

## Right to Expression Vs Right to Take Offence

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The Indian Penal Code (IPC), 1860, limits the freedom of expression. This was highlighted by the events of May 1924, when a pamphlet was published in Punjab called Rangila Rasul, on the life of Islam's founder, Mohammed.

Gandhi writing in Young India stated: (1) "The very title is highly offensive" (2) "Abuse and caricature of the Prophet cannot wean a Musalman from his faith" (3) "As a contribution therefore to the religious propaganda work, it has no value whatsoever" and (4) "The harm it can do is obvious".

Action was taken under Section 153A (IPC) which prescribed: "Whoever by words, either spoken or written, or by signs promote feelings of enmity or hatred between different classes of classes..... shall be punished with imprisonment which may extend to two years, or with fine or with both."

But the explanation to this section stated: "It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity". Clearly this protected revisionist tendencies and scholarship.

For over two years the case moved through the trial court of the District Magistrate, the Sessions Judge and, finally, the Punjab High Court. The first two courts held the publisher guilty but the high court did not – holding that the subject was outside the purview of Section 153A. The High Court Judge held that:

"It seems to me that the Section was intended to prevent persons from making attacks on a particular community as it exists at the present time and was not meant to stop polemics against deceased religious leaders however scurrilous and in bad taste such attacks might be. For instance, if the fact that Mussalmans resent attacks on their Prophet was to be the measure of whether S 153A applied or not, then a historical work in which the life of the Prophet was considered and judgment passed on his character by a serious historian might come within the definition of S 153A" (Raj Paul v. King Emperor, AIR, 1927, Lahore, p. 592).

Muslim groups then demanded that the (Hindu) Judge be dismissed and took to the streets and the mosques resounded with fury. Since the matter had been clearly decided by the judicial process, the British authorities proposed legislative action by addition of a new Section 295A to the IPC.

This was considered by the Select Committee of the Legislative Assembly where Lala Lajpat Rai, MA Jinnah, Madanmohan Malaviya, M R Jayakar, Sir Srinivasa Iyengar and T Prakasam made their views known. The motion passed and Section 295A came into being — which after amendments in 1961 now stands as : “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.”

The 1961 amendment also substituted Section 153A with a new one, which also duplicated Section 295A and reads:

“Whoever, by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place or birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

Unfortunately the Explanation to the original Section 153A protecting works of scholarship was been deleted in 1961 — that may need to be added back. Section 295A now allows for prosecution but it needs to be proven that the expression in question was made with “deliberate and malicious intent”. In a genuine historical piece of writing, written with due balance, calm and dispassionate this can be easily proven. However, prosecution under Section 153A does not need to prove similar intent.

Section 295A was also the basis for the 1984 “Quran Petition” filed before the Calcutta High Court demanding a ban on the Quran. It was contended that the Quran: “on grounds of religion, promotes disharmony, feeling of enmity, hatred and ill-will between different religious communities and incite people to commit violence and disturb public tranquility.” The case caused an uproar and mayhem and was eventually not pursued to finality.

Section 295A can cover writings of Salman Rushdie, Taslima Nasreen, Wendy Doniger and many others who express strong views about things and people that are held in high esteem by others. It also applies to the Danish cartoons of the Prophet Mohammed or to cartoons of Hindu goddesses by M F Hussain. Criticism or disparagement of even non-religious figures such as Dr Ambedkar and Bal Thackeray attract passionate anger from their supporters. And filmstars such as Rajnikanth and Aamir Khan can be troubled regularly by those who take their words and deeds much too seriously.

In 1979, India signed the International Covenant on Civil and Political Rights (ICCPR) whose Article 19 reads: "(1). Everyone shall have the right to hold opinions without interference. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

Section 295A and Section 153A of the IPC then violates both the ICCPR and the Constitutional Fundamental Right of Expression (and the Freedom of the Media). This may have been intended to preserve public order in a country where many citizens are very emotional and sensitive about their religious beliefs, caste, linguistic and regional identities which they have taken seriously for centuries.

The issue thus boils down to the "Right of Expression" versus the "Right to take Offence". Both attitudes are harmful and one group does not extend the same 'right' to the other. These rights have become tools in the clash of religions and religious beliefs. Thus those who protested at Hussain's paintings of Hindu goddesses would not protest at the cartoons of the Prophet of Islam and vice versa.

Even a torn page from the Quran or the Bhagavad Gita, a part of a pig or a cow or a torn flag are provocations which lead to massive and unthinking violence.

Provocations are one thing, the truth is another: in punishing the former, we should not punish the latter. As Manu wrote: maunnat satyam vishishyete (truth is superior to silence). And our national motto is satya meva jayathe (truth always triumphs). Can we defend the truth and telling of the truth — however unpalatable? Or is the truth only to be internalised and not to be broadcast?

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