

Tracing Blasphemy: Comparing the Legal Overreach on Expression and Free Speech in Digital Media and OTT in India and the US

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Abstract

The paper examines the scope and impact of blasphemy law in India, which is Section 295-A of the Indian Penal Code (now Section 299 of the Bharatiya Nyaya Sanhita, 2024), restricting freedom of expression with reference to digital and Over-the-Top (OTT) media platforms. The hands of the judiciary may have attempted to restrict the application through appreciatory interpretation, but the vagueness of the language involved—most importantly, the undefined concept of a "class of citizens" and the rather broad invocation of "public order"—continues to give ample scope for misuse of the provision. The discussion examines significant cases concerning the arrests of comedians Kiku Sharda and Munawar Faruqui and the controversies surrounding shows like Tandav, Leila, and Paatal Lok, as illustrative cases where Section 295-A has been weaponized as cultural censorship and legal overreach. The paper also carries out a comparative analysis of the constitutional approach to blasphemy and speech in the United States and how the First Amendment and the “clear and present danger” doctrine provide a stronger leeway for creative and dissenting articulation. In the end, this paper argues that India must rethink its laws to avert interfering with artistic freedom and democratic discourses in the digital era.

Keywords: Blasphemy, free speech, Freedom of Expression, OTT Platforms

I. Introduction

The advent of Over-the-Top (OTT) streaming platforms has revolutionized digital content creation, enabling bold, provocative, and globally accessible storytelling. However, this liberty has increasingly been at odds with legal and

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social prohibitions over the years, especially concerning religious sensitivities. In India, Section 295-A of the IPC (now Section 299 of Bharatiya Nyaya Sanhita, 2024) makes the act of insulting by deliberate and malicious means intending to outrage the religious feelings of a “class of citizens” an offense. Although the jurisprudence has narrowed its ambit to require volitional and malevolent action, the provision continues to raise severe concerns owing to its vagueness, particularly on how to define a “class of citizens” and the kinds of threats been considered legitimate in terms of “public order.”

The paper will analyze the current enactment of blasphemy laws, with primary focus on Section 295-A, against the backdrop of modern digital media, where they are more often employed as instruments of censorship than protection. The analysis will demonstrate how subjective offence begins to prevail over creative freedom with instances from popular OTT content and the likes of Tandav, Paatal Lok, Kiku Sharda and Munawar Faruqi. The pattern suggests a more ominous trend of legal overreach and a chilling effect on free expression, especially when the definition of 'religion' remains uncertain and the threshold for 'public disorder' is dangerously low.

In order to properly situate India's approach, the paper offers comparisons with the United States, where the First Amendment offers strong protection for speech, and where the ‘clear and present danger’ test is utilized to determine the propriety of limitations on expression. Against the backdrop of American jurisprudence that favors speech, this paper critically examines the legitimacy of the present Indian set of laws along with its ramifications and implications for a digital pluralistic society, where satire, critique, and diverse narratives are indispensable to any democratic discourse.

II. Blasphemy: The Origins; No enmity No law

With the prior conviction of the British colonial authorities along with the IPC in 1860, provisions were made in the IPC to cater to communal tensions and hate speech. Section 153A, among others, specially made it an offence to promote enmity or hatred between different groups on grounds relating to religion, race, language, and other identities.^[66] Stark inadequacies of Section 153A were

exposed in a couple of cases. *Rajpaul v. Emperor*⁴ saw a Hindu publisher circulate a pamphlet called ‘Rangila Rasul’ which depicted the intimate life of Prophet Muhammad, outraging the Muslim community. The publisher was prosecuted under Section 153A, but was acquitted because his actions did not actually cause enmity among different religious groups. This led to one *Illam ud Din*, murdering the publisher in Haridwar. He was celebrated as ‘shaheed’(martyr) and was represented in court by Muhammad Ali Jinnah. Jinnah argued *Illam*’s tender age and religious provocation as reasons for acquittal. The court, however, convicted him, holding that mere tender age and religious provocation were wholly insufficient reasons for acquittal.⁵ This led to a call for legislation specifically addressing insults to religious feelings. And thus in 1927, Section 295-A, which criminalized the offence of blasphemy, came into force.

Section 295-A criminalizes those who intentionally or maliciously insult or attempt to insult the religion or belief of a class of citizens.⁶ The effort to decolonize criminal laws of India, saw the IPC repealed and enactment of the *Bhartiya Nyaya Sanhita (BNS)*, 2024. The text of the blasphemy provision was reproduced under Section 299, BNS, with the addition of electronic communications.⁷

III. Section 295-A: The Curious Question of Religion

The Supreme Court in *Ramji Lal Modi v. State of UP*, while dealing with the constitutionality of Section 295-A, held that not every action of religious insults

⁴ AIR 1927 Lah. 590.

⁵ *Ghazi Ilam ud Din v. Emperor*. A.I.R. 1930 Lahore 157.

⁶ The Indian Penal Code 1860, s 295A.

“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.”

⁷ *Bharatiya Nyaya Sanhita 2023*, s 299.

“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 through electronic means 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.”

will qualify as blasphemy. It is only when the person's actions are intentional and malevolent, and they cause offence to the religious feelings of a community. *Shreya Singhal v. Union of India*,⁸ further clarified that Section 295-A has been read down to punish only those aggravated forms of religious insults which can disrupt public order. The *Mahendra Singh Dhoni* case,⁹ emphasized on that point and added that the actions under Section 295-A must have a calculated tendency. Thus, the courts have interpreted Section 295A as having a limited scope, applying only to the most deliberate and intentional acts of insulting religious beliefs.

The difficulty lies in identifying who is meant to be offended by blasphemy under the law itself. Section 295A of the IPC makes it an offense to insult a "class of citizens" with respect to their religion or religious feelings. Of course, it does not define what it means by a "class of citizens." A simple reading of the provision would suggest that it refers to people who belong to a certain religion. In this regard, Article 25 of the Constitution grants the right to freedom of religion and Article 26 works to ensure that religious denominations manage their own affairs and institutions. Thus, one must also find out what can be termed within law as "religion" or "religious denomination" to appreciate the ambit and applicability of protection available under Section 295A.

The *Shirur Mutt* case,¹⁰ explored the depth of religion and laid down that religion is not just a doctrine or belief, but it can also prescribe ethical codes for people, rituals, or ceremonies, which might be integral to the religion. It is a matter of faith within communities. This becomes a bigger problem with Hinduism, which is not a monotheistic religion. In the *Satsangi* case,¹¹ Justice Gajendragadkar made the famous observation that Hinduism cannot be defined as via the narrow features of a religion or creed but must be understood as a way of life.

The next big development came when the apex court had to deal with the question of whether the followers of Sri Aurobindo Ghose would constitute a 'religious denomination'. The court came up with a 3-part test to determine a religion. The

⁸ AIR 2015 SUPREME COURT 1523.

⁹ AIR 2017 SC 2392.

¹⁰ *The Commissioner, Hindu Religious ... v. Sri Lakshmindra Thirtha Swamiar Of Sri* 1954 AIR 282.

¹¹ *Sastri Yagnapurushadji And Others v. Muldas Brudardas Vaishya And Another* 1966 AIR 1119.

test was to ascertain the existence of: (i) a collection of individuals who have common system of beliefs and doctrines (ii) common organization (iii) designation by a distinctive name. The final case of reference is the infamous Sabrimala case, which dealt with the law preventing women of menstrual age to enter the Sabrimala temple in Kerala, owing to Lord Ayyappa being a celibate. This long standing practice was fiercely defended by the Ayyappa sect as an essential part of their religion. The argument was raised that the Ayyappa sect was a religion and had a right to manage their own temple. The apex court struck this down stating that 'system of doctrines' must have a methodology, and one does not become a religion just because they have a long-standing practice.¹²

In the Shatrughna Sinha case, the supreme court settled a grievance over an interview where Marwaris were labelled as traitors and enemies of India. The speaker was charged in reference to blasphemy as well as defamation. The court noted that a High Court order had quashed the Section 295-A complaint and saw no use in dealing with the question of whether the ingredients of the offence were attracted. This is interesting as the Marwari community is a regionally ethnic group and not from a particular religion. So would they constitute a 'class of citizens' and what would it mean to insult their 'religious feelings' or 'system of doctrines' since Marwaris can be of different religions.¹³

Turning to a similar provision in Section 295, this deals with the destruction of sacred objects or places with the intention to insult the religious feelings of a 'class of persons'.¹⁴ While the provision has a different scope and covers all persons and not just citizens, since it is also based on religious feelings of a class, perhaps a definition can be appropriated to Section 295-A.

¹² *Indian Young Lawyers Association v. The State Of Kerala* AIR ONLINE 2018 SC 243.

¹³ 'History of the Eternal Marwaris' (The History of Marwaris 16 January 2008) The History of Marwaris: "History of the Eternal Marwaris" accessed 1 April 2025.

¹⁴ The Indian Penal Code 1860, s 295.

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

In *Veerabadran Chettiar v. EV Ramaswami*,¹⁵ the court was dealing with the accused breaking a mud idol of Ganesha and a complaint lodged by the Shaivite sect of Tamil Nadu. A complaint under Section 295-A was dismissed due to a lack of proper sanction. Concerning the complaint under Section 295, the Sessions Court rejected the complaint on the grounds that a mud-doll of Ganesha had to be physically in a place of worship to be sacred, as in general they cannot be said to be sacred to any particular class, as a lot of people have images or idols of the God in their rooms. The Supreme Court disagreed with this interpretation, as the object can be destroyed even outside a place of worship to fall within Section 295. It did not comment on the Shaivites being a particular class of persons and what their 'religious feelings' would be as a Ganesh idol can indeed be found in the homes of people of different sects or denominations. Hence, even here the definition of class is left shrouded in mystery. So, can it be said to be a system of beliefs of Shaivites alone or would this mean that cause of action can be opened by multiple people?

The danger of not knowing what a 'class of citizens' under Section 295-A is, that people can use the offence to silence content due to it upsetting their religious feelings without the concerned persons constituting a religion. A 'class of citizens' claiming that their religious feelings have been insulted, without them being a religion is a legal conundrum. A certain class of citizens prescribing to a fixed set of religious and ethical doctrines and beliefs can raise allegations of blasphemy premised simply on a common moral framework. There will be no burden of proof that a certain set of people constitute a 'class of citizens' and Section 295-A merely becomes about intention and whether the religious feelings of persons were outraged, without going into what religion are those feelings connected to. This can be a dangerous tool to silence free speech on vague grounds, especially when the Ramji Lal Modi case upheld the constitutionality of Section 295-A as a 'reasonable restriction' under Article 19(2), as an essential for maintaining public order. But there are serious issues with this view.

The protection of free speech and expression stands as a basic element of democratic government according to Article 19(1)(a) of the Indian

¹⁵ *S. Veerabadran Chettiar v. E. V. Ramaswami Naicker & Others* 1958 AIR 1032.

Constitution.¹⁶ However, this view makes it difficult to distinguish between statements that could offend religious sentiments and actual incitement to violence, necessitating State action on ‘public order’. This significantly weakens the protective scope of free expression in a pluralistic society by elevating subjective sentiments over rights guaranteed by the constitution.¹⁷

IV. The Problematic Justification of the Order

Conceptual Vagueness: Ramji Lal Modi's definition of “public order” reveals a serious conceptual error. “Public order” is still an ambiguous and flexible phrase, in contrast to the more distinct concepts of “law and order,” which deals with broad criminal activity, or “security of the state,” which deals with serious threats like terrorism or insurrection. Owing of its vagueness, it can be used too broadly, for restricting free expression with even little disturbances or personal discomfort being used as justification.¹⁸ The vagueness lies in the failure to define what level of disruption qualifies as a threat to public order, allowing even minor discomfort or offence to justify curtailment of free speech.

Inconsistency with Evolved Jurisprudence: The logic in Ramji Lal Modi is not followed in later decisions like *S. Rangarajan v. P. Jagjivan Ram* (1989).¹⁹ The Court in Rangarajan, using the American “clear and present danger” standard, determined that communication can only be restricted if it presents a genuine, immediate, and substantial harm to the public interest, figuratively comparing it to a “spark in a powder keg.” The anticipatory and speculative approach approved in Ramji Lal Modi, which justifies censorship even in the absence of immediate threat, is far lower than this.

The emergence of Over-the-Top (OTT) platforms has heightened public debate over laws like blasphemy restrictions because they are used as content-censorship tools to censor content that is considered offensive to religious sensibilities in the name of upholding “public order.” The definition of “public order” in *Ramji Lal Modi v. State of U.P.* was so expansive that it essentially

¹⁶ PHILIP ALSTON & RYAN GOODMAN, *INTERNATIONAL HUMAN RIGHTS* (Oxford University Press 2012) 677.

¹⁷ Section 295A – An Analysis, Indian Law Offices (January 14).

¹⁸ Gautam Bhatia, The Constitutional Case against India’s Blasphemy Law, *THE WIRE* (June 13, 2020, 09:08 AM) <http://thewire.in/19508/the-constitutional-case-against-indias-blasphemy-law/>.

¹⁹ *S. Ranga Rajan v. P. Jagajivan Ram*, 1989 SCR (2) 204.

permitted authorities to restrict speech based only on the potential for offence or unrest, including anything that might disturb public tranquilly, no matter how slight or subjective. This ambiguity makes it possible for arbitrary enforcement to occur even innocuous satire or opposing views may be outlawed if someone argues that they could disturb social harmony. Conservative governments and groups support these limitations, claiming they avoid intercommunal strife.²⁰ But this logic only repeats Modi's failed strategy, giving vague ideas of "public order" precedence over the fundamental right to free speech in our digitally pluralistic society.

V. Blasphemy and the Rise of OTT Platforms

The landscape of streaming media has undergone a remarkable transformation since its early experimental days. Initial attempts to transmit video content online were hampered by technical limitations, but pivotal players such as RealNetworks and, later, YouTube, catalyzed a shift in the mid-2000s. YouTube, in particular, democratized content creation and distribution by allowing users across the globe to upload and share videos, fundamentally altering the dynamics of media production.

In 2007, Netflix initiated a significant paradigm shift in media consumption by transitioning from physical DVD rentals to streaming services. This move effectively eliminated temporal and physical constraints, fundamentally reshaping the way audiences accessed and engaged with visual content. The subsequent release of *House of Cards* in 2013 further solidified Netflix's position—not merely as a distributor, but as a producer of original, high-quality programming. This development underscored the capacity of over-the-top (OTT) platforms to innovate within the entertainment industry, marking a clear evolution from content distribution to content creation.²¹ Disney+, HBO Max, and Amazon Prime Video exemplify the proliferation of new competitors in the streaming industry—a trend initiated by the early successes of platforms such as

²⁰ U.S. Commission on International Religious Freedom, *Violating Rights: Enforcing the World's Blasphemy Laws* (USCIRF, 9 December 2020) <https://www.uscifr.gov/publication/violating-rights-enforcing-worlds-blasphemy-laws>

²¹ *Obscenity on Over-The-Top (OTT) Platforms and Censorship: A Study of Issues and Regulatory Laws* Dr. Raghuvinder Singh, Professor, Faculty of Law, Himachal Pradesh University, Shimla-05, Mr. Sudhir, Research Scholar, Faculty of Law, Himachal Pradesh University, Shimla-05

Netflix.²² The transition to digital entertainment was significantly expedited by the COVID-19 epidemic, which was accompanied by massive lockdowns and social distancing measures.²³ Due to the closure of theatres and the restriction of public meetings, OTT platforms emerged as the main source of fresh material for millions of users globally.²⁴ Streaming services have embraced technical innovation more and more to improve user experience in response to this growing demand.²⁵

However, the rapid pace of digital transformation has undeniably reignited complex debates-particularly those surrounding censorship, religious sensitivities, and allegations of blasphemous content. As OTT platforms expand across borders and reach increasingly diverse audiences, the degree to which content creators can challenge established religious or cultural narratives has become a central issue.

Blasphemy on these platforms has emerged as an especially contentious topic, triggering both legal disputes and broader sociopolitical debates. While OTT services offer creators an unprecedented level of artistic freedom, their content frequently clashes with deeply ingrained religious beliefs, leading to public backlash, legal proceedings, and even financial repercussions. The situation is made more complicated by the absence of a clear “class of citizen” protected under blasphemy laws in many regions, where the very concept of “religion” remains fluid and ambiguously defined. This lack of clarity leaves the law vulnerable to exploitation by powerful religious or political actors, who may wield it as a tool to suppress dissent, limit artistic expression, and silence perspectives that challenge prevailing norms.

In regions such as South Asia, the Middle East, and Eastern Europe, most blasphemy statutes remain imprecise in their definitions. As a result, determining

²² The Modern Media Streaming Landscape and the rise of on-demand AR/VR Streaming Services, <https://www.travancoreanalytics.com/ott-modern-media-landscape-and-ar-vr-streaming-services/>;

²³ Kavita Sharma, Emmanuel Elioth Lulandala, OTT platforms' resilience to Covid-19 study of business strategies and consumer media consumption in India, 31 (1) IJOA 63-90 (2023).

²⁴ Ria Patnaik, Reema Shah, Upendra More, Rise of OTT platforms: effect of the C-19 pandemic, 18 (7) PJA 2277-2287 (2021).

²⁵ E Sundaravel, N Elangovan, Emergence, and future of over-the-top (OTT) video services in India: analytical research, 8 (2) IJBMSR 489-499 (2020).

what qualifies as “blasphemous” is highly subjective, creating significant legal and cultural uncertainty.²⁶ States are able to confuse criticism with sacrilege due to this legal uncertainty, which also encourages selective enforcement. Incidents of digital information being banned, legal action being taken, and producers being criminally prosecuted under blasphemy-related rules have increased in countries including Saudi Arabia, India, Pakistan, and Turkey.²⁷

In India, “deliberate and malicious acts intended to outrage religious feelings” has generated a broad reach of Section 295-A and frequently resulting in legal strong-arming, coercing OTT platforms to proactively modify or remove content in order to avoid legal action. Subjective interpretations and pointless lawsuits are made possible by the vagueness surrounding what exactly qualifies as an “outrage to religious sentiments,” which in turn suppresses intellectual, artistic, and literary expression.

Amazon Prime's *Tandav* is a notable example²⁸ where multiple FIRs were filed against it on the grounds that it insulted Hindu sentiments, which resulted in enforced edits and public apologies.²⁹ Similarly, Sarmad Khoosat's *Zindagi Tamasha* (2020) faced significant public backlash for its portrayal of a priest and was ultimately blocked from release by Pakistan's stringent blasphemy laws.³⁰ While the United States does not have blasphemy laws, even there, social pressure can influence content decisions; for instance, Netflix's *Messiah* was cancelled following religious criticism, demonstrating that public sentiment can shape media choices in modern democracies as well.³¹

²⁶ Law Library of Congress, *Blasphemy and Related Laws in Selected Jurisdictions* (Global Legal Research Centre, January 2017) <https://www.loc.gov/item/2016590066/>

²⁷ *Four Pakistanis handed down a death sentence over blasphemous social media posts* (Daily Pakistan, 25 January 2025) <https://en.dailypakistan.com.pk/25-Jan-2025/four-pakistanis-handed-down-death-sentence-over-blasphemous-social-media-posts>

²⁸ *Aparna Purohit v State of Uttar Pradesh* (2021) SCC OnLine All 179

²⁹ *Fact file: 'Tandav', Amazon Prime, Saif Ali Khan, police complaint, FIR, IB ministry* (BOOM Live, 11 January 2021) <https://www.boomlive.in/fact-file/tandav-amazon-prime-saif-ali-khan-police-complaint-fir-ib-ministry-11607>

³⁰ *Zindagi Tamasha: Pakistan film suspended after religious uproar* (BBC News, 22 January 2020) <https://www.bbc.co.uk/news/world-asia-51201994>.

³¹ Ben Pearson, *'Messiah: Why Netflix Canceled The Controversial Series'* (Slashfilm, 1 November 2024) <https://www.slashfilm.com/1700226/netflix-messiah-series-cancellation-reason/>.

Laws that punish both protected and unprotected speech are “overbreadth” from a legal perspective, going beyond their constitutional bounds.³² Because the Indian legal system does not define “religion” it has led to an overly expansive definition of what constitutes objectionable behavior.³³ An increasing amount of legal uncertainty currently confronts OTT platforms, which are renowned for shattering boundaries through daring, varied storytelling.³⁴ Due to litigation, overcompliance, and self-regulation, Section 295A in its current form has opened the door for regulatory overreach, which has eventually undermined the creative autonomy that these platforms previously promoted.³⁵

a. The Arrest Case of Kiku Sharda

Comedian Kiku Sharda's 2016 arrest is a notable instance of the possible abuse of Section 295A. Sharda, who was known for appearing in “Comedy Nights with Kapil,” was charged under this section after he delivered a satirical mock-up of Dera Sacha Sauda guru Gurmeet Ram Rahim Singh. His imitation, which copied Singh's unique appearance and habits, was taken by members of the group as an insult to their religious feelings.³⁶ A major complication involved the fact that Dera Sacha Sauda is not officially recognized as a religion and so raised serious questions about the application of Section 295A here. Even in the absence of clear religious provocation, the authorities did move fast- arresting Sharda, though he was later released on bail. This event highlights the delicate position of satire and comedy under Section 295A. Without evident intent to offend, the line between creative expression and content offensive can be dangerously blurred, demonstrating the susceptibility of creative work within such legal definitions.

³² GAUTAM BHATIA, *OFFEND, SHOCK, OR DISTURB: FREE SPEECH UNDER THE INDIAN CONSTITUTION* (Oxford University Press, 2016).

³³ Pritika Rai Advani, “Section 295A: Blasphemy Law and Its Chilling Effect on Artistic Freedom in India”, *NUJS Law Review*, Vol. 14, No. 2, 2021.

³⁴ Law Commission of India, Report No. 267 on Hate Speech, March 2017.

³⁵ Anuj Bhunia, “Free Speech and the OTT Censorship Debate in India” *Verfassungsblog*, March 2021.

³⁶ The Indian Express, “Actor Kiku Sharda arrested for mimicking Dera chief Ram Rahim Singh”, Jan. 13, 2016.

b. Munawar Faruqui's Arrest

Yet another cause for concern is the arrest of stand-up comedian Munawar Faruqui in Indore in 2021.³⁷ Right-wing Hindu Rakshak members accused Faruqui of insulting Hindu gods during a live comedy show. Ironically, the complaint was lodged before the comedy show by the local BJP mayor's son, Aklavya Singh Gaur.³⁸ The police acted immediately when the FIR was filed. In a disturbing precedent in which even anticipated content was deemed adequate for judicial action, Faruqui was taken into custody on the grounds of speculative suspicion about possibly offending information.³⁹ His bail requests were turned down by the sessions court as well as by the Madhya Pradesh High Court, leaving him at Indore Central Jail for close to a month before the Supreme Court stepped in.⁴⁰

This case highlights a disturbing trend where Section 295A is increasingly weaponized to target comedians, even without proof of malicious intent, raising deep concerns about the arbitrary suppression of dissent and artistic freedom.

c. The Tandav Controversy

Amazon Prime's political drama Tandav (2021) drew harsh criticism for disparaging Hindu sensibilities. A student play's sequence in which a character portraying Lord Shiva makes scathing remarks prompted the filing of a formal complaint under Section 295A.⁴¹ In response to popular outcry and political

³⁷ Live Law, "Comedian Munawar Faruqui's Bail: Supreme Court Grants Interim Relief", February 2021.

³⁸ Stuti Mishra, 'Indian comedian charged with insulting Hindu deities after right-wing group crashes show' (The Independent, 4 Jan. 2021) <https://www.independent.co.uk/news/world/asia/munawar-faruqui-case-hindu-deities-b1782027.html>.

³⁹ Shruti Jain, "The Arrest of Munawar Faruqui and the Weaponisation of Offence in India", THE WIRE, Jan. 2021.

⁴⁰ Seerat Chabba, 'Muslim comedian detained for alleged anti-Hindu jokes' (DW, 20 Jan. 2021) <https://www.dw.com/en/india-muslim-comedian-detained-over-anti-hindu-jokes-he-might-crack/a-56280748>.

⁴¹ Reuters, 'Amazon Prime Video apologises for offending Hindu beliefs in Indian political show' (2 March 2021) <https://www.reuters.com/world/india/amazon-prime-video-apologises-offending-hindu-beliefs-indian-political-show-2021-03-02/>; Scroll.in, "Explained: Why FIRs have been filed against the makers of Amazon Prime show 'Tandav'", Jan. 2021.

pressure, the creators issued an apology and removed contentious scenes. Despite being satire and fiction, the law's ambiguous wording allowed it to be enforced, stifling artistic expression.⁴²

Perception Issue: Because religion is not specifically defined in the legislation, regardless of the creator's true intentions, any depiction of religious figures that does not involve obvious reverence runs the danger of being offensive.⁴³

d. Paatal Lok, Sacred Games, and Leila Complaints

Similar disputes have also engulfed shows such as Sacred Games, Leila, and Paatal Lok.⁴⁴ Leila, a dystopian Netflix series, has drawn criticism for supposedly demeaning Hindu customs by portraying a world in which religious intolerance has taken hold.⁴⁵ However, it was still unclear whether the show was parodying religion or sociopolitical issues, which led to a rift in public opinion and legal ambiguity.

As a result, OTT platforms have increasingly implemented overcompliance measures, such as content self-regulation and script modification, out of concern for legal action and public censure.⁴⁶ Even before official grievances are filed, politically and religiously sensitive scenes are already being removed, indicating a fundamental collapse in creative freedom.

⁴² Reeta Sony A.L. & Shruti Chopra, *Regulating Digital Era: A Comparative Analysis of Policy Perspectives on Media Entertainment* (2020)

⁴³ Austin Cline, 'What Is Religion?' (Learn Religions, 25 June 2019) <https://www.learnreligions.com/what-is-religion-250672>; Piyush Senapati, "Over the Top, Under What Law? Critically Analysing the Regulatory Framework for OTT Platforms in India," *Indian Journal of Private International Law* (online article, Aug 7, 2024).

⁴⁴ *MediaNews Reports: Legal notice sent to Amazon and directors of Patal Lok for hurting religious sentiments of Sikh community, unconditional apology sought* (OpIndia, 29 May 2020) <https://www.opindia.com/2020/05/amazon-prime-patal-lok-legal-notice-hurt-feelings-sikh-community-rape-scene-dsgmc/>

⁴⁵ Asian News International, 'Netflix shows Sacred Games, Leila, others accused of promoting "deep-rooted Hinduphobia" by Shiv Sena member' (Firstpost, 4 Sept. 2019) <https://www.firstpost.com/entertainment/netflix-shows-sacred-games-leila-others-accused-of-promoting-deep-rooted-hinduphobia-by-shiv-sena-member-7282171.html>

⁴⁶ Chawla, M.G. and Buch, N., 2023. Regulation Of Web-Based Entertainment In India: Evaluating Self-Regulation Over Censorship As A Mechanism For Regulating OTT Platforms. *Journal of Namibian Studies: History Politics Culture*, 36, pp.134-155.

OTT platforms used to have more regulatory autonomy than traditional broadcast media, but Section 295A's ambiguous application has made this distinction hazy and forced streaming services to follow de facto censoring guidelines. Hence, in the absence of well-defined legislative safeguards, OTT platforms remain vulnerable to disproportionate restrictions on freedom of expression, often triggered by majoritarian sentiments rather than legitimate legal thresholds.⁴⁷

The above serves as an introduction to the Indian approach to blasphemy and its effects on freedom of expression, especially with respect to its application in the digital media and over-the-top (OTT) platforms. To illustrate this better, one can look at how another constitutional democracy has dealt with the same kinds of problems. In this respect, the U.S., with its strong constitutional commitment to free speech under the First Amendment, has taken a different path altogether in regulating religious offence. The two jurisdictions, in fact, share a historical basis for having public order and public sentiment in relation to religion. However, U.S. jurisprudence has continuously delved into the softening of the criminalization of blasphemy, with little blame assigned to the enforcement of public order without having reference to any religious doctrine. This comparison is made in order to highlight how the different legal systems have moved forward with respect to the legal threshold, judicial reasoning, and constitutional values that occupy the balance between expression and offence.

VI. Blasphemy, Public Order, and Speech: A Comparative Legal Perspective from the US

The United States on the other hand has had a very different approach to trying cases based on outraged religious sentiments. Prosecution under blasphemy laws has gradually declined to oblivion in the United States over the last two centuries. Even at the height of their presence, such trials were seen as a mode of preserving peace and ensuring civil values, as opposed to safeguarding faith. The Pennsylvania Supreme Court in the case of *Updegraph v. Commonwealth*⁴⁸, upheld an earlier belief of the New York Supreme Court⁴⁹ to promote that

⁴⁷ Rimma Quadros, 'A Study on Censorship in OTT Platforms – A Necessity?' (2022) 9(1) *International Journal of Research and Analytical Reviews (IJRAR)* 611–615.

⁴⁸ *Updegraph v. Commonwealth* [1824] 11 *Serge & Rawle* 394 (Pa. 1824).

⁴⁹ *People v. Ruggles* [1811], 8 Johns. 290 (N.Y. Sup. Ct. 1811).

blasphemy was independent of any particular religious belief and looked to protect the interests of civil society, adding that the trial of such cases was “*not to force conscience by punishment, but to preserve the peace of the country....*”⁵⁰ Shaw CJ, writing for the court in *Commonwealth v. Kneeland*⁵¹, held blasphemy laws to be consistent with religious freedom provisions, highlighting their roles in punishing acts that have a tendency to disturb public peace. Subsequently, some states qualified religious liberty with a public safety proviso⁵², unlike the Federal Free Exercise clause, which lacked any such explicit qualification.⁵³

The US Supreme Court cemented its stance against blasphemy restrictions in the landmark case of *Joseph Burstyn Inc. v. Wilson*⁵⁴, removing priorly upheld constraints on ‘sacrilegious films’, invoking the free speech clause. Even though this did not directly declare blasphemy laws explicitly unconstitutional, the *obiter dicta* in the case was instrumental as a reference point for future decisions. The free speech clause has been invoked on multiple occasions as a strong tool protecting religious speech and art, even in cases of extremist views. Antonin Scalia J., famously delivered the majority opinion in *Capitol Square Review & Advisory Board v. Pinette*⁵⁵, allowing Vincent Pinette, a practicing member of the white-supremacist group Klu Klux Klan (KKK), to place an unattended cross in the Capitol Square lawn. The majority bench relied on the protection of private religious speech being protected under the free speech clause of the First Amendment. It was also concurrently held that while the Advisory Board of the Capitol Square was still in charge of the material being displayed on its grounds, which was public property, the display of a religious symbol that was held to be purely private did not in fact violate the Establishment clause, and that the board could not actively stop the display of a religious nature on its grounds. This was advocated to the extent that even the disparagement clause was eventually held to be violating the free speech clause, in *Matal v. Tam*⁵⁶, on the registration of a

⁵⁰ Anna Price, A History of Blasphemy Laws in the United States (Library of Congress Blogs, 19th Dec 2023)

⁵¹ *Commonwealth v Kneeland* (1838) 37 Mass (20 Pick) 206.

⁵² Mass Const 1780 pt I, art II.

⁵³ Blasphemy and the Original Meaning of the First Amendment' (2021) 135(2) Harvard Law Review 689.

⁵⁴ *Joseph Burstyn Inc v Wilson* 343 US 495 (1952)

⁵⁵ *Capitol Square Review & Advisory Board v Pinette* 515 US 753 (1995)

⁵⁶ *Matal v. Tam*, 582 U.S. (2017)

trademark, for the name of an Asian-American rock band as ‘*The Slants*’, which had been held as a historical derogatory term for the Asian community in the US, and their beliefs.

The United States have thus long held a robust defense for their free speech clause, protecting almost all forms of expression from the threat of censorship on the premise of blasphemy. The primary challenge to this has been the ‘*clear and present danger*’ test established by Oliver Wendell Holmes J., in *Schenck v. United States*⁵⁷. The case revolved around one Charles Schenck, General Secretary of the US Socialist party, for distributing leaflets urging resistance to military drafting during the First World War. Justice Holmes, delivering on behalf of the unanimous Supreme Court, held that there was far greater curtailment of free speech in the country during war time, especially if the speech showed ‘clear and present’ danger to national security, as was apparent in this case. They held that such speech, even though unsuccessful in inciting real threat to national security, would be tried the same as attempted crimes. However, even the ‘clear and present danger’ has had overwhelming criticism, both judicial and scholarly. This can be seen in Justice Holmes’ own dissent in *Abrams v United States*⁵⁸, where he greatly raised the threshold for the ‘clear and present danger’ test, arguing that a ‘*silly leaflet*’ being distributed by an ‘*unknown man*’ would have no appreciable tendency to hinder the war effort, a direct contradiction to his opinion in the *Schneck case*⁵⁹. Redish highlights this contradiction, arguing the popularity of the Abrams as a socialist voice to be far higher than that of Schneck.⁶⁰ The test was largely neglected in the following years, and was only used once in the majority opinion of *Schneck*. Learned Hand’s opinion, being quoted in the *Dennis case*⁶¹, established an even higher threshold formula, stating that only on the satisfaction of two independent clauses: a) That a substantive evil might follow from the speech, and b) The real and imminent threat arising out of it; together, would facts of a given case satisfy this case. This formula

⁵⁷ *Schenck v United States* 249 US 47 (1919).

⁵⁸ *Abrams v United States* 250 US 616 (1919).

⁵⁹ *Supra* n 56.

⁶⁰ Martin H Redish, ‘*Advocacy of Unlawful Conduct and the First Amendment: In Defense of Clear and Present Danger*’ (1982) 70 *Cal. L Rev* 1159.

⁶¹ *Dennis v. United States* 341 US 494 (1951)

further cemented the battered historical use of this test, often being completely ignored when discussing fundamental limitations to the free speech clause⁶².

The most pertinent observation of tracing the development and use of this test as an opposition to the free speech clause has been the absence of any religiously provocative considerations, or the deliberation of any form blasphemy allegations as central to the clear and present danger test. Judges, even in the most extreme of cases, have held politically motivated speeches undermining the legitimacy of national interests as qualifications for curtailing the clause, and even then, the threshold has been very high, folding only at imminent threat of violence. *Updegraph*⁶³ and *Kneeland*⁶⁴ are classical examples that the US courts have consistently valued public order as central to issuing any form of check on free speech and rejected being moved on the premise of outraged private religious sentiments.

This staunch belief in free speech has been instrumental in the lack of censorship cases for OTT platforms in the US based on outraging religious sentiments or allegations of blasphemy, while a country like India has been marred with an overabundance of such cases and litigation. Similar litigation arose in the US, in the case of *R.A.V. v. City of St. Paul*⁶⁵, where a group of teenagers burnt a cross on a private lawn. Scalia J., speaking on behalf of the majority, ruled, reiterating the stance from *Chaplinsky*⁶⁶, that there are only a few spaces where society has permitted restrictions on content, like fighting words – which immediately inflict injury or disrupt peace by their utterance. Ruling content moderation to be generally invalid, the majority held that the Government may not proscribe speech, or expressive conduct, premised on disapproval of the ideas expressed, granting the writ of certiorari.⁶⁷ Even during archaic status quos, the threshold for disturbing peace was not premised on religious identities or considerations, but on imminent threat to political and national structures.

While the free speech model is somewhat complicated, it seeks to establish peaceful coexistence with public order without relying on vague or overly broad

⁶² *Supra* n 59.

⁶³ *Supra* n 47.

⁶⁴ *Supra* n 50.

⁶⁵ *RAV v. City of St Paul* 505 US 377 (1992).

⁶⁶ *Chaplinsky v. New Hampshire* 315 US 568 (1942).

⁶⁷ *Supra* n 62.

blasphemy laws. India's continued application of Section 295A in the context of creative and digital expressions is thus creating an ever-growing cloud of legal uncertainty over these sectors and resulting in a chilling effect on OTT platforms, once hailed for their daring and path-breaking content. These platforms are now forced to self-censor out of fear of possible litigation and political repercussions. A far more narrowly tailored and speech-protective legal regime, akin to that enshrined in U.S. jurisprudence, would better guarantee artistic freedom in India for dealing with actual offences against public order, rather than using it to quash opposing or creative voices on grounds of religious insensitivity.

VII. Conclusion

Blasphemy finds its way into the IPC of British India, as a response to the inadequacies of the erstwhile provisions. Section 153-A only dealt with enmity among different religions and as the provocations of 'Rangila Rasul' demonstrated, there was nothing to cater offending religious sentiments of people of a particular religion. And thus, came Section 295-A of the IPC, later replaced by Section 299, BNS.

Jurisprudence has made it abundantly clear that Section 295-A is not attracted to every provocation on religion or religious beliefs. The provocations have to be malicious and have a calculated tendency about them, where the actor was aware of the consequences. However, it is the second limb of Section 295-A that is in doubt. The target of these offences is a 'class of citizens'. Even assuming this is synonymous with 'religion' or 'religious denomination as under Article 25 and 26, this term is something left undefined by legislation or jurisprudence, despite a plethora of opportunities. This can lead to speech being shut down as blasphemy, even when the affected 'class' is not a religion.

Section 295-A has been preserved of its constitutionality, in the Ramji Lal Modi case, wherein it was held to be a reasonable restriction under Article 19(2) on grounds of 'public order'. This is harmful due to the vagueness of a term like public order, and its proneness to be used excessively by the State to clamp down on speech.

This has had real effects on OTT platforms, which has led to undermining the creative autonomy of these platforms. Multiple instances like where Kiku Sharda was arrested on the premise of a frivolous complaint alleging blasphemous imitation against their religious leader, by the followers of Dera Sacha Sauda,

despite the group never being recognized as a formal religious faith. The subsequent arrest of Munawar Faruqui further displays a disturbing trend of Section 295-A being weaponized against artists and critical expression, even though they may not possess any malicious intent. This being due to Section 295-A finding place in Article 19(2) due to the Ramji Lal case. Further applications of Section 295-A to web series like Tandav, Paatal Lok, Sacred Games, and Leila shows how Section 295-A is more about any offensive depiction of a God, rather than it being a malicious attack on a class of citizens' religious beliefs. Gods like Lord Shiva have numerous devotees and sects. With an absence of definition of a class of citizens, anyone finding a depiction of a God offensive can weaponize Section 295-A to bring down the arm of the law onto OTT.

On the contrary, while American courts traditionally have maintained the constitutionality of blasphemy as a crime, from here, the comparison mainly ends with India. In the USA, always have the courts applied the 'clear and present danger' test to issues concerning free speech, firmly embedding their reasoning in First Amendment protections. This, therefore, has led to a steady decline in prosecutions concerning blasphemy. The judiciary, for example, has come to clarify that, in the American understanding, blasphemy is not treated as a criminal injury to specific religious sentiments but rather a civil infringement upon legislation. The result of this judicial interpretation has led to the creation of a shelter for digital content, particularly OTT platforms, from blasphemy law misuse. India is, however, seeing a trend in the opposite direction, reflecting an ever-increasing state of tension between cultural sensitivities and freedom of expression.

India thus needs to reform its laws to retain the sanctity of its constitutional commitment to free speech and to foster the growth of creative expression in this new digital age. It is necessary either to repeal or to substantially change Section 295A of the Indian Penal Code to include explicit definition, a very high threshold of harm determination, and sufficient protection against arbitrary or politically motivated enforcement. Given the logistical concerns of such mass amendments, the Judiciary must proactively apply purposive interpretation to these litigations, upholding the sanctity of critique and discourse in a functional democracy. Till then, this provision shall act only as the bluntest instrument of cultural censorship, rather than a reasonable tool for maintaining public order in a diverse and pluralistic society.