Leonard W. Levy, in simple words, describes Blasphemy as speaking evil of sacred matters.\textsuperscript{1} Blasphemy has been a less discussed topic, in India, for the past few decades. However, it has caught ample attention in the past few weeks due to the Indian Penal Code (Punjab Amendment) Bill, 2018, proposed by Congress-led government in Punjab on August 21, 2018. The amendment bill proposes an additional section 295AA in the Indian Penal Code, 1860 under Chapter XV, that deals with offences against religion. The amendment is an aggravation of the already existing section 295A, which is an anti-blasphemy statute. Section 295AA states, “Whoever causes injury, damage or sacrilege to Sri Guru Granth Sahib, Srimad Bhagwad Gita, Holy Quran and Holy Bible with the intention to hurt the religious feelings of the people, shall be punishable with imprisonment for life.”\textsuperscript{2} The proposal was approved by Punjab’s legislative assembly on August 28, 2018. It seems like Punjab is not only sharing borders with Pakistan, but also, has taken on similar stance on the matter of Blasphemy. The paper seeks to address the legislative history of the proposed amendment and address the socio-legal issues related to it.

Many comparisons will be drawn between India and Pakistan. Even though, both the countries have similar laws as laid down under chapter XV of the IPC, we’ll focus on the legal and political position of Pakistan after it added sections 295-A, 295-B, 298-A, 298-B, and 298-C in 1980’s with much stricter punishments, likewise to Punjab’s attempt of inserting section 295AA to the Indian Penal Code.\textsuperscript{3}

\textsuperscript{1}LEONARD W. LEVY, BLASPHEMY3 (1st ed. 1995).
\textsuperscript{3}“As Good as Dead” The Impact of the Blasphemy Laws in Pakistan, Amnesty International Ltd, 2016, 10.
CHAPTER -1

Blasphemy’s legislative history dates to 1676, when for the first time in history, blasphemy was declared as a criminal offence in common law jurisdictions, in the sensational case of *Rex v. Taylor.*

Lord Chief Justice Matthews Hale’s words clearly laid out the seriousness of the crime of blasphemy in the 17th century. The case was brought to the court as Taylor called Jesus a bastard and said that the religion was a cheat, among other things.

He said, “Such kind of wicked blasphemous words are not only an offence to god and religion, but a crime against laws, state and government, and therefore punishable in this court...Christianity is the parcel of the laws of England.”

The proposition laid down in his judgment clearly establishes the roots of seriousness of the crime of blasphemy and the thin line between religion and law. This law spread to other European states and colonies. Centuries later, in colonial India, due to excessive communal riots and the very famous ‘Rangila Rasul’ case, the British government enacted section 295A, in the year 1927. The book allegedly dealt with the sex life of Prophet Mohammed which invoked hurt feeling in the Muslim community. The law was enacted at the plea made by the Muslim Community, requesting criminalization of the act of blasphemy and seeking legal relief for it.

Interestingly, Rangila Rasul was also the first book to be banned in India. Even though, the Constitution of India doesn’t explicitly provide for Blasphemy, s. 295A of the IPC embodies the principle of blasphemy. Section 295A deals with cases of acts of insulting the religion or religious beliefs, done with the malicious intention to outrage religious feelings of any class of people in India.

The law is still prevalent in modern-independent India. Amusingly, England has repealed its statute relating to blasphemy a decade back, in the year of 2008. Whereas, Punjab has proposed and approved to provide for aggravation of the same offence. This only shows the direction India is moving in, with respect to legislation relating to religion, and it is not forward.

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2 Id.
3 Id.
4 Id.
5 Hegde, Supra note 2.
6 Neeti Nair, Bhagat Singh as ‘Satyagrahi’: The Limits to Non-violence in Late Colonial India, Mod. Asian Stud. 649, 655 (2009).
7 Id.
8 Id.
9 Id.
10 Id.
11 Indian Penal Code, 1860, s.295A.
The former SAD-led government in Punjab on the account of number of cases of desecration of the Guru Granth Sahib, the holy text of Sikh community in the year of 2015, proposed a bill similar to the Indian Penal Code (amendment Bill) 2018, in the year 2016. It was also sensationalized as the ‘2015 Guru Granth Sahib Sacrilege’ which led to massive protests by the Sikh Community in Punjab and the rest of the Indian territory. The dissimilarity between the two bills is basically, the former bill solely brings within its purview the Guru Granth Sahib. The latter includes the holy texts of four religious majorities, Hinduism, Christianity, Islam and Sikhism. The center returned the previous proposal due to its discriminatory nature, excessiveness of the punishment and its violation of the principle of secularism.  

This bill is mainly proposed to avoid cases of desecration. This is based on the principle of deterrence and seeks to avoid the cases of desecration. However, the act does not explicitly mention the term itself and has recourse to a much broader and unclear expression of ‘sacrilege’. The amendment has attracted disquisitions critiquing it on constitutional and political parameters. There was a need to take a step, but Punjab has evidently taken a step in the wrong direction. The reasons for this are reflected in the subsequent section.

CHAPTER - 2

One of the major setbacks of this amendment is its attack on Freedom of speech and expression provided under article 19 (1) of the constitution. It is well-known to the citizens that this right is subject to reasonable restriction under clause (2) of the same article. Evidently, section 295AA is not a reasonable restriction but a blanket restriction. As there is already a provision in the constitution for blasphemous speech and sacrilege, the need for an additional provision is not justified. The drafters have contended that the amendment is primarily for the cases of desecration, but the lack of clarity and literature on the terminology used in the amendment has left its scope in the gray area. Justice A. M. Kapadia has laid down the test of determining whether a case falls under the section 295A in the case of Yashwant Venilal Sanghvi vs Venkatasubramanian, Section 295AA: Holier Than Thou, INDIA LEGAL(Sept 2, 2018, 10:04 AM) http://www.indialegallive.com/special-story/section-295aa-holier-thou-53892.
**Sahdevsinh Dilubha Zala** (2004), in Gujrat High Court. The burden lays on the prosecutor to prove it.

Justice Kapadia states, “the prosecution has to prove the following:

(i) that the accused spoke or wrote the words or made the signs or the visible representations;

(ii) that the accused thereby insulted or attempted to insult the religion or the religious beliefs of a class of citizens of India;

(iii) that the accused did so with the deliberate and malicious intention of outraging the religious feelings of that class...

...If the words used cause persons to feel insulted but were only such as might possibly wound and in fact did so, then there is no offence under this section; if the words used were bound to be regarded by any reasonable man as grossly offensive and provocative, and were maliciously intended to be regarded as such, then an offence is committed.\(^\text{13}\)

The ingredients and test mentioned above may be inked on paper but the courts read it differently and sometimes don’t read it at all. In *State of Maharashtra v Sangharaj Damodar Rupawate*, the court held that, truthful account of past events which may hurt religious feelings of a class or many classes of citizens of India, may still be an offence.\(^\text{14}\) Clearly, in the abovementioned case the accused had no malicious intent to cause hurt feeling or public outrage by his literary work but the court disregarded this fact. Further, as stated in the case of *Ramji Lal Modi v State of U.P.*, which challenged the constitutional validity of section 295A, a case can still be booked under section 295A even if the public order has or has not been disrupted due to the speech, merely on the statement of a ‘hurt’ individual.\(^\text{15}\) The fear of accusations under this section will curtail free speech and expression.\(^\text{16}\) In Pakistan, in 2014, conviction of actress Veena Malik along with three other persons accused of blasphemy for re-enacting her wedding and latter for participating in it and airing it on a television, shows how ‘unreasonable’ the restrictions are.\(^\text{17}\) Similarly, the Indian

\(^{13}\) *Yashwant Venilal Sanghvi vs Sahdevsinh Dilubha Zala*, (2004) 3 GLR 1873.


\(^{16}\) Amnesty Int. Ltd., supra note 3, at 24-25.

\(^{17}\) Id.
case of the comedian Kiku Sharda, booked under 295A for hurting religious feelings of the followers of Dera Sacha Sauda, by impersonating its chief Gurmeet Ram Rahim Singh. However, he was given a bail and no serious legal action was taken regarding the matter.\textsuperscript{18} Moreover, the case bagged media’s attention and the accused apologized publicly to the followers. Many scholarly works and art pieces have been booked under this provision. The new amendment with much stricter punishment will lead to the censorship of candid artwork and literature. Mohammed Ali Jinnah, a prominent member of the drafting committee, alerted, “\textit{we must also secure this very important and fundamental principle that those who are engaged in historical works, those who are engaged in bona fide and honest criticism of a religion, shall be protected.}”\textsuperscript{19}

\textbf{CHAPTER - 3}

As we have seen, the amendment only brings four religious texts within its ambit. This law is in defiance with the principle of secularism. Unanimous approval of Punjab’s legislative assembly remains unsettling. Inconsideration of the religious minorities will widen the gap between religions majorities and minorities, and will also widen the whole gamut of role of religion in the political, legal and social spheres. There is a huge spectrum of people who are non-believers, doubters, atheists or humanists among others, who do not believe in religion or doubt it. The law does not reflect on their freedom of religion, and freedom of speech and expression, in respect with the current and proposed anti-blasphemy statutes. Innumerable cases have been recorded in Pakistan, where the religious minorities are the most susceptible targets for the accusations for the crime of blasphemy. The amendment has mounted the fear of shifting of Punjab’s political arrangement from democracy to theocracy, like Pakistan, in the foreseeable future. The manifestation of vigilantism as a subsequent result of the infamous ‘\textit{Beef Ban}’ in 2017 has set an ugly example for lawmakers regarding bills that are exclusive of the religious minorities or, bills which are guided by religious beliefs and practices of the majority. Leonard Levy says, “\textit{the

primary purpose of blasphemy law is to further religious ends, not secular ones." The impact of section 295AA, as an aggravation of section 295A, on the current laws against religion might lead to unclear and equivocal interpretations due to the restrictiveness of the proposal in the religious realm.

CHAPTER - 4

One of the most significant contention regarding the misuse or misapplication of the law remains crucial to the lawmakers. Misapplication includes misuse by both, the benefitters and the executors of the law. The appalling case of the 14-year-old Rimshah Masih in Pakistan, who was tried in the court of law despite her learning disability for carrying burned pages of the Quran. The laws against blasphemy in Pakistan have been invoked due to the high religious intolerance in the state. Punjab’s proposed amendment might penetrate such religious intolerance. Asma Jahangir, a Pakistani Human Rights Lawyer, states, “In 1986, Pakistan got the blasphemy law. So, while we had just two cases of blasphemy before that year, now we have thousands. It shows that one should be careful while bringing religion into legislation, because the law itself can become an instrument of persecution.” Such intolerance might also be used to defeat the principle of secularity and lead to mobocracy. Mobocracy has left its traces in overwhelming amount in the state of Punjab and Pakistan. One such incident took place on October 13, 2017 in Buttar Kalan village in the Moga district in Punjab, wherein around 10 policemen were grievously hurt, as the police cane-charged a group of radical Sikh activists who were peacefully protesting the Sacrilege of Guru Granth Sahib, which led to violence by the protestors. Other instances of blocked highways, burning of effigies and cancellation of the Kabaddi World Cup in 2015, highlight the power such statutes might give to the masses to practice violence in the name of religion or persecution by the police force of the victims of such laws. The offence in the proposed amendment is a cognisable and non-bailable one. This is arbitrary and discriminatory. Sherbir Panag in his discussion with Sunetra Choudhury of NDTV, also underlined the problem of

20Levy, supra note 1, at 573.
21Amnesty Int. Ltd., supra note 3, at 21-22.
empirical evidence for stringent penalties like life imprisonment. The Supreme Court of Pakistan, in the case of *The State V. Muhammad Qadri*, stated, “It is an unfortunate fact which cannot be disputed that in many cases registered in respect of the offence of blasphemy false allegations are levelled for extraneous purposes and in the absence of adequate safeguards against misapplication or misuse of such law by motivated persons the persons falsely accused of commission of that offence suffer beyond proportion or repair.”23

**CHAPTER - 5**

Simran Sodhi, an Indian Journalist, in her discussion with Sumetra Choudhury of NDTV, ushered the discussion towards the political angle of the amendment bill. She stated that religion is appealing to people and Amrinder Singh, the CM of Punjab is using this area as a distraction from ‘real’ problems of the state.24 The unanimous approval also highlights the inclination of Punjab’s Political attitude towards religion. Leonard Levy has said in his book that the government must not pursue to decide whether the citizens have erred opinions, taste or views about religion.25

**CHAPTER – 6**

The paper has highlighted various issues with the proposed amendment. These issues have been addressed but there are no alternatives for the matter. The offence should be made non-cognizable and bailable. Section 295A of the IPC in its interpretation is inclusive of desecration and thus, it does not need an additional section for the offence. The test laid down in *Yashwant Venilal Sanghvi vs SahdevsinhDilubhaZala* (2004) should be followed in the strictest sense by the courts of law. Religion and law must be separate. The law provides to protect the religion but should not be guided by it. American novelist, E.L. Doctorow, has said, “The difference between Socrates and Jesus is that no one had ever been put to death in Socrates’ name. And that is because Socrates' ideas were never made law. Law, in whatever name, protects privilege.”26 Religion

23Amnesty Int. Ltd., supra note 3, at 21.
24NDTV, supra note 21.
25Levy, supra note 1, at 571.
mustn’t find its sustenance in law. There should be awareness spread regarding the subject matter of blasphemy and tolerance, and freedom of expression. The term ‘sacrilege’ should be clearly defined by the law-makers. There are abundant reasons for quashing the proposed amendment, without providing any further recourse in law for hurt religious sentiments. This can also be an opportunity to reflect on the constitutional validity of section 295A. Richard Dawkins, the author of The God Delusion, has said, “It is an absurd law [Section 295A of the Indian penal code] but also extremely dangerous because it gives fanatics, whether they are Hindus, Catholics or Muslims, a licence to be offended. It also allows people who are in dispute with you to make up false accusations of blasphemy.”
BIBLIOGRAPHY


6. Indian Penal Code, 1860, s.295A.


