

INNOCENCE OF MUSLIMS: BLASPHEMY, ISLAM AND PUBLIC DISORDER - A HOLY ANALYSIS

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Abstract

When a caricature on Prophet Mohammed (PBUH), published in a newspaper, can lead to violent protests erupting in the Arab world with economic boycotts, threats of retaliations and envoys being recalled and embassies closed; a filmmaker can get murdered in cold blood for making a short film about Muslim Women who shift from total submission to dialogue with God; it is not hard to imagine the fate meted out to a semi-porn video reviling the Prophet on YouTube. Ever since a fatwa was issued against Salman Rushdie for his infamous Satanic Verses, a volcanic reaction for blasphemous expressions offending the sensibilities of Muslims has become an expected reality. It is not unheard of the state to ban books, movies or even disallowing an author from exercising his/her legitimate right to freedom of expression in the interest of public order. This paper, which is originally a part of the thesis “Freedom of Expression and Maintenance of Public Order: Contemporary Issues and State Response,” is a small attempt to analyze the nexus between Islam, blasphemy and public order justification of the state for curbing freedom of expression.

- I. Introduction**
- II. Blasphemy**
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I. Introduction

When a booker prize winner author writes a sacrilegious mockery on Islam, reviling the Prophet *Muhammad* (PBUH), violent protests in the Muslim world erupt escalating to a level leading to a

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number of deaths.¹ The author of the highly inflammatory book himself gets a *fatwa* issued in his name sentencing him to death.² Even after almost two and a half decades of the publication of the objectionable work of fiction, the author is forced to cancel his visit for a literary festival in India.³ All hell breaks loose when a newspaper in Denmark publishes a stream of cartoons mocking the Prophet with booty calls on the head of the cartoonist to economic boycotts of Danish products by the Muslim world.⁴ Publication of the 14 minute YouTube trailer - *Innocence of Muslim* deeply

¹ The *Satanic Verses* was published on September 26, 1988 in the United Kingdom by Viking Penguin. Soon after its publication violent protests erupted across the Muslim world that led to a number of deaths. At least 12 people were killed and 40 wounded on February 24, 1989 when the police fired at Muslims rioting in Bombay against the novel. In Pakistan, six people were killed and 83 wounded when the police opened fire on demonstrators outside an American information center in Islamabad who demanded the banning of the book in the United States. See: Sanjoy Hazarika, "12 Die in Bombay in Anti-Rushdie Riot" *New York Times*, Feb. 25, 1989, available at: <http://www.nytimes.com/books/99/04/18/specials/rushdie-riot.html> (last visited on January 10, 2013). Japanese translator of the book was found slain on July 12, 1991 at a university northeast of Tokyo. See: Steven Weisman, "Japanese Translator of Rushdie Book Found Slain", *New York Times*, Jul. 13, 1991, available at: <http://www.nytimes.com/books/99/04/18/specials/rushdie-translator.html> (last visited on January 10, 2013).

² On February 14, 1989 by a broadcast by Tehran radio, the Ayatollah of Iran was quoted to be saying, "I inform the proud Muslim people of the world that the author of the Satanic Verses book which is against Islam, the Prophet and the Koran, and all those involved in its publication who were aware of its content, are sentenced to death. I ask all the Muslims to execute them wherever they find them." See: Peter Murtagh, "Rushdie in Hiding after Ayatollah's Death Threat", *The Guardian*, Feb. 15, 1989, available at: <http://www.theguardian.com/books/1989/feb/15/salmanrushdie> (last visited on January 16, 2014).

³ Rushdie was scheduled to visit the Jaipur Literary Festival in January 2012. He cancelled his visit apparently due to pressure from the State Government. See: Amrita Tripathi, "Salman Rushdie Asked to Skip Jaipur Literature Festival?" *IBN Live*, Jan. 20, 2012, available at: <http://ibnlive.in.com/news/salman-rushdie-asked-to-skip-jaipur-literature-festival/221436-17.html> (last visited on January 18, 2014) Although the State Government expressed its oblivion about Rushdie's plans and it was later clarified by Rushdie himself that he cancelled his visit owing to death threats. See: "Salman Rushdie Pulls Out of Jaipur Literature Festival," report dated January 20, 2012 available at: <http://www.bbc.com/news/world-asia-india-16644782> (last visited on January 18, 2014 at 19:30 hrs) The organizers tried to get him speak via video conference but permission for the same was denied by the authorities who feared a law and order situation. See: William Dalrymple, "Why Salman Rushdie's Voice was Silenced in Jaipur", *The Guardian*, Jan. 26, 2012, available at: <http://www.theguardian.com/books/2012/jan/26/salman-rushdie-jaipur-literary-festival> (last visited on January 18, 2014)

⁴ Cartoons depicting Prophet Muhammad in unflattering poses, including one in which he is portrayed as an apparent terrorist with a bomb in his turban, were published in a conservative, mass-circulation Danish daily, *Jyllands-Posten* in September, 2005 which were later reprinted in *Magazinet*, a small evangelical Christian newspaper in Norway. Cartoons triggered outrage among Muslims across the Middle East, sparking protests, economic boycotts and warnings of possible retaliation against the people, companies and countries involved. Saudi Arabia recalled its ambassador and Libya closed its embassy in Denmark. See: John Ward Anderson, "Cartoons of Prophet Met with Outrage," *Washington Post*, Jan. 31, 2006, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/01/30/AR2006013001316.html> (last visited on March 5, 2014). A Pakistani cleric Mohammed Yousef Qureshi announced a \$1 million bounty for killing a cartoonist who drew the Prophet Muhammad. After Friday prayers, he announced in front of 1,000 people "Whoever has done this despicable and shameful act, he has challenged the honor of Muslims. Whoever will kill this cursed man, he will get \$1 million from the association of the jewelers bazaar, 1 million rupees (\$16,700) from Masjid Mohabat Khan and 500,000 rupees (\$8,350) and a car from Jamia Ashrafia as a reward," "This is a unanimous decision of by... all imams (prayer leaders) of Islam that whoever insults the prophets deserves to be killed and whoever will take this insulting man to his end, will get this prize." See: "Nine Die in Cartoon Protests in Libya," *USA Today*, Feb. 17, 2006, available at: http://usatoday30.usatoday.com/news/world/2006-02-17-prophet-drawings_x.htm (last visited on March 5, 2014 at 17:45 hrs).

incense the Arab world and leads to mass rioting, killings and bombing across the globe.⁵ A filmmaker gets murdered in broad day light in cold blood for making a short film about defiance of Muslim women.⁶ The list of instances just keeps on growing. A criminal complaint was filed against teen sensation Priya Prakash Varrier for winking in a song as the picturization was deemed to be blasphemous by the petitioners.⁷

With such extreme reactions towards blasphemous expressions which offend the sensibilities of Muslims, it becomes naturally very important for us to find out what exactly Islam says about blasphemy. Is the reaction of the Muslims justified and in tandem with Islam? Also, it is to be seen whether it is justified on the part of the state to curb individual expression for the fear of offending sensibilities and fear of public order situations. Keeping these questions in mind the paper in the first part would briefly delineate the idea of blasphemy with a cursory glance on Indian law. The paper would then proceed to analyze blasphemy under Islam in detail. The next part of the paper would discuss the peculiar case of *Innocence of Muslims*. For the purpose of ascertaining the truth whether public order situations do arise on exercise of freedom of expression by certain

⁵ The video, a 14 minute YouTube trailer of the movie *Innocence of Muslims* directed by a Nakoula Basseley Nakoula also known as Sam Bacile led to violent protests across Middle East including Benghazi, Libya where four Americans including the U.S ambassador Chris Stevens died. The movie which portrays Prophet *Muhammad (PBUH)* as a sexual deviant and barbarian drew instant flak from the Muslim world which considered the video blasphemous. Google came under immense pressure to take down the video from YouTube, Google however decided against removing it, although it did block the video from its servers in particular Muslim countries along with India and Indonesia. See: "Google approved to keep showing 'Innocence of Muslims'," *available at*: <http://rt.com/usa/google-muslims-film-garcia-478/>. (last visited on January 20, 2014). Also See, Peter Bradshaw, "Innocence of Muslims: a dark demonstration of the power of film," *available at*: <http://www.theguardian.com/film/filmblog/2012/sep/17/innocence-of-muslims-demonstration-film>. (last visited on January 20, 2014 at 20:10 hrs).

⁶ Theo Van Gogh, a Dutch, filmmaker, author and artist made a short film *Submission*, along with Ayaan Hirsi Ali, the Somali born Dutch parliamentarian and author. The movie was about defiance of four Muslim women who shift from total submission to God to a dialogue with the deity. With words from *Quran* tattooed on their bodies they pray but instead of casting down their eyes, they look up and tell God that, if submission to Him brings them so much misery, they may stop submitting. See introduction to Ayaan Hirsi Ali, *Infidel- My Life*, (Pocket Books London 2008). Van Gogh was shot several times on his way to work on November 2, 2004 by a 26 year old Muslim Dutch of Moroccan origin. After having shot Gogh several times, the murderer stabbed him repeatedly and sawed one butcher knife into his throat and with another knife stabbed a five-page letter addressed to Ali onto his chest. See *ibid*. Also see report dated November 3, 2004 by Marlise Simons, "Dutch Filmmaker, an Islam Critic, Is Killed," *available at*: http://www.nytimes.com/2004/11/03/international/europe/03dutch.html?_r=1&. (last visited on February 1, 2014 at 13:30 hrs).

⁷ The complaint was filed with respect to the song "*Manikya Malaraya Poovi*" wherein the actress winks at the male lead of the movie "Oru Addar Love". The song is a traditional folk song sung by Malabari Muslims celebrating the love between Prophet *Muhammad (SAW)* and *Hazrat Khadijah (RH)*. The complainant had no issues with the lyrics of the song as it was a folk song being sung in public domain for years but had a problem with picturization of the song specifically the wink which according to the petitioner offended the sentiments of Muslim community. The Supreme Court in a judgement dated August 31, 2018 quashed all criminal action taken against Priya Prakash Varrier. See *infra* note 42.

individuals, an empirical survey was conducted.⁸ The last part of the paper would discuss the empirical evidence before reaching a conclusion.

II Blasphemy

The word blasphemy is derived from the Greek “*blapto*” meaning “to harm” and “*pheme*” meaning “speech.” According to the Webster’s Encyclopedic unabridged Dictionary “to blaspheme” means “to speak impiously or irreverently of God or sacred things.” “Blasphemy” is defined as “impious utterance or action concerning God or sacred things.”¹⁰ The Black’s Law Dictionary¹¹ defines “blasphemy” as “irreverence to God, religion, a religious icon, or something considered sacred.” In England, blasphemy was the malicious revilement of the Christian religion. Blasphemy is a sin under Canon law. The Merriam Webster’s dictionary defines sin as “a vitiated state of human nature in which the self is estranged from God.”¹² Blasphemy is an offense committed against God, rather than an offense against a person. It means assigning false attributes to God, or denying God’s true characteristics. It is a willful and malicious attempt to lessen men’s reverence of God.¹³ Jeremy Patrick loosely defines blasphemy as an inevitable side effect whenever the barrier between the sacred and the profane is breached.¹⁴ According to *Perkins and Boyce*¹⁵ blasphemy has been held to be a common law crime in the United States because of its tendency to stir up breaches of the peace. Blasphemy upsets people, it arouses emotional responses.¹⁶ When

⁸ For the purpose of the study, a survey was conducted in the month of March-April 2014 and a sample was taken from population within a certain age range. The data was generated by two methods- online survey (sample that comprised of people who use social media) and individual data collection by distribution of questionnaire. A total of 331 subjects undertook the survey, of which 51.1% were females. The maximum number of respondents, were from the age group 25-34 at 52.6% followed by the 18-24 age group at 34.7%. Classifying the respondents on the basis of educational background, 21.5% were pursuing graduation, 23.6% were already graduates and 41.1% were postgraduates. 5.7% were doctorate holders, 5.4% SSC pass and 2.1% had only pursued their studies until high school. Of the total sample, Respondents were further classified by the religion of parents which turned out to be 56.8% Hindus, 38.7% Muslims and rest 4.5% comprising of Christians, Sikhs and atheists. 0.3% belonged to parents of different religions. The data was analyzed with help of pie charts, Microsoft Excel and by using SPSS and applying chi square tests.

⁹ Webster’s Encyclopedic Unabridged Dictionary of the English Language, 156 (Gramercy Books, New Jersey, 1996).

¹⁰ *Ibid.*

¹¹ Bryan A. Garner ed. *Blacks Law Dictionary*, 164 (West Group, St.Paul Minn., 7th ed., 1999).

¹² Merriam Webster’s Collegiate Dictionary, 1162 (Merriam-Webster Inc., Massachusetts, 11th ed., 2004).

¹³ “In general blasphemy may be described, as consisting in speaking evil of the Deity with an impious purpose to derogate from the divine majesty, and to alienate the minds of others from the love and reverence of God. It is purposely using words concerning God, calculated and designed to impair the reverence, respect, and confidence due to him, as the intelligent creator, governor and judge of the world . . . It is a wilful and malicious attempt to lessen men’s reverence of God.” *Commonwealth v. Kneeland*, 37 Mass. 206, 213 (1838).

¹⁴ Jeremy Patrick, “The Curious Persistence of Blasphemy,” 23 *Fla. J. Int’l L.* 187 (2011).

¹⁵ Rollin M Perkins & Ronald N Boyce, *Criminal Law*, 474-5 (Foundation Press New York, 3rd ed., 1982).

¹⁶ *Supra* note 14 at 197.

that emotion is anger, the resulting violence can lead to social unrest and breaches of the peace as has been seen in the very recent *Innocence of Muslims* protests.

The basic rationale behind having any blasphemy law is to prevent individual distress and protection of societies' shared set of values. According to Lord Devlin, since a shared set of basic moral values are essential to society, it is as justified in protecting itself against attacks on these values as it is in protecting itself against any other phenomena which threatens its basic existence, such as violent public disorder.¹⁷ On this thesis, moral corruption of the individual is to be prevented in order to ensure the ultimate survival of society.¹⁸ Any attack on the shared set values may cause to bring not only individual pain and anguish but also collective hurt. Thus, any expression which blasphemes thereby causing individual pain or collective hurt to a value system held sacred to a group or the society as a whole.

The biggest problem with Blasphemy laws lies in pluralistic societies, where owing to the very fundamental beliefs of a particular religious sect any expression with slightest religious undertones might be deemed to be blasphemous to other religious communities and vice versa. In a homogenous society, viewing blasphemy as an attack on shared set of values might be justifiable but in a pluralistic society, drawing a line between one set of shared values held sacred to one group and other set of values to another becomes difficult.¹⁹

Blasphemy and the Law

Blasphemy laws are not peculiar to India and they arguably exist in a far more problematic and controversial form in other countries.²⁰ Religion is intrinsically mired in the lives of the citizens

¹⁷ Lord Devlin's *The Enforcement of Morals* (1965) cited from Helen Fenwick, *Civil Liberties*, 152 (Lawman India Pvt. Ltd., New Delhi, 1995).

¹⁸ *Ibid.*

¹⁹ If believing in One God is the fundamental belief of one religious denomination and belief in the Holy Trinity of God of the other, propagation of any of these beliefs would be blasphemous in between communities *inter se*. Where does one draw a line? Does the public morality or so as to say morality of the majority justify restricting the rights of minority to voice their beliefs or vice versa?

²⁰ Chapter XV of the Pakistan Penal Code (PPC) is titled as "of Offences Relating to Religion." Austria, Denmark, Finland, Greece, Italy, Liechtenstein, the Netherlands, Ireland are certain European Countries which penalize blasphemy as an offence. Until the passing of the Criminal Justice and Immigration Act, 2008, Blasphemy was a punishable offence in England. Ireland, by the Defamation Act of 2009 has also made blasphemy as a punishable offence. Although rarely invoked, blasphemy to this day remains a common law offense in New South Wales and Victoria, and a statutory crime in Tasmania (Criminal Code Act 1924). The status of blasphemy as an offence remains unclear in South Australia, Norfolk Island, and the Northern Territory, and only in the States of Queensland and Western Australia has it been conclusively abolished. There is no Federal prohibition on blasphemy, but Federal courts have, in dicta, assumed that blasphemy remains a part of the common law with a meaning similar to that given by English courts in *Archbishop of Melbourne v. Council of Trustees of National Gallery*, 1997 WL 1882161. See *supra* note 14.

of India and it is virtually impossible to divorce religion from Indian political structure. Even a very mildly offensive remark with slight religious intonation is capable of sparking passions which may lead to communal discord and disrupt public order at large. India has witnessed the dirtiest communal violence incited by hateful, incriminating speeches of individuals. Although India is a secular²¹ democratic republic with the state having no stake whatsoever in the matters of religion, law makers in all their wisdom retained penal provisions framed by the British providing for the tackling of situations arising out of blasphemous utterances that might upset public peace and cause disorder.

Chapter XV of the Indian Penal Code, 1860 (IPC) provides for offences against religion. Whereas section 295 penalizes “injuring or defiling place of worship,” section 295A²² which was inserted by section 2 of the Act 25 of 1927,²³ penalizes “malicious acts intended to insult or outrage religious feelings of any class.” Thus, it is section 295A of IPC which makes blasphemy an offence in India. The section does not penalize each and every act or attempt to insult the religion or religious beliefs of a class of citizens, but only punishes “those acts of insult to or those varieties of attempt to insult, perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.”²⁴

Mens rea is the most important aspect of this section and unless the expression is made without a calculated intent, the section would not be attracted. Insult to religion offered innocently or carelessly without any deliberate or malicious intention to outrage the religious feelings of that class, fall outside the ambit of the section. Section 295A only punishes the aggravated form of such insults when perpetrated with a deliberate and malicious intention of outraging the religious

²¹ The Indian Constitution stands on the bedrock of secularism though nowhere in the original Constitution the word ‘secularism’ was mentioned. It was by the 42nd Constitutional Amendment Act, 1976 that the word ‘Secularism’ was inserted in the Preamble to the Indian Constitution. Saadiya Suleman, “Freedom of Religion and Anti Conversion Laws in India: An Overview” 1 *ILI Law Rev.* 106 (2010).

²² Section 295A reads - “Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.-- 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.” Indian Penal Code, 1860 (Act no. 45 of 1860).

²³ The section was amended by section 3 of the Indian Penal Code (Amendment) Act, 41 of 1961 by which: a) for the words, ‘by words either spoken or written, or by visible representation,’ the words ‘by words, either spoken or written, or by signs or by visible representation or otherwise,’ and b) for the words ‘two years,’ the words ‘three years’ were substituted.

²⁴ S. K. Sarvaria, *RA Nelson’s Indian Penal Code*, 2558 (Vol. 2, Lexis Nexis Buttersworth Wadhwa, Nagpur, 10th ed., 2008).

feelings of a particular class. As the Supreme Court clarified in *Ranjilal Modi*,²⁵ the “calculated tendency of this aggravated form of insult should clearly be to disrupt public order.” Having regard to the ingredients of the offence created by this section there cannot be any possibility of the section being employed for purposes other than that sanctioned by articles 19(2), 25 and 26 of the Constitution. To put in other words, the section can be applied only when it is necessary “in the interest of public order.”²⁶ In order to bring the case within the scope of this section it is not so much the matter of discourse as the manner of it. The test essentially is that of a reasonable man’s reaction to the expression.²⁷ Words used should be such as are bound to be regarded by any reasonable man as grossly offensive and provocative, “maliciously and deliberately intended to outrage the feelings of any class of citizens of India.”²⁸

Section 295A was specifically drafted to penalize deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.²⁹ The immediate cause of the amendment were the conflicting judgments³⁰ of high courts delivered arising out of similar facts in the same year which stirred a lot of controversy and the British India government thought it was appropriate to enact a law penalizing blasphemous writings. The justification of this penal provisions is generally questioned by the argument that having penal laws putting an absolute bar on such speeches that tend to offend some sections of the society, is not good for democracy as it unduly restricts the freedom of expression guaranteed by the Constitution. The Supreme Court in *Ranjilal Modi*³¹ deliberated on the question “whether the impugned section can be properly said to be a law imposing reasonable restrictions on the exercise of the fundamental right to freedom

²⁵ *Ranjilal Modi v. State of U.P* AIR 1957 SC 620.

²⁶ *Ibid.*

²⁷ Please see *Bhagwati Charan Shukla v. Provincial Government* AIR 1947 Nag 1, *Anand Patwardhan v. The Union of India And Others* AIR 1997 Bom 25 and *Prakash Jha Productions v. Union of India* (2011) 8 SCC 372 for elaborate discussion on the test of reasonable man’s reaction.

²⁸ *Shiv Ram Dass v. State of Punjab* AIR 1955 Punj 28.

²⁹ The statement of object and reasons stated-“The prevalence of malicious writings intended to insult the religion, or outrage the religious feelings of various feelings of various classes of His Majesty’s subjects had made it necessary to examine the existing provisions of the law with a view to see whether they require to be strengthened. Chapter 15 of the India Penal Code which deals with offences relating to religion, provides no penalty in respect of writings of the kind described above, such writings can usually be dealt with under section 153A of the Indian Penal Code, as it is seldom that they do not represent an attempt to promote feelings of enmity or hatred between different classes. It must be recognized, however that this is only an indirect way of dealing with acts which may properly be made punishable themselves, apart from the question whether they have the further effect of promoting feelings of enmity or hatred between classes. Accordingly, it is proposed to insert a new section in chapter 15 of the Indian Penal Code, with the object of making it a specific offence intentionally to insult or attempt to insult the religion, or outrage the religious feelings of any class of His Majesty’s subjects.” Gazette of India dated August 20, 1927, pt 5, p. 213.

³⁰ *Raj Paul v. Emperor, infra* note 106; *Devi Sharan Sharma v. Emperor* AIR 1927 Lah. 594. Also see *Kali Charan Sharma v. Emperor* AIR 1927 All 649.

³¹ *Supra* note 25.

of speech and expression in the interests of public order.” The court noticed that the language employed in the amended clause is “in the interests of” and not “for the maintenance of” and cited *Debi Soron v. The State of Bihar*,³² wherein the Patna High Court noted that the expression “in the interests of” makes the ambit of the protection very wide and a “law may not have been designed to directly maintain public order and yet it may have been enacted in the interests of public order.”

The court further held:³³

Insults to the religion or the religious beliefs of a class of citizens of India may...lead to public disorders in some cases, but in many cases they may not do so and, therefore, a law which imposes restrictions on the citizens’ freedom of speech and expression by simply making insult to religion and offence will cover both varieties of insults, *i.e.*, those which may lead to public disorders as well as those which may not. The law in so far as it covers the first variety may be said to have been enacted in the interests of public order within the meaning of clause (2) of article 19, but in so far as it covers the remaining variety will not fall within that clause. The argument then concludes that so long as the possibility of the law being applied for purposes not sanctioned by the Constitution cannot be ruled out, the entire law should be held to be unconstitutional and void. We are unable, in view of the language used in the impugned section, to accede to this argument. In the first place clause (2) of article 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression ‘in the interests of’ public order, which is much wider than ‘for maintenance of’ public order. *If, therefore, certain activities have a tendency to cause public disorder, a law penalizing such activities as an offence cannot 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. (emphasis supplied)*

Thus, it becomes absolutely clear from the above deliberations that the section was enacted in the interest of “public order” and only penalizes the aggravated form of insult to religion when it is committed with a deliberate and malicious intention of outraging the religious feelings of a

³² AIR (1954) Pat. 254.

³³ *Id.* at Para 9.

particular class of citizens. It is the regulation of calculated tendency of this aggravated form of insult planned with reasonable foresight to disrupt public order which falls within the protection of clause (2) of article 19 as a law imposing reasonable restriction on the legitimate exercise of right to freedom of speech and expression.

The court further pointed out that:³⁴

In the next place, section 295A does 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 it penalizes 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 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. It only punishes 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. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalizes such activities, is well within the protection of clause (2) of article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by article 19(1)(a).. (emphasis supplied)*

The bottom line is deliberate and intentional outraging of religious feelings. It cannot be stretched to picking up expressions from here and there and quoting out of context to make them fall under section 295A.³⁵ Free thinking does not involve freedom to make scurrilous attacks on the religion and religious beliefs of other sects with impunity.³⁶ It is not free thinking to abuse and insult other religions. Further the method and the manner of discourse on a particular topic are also of much concern.³⁷ All citizens of India are guaranteed freedom of religion and freedom of conscience by

³⁴ *Ibid.*

³⁵ See *Chandanmal Chopra v. State of West Bengal* AIR1986 Cal 104 wherein an application under article 226 of the Constitution of India was filed praying for a writ of Mandamus directing the state of West Bengal to declare each copy of the Koran, whether in the original Arabic or in its translation in any of the languages, as forfeited to the Government. The petitioners claimed that certain passages are offending, encourage crime, invite violence and insult all religions except Islam. The Honorable Court held that –“Some passages containing interpretation of some chapters of the Koran quoted out of context cannot be allowed to dominate or influence the main aim and object of this book. It is dangerous for any Court to pass its judgment on such a book by merely looking at certain passages out of context.”

³⁶ *Supra* note 24 at 2562.

³⁷ *Ibid.*

virtue of article 25 of the constitution. As the Supreme Court pointed out in *N. Veerabrahmam v. State of Andhra Pradesh represented by its Secretary, Home Dept., Hyderabad*³⁸ that:

It is the duty of the State to create such a climate as would enable every one of its citizens to exercise freedom of religion and conscience. Section 99A of the Criminal Procedure Code and section 295A of the Indian Penal Code are only legislative recognition of the power of the State to take action for the purpose of affording such protection to all its citizens. If the deduction that any citizen could intentionally wound the religious beliefs of others in the name of free-thinking were legitimate, no affront however deliberate and malicious it might be would be governed by section 99A of the Criminal Procedure Code and section 295A of the Indian Penal Code with, the result that they become otiose.”

Freedom of speech and expression is one of the basic rights guaranteed by the Constitution. However, expressing opinion is one thing and insulting others is another. No right is absolute but has a corresponding duty attached to it. When law guarantees a person the right to express himself/herself, the person has a corresponding duty not to abuse the rights of others and cause a situation inviting lawlessness. The state is the protector of the rights of the individuals but individuals also have a duty to provide conducive atmosphere for the state to function properly.

On the question whether the section can be said to be in conflict with right to religion of the person expressing his views, it is amply clear from the plain language of the section that it does not prohibit or make punishable anything which is mere profession, practice or propagation of a religion or any of the things specified in part III of the constitution. A person may with complete liberty, profess, practice or propagate his religion without any obstacle or hindrance and nothing what he may do, can possibly be treated or considered as an intention to outrage the religious feelings of any class of people, much less would it amount to a “deliberate and malicious” intention to do so. There would be deliberate and malicious intention of outraging the religious feelings of others “only if a person does something which has a tinge of intention to outrage the feelings of others and even that intention is not merely deliberate, but also malicious.”³⁹

The constitutional validity of section 295A is thus well settled. The section is by no ways in conflict with article 19 or 25 of the Constitution, although hardcore advocates of free speech without any

³⁸ AIR 1959 AP 572.

³⁹ *Sant Das Maheshwari v. Baburam* AIR 1969 All 436.

restraints may call it to be violative of article 19(1)(a), section 295A broadly fulfills the criterion of reasonable restrictions provided for in article 19(2) since our system is that of ordered liberty and not liberty without any restraints. However, a lot depends on the approach of the judge hearing the case whether he gives more weight to the individuals' freedom of expression or thinks that the expression is imminently likely to disrupt public order and preservation of public peace tops his priority. The recent trend witnessed in case of *Mahender Singh Dhoni*,⁴⁰ *Sanjay Leela Bhansali*⁴¹ and *Priya Prakash Varrier*⁴² has been to uphold freedom of expression. The approach of the court has been consistent in emphasizing upon establishing the subjective element of the offence *i.e.*, deliberate and malicious intention to outrage the religious feelings with reasonable foresight of disrupting public order and at the same time chastising the petitioners⁴³ as well as the magistrates issuing summons.⁴⁴

III. Blasphemy and Islam

Under Islamic law, there are specific acts, utterances or writings to which the term blasphemy applies. According to the Encyclopedia of Religion and Ethics⁴⁵ blasphemy in Islam is a very broad concept which comprises:

‘all utterances expressive of contempt for God, for His Names, attributes, laws, commands and prohibitions...such is the case for instance if a Muslim declares that it is impossible for Allah to see and hear everything, or that Allah cannot endure to all eternity, or that He is not one (*wahid*)... All scoffing at *Muhammad* or any other prophets of Allah is also to be regarded in Islam as blasphemy.’

In what can be said to be the broadest possible definition, Dr. Mohammed Asrar Madani defines blasphemy as:

“reviling or insulting the Prophet in writing or speech; speaking profanely or contemptuously about him or his family; attacking the Prophets dignity and honour in an abusive manner; vilifying him or making an ugly face when his name

⁴⁰ *Mahender Singh Dhoni v. Yerranguntala ShyamSunder* (2017) 7 SCC 760.

⁴¹ *Manohar Lal Sharma v. Sanjay Leela Bhansali* (2018) 1 SCC 770.

⁴² *Priya Prakash Varrier v. State of Telangana* Writ Petition (Criminal) No.44 OF 2018.

⁴³ The Supreme Court while quashing all complaints filed against the actress remarked that “as we perceive, the intervenor... in all possibility has been an enthusiast to gain a mileage from the F.I.R....” para 13. *Ibid*.

⁴⁴ *Supra* note 40. The Supreme Court held - “we would like to sound a word of caution that the Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offence...” para 14.

⁴⁵ J Hastings ed., *Encyclopedia of Religion and Ethics* Vol. VI cited from *infra* note 47.

is mentioned; showing enmity or hatred towards him, his family, his companions and the Muslims; accusing or slandering the Prophet and his family, including spreading evil reports about him or his family; defaming the Prophet; refusing the Prophet's jurisdiction or judgment in any matter; rejecting the *Sunnah-al-Nabawiyya*; showing disrespect, contempt for or rejection of the rights of Allah and His Prophet or rebelling against Allah and His Prophet. Indulging in any of the above would constitute blasphemy under Islamic Law."⁴⁶

Thus, we can broadly demarcate the concept of blasphemy under Islam under two heads- blasphemy against God (*Sabb Allah*) and blasphemy against the Prophet (*PBUH*) (*Sabb al-Rasul*). It is the blasphemy of the second kind *i.e.*, *Sabb al-Rasul* which in the recent times has been the cause of violent disruption of public order. Hashim Kamali⁴⁷ points out the main purpose of drawing distinction between reviling God and insulting the Prophet (*PBUH*) is to determine the admissibility or otherwise of repentance in each case. This very distinction is also related in turn to the binary division of rights into the right of God and the right of man.⁴⁸ Thus, *Sabb Allah* consists of violation of the right of God whereas *Sabb al-Rasul* is the violation of right of man *i.e.*, the personal right and honour of the Prophet (*PBUH*). Before discussing *Sabb al-Rasul* we would first discuss *Sabb Allah*.

Sabb Allah

Sabb means insult. Any word, expression, or gesture which attacks the dignity of the person to whom it is addressed, and which humiliates the latter in the eyes of his or her compatriots may be termed as "insult."⁴⁹ It is virtually impossible to mark out or list words and expressions that may be classified as *sabb*. While certain words and expressions are generally known to be insulting, there may be instances where their precise significance needs to be measured in the light of prevailing circumstances, such as the social status of the victim, and the context in which the words were expressed.⁵⁰ Generally, the Holy *Qur'an* proscribes

⁴⁶ Dr. Mohammed Asrar Madani, *Verdict of Islamic Law on Blasphemy & Apostasy*, 19 (Kutub Khana Aziza, New Delhi, 1994).

⁴⁷ Mohammed Hashim Kamali, *Freedom of Expression in Islam*, 231 (Islamic Text Society, Cambridge, 2012).

⁴⁸ *Ibid.*

⁴⁹ *Id.* at 177.

⁵⁰ *Ibid.*

a believer or a Muslim from insulting or ridiculing others⁵¹ and under no circumstance should he insult a *mushrik i.e.*, a believer in multiple Gods.⁵²

Sabb Allah means insulting *Allah*. “*Allah*” is one of the names of the One God Almighty in Islamic tradition. The fundamental basis of Islam is believing in the concept of One God⁵³ or one superpower who is the creator of this universe and to whom will all mankind return on the day of judgment. This supreme power has many other names which are mentioned in the Holy *Qur’an* itself but the name which is used the most is *Allah*. *Sabb Allah* can be said to be a result of disbelief of non-believers. Does this imply that anybody who expresses his non-belief in *Allah (SWT)* would be guilty of blasphemy? Going by the definition of blasphemy given by Encyclopedia of Religion and Ethics,⁵⁴ any expression by a man which denies the unity or Oneness of God *i.e.*, *Allah* or declares that *Allah* is not all enduring not possessing any power over man, would be liable for punishment under blasphemy law.

Islam essentially is a religion that recognizes and reaffirms the truth revealed earlier by divine inspiration⁵⁵ that there is just one God who is the creator⁵⁶ of this universe, to whose will a man is supposed to submit.⁵⁷ Now would any expression which denies this very thesis by making fun of the fundamental conception of “One God,” mocking at the belief of the believers be deemed blasphemy?

Going purely by *Qur’anic* injunctions, the answer to the above question would be in negative. Islam quintessentially is all about believing, setting man free to make his choice either to believe submitting his will to the will of *Allah* or disbelieve, strictly forbidding coercion in the matters of faith.⁵⁸ A man of faith

⁵¹ “O you who have believed, let not a people ridicule [another] people; perhaps they may be better than them; nor let women ridicule [other] women; perhaps they may be better than them. And do not insult one another and do not call each other by [offensive] nicknames.” *Surah Al Hujurat* 49:11, Abdullah Yusuf Ali, *The Translation and Meaning of the Holy Qur’an*, (Darul Qur’an, New Delhi, 1988).

⁵² “Do not insult those whom they invoke other than Allah, lest they should revile Allah in transgression without having knowledge.” *Id.* at *Surah Al- An’am* 6:108.

⁵³ “He is Allah, [who is] One, Allah, the Eternal Refuge.” *Id.* at *Surah Ikhlas* 112:1-2.

⁵⁴ See *supra* note 45.

⁵⁵ *And We have revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it. So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth. To each of you We prescribed a law and a method. Had Allah willed, He would have made you one nation [united in religion], but [He intended] to test you in what He has given you; so race to [all that is] good. To Allah is your return all together, and He will [then] inform you concerning that over which you used to differ.* *Supra* note 51 at *Surah Al-Maidah* 5:4.

⁵⁶ “[He is] Creator of the heavens and the earth.” *Id.* at *Surah Al Ash Shuraa* 42:11. “[All] praise is [due] to Allah, who created the heavens and the earth and made the darkness and the light.” *Id.* at *Surah Al An’am* 6:1. *Ibid.*

⁵⁷ “Say, ‘You have not [yet] believed; but say [instead], ‘We have submitted,’ for faith has not yet entered your hearts. And if you obey Allah and His Messenger, He will not deprive you from your deeds of anything. Indeed, Allah is Forgiving and Merciful.” *Id.* at *Surah al- Hujurat* 49:14.

⁵⁸ “There shall be no coercion in matters of faith.” *Id.* at *Surah Al Baqarah* 2:256. Also, *Surah Al Kafirun* 109:1-6 “Say: O ye that reject Faith! I worship not that which ye worship, Nor will ye worship that which I worship. And I will not worship that which ye have been wont to worship, Nor will ye worship that which I worship. To you be your Way, and to me mine.” Also

can only convey his beliefs to non-believers making them aware of the message⁵⁹ but can in no ways compel a non-believer to believe in Islam.

*“So to that [religion of Allah] invite, [O Muhammad], and remain on a right course as you are commanded and do not follow their inclinations but say, ‘I have believed in what Allah has revealed of the Qur’an, and I have been commanded to do justice among you. Allah is our Lord and your Lord. For us are our deeds, and for you your deeds. There is no [need for] argument between us and you. Allah will bring us together, and to Him is the [final] destination’”*⁶⁰

For a Muslim, a disbelievers’ non-belief in God or mockery of religion which professes the way to eternal reality should not be a matter of grief or hurt at all because there scoffing at God Almighty is not going to alter the ultimate truth.

*“And do not be grieved, by those who hasten into disbelief. Indeed, they will never harm Allah at all. Allah intends that He should give them no share in the Hereafter, and for them is a great punishment.”*⁶¹

If a non-believer chooses to ignore the message, a believer is not under an obligation to do anything, as Islam essentially is a religion which focuses on individual liability of actions. No other person is responsible for the deeds of the other.⁶² It is not enjoined to a Muslim to even judge the belief or non- belief of a person.⁶³ As far as the question of punishment goes, it is only God himself who is to punish the non-believer whose ultimate abode would be hell.

see Surah Al- Yunus 10:99- *“And had your Lord so willed, all those who live on earth would have attained to faith - all of them, do you then think that you could compel people to believe?”*

⁵⁹ *“Remind them, for you are one who reminds; you are not a warden over them.”* Id. at Surah Al Ghasiya 88:21-22. Also see Surah Al Imran 3:20, wherein the God Almighty says- *“And say to those who were given the Scripture and [to] the unlearned, ‘Have you submitted yourselves?’ And if they submit [in Islam], they are rightly guided; but if they turn away - then upon you is only the [duty of] notification. And Allah is Seeing of [His] servants.”*

⁶⁰ Id. at See Surah Al Ash Shuraa 42:15.

⁶¹ Id. at Surah Al Imran 3:176.

⁶² See supra note 60.

⁶³ *“O you who believe! When you go (to fight) in the Cause of Allah, verify (the truth), and say not to anyone who greets you (by embracing Islam): ‘You are not a believer’; seeking the perishable goods of the worldly life. There are much more profits and booties with Allah. Even as he is now, so were you yourselves before till Allah conferred on you His Favours (i.e. guided you to Islam), therefore, be cautious in discrimination. Allah is Ever Well-Aware of what you do.”* Id. at Surah Al- Nisa 4:94.

*“He who turns away and disbelieves, then Allah will punish him with the greatest punishment. Indeed, to Us is their return. Then indeed, upon Us is their account.”*⁶⁴

*“Behold, together with those who deny the truth, God will gather in hell the hypocrites..”*⁶⁵

*“Verily the hypocrites shall be in the lowest depth of hell...”*⁶⁶

*“And whoever contradicts and opposes the Messenger after the right path has been shown clearly to him, and follows other than the believers’ way. We shall keep him in the path he has chosen, and burn him in Hell what an evil destination.”*⁶⁷

Sabb Allah, according to the majority view of *Ulemas* or religious heads is in principle pardonable when the offender repents and expresses regret over his conduct.⁶⁸

Sabb al-Rasul

Sabb al-Rasul means insulting Prophet *Muhammad (PBUH)*. Reviling the Prophet as has been noted earlier is seen to cause explosive reactions across the Muslim world with *ulemas* taking a more serious offence to *Sabb al-Rasul* than *Sabb Allah*.⁶⁹ The basic rationale of taking a more strict view of *Sabb al-Rasul* is the idea that honour of God cannot, in any real sense, be touched by the nonsensical conduct of a misguided individual, however, as a human being, Prophet of God is susceptible to abuse and therefore his rights must be protected.⁷⁰ Under Islamic jurisprudence, violation of the right of man *i.e.*, *haqq al-‘abd* can only be pardoned by the man whose right has been violated and since *Sabb al-Rasul* is *haqq al-‘abd*, it can only be pardoned by Prophet *Muhammad (PBUH)* himself.⁷¹ Coming to the question of repentance, according to the majority opinion, the punishment for reviling God is cancelled upon repentance prior to arrest but there is reservation on this point when it comes to the question of insulting the Prophet (PBUH).⁷² It is argued that since *Sabb al-Rasul* could only be pardoned by Prophet *Muhammad (PBUH)* himself,

⁶⁴ *Id.* at *Surah Al Ghasiya* 88:23-26.

⁶⁵ *Id.* at *Surah Al Nisa* 4:140.

⁶⁶ *Id.* at *Surah Al Nisa* 4:145.

⁶⁷ *Id.* at *Surah Al Nisa* 4:115.

⁶⁸ See *supra* note 47.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Id.* at 232.

after his demise the punishment would be enforced regardless of whether the offender repents or not.⁷³ This view is criticized by Kamali who holds an opinion that after the demise of Prophet Muhammad (PBUH) *Sabb al-Rasul* should be treated similar to *Sabb Allah*.⁷⁴

Agreeing to the logic of Kamali's argument of treating *Sabb Allah* as *Sabb al-Rasul*, it becomes essential to know the manner in which the Prophet (PBUH) reacted to insults, abuse or hurt. The *Quran* expressly tells the Prophet (PBUH) not to grieve over the unbelievers.⁷⁵ The Prophet (PBUH) is time and again reminded of the earlier prophets of God who were ridiculed at and whom *Allah* punished.

And already were [other] messengers ridiculed before you, and I extended the time of those who disbelieved; then I seized them, and how [terrible] was My penalty.⁷⁶

And indeed (many) Messengers were mocked before you, but their scoffers were surrounded by the very thing that they used to mock at.⁷⁷

The Almighty God assures of the swift account that would be taken of the unbelievers who hurt the Prophet (PBUH).

*"And among them are men who hurt the Prophet (Muhammad) and say: "He is (lending his) ear (to every news)." Say: "He listens to what is best for you; he believes in Allah; has faith in the believers; and is a mercy to those of you who believe." But those who hurt Allah's Messenger (Muhammad) will have a painful torment."*⁷⁸

The Prophet (PBUH) is also advised not to get impatient by the abusive taunts of the unbelievers questioning the power of Almighty.

⁷³ *Ibid.*

⁷⁴ The Hanafi and Shafi school of thought treat *Sabb al-Rasul* as *Sabb Allah* but there reasoning is altogether different as they consider *Sabb Allah/Sabb al-Rasul* as a sub variety of apostasy. See *ibid.*

⁷⁵ "We know indeed the grief which their words cause you (O Muhammad): it is not you that they deny, but it is the Verses (the *Qur'an*) of Allah that the Zalimun (polytheists and wrong-doers) deny. Verily, (many) Messengers were denied before you (O Muhammad), but with patience they bore the denial, and they were hurt, till Our Help reached them, and none can alter the Words (Decisions) of Allah. Surely there has reached you the information (news) about the Messengers (before you)." *Supra* note 51 at *Surah Al An'am* 6:33-34.

⁷⁶ *Id.* at *Surah Al- Ra'd* 13:32.

⁷⁷ *Id.* at *Surah Al- An'am* 6:10..

⁷⁸ *Id.* at *Surah Al- Taubah* 9:61.

*If their aversion (from you, O Muhammad and from that with which you have been sent) is hard on you, (and you cannot be patient from their harm to you), then if you were able to seek a tunnel in the ground or a ladder to the sky, so that you may bring them a sign (and you cannot do it, so be patient). And had Allah willed, He could have gathered them together (all) unto true guidance, so be not you one of those who are Al-Jahilun (the ignorant)*⁷⁹

The Prophet (PBUH) is time and again assured by God Almighty not to worry about the disbelievers who do not heed to the message.

*He who obeys the Messenger has indeed obeyed Allah, but he who turns away, then we have not sent you (O Muhammad) as a watcher over them.*⁸⁰

*“And those who have disbelieved say, ‘You are not a messenger.’ Say, [O Muhammad], ‘Sufficient is Allah as Witness between me and you, and [the witness of] whoever has knowledge of the Scripture.’”*⁸¹

The Prophet (PBUH) is also instructed to turn away from the people who plot against him without retribution and leaving the disposal of matter to God himself.

*They say: “We are obedient,” but when they leave you (Muhammad), a section of them spend all night in planning other than what you say. But Allah records their nightly (plots). So turn aside from them (do not punish them), and put your trust in Allah. And Allah is Ever All-Sufficient as a Disposer of affairs.*⁸²

Gathering from various sources from the *Quran*, it becomes amply clear that in this regard just as with *Sabb Allah*, the punishment is reserved for the hereafter. The *Quranic* injunctions can also be supplemented by the traditions of Prophet *Muhammad (PBUH)* himself.

*“Let him who deliberately attributes a lie to me, take his seat in the Fire [of Hell].”*⁸³

“The person who utters a word which meets with Allah’s favor may think it has been heard, yet for this Allah will raise him to a higher level of paradise. Conversely, the

⁷⁹ *Id.* at *Surah Al An’am* 6:3.5

⁸⁰ *Id.* at *Surah Al Nisa*-4:80.

⁸¹ *Id.* at *Surah Al Ra’d* 13:43.

⁸² *Id.* at *Surah Al Nisa*-4:80.

⁸³ Book 3, *Hadith* 51 *Sahih al-Bukhari* 109..

person who utters a word that stirs Allah to anger may give no thoughts to what he said, only to have Allah cast him in Hell for seventy years.”⁸⁴

Thus, it can very well be concluded that neither the Holy *Quran* nor does *Sunnah* explicitly provide for punishment for blasphemy in this world and clearly reserves the same for the hereafter.

IV. Innocence of Muslims and Public Disorder

In this part, we shall discuss the peculiar case of the infamous blasphemous video which took the entire world by storm.⁸⁵ The video which in the words of Peter Bradshaw is nothing but “a bigoted piece of poison calculated to inflame the Muslim world.”⁸⁶ Nakoula Basseley Nakoula who was held guilty of a bank fraud in California and sentenced to 21 months in federal prison and five years on probation in 2010, produced the movie after he was released from custody in June 2011. After the violent protests caused by the highly blasphemous content of the video across the Muslim World, the court ordered him back to prison without bail for violating the terms of probation as he had used aliases which his probation order expressly prohibited from.⁸⁷ Nakoula used an Israeli alias Sam Bacile and claimed that the funds sourced from Jewish donations⁸⁸ thereby trying to incite anti-Jewish sentiments amongst Muslims. Although Nakoula’s re-imprisonment had absolutely nothing to do with the movie or its blasphemous nature, with his arrest, the protests faded away.

The entire chain of events revolving the blasphemous video trailer on YouTube raises important questions. What if, Nakoula Basseley Nakoula had not been the fraudster on probation, who had produced the video? To put it in different words, would Nakoula be apprehended by the police and sent to jail for producing the *Innocence of Muslims* in absence of any prior conviction?

Keeping in mind the First Amendment jurisprudence as developed by the courts in United States, the answer to the above question is in negative.⁸⁹ Thus, when the actress in the movie moved to

⁸⁴ *Hadith At-Tirmidhi*.

⁸⁵ See *supra* note 5.

⁸⁶ *Ibid*.

⁸⁷ See Randy Kreider, “Innocence of Muslims’ Filmmaker Ordered Back to Prison,” *available at*: <http://abcnews.go.com/Blotter/innocence-muslims-filmmaker-ordered-back-prison/story?id=17673952> (visited January 20, 2014 at 20:30 hrs).

⁸⁸ Nakoula had initially claimed himself to be an Israeli Jew and the said that the funds for the film which cost him about \$5,000,000 came from his wealthy Jewish friends. Nakoula who is actually an Egyptian-American Coptic Christian, later on told authorities that the film costs between \$50,000 and \$60,000 the funds for which came from his wife’s family in Egypt. See *ibid*.

⁸⁹ The First Amendment of the U.S. Constitution provides—“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to assemble peaceably, and to petition the Government for a redress of grievances.”. American approach

the Los Angeles County court asking Google to remove the video from the website, the federal court ruled in favor of Google, allowing it to continue showing the trailer on YouTube.⁹⁰ Going by the dictionary meaning of *blasphemy*, without any doubt, the video is blasphemous as it mocks on the revered Prophet of Islam. Is it really the video which is responsible for the riots? Does it call for violence? Or does it in any ways justify violence by the people who get offended by it?

Different jurisdictions deal differently with blasphemy. Unlike United States, in countries of the Middle East or the countries governed by *Sharia*, as well as in India, blasphemy is an offence punishable by law.⁹¹ How does one deal with a blasphemous piece in the highly globalized world of Internet? In the absence of internet, if a person, say A publishes a pamphlet or a book in a country X, where blasphemy is not a criminal offence, mocking on the prophet or religious tenets of a particular religion, A is not guilty in law even if the pamphlet hurts the sentiments of a minority in Country X. Since the publication is local, there is no question of the rest of the world getting offended. Situation changes when the publication in country X is accessible easily to say country P, Q and R where blasphemy is a punishable offence. What would be the liability of A in such a circumstance? Nakoula cannot be punished for producing a blasphemous piece of video in the United States. The reason he was sent back to prison, was not because of his producing the movie

on dealing with free speech issues regarding religious insinuations is different from the rest of the world. While using the Nazi symbols is a crime under the German Criminal law, Neo-Nazi's can march in the holocaust sensitive village in America and the State Supreme Court as well as the Federal Appeals Court ruled in favour of the marchers [See *Vill. of Skokie v. Nat'l Socialist Party of America*, 373 N.E.2d 21, 24 (Ill. 1978)]. If a certain Reverend Terry Jones presides a mock jury trial against the Holy *Quran* and holds it guilty of crimes against humanity, burning it in front of a live audience and streaming the whole event on the internet with Arabic subtitles, his act is protected by the First Amendment jurisprudence of United States. [Though there are commentators who argue that *Quran* burning be considered as "symbolic fighting words" in order to lose the first Amendment protection and Reverend Jones would be convicted under the Anti Riot Act as his whole act was deliberate in order to incite passions and acts of violence across the Muslim world. See John R. Maney, "The Burning," 7 *Crim. L. Brief* 48 (2011) and Catherine Blue Holmes, "Quran Burning and Religious Hatred: A Comparison of American, International, and European Approaches to Freedom of Speech," 11 *Wash. U. Global Stud. L. Rev.* 459 (2012)]. A similar incident of burning the *Quran* would not be protected in United Kingdom. See Andy Bloxham, "Man who burned Koran jailed for 'theatrical bigotry'," available at: <http://www.telegraph.co.uk/news/religion/8459965/Man-who-burned-Koran-jailed-for-theatrical-bigotry.html> (visited January 20, 2014 at 20:40 hrs).

⁹⁰ See "Google approved to keep showing 'Innocence of Muslims'" available at: <http://rt.com/usa/google-muslims-film-garcia-478/> (visited January 20, 2014 at 20:50 hrs). The reason why the actress moved to court was that she claimed she had been duped by the producer as she had no idea that the movie was projecting Prophet *Muhammad* (*PBUH*) in bad light. Considering the fact that the most crude Islamophobic lines don't lip-sync with the words the actors are heard mouthing off, her claim is pretty believable. However, the court declined the actress any relief. After the LA Court refused deletion of the video from Google, the actress filed a lawsuit against Google, YouTube and Nakoula Basseley Nakoula for libel, fraud and copyright infringement. Her claim on performers' rights was out rightly rejected by the judge who said that "Even assuming that both Garcia's individual performance in the film is copyrightable and that she has not released this copyright interest, the nature of this copyright interest is not clear." Although, the question of performers right being beyond the scope of the current paper, the author is of the strong opinion that the moral rights of the actress on her performance in the present case has been infringed.

⁹¹ See part II.I of the paper.

but for breach of terms of his probation orders. He was after all a convicted fraud. Contemplating the situation had he not been a fraud, what then? No court in the United States would have ever convicted him for coming up with the video, in that case, what would have been the state of affairs, it is hard to imagine. Violence erupted in the Middle East after the surfacing of the video, this is a fact. But was the video the real reason of riots and killings?

As it was later on revealed, the attack on American embassy in Libya which killed the US Ambassador Chris Stevens was a planned attack by terrorist organizations and the anti-video protest was used as a cover up.⁹² If J.S Myerson is to be believed then the real reason behind the violence in Middle East is not the blasphemous content of the video but the rising global food prices.⁹³ He argues that the surfacing of the video just acted as a catalytic agent in a society where population was already primed for unrest. His argument is not hollow and backed up by a report on “The Food Crisis and Political Instability in North Africa and Middle East”⁹⁴ which concludes that “food prices are the precipitating condition for social unrest” and warns “if food prices remain high, there is likely to be persistent and increasing global social disruption.”

Innocence of Muslims, no matter how blasphemous does not fall under the category of hate speech. The video does not provoke its audience to violence. The video also did not simply pop out in front of a casual internet surfer. Its viewers had to take an effort to search for it on YouTube in order to view it and then get offended by the content. The audience would get offended by it and vent their hurt by means of violence is something which cannot be said by reasonable certainty. The theory connecting rising food prices priming the conditions for a social unrest which can precipitate into mass scale riots with any small incident make the blasphemous nature of the video just a stimulating or precipitating factor and not the sole cause of disrupting public order.

In Indian context, *Innocence of Muslims* can be compared to the publication of “*Bichitra jivan*”, a violently abusive and obscene diatribe against Prophet *Mohammed* in 1923 by Pt Kali Charan Sharma claiming to be a spearhead of the Shuddhi movement trying to reclaim Hindus from other

⁹² See the report by the New York Post dated September 12, 2012 “Attack on US Ambassador planned for 9/11,” available at: <http://nypost.com/2012/09/12/attack-on-us-ambassador-planned-for-911-report/>. (visited January 20, 2014 at 16:00hrs). Also see report by David D Kirkpatrick and Steven Lee Myers for the New York Times dated September 12, 2012 “Libya Attacks Brings Challenges for U.S.,” available at: <http://www.nytimes.com/2012/09/13/world/middleeast/us-envoy-to-libya-is-reported-killed.html?pagewanted=all>. (visited January 20, 2014 at 16:10 hrs).

⁹³ J.S. Myerson, “The Real Reason the Middle East is Rioting,” available at: <http://www.psmag.com/politics/why-the-middle-east-is-rioting-46792/>. (visited January 20, 2014 at 16:15 hrs).

⁹⁴ The report dated September 28, 2011 is available at: http://necsi.edu/research/social/food_crises.pdf. (visited January 20, 2014 at 16:25 hrs).

religions.⁹⁵ In the book, the author undertakes to demonstrate that the Prophet was guilty of acts which no decent man could describe and to show that he was in fact a person of such abandoned and infamous character that Muslims if they could only reflect calmly, must necessarily repent of their belief in him as a messenger from God.⁹⁶ The book is devoted to a narrative of incidents in the history of the life of the Prophet interspersed with caustic and provocative comment on the part of the author. Many of the passages abound in vituperation and sarcasm are expressed with the grossest obscenity which cannot fail to suggest that they were written deliberately for the purpose of holding up the Prophet to odium and derision so as to present him to the reader as a man wholly unworthy of the reverence of the millions who believe in him and in his doctrine.⁹⁷

The question before the court in this case was to judge the intention of the writer whether has he by the book promoted or attempted to promote feelings of enmity or hatred between two classes. The case precedes the insertion of section 295A by amendment in IPC. The court held that- The principle applying to case of seditious libel applies to the publication punishable under section 153A, I.P.C.⁹⁸ The court also observed: ⁹⁹

It must of course be recognized that in countries there is religions freedom a certain latitude must of necessity be conceded in respect of the free expression of religious opinion to weather with a certain measure of liberty to criticize the religious beliefs of others, but it is contrary to all reason to imagine that liberty to criticize includes a licence to resort to the vile and abusing language which characterizes the book now before me.

The court further observed that- “The whole tenor of the book suggests to my mind that the object can be no other and I am not prepared to believe the statement of Kali Charan that he wrote the book as a missionary and in the exercise of a legitimate right to induce people to embrace Hinduism.”¹⁰⁰

⁹⁵ See *Kali Charan Sharma v. Emperor* AIR1927 All 649.

⁹⁶ The book is divided into twelve chapters the earlier portions purporting to describe the perverted morals of Arab society at the time of the appearance of the Prophet. Here reference is made to the general prevalence at that time of drunkenness, superstition, adultery, incest and bestiality and it is asserted that although the Prophet posed as a reformer of morals he became in fact "a victim of all the vices just enumerated." The author deposed on oath what he meant to convey by it was that while Mohammad professed to condemn these immoral practices he nevertheless sanctioned them in the law (*Shariat*) which he promulgated for the guidance of Islam. See *Id.* para 12, 13 and 14.

⁹⁷ *Id.* Para 15.

⁹⁸ *Id.* As per Benerji, J. para 29.

⁹⁹ *Id.* As per Lindsay, J. para 27.

¹⁰⁰ *Id.* Para 29.

It is also interesting to note the observation of the Lahore high court in the case of *Rajpaul*¹⁰¹ where in a similar scurrilous attack made on Prophet Mohammed by means of publication, the High Court held that section 153 A¹⁰² of the Code 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.

The court when pressed with the argument that the Muslim community is more fanatical on the question of religion than other communities a satire on the founder of the Muslim religion is more likely to promote hatred and enmity between the masses than a satire on the founder of another religion,¹⁰³ the court held-

“I am unable to accept the argument that the ignorance or fanaticism of a particular community should determine the nature of an act. It may aggravate the offence in certain cases, but it cannot be held that the words used about the founder of one religious creed might not come within the purview of S. 153A, and words used about the founder of another religious creed might come within that purview because of the known fact that one community will resent such words more actively than the other. *The nature of the act, namely whether it is an offence or not, cannot be determined by the reaction of the particular class.*”¹⁰⁴

¹⁰¹ AIR 1927 Lah. 590.

¹⁰² 153A. 1 [Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.]

(1) Whoever- (a) 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 of 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, or (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, 2[or] (c) 2[organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Offence committed in place of worship, etc.-- Whoever commits an offence specified in sub- section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

¹⁰³ See para 11 of *Supra* note 106.

¹⁰⁴ As per Dalip Singh J., *ibid*.

To be prosecutable, the offence has to satisfy the requisites of the statute and not the belief of the masses.

V. Blasphemy and Fear of Public Disorder - An Empirical Evidence

In the light of Supreme Court judgment in *Prakash Jha Productions v. Union of India*¹⁰⁵ wherein a controversy arose with respect to a high-Level Committee of State Government ordering deletion of some portions of film on the ground of apprehended breach of peace and banning public exhibition of the film after the Censor board had certified the movie fit for public viewing, the court categorically emphasized the responsibility of the state to maintain law and order.¹⁰⁶ Drawing an analogy of banning movies with banning individuals, can curtailing an authors' right to attend a literary festival on the pretext of fear of breach of public order be said to be legitimate argument? It is the duty of the state to provide protection to its citizens. And if a certain individual wants to visit the country isn't it the states responsibility to protect his/her life? Is the state justified in considering an apprehended reaction of a certain community while deciding matters that affect an individuals' fundamental right. Is the apprehension of the state real or in the garb of preventing law and order situation, it is the vote bank politics which is being played?

Freedom of expression cannot be held ransom for the fear of apprehended breach of peace. But is there really an apprehension of breach of peace? For ascertaining the truth behind the common assertion that public order situations arise because of offensive/blasphemous expressions, an empirical survey¹⁰⁷ was conducted by the author, the results of which were then crosschecked by applying chi-square tests.

When the respondents were asked if they felt hurt on seeing any picture/video/movie that questioned their faith a sizeable majority at 67.7% answered in affirmative. When these respondents were further asked whether they expressed their hurt by resorting to violence, a whopping majority at 79% answered in negative. Only 21% admitted of expressing their hurt sentiments by resorting to violence.

¹⁰⁵ (2011) 8 SCC 372.

¹⁰⁶ The Hon'ble court held-“It is for the State to maintain law and order situation in the State and, therefore, the State shall maintain it effectively and potentially. Once the Board has cleared the film for public viewing, screening of the same cannot be prohibited in the manner as sought to be done by the State in the present case. As held in *K.M Sankarapaa* it is the responsibility of the State Government to maintain law and order.” See *para 23. Ibid.* Also see *Bhagwati Charan Shukla v. Provincial Government* AIR 1947 Nag 1, *Anand Patwardhan v. The Union of India And Others* AIR 1997 Bom 25, *Sujato Bhadra v. State of West Bengal* (2005) 3 CALLT 436 (HC), *LYCA Production Pvt. Ltd. v. The Government of Tamil Nadu* MANU/TN/2659/2014.

¹⁰⁷ See *Supra* note 8.

When the respondents were asked how do they feel when a person not belonging to their faith expresses an opinion which according to them is insulting or offensive, 61.6% admitted of feeling angry, of which a minority of 17.2% admitted of venting out their anger by violent means whereas a whopping majority of 82.8% denied using any violent means categorically.

Of the 17.2% who admitted of resorting to violence, 80% believed with utmost surety that violence was justified by religion. The other respondents who felt angry but did not resort to violence were asked how they express their anger. Answers varied with maximum number of people opting for peaceful intellectual discussions, putting across their point of view in most intelligent manner or simply ignoring the same especially in case the person posting the offensive content is visibly ignorant, uncouth and mischievous. When the respondents were asked, whether in their opinion punishing a man/woman for expressing an opinion offensive about religion justified, a majority of 76.1% answered in negative. Of the 23.9% who answered in affirmative were further asked if they were aware of any religious scriptures/testaments which expressly instructed to punish a person for offending God/Prophet/religious head. A majority of 51.9% answered in affirmative. When further asked to name the source, 4.9% named internet, 4.9% named their parents and the rest named the religious books.

For the purpose of ascertainment of nexus of religious beliefs and education on freedom of expression and maintenance of public order, the above results were checked on the variables of Education and Religious beliefs. The Chi square tests were applied to verify the results.

The respondents were classified according to their educational qualifications and it was found that irrespective of the differences in the level of education, respondents were equally hurt by seeing pictures that were offensive. Since the p-value (0.255) came to be higher than the significance value, it is proved that the respondents irrespective of the differences in the level of education are equally hurt by seeing pictures that were offensive.

However, when it came to the expression of their hurt sentiments by resorting to violence there was a remarkable difference in the response. Of the 21% admitting of resorting to violence, 80% were educated only until high school. 38.5% till senior secondary, 27.5% were studying in college. The percentage further slumped after graduation at 18.2% and 17.1% at post graduate level to a complete 0% at doctorate level. The p-value (0.003) came out to be lower than the significance value proving that there is a direct correlation between education level of respondents and violent reactions to offensive expressions.

All the respondents with education till highschool level felt angered on coming across blasphemous expression; however only 28.6% admitted of resorting to violence in order to express their anger. Of the respondents who had completed education till senior secondary, 72.2% felt angry, of which 30.8% admitted of venting their anger by resorting to violence. Of the respondents studying in college, 63.4% felt angry of which 26.7% admitted of expressing their anger by violent means. With the increase in education level from graduation onwards, there is a constant slump in reaction with 17.8% of graduates admitting to resorting to means of violence, to 10% post graduates and 7.7% doctorates. However, when the results are tested by applying chi-square tests, p-value (0.344 and 0.167) being higher than the significance level it can be said that when it comes to blasphemous expressions, education does not have a direct correlation with either getting hurt or violence.

A whopping majority of 85.7% respondents with high school background believed that punishing for blasphemous expression is justified by religion. When further asked, whether they are aware of any religious testaments that expressly instruct punishment, the respondents were divided equally. The percentage of respondents believing punishment for blasphemy as justified slumped dramatically with increase in education. From 38.9% at senior secondary to 16.7% at graduation. 71.4% of the respondents with senior secondary background categorically denied having any knowledge about express religious instructions for same. The number dramatically decreased as soon as moving on to college level where 64.7% admitted of having knowledge about express religious instructions punishing blasphemy. 23.5% of post graduates believed blasphemy to be a punishable offence of which only 50% admitted of having knowledge about the source. At the doctorate level, only 21.1% believed punishment for blasphemy as being justified, of which again, 50% denied having any knowledge about the religious backing to the justification. When chi-square tests were applied to check the results, it becomes very evident with the p-value (0.003) being less than the significance level is directly linked with education, however, when it comes to the source of knowledge, education has no such correlation.

When the respondents were classified on the basis of religion, it was found out that Muslims at 74.2% were the most hurt on seeing offensive posts followed by Hindus at 65.4% and Christians and Sikhs came at 50% both. However, when it came to expressing their hurt by resorting to violence, the Sikhs admittedly were most likely to respond by resorting to violence, followed by Christians at 25% and Hindus at 23.6%. Muslims at 16.8% feature at the bottom of the list and surprisingly come across as least volatile of the lot. Checking the results by applying chi-square

tests, it becomes amply clear that religion of respondents has no direct correlation with either getting hurt or expression by violent means as p-value (0.118 and 0.260) is higher than the significance level. So, it can safely be assumed, that all religious denominations behave similarly when it comes to offensive expressions.

When the respondents were asked whether when a person not belonging to their faith expresses an opinion which according to them is insulting or offensive, they feel angry, it was found surprisingly that, it were the atheist at 100% who felt most angered by listening to opinions offending their non-belief. They however, did not admit of resorting to any violent means in order to vent their anger. The atheists were followed by Christians at 75% out of which only 16.7% said they would resort to violent means. The Muslims at 64.8% followed the Christians in getting angry on hearing blasphemous expressions, surprisingly, out of which only 9.6% admitted of resorting to violent means in order to vent their anger. The Muslims were followed by Hindus at 59.6% and Sikhs at 50%. Again, Sikhs at 100% admitted of resorting to violence in order to express their anger whereas, only 22.3% of the Hindus admitted of same. Thus, once again, even when dealing with blasphemy, Muslims are the least volatile of the lot and although offended by the expressions are the least likely to resort to violence.

Again applying chi- square tests, it becomes amply clear that religion of respondents has no direct correlation with either getting angry and venting the same by violent means as p-value (0.562 and 0.257) is higher than the significance level. So it can safely be assumed, that all religious denominations behave similarly when it comes to blasphemy.

When the respondents were asked, whether in their opinion punishing a man/woman for expressing an opinion offensive about religion justified, classification of the respondents, on the basis of religious affiliation leads to interesting results.

Hindus at 76.6% and Muslims at 75.8% did not believe that punishing a man or a woman for blasphemous expression is justified by religion. Of those who believed it to be justified, 56.8% of the Hindus and 41.9% of the Muslim respondents denied any knowledge of religious scriptures that instructed such punishment. 62.5% of the Christians did not believe punishing for blasphemy as being justified whereas, the ones who believed, admitted of being aware of the religious scriptures prescribing punishment. Whereas the Sikhs are concerned, they were equally divided in the opinion as far as the justification of punishment is concerned but the ones who believed it to be justified, expressed knowledge of religious scriptures prescribing same. However, applying chi-

square tests, it becomes amply clear that religion of respondents has no direct correlation with either getting hurt or expression by violent means as p-value (0.787 and 0.163) is higher than the significance level. It can therefore, safely be assumed, that all religious denominations behave similarly when it comes to opinion on punishing the blasphemer.

The survey results dispel the misconceived notion of religion having direct correlation with getting offended. Religious identity of the respondents does not have any direct correlation either with getting hurt or expressing their hurt by violent behavior. All religious denominations behave similarly when it comes to offensive expressions. What is highlighted very prominently from the survey, is the role played by education as a moderating factor which inculcates a scientific temperament of tolerance in the individuals. Education as such does not have a direct nexus with violent behavior when it comes to blasphemous expressions but the attitude towards blasphemers is directly affected by the education level of the respondents. The more educated a person is the more open he becomes to the idea of accepting a blasphemer for his/her beliefs without making a case for penalizing him/her. Public order is more likely to be disturbed by the less educated lot who can easily come under political influences.

VI. Conclusion

A fundamental question which is raised while delving on to the rationale behind penalizing blasphemous expressions is- to what extent can one regulate speech in the name of blasphemy which is primarily an offence against God Almighty? Do humans have a *locus standi* in matters concerning the divine? Isn't blasphemy essentially a matter between self and God as it becomes evident while discussing Islamic law on Blasphemy? Humans do not have the divine sanction to punish blasphemous expressions at least according to Islamic teachings. Since freedom of expression or blasphemy laws of religions other than Islam, were not discussed in the paper, a general conclusion cannot be drawn here. However, as the problematic aspect of offended Muslim sensibilities in the real world has been discussed it can be concluded that penalizing blasphemy as such by law is against the *Quranic* dicta. In a democratic setup like India wherein right to freedom of expression is guaranteed by the constitution as a fundamental right, the only justification for retaining the law penalizing blasphemy is "in the interest of public order."

In light of evidence adduced in the paper, the author humbly submits that the unholy nexus of Islam with blasphemy and violence that finds itself in the headlines does not hold ground. Blasphemy is an offence against God and humans do not have the right to get offended and punish

the blasphemer. Islam does not support punishing blasphemy in this world and the punishment is reserved for the hereafter. The hypothesis that Muslims are more likely to resort to violence is thus negated by the data analysis. Religious identity of the respondents does not have any direct correlation either with getting hurt or expressing their hurt by violent behavior. All religious denominations behave similarly when it comes to offensive expressions. People do get hurt when they come across an expression which attacks their innate beliefs, but it is not their religious identity which conditions their reaction towards the attacks, rather it is the level of their education which defines their behavior. In a pluralistic society, it is, thus, not the differences in thought process or belief system but the disparity in education levels which is the root cause of problems. Education is a huge moderating factor which inculcates a scientific temperament of tolerance in the individuals which is completely in tandem with the democratic ideals in a state based on Rule of law and is in furtherance of the constitutional mandates of Part III and IV of the Indian Constitution. Thus, it does not make any sense on the part of the State, to limit individual freedom taking the plea of offended sensibilities or apprehending public order situations when there is none.