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## FIR under Section 295A - IPC: Elucidating the hydra-headed Imbroglia

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*Hate speech and freedom of expression often find themselves at a roadblock with each other. Different provisions of the Indian Constitution maintain that India is a secular country- a phenomenon that is supported by profuse legal provisions. Section 295 of the Indian Penal Code deals with punishments for defiling a place of worship with intent to insult the religion of any class. Subsection A of the same section i.e., s. 295A was created to control public peace by punishing those who intentionally hurt the feeling of worshippers of other religions. This section bears a great gravity in a religion-oriented Indian society. The latest times, however, have seen a dreadful abuse of this section. This article aims to plunge into the validity and reasonability of FIRs made under s.295A. Drawing a line between genuine hate speech and sensible blasphemy, the article seeks clarity regarding the legitimacy of arrests and penalties under the section with a complex plethora of landmark judgements and case laws.*

**Keywords:** FIR, section 295a, religion, intention, secular.

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## INTRODUCTION

Very recently, comedian Munawar Farooqui was arrested under section 295A<sup>1</sup> of IPC, subsequently attracting a circumlocutory discussion on and around the same section of the Indian Penal Code. However, these discussions and debates have been somewhat binary in nature with a tint of whataboutery. This article thus aims to take a detailed dive into the leading case laws which define the validity and reasonableness of FIRs under s. 295A.

**To begin with, let us first have a look at the said Section:**

*Section 295A, Indian Penal Code 1860: [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 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.]*

### **Ingredients of Section 295-A:**

- The accused must insult or attempt to insult the religion or religious beliefs of any class of citizens of India.
- The said insult must be with a deliberate and malicious intention of outraging the religious feelings of the said class of citizens.
- The said insult must be by words, either spoken or written, by signs or by visible representation or otherwise.
- The offence under Section 295-A is cognizable and a non-bailable and non-compoundable offence.
- The police have the power to arrest a person charged under Section 295-A without a warrant.

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<sup>1</sup> Indian Penal Code, 1860, s 295A

This section was brought into the Indian Penal Code, 1860 by *Criminal Law Amendment Act, 1927* following the widespread agitations erupting from the decision *Rajpaul v Emperor*<sup>2</sup>, commonly called as *Rangila Rasul case*, rendered by the Lahore high court.<sup>3</sup> Section 295-A IPC is a non-bailable, non-compoundable, and cognizable offence, which means that the police can register an FIR on a complaint lodged by a private citizen without any kind of prior judicial oversight.<sup>4</sup> However, it is important to note that in *Arnesh Kumar v The State of Bihar*<sup>5</sup> the Supreme Court had laid down the guidelines which state that the police must always mention the reason for arresting the accused.<sup>6</sup> Also, In *Joginder Kumar v State of U.P.*<sup>7</sup>, 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. Going forward, this article takes a detailed dive into a landmark and substantial case laws and the grounds on which the court has either declared the FIR valid or quashed it on lawful grounds.

## FIR VALID, ACCUSED PUNISHED

### *Deliberate and malicious intent:*

*Ramji Lal Modi v The State of U.P.*<sup>8</sup>: This is one of the most significant landmark judgements delivered in cases related to hurting religious sentiments. The bench of five judges defined the scope of the section and emphasised the restrictions of the same in the following words: Section 295A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises 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 are perpetrated with the deliberate and malicious intention of outraging the religious feelings

<sup>2</sup> *Rajpaul v Emperor* AIR 1927 Lahore 590

<sup>3</sup> Ratanlal & Dhirajlal, *The Indian Penal Code* (36<sup>th</sup> edition, Lexis Nexis)

<sup>4</sup> AjitWarrier, 'Section 295A IPC And The Slippery Slope Of 'Outrage' (*Mondaq*, 7 December 2020)

<<https://www.mondaq.com/india/broadcasting-film-tv-radio/1013784/section-295a-ipc-and-the-slippery-slope-of-outrage39>> accessed 07 February 2022

<sup>5</sup> *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273

<sup>6</sup> Moumita Mandal, 'Misuse of Section 295A of IPC in light of Sudheer Rikhari v State of Goa' (*Ipleaders*, 12 May 2021)<https://blog.ipleaders.in/misuse-section-295a-ipc-light-sudheer-rikhari-v-state-go/> accessed 07 February 2022

<sup>7</sup> *Joginder Kumar v State of UP* 1994 AIR 1349

<sup>8</sup> *A. Veerabhadran Chettiar v E.V. Ramaswami Naicker And Ors* 1955 CriLJ 1268

of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section.<sup>9</sup>The court added that the said section only penalises the 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 case remains significant also because it dissected the constitutional validity of the section and declared it well within the protection clause (2) of Article 19 of the Constitution.<sup>10</sup>

### **Liberty of speech and reasonable restrictions:**

*Kali Charan Sharma v Emperor*<sup>11</sup>: The judgement drew a fine line between liberty to criticise and unreasonable usage of the said liberty. The court held that scurrilous and bad taste remarks against religion attract a penalty and it was at this stage that 295A was brought in IPC, further narrowing the scope of section 153A which was already in implementation.<sup>12</sup>In the judgement, the bench laid down that those boundaries of liberty of speech come within certain reasonable restrictions in a culturally diverse and democratic country like India and those restrictions are to be taken care of while opining. The bench annotated that liberty to criticize does not include a license to resort to vile and abusive language.

### ***The purpose of reforms is not a valid reason:***

*Henry Rodrigues Case*<sup>13</sup>: The bench introduced restrictions on the leeway of language used to introduce the reforms. The first respondent- Henry Rodrigues had criticized certain practices and beliefs of the Roman Church, consequently hurting the feelings of those who believed in them. The court remarked that even if it were to be accepted that the first respondent is looking at the above-said practices and beliefs of the followers of the Roman Church, with the eyes of a reformer and his attacks on the same are lie to his sincere conviction that the said practices and beliefs are wholly opposed to the teachings of Jesus Christ, there cannot be any

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<sup>9</sup> *Ibid*

<sup>10</sup> Ratanlal & Dhirajlal (n 3)

<sup>11</sup> *Kali Charan Sharma v Emperor* AIR 1927 All 649

<sup>12</sup> *Ibid*

<sup>13</sup> *The State Of Mysore v Henry Rodrigues And Anr.* 1962 CriLJ 564

excuse for the vile and highly insulting language used by him.<sup>14</sup> The basis of this notion was found in the Kali Charan Sharma case.<sup>15</sup> It was also observed that section 295A is not inconsistent with the right guaranteed by Article 25(1) of the constitution.<sup>16</sup>

*Veerabhadran Cnettiar v E. V. Ramaswami Naickar*<sup>17</sup>: The matter fell mainly within the confines of Section 295 and not 295A exclusively, but the remarks made by the judges were considered equally applicable to a case under Section 295A of the IPC.<sup>18</sup> The court contained that the primary aim of creating the section has been creating legal immunity to the religious susceptibilities of people of various religious persuasions or creeds. Courts are to be very circumspect in such matters and should pay due regard to the feelings and religious emotions of different classes of persons with different beliefs, irrespective of the consideration whether or not they share those beliefs, or whether they are rational or otherwise, in the opinion of the court.<sup>19</sup>

*Provocation cannot be an excuse:*

*Baba Khalil Ahmad v State*<sup>20</sup>: This case highlights the capacity of the word ‘malicious.’ The judgement contains that in order to establish malice as contemplated by this section, it is not necessary for the prosecution to prove that, the applicant bore ill will or enmity against specific persons. If the injurious act was done voluntarily without a lawful excuse, malice may be presumed.<sup>21</sup> Khalil Ahmad was supposedly provoked to right malicious books by those who did not share the view as him and in this regard, the court held that voluntary acts, provocation, or any other circumstance cannot be considered a lawful excuse. This indicates that if an author has made a voluntary decision of writing something, the responsibility lays only on him and not on externalities. And so, malice, in this case, was established.

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<sup>14</sup> *Ibid*

<sup>15</sup> Kali Charan Sharma (n 11)

<sup>16</sup> Constitution of India, 1950, art. 25(1)

<sup>17</sup> A. Veerabhadran Chettiar (n 8)

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*

<sup>20</sup> *Baba Khalil Ahamad v State* AIR 1960 All 715

<sup>21</sup> *Ibid*

***Promoting enmity through written/spoken words:***

***RV Bhasin v State of Maharashtra***<sup>22</sup>: The judgement contained that the book written by Mr. R V Bhasin contained abusive language bringing meanness to Jihaad, Quaran, Mohammed Paigambar, Indian Muslims and conversion, as well as derogatory and false references therein is likely to create hatred against Muslims in the minds of non-Muslims thereby promoting enmity between classes so also the said book and relevant translation thereof. The bench sensed that the book could likely lead to acts of violence; further disturbing public peace. And so, the book was forfeited.

***Even if a section is hurt, accused guilty under 295A:***

***George Ponniah case***<sup>23</sup>: The Madras High Court refused to quash the FIR filed against the Tamil Nadu Catholic priest named Father George Ponniah who was arrested in July 2021 for his hate speech targeting the Hindu community.<sup>24</sup> The Madras HC observed that offensive words used against 'Bharat Mata' and 'Bhumi Devi' attract offence under Section 295A of the IPC. Justice Swaminathan declared that it is not necessary that all Hindus should feel outraged. If the offending words outrage the religious feelings or beliefs of even a section of Hindus, the penal provision would be attracted.

## **FIR QUASHED ACCUSED NOT GUILTY**

***The deliberate intention should be proved:***

***State v Gulshan Rai***<sup>25</sup>: The Magistrate court established that the existence of this deliberate and malicious intention is *sine qua non* to bring home guilt of the accused u/s 295A, IPC, and said intention cannot be always proved by leading direct evidence and must, at times, be

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<sup>22</sup> *R.V. Bhasin v State of Maharashtra* 2012 Cri LJ 1375 (Bom.)

<sup>23</sup> 'Offensive Words Against 'Bharat Mata' & 'Bhuma Devi' Attract Offence Under Section 295A IPC : Madras High Court Refuses To Quash FIR Against Catholic' (Live Law, 7 January 2022 ) <<https://www.livelaw.in/news-updates/offensive-words-against-bharat-mata-bhuma-devi-attract-offence-under-section-295a-ipc-madras-high-court-catholic-priest-george-ponniah-188989>> accessed 05 February 2022

<sup>24</sup> *Ibid*

<sup>25</sup> *State v Gulshan Rai* 2019

gathered from the words spoken or written by the accused.<sup>26</sup> Malice implies the negation of bona-fides. The judge declared that the prosecution had failed to prove its case beyond reasonable doubt and benefit of doubt must be given to the accused. Thus, accused Gulshan Rai was acquitted for the offences punishable 295A IPC.

*Mahendra Singh Dhoni v Yerraguntla Shyamsundar*<sup>27</sup>: Court established that s. 295A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. The world-famous cricketer was pronounced not guilty under section 295A.<sup>28</sup>

*The degree of the offensiveness of language is important:*

*Shiv Ram Dass v Udasi Chakravarti*<sup>29</sup>: The judgement holds that it is no defence to a charge under Section 295A, Indian Penal Code, for anyone to plead that he was writing a book in reply to the one written by one professing another religion who has attacked his own religion.<sup>30</sup> The words used should be such as are bound to be regarded by any reasonable man as grossly offensive and provocative and maliciously and deliberately intended to outrage the feelings of any class of citizens of India. Emphasising the quality of language, the court laid down the foundation of the reasonableness of the usage of the same.

*Consideration of context holds significant importance:*

*Sujata Bhadra v State of West Bengal*<sup>31</sup>: The bench stated the five ingredients of the section which are necessary to be found in the matter being examined, namely: Whether the offending passage was (1) written (2) with the deliberate and malicious intention (3) of outraging the religious feelings to insult the religion or religious beliefs (4) of a particular

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<sup>26</sup> *Ibid*

<sup>27</sup> *Mahendra Singh Dhoni v Yerraguntla Shyamsundar* 2017 SC 2392

<sup>28</sup> *Ibid*

<sup>29</sup> *Shiv Ram Dass v Udasi Chakravarti* (1954) Pun 1020 (FB)

<sup>30</sup> *Ibid*

<sup>31</sup> *Sujata Bhadra v State of West Bengal* 2006 Cr LJ 368 (Cal)

class of citizens (5) of India.<sup>32</sup> The intention of the author has to be found out from the book itself having regard to the context in which it was written.<sup>33</sup> The order of forfeiture of books under Section 95 of the Code of Criminal Procedure was therefore set aside.

***Ramlal Puri v State of Madhya Pradesh***<sup>34</sup>: In a petition challenging a notification forfeiting a book 'Agni Pariksha' in the exercise of the powers conferred by Section 99A of the Code of Criminal Procedure, 1898 since some couplets finding a place in some pages of the said book was grossly offensive and provocative, it was held as under<sup>35</sup> The mere fact the learned author used such words as 'Kulta' or 'Duracharani' with reference to Sita not as a comment but as the accusations of the conspirators and the rumour-mongers that cannot by itself establish his intention as contemplated by the Section 295A IPC.<sup>36</sup> Because of the absence of any grossly offensive and provocative matter contained in those couplets, Mr. Ramlal Puri was set free and the FIR was quashed.

*Even when there is no intention, one should be extremely careful with language:*

***Mohan CLazarus Case***: The Madras high court has quashed criminal proceedings against an evangelist, Mohan C Lazarus, but not without disapproving of his extreme religious views that could incite hatred, violence, and bloodshed<sup>37</sup>. The judge expressed his views about the gradual degradation of secularist values and extremities present in modern Indian society over the years, which has now led us to this fiasco that might as well result in violence. Mohan C Lazarus faced multiple FIRs for making derogatory statements against Hinduism at a gathering in Chennai. After the video went viral on social media, he approached the high court to quash the FIRs.<sup>38</sup> Justice Anand Venkatesh cited the Sermon on the Mount to express that no religion teaches making derogatory comments against other religion. The judge further added

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<sup>32</sup> Ratanlal & Dhirajlal (n 3)

<sup>33</sup> *Ibid*

<sup>34</sup> *Ramlal Puri v State Of Madhya Pradesh* AIR 1971 MP 152

<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> 'Madras HC raps evangelist for extreme views' (*Times of India*, 6 February 2021)

<<https://timesofindia.indiatimes.com/city/chennai/hc-raps-evangelist-for-extreme-views/articleshow/80713734.cms>> accessed 08 February 2022

<sup>38</sup> *Ibid*



that this court would not hesitate to say it is in fact, the fundamental duty cast upon every citizen to preserve the rich heritage of our composite culture and that such heritage and culture cannot be, at any circumstance, seen as one independent of the religious, cultural and civilizational sentiments that have been rooted, ingrained and etched in the history, soul, and spirit of this nation.

*Artistic license is a right in a democratic country:*

*Manohar Lal Sharma v Sanjay Leela Bhansali*<sup>39</sup>: Wherein the Court observed thus: A story, a play, a novel, a poem or any other form of artistic expression consists largely of freedom of expression and thought that requires innovation, skill, craftsmanship and, above all, individual originality founded on the gift of imagination or reality transformed into imagination or vice versa. The platform can be different and that is why the creative instinct is respected and has the inherent protective right from within which is called artistic license.<sup>40</sup>

*Unpopular views merely because they are unpopular do not attract s. 295A:*

*Manjula Sahdev v State of Punjab*<sup>41</sup>: The court, while citing S. Khushboo's case<sup>42</sup> judgement by the Hon'ble Supreme Court, held that it is not the task of the criminal law to punish the individuals merely for expressing unpopular views unless it is proved that the accused has done it in a mala fide manner.<sup>43</sup>

## CONCLUDING NOTES

Sociologists Emile Durkheim and Bronislaw Malinowski strongly believed that the key role of religion was to reinforce social norms and values and promote social solidarity<sup>44</sup>. The current role of religion in the Indian demographic is unfortunately depicted in a contradictory way. In recent times artistic liberty has allured a great amount of scrutiny. But this cannot be

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<sup>39</sup> *Manohar Lal Sharma v Sanjay Leela Bhansali and Others* (2018) 1 SCC 770

<sup>40</sup> *Ibid*

<sup>41</sup> *Manjula Sahdev and Ors. v State of Punjab and Ors.* 2019

<sup>42</sup> *Ibid*

<sup>43</sup> *Ibid*

<sup>44</sup> Karl Thompson, 'Malinowski's Perspective on Religion' (*Revise Sociology*, 21 June 2018)

<<https://revisesociology.com/2018/06/21/malinowskis-perspective-on-religion/>> accessed 12 February 2022

considered an exclusive modern-day occurrence. Artists, writers, stand-up comedians, and filmmakers have always had a long, tedious history of facing condemnation while walking on a subliminal line of freedom of speech and not hurting religious feelings<sup>45</sup>. What remains concerning is the intersection of outrage, social media trials, and untrue narratives about religion. This intersection combined with OTT platforms coming under I&B Ministry only leaves us with dystopian situations which are highly perturbing<sup>46</sup>. Because such a situation faces a momentous risk of quickly getting Orwellian and Orwellian rarely ends well. Section 295A was enacted to control and penalise the anti-social elements and not so that the citizens can declare each other as anti-religious. The section that was once brought in to maintain the secularist values of the Indian constitution, is now at the brink of getting outrightly blasphemous because of the easily bruised egos that misuse the section with wounded pride. This might as well be a chance to reconsider the absolute necessity of s. 295A, considering the widespread abuse of it in today's date and time. To avoid misuse, it is critically important that we have a shared understanding of reality as well as that of religion. And that can be done only with constitutional values serving as a catalyst in the process.

It is essential that we criticize religion because time and again social reforms have found their roots in criticism of religion and upbraiding of those who wrongfully practice it. We consider the idiosyncratic nature of FIRs made under 295A in recent times, only to realize that lo and behold, that perquisite intolerance and a fallacious sense of spurious beliefs is consistently growing with the passage of time and tide. This logical, religious and philosophical fallacy might as well result in repercussions that are beyond repair. Lastly, it is important, that we also note a phenomenon that is the kernel of almost every religious philosophy in the world. The oneness of the higher power. Advaita in Hinduism, Tawhid in Islam, Oneness Pentecostalism in Christianity, and Ik Onkar in Sikhism; all cumulatively stand for a common idea. As Shams of Tabriz says, *“Real faith is the one inside. The rest simply washes off. There is only*

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<sup>45</sup> ‘These actors were charged under section 295A before Kiku Sharda’ (*Hindustan Times*, 13 January 2016) <<https://www.hindustantimes.com/bollywood/these-actors-were-charged-under-section-295a-before-kiku-sharda/story-vMJqps1bSZxQsjAOTcbBBN.html>> accessed 07 February 2022

<sup>46</sup> Swati Mathur ‘Govt brings OTT platforms under I&B ministry’ (*The Times of India*, 12 November 2020) <<https://timesofindia.indiatimes.com/india/govt-brings-ott-platforms-under-ib-ministry/articleshow/79181513.cms>> accessed 10 February 2022

*one type of dirt that cannot be cleansed with pure water, and that is the stain of hatred and bigotry contaminating the soul.”* It is about time, we re-visit the true meaning of religion and place the locus of our beliefs inside us, instead of situating it on the external circumstances. Only this will allow us to be more tolerant and vigilant, without getting our beliefs shaken up.