between criticism and premeditated hate speech. Failing to articulate these distinctions diminishes fair use of the Section and makes it more difficult to define and penalise the actual crime of hate speech.

How should one deal with incidents of blasphemy?

Blasphemy laws which prohibit religious criticism in general are incompatible with the principles of a democratic society. In a free and democratic society, there should be no screening of discourse and dissent. The only feasible solution that stands on the thin line of protection of faith and questioning hate speech should be keeping blasphemy in the statutes but de-criminalising it.

Expected Question (Prelims Exams)

Q. Consider the following statements in the context of hate speech:-

1. Hate speech is an exception to Article 19(1)(a) (freedom of speech and expression).
2. Sections 153A and 153B of IPC make enmity and hatred between two groups punishable.

Which of the above statements is/are correct?

- (a) 2 only (b) 1 only
(c) Both 1 and 2 (d) Neither 1, nor 2

Ans. (c)

Expected Question (Mains Exams)

Q. What is blasphemy? Discuss the reasons for the rise of hate speech or hate speech in Indian society and the steps that can be taken to deal with such issues.

(250 Words)

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Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.