

August 7, 2023

Regulating Religious Expression

By: Abhinav Sekhri

The experience of legal provisions against “outraging religious feelings” demonstrates the pitfalls of modern states resorting to penal secularism.

Secularism is often projected as the idea of the state not interfering in matters of religion. Such a narrow view would make laws such as [Section 295-A of the Indian Penal Code](#) appear anachronisms in avowedly secular nations like India. J. Barton Scott’s *Slandering the Sacred: Law and the Shaping of Indian Secularism* explains why this is not so.

Scott develops on the ‘dual character’ of secularism in which the lack of state interference in matters of religion is but one side of a coin. On the other side is active state regulation on matters concerning religious beliefs, resulting in the restriction of civil liberties if need be. Laws such as Section 295-A are not contrary to secular notions, but a part and parcel of how secularism has been understood and accepted over time. Aggressive regulation by the state is as much part of the liberal enterprise as petitioning for spheres of freedom from state regulation.

What sets apart Scott’s work from [previous accounts](#) is that the legal history of the section is not the object of the story. *Slandering the Sacred* is not a legal book. It uses the story of this specific legal provision not to wade into debates about the limits of free speech and expression, but to demonstrate the practice and pitfalls of modern states resorting to ‘penal secularism’.

The ends of secularism

Slandering the Sacred consistently returns to the duality of secularism as a concept to demonstrate how it became a tool for states to pursue drastically different ends depending upon the kind of society one dealt with.

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Towards the highbrow, secularism was a credo of the state to retreat from censorship of thought to encourage the fullest pursuit of spiritual thought and ideas. Towards the lowbrow, secularism was why the state needed to censor publications that would inflame passions by outraging the religious feelings of persons. This necessarily involved the state intruding in matters of religion to proscribe what someone might say on these affairs.

Section 295-A came in the aftermath of what has come to be known as the [Rangila Rasul affair](#): the infamous incident regarding the 1924 publication of a pamphlet replete with innuendo lampooning the Prophet Mohammad and the subsequent communal unrest and violence in Punjab.

In the context of *Rangila Rasul*, we can see why, even though it necessarily involved the state playing a role in determining matters of religious belief, Section 295-A appealed to the legislators. To them, it was a *secular* solution in law for the persistent problem of the times: frequent clashes between Arya Samajis and Muslims. The book goes through these interactions, especially the history of the Samajis, in some detail to make the point and demonstrate the pitfalls of the penal secularism approach. A legal regime designed to curb outraging of religious beliefs ended up contributing to more performative displays of such outrage.

‘Us’ elite and ‘them’ lowbrow

For Scott, the context in which the colonial legislature of the day, including its Indian members, viewed and responded to the *Rangila Rasul* affair, spoke to their shared heritage of imbibing a set of values slowly developing from the 1830s (if not earlier). These were determinedly ‘secular’ and ‘liberal’ values as understood at the time.

But this liberalism of the legislature had two faces. It professed non-interference of the state in matters of religion and religious speech. At the same time, it endorsed state regulation on speech and expression (including on matters of religion) with resort to penal sanctions in such matters wherever necessary.

Speech, including religious speech, was proscribed where it was seen as rousing passions against the state or fuelling disharmony between different groups and classes.

This need for regulation, in turn, was arguably linked to a deep-rooted set of classist beliefs of these societies where governance remained the provenance of the elite, which viewed the public not with a sense of familiarity but with a sense of fear. There was a clear ‘us’ and ‘them’ in most matters, including those of religious speech. Where scholarly novels on religion would be read by the highbrow and spur an exchange of ideas on matters of the soul, cheap pamphlets (especially those with pictures) would be used to prey upon the baser instincts of the lower classes to rouse their passions on matters of faith.

Highbrow speech, by extension, warranted state patronage and approval, demonstrating the value of free speech on all matters including those of religion. Lowbrow speech, in contrast, did not touch upon the enlightened soul but the heated body, triggering passions instead of ideas. Rather than warrant protection, it merited regulation to keep the peace.

By the time the *Rangila Rasul* affair unfolded, this logic was deeply embedded in the web of colonial law in India (reflected also across other colonies of the British Empire). Speech, including religious speech, was proscribed where it was seen as rousing passions against the state or fuelling disharmony between different groups or classes.

What this experience reveals, as Scott demonstrates through the history of the Arya Samaj, was how the variant of penal secularism subscribed to by the colonial administration in response to perceived fears about the public itself evoked a response in the public. In a bid to invite state sanction, persons aggrieved by the speech act in question would manifest the language of the law through their own performative acts of either conducting public assemblies or leading demonstrations.

Entrenching the state

In the *Rangila Rasul* affair, all the above played out. The publication of the pamphlet was followed by meetings and assemblies, which passed resolutions that their feelings had been hurt. Demonstrations were carried out in cities, giving evidence of the sense of outrage prompted by the pamphlet. These assemblies and demonstrations were cited as evidence in the state prosecution of the publishers that followed.

The system, as it was, worked fine. Until of course, the Lahore High Court reversed the conviction and exposed gaps in the existing legal framework through which this brand of offensive speech could escape.

At no point did the government agree with the verdict, as the primary material referenced by Scott confirms. It found many faults in the logic of the court, but what it could not satisfactorily answer was the underlying vagueness of the idea of ‘religion’ itself which made it so tough for any legal text to regulate acts that offend religious beliefs or feelings.

Many inside and outside of the legislature commented that this solution was worse than the problem. It seemingly covered too much and too little at the same time.

By choosing to enact a new offence even more centrally concerned with religious feelings, the interference of the state in matters of religion was firmly entrenched. As experience thus far would indicate, it was quite likely that this new offence would in turn promote more questions than answers.

Indeed, even as Section 295-A was brought into force, many inside and outside of the legislature commented that this solution was worse than the problem. It seemingly covered too much and too little at the same time. It would leave far too much vagueness in matters of criminal administration.

The presence of colonial pasts

The story told in *Slandering the Sacred* ends in the late 1920s, but the themes that it develops offer another viewpoint towards understanding legal strategies on questions of exercising the freedom of speech in independent India.

In 1950, the Constitution was enforced, guaranteeing to all citizens the fundamental freedom of speech and expression. However, this constitutional document was not accompanied by an overhauling of the various other pieces of colonial legislation that had regulated the exercise of speech, such as the Indian Penal Code and Section 295-A within it. If anything, the regulatory impulse was embedded

within the constitutional document itself, empowering legislatures to restrict speech and expression across a variety of areas.

This duality suggests the constitutional moment for matters of penal law was not one of transformation but trying to saddle the same unruly horse with a new rider.

On matters of speech, a guarantee protecting free speech meant that the state could not selectively promote certain kinds of speech. Or, to put it more bluntly, there could no longer be state oversight to bar speech simply because it was lowbrow. The restrictions on speech could only be imposed in terms of the Constitution, which required demonstrating some link between the supposedly offending speech and, say, a threat to public order (from 1951 onwards).

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Such a scheme appears superior if we think that the colonial regime was engaged in routine censure of speech only because of *who* said it. But, as *Slandering the Sacred* vividly demonstrates, that was never quite the strategy. On the face of it, the colonial administrators always justified proscribing speech because of what effect it might have, which did not seem very different to the kind of regulatory scheme the Constitution brought about.

The real test for free speech, thus, lay elsewhere, in how the governments and courts of Independent India would apply the law. Legal approaches towards ideas of speech and expression in independent India remain strikingly similar to its colonial experience. The past, as they say, is always living in the present.

In a [podcast](#), Scott remarks that his research into Hinduism and awareness about [Section 295-A of the Indian Penal Code](#) made him fearful about facing criminal charges for his scholarly work. That worry ultimately translated into a direct inspiration for this book. That *Slandering the Sacred* required extensive disclaimers in the introduction, itself suggests that the ghosts of India's colonial pasts continue to live in its present.

Abhinav Sekhri is a lawyer practising in New Delhi. When not working or writing about criminal law, he can be found trawling through the archives in search of curious stories from Indian legal history.