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OFFENCES AGAINST RELIGION UNDER THE BHARATIYA NYAYA SANHITA, 2023: BALANCING RELIGIOUS FREEDOM AND FREEDOM OF EXPRESSION

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This paper examines the legal framework governing offences against religion in India, with particular emphasis on the provisions of the Bharatiya Nyaya Sanhita, 2023 (BNS) and their relationship with the constitutional guarantees of religious freedom and freedom of speech and expression. The study begins by examining the constitutional foundations of religious freedom under the Constitution of India, particularly Articles 14, 15, 25, 26, 27 and 28, and considers the extent to which the State is required to maintain neutrality while protecting religious liberty. It then analyses the principal BNS provisions concerning offences against religion, including the destruction or defilement of places or objects of worship, deliberate and malicious acts intended to outrage religious feelings, disturbance of religious assemblies, trespass into places of worship or sepulture, and deliberate acts intended to wound religious feelings. Through an examination of judicial decisions, the paper highlights the importance of intention and mens rea in determining criminal liability and distinguishes deliberate and malicious conduct from unwitting, careless or bona fide acts. Particular attention is given to the judicial interpretation of religious offences and their interaction with the constitutional protection of freedom of speech and expression under Article 19(1)(a). The paper critically examines the continuity between the erstwhile Indian Penal Code, 1860 and the BNS, observing that the principal offences against religion have largely been retained despite the broader restructuring of India's criminal laws. It further identifies concerns arising from expressions such as "outrage religious feelings" and "insult to religion", which may permit subjective interpretation and potentially affect legitimate expression. The study also considers procedural safeguards under the Bharatiya Nagarik Suraksha Sanhita, 2023. It concludes that the continuing challenge lies in maintaining an appropriate balance between protecting religious sentiments, preserving public order and safeguarding freedom of expression in a constitutional democracy.

Keywords – Offences Against Religion; Bharatiya Nyaya Sanhita, 2023; Religious Freedom; Freedom of Speech and Expression; Mens Rea; Religious Sentiments; Article 19(1)(a); Public Order.

I. INTRODUCTION

Secularism is ingrained in Indian culture, and religious freedom is a fundamental right guaranteed to all Indian citizens. Religion is the most essential component of most Indians lives in fact, religion is

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important to the majority of the world's people. Religion is a touchy subject because it affects not just a person's principles but also their emotions and upbringing.

Everybody believes India is a divine land, including Indians, however there are numerous flaws and blunders going on around us that we fail to notice or overlook. To be honest, in India, certain religious offences are tolerated with ease, and acceptance of such crimes is common place nowadays. The use of violence in the name of religion is becoming more common. In India, repression of minorities and hate crimes are on the rise. Although technological advancements have amused us in the twenty-first century, we continue to despise cyber-crime.

People are promoting religious hatred even now, in the era of the coronavirus, according to a story named "In India, Coronavirus Fans Religious Hatred" which was published in the New York Times. Officials in India are inculcating the virus on Muslims have been targeted in a wave of violence.¹ Young Muslim guys were beaten with cricket bats while dishing out meals to the poor. Other Muslims have been beaten up, and they were even forced to leave their neighborhoods, and they were also attacked by the people of other religions in mosques, all this type of crime spreading like a virus. In Punjab, Sikh temples broadcasted through their loudspeakers and warned people not to buy milk from dairy owned by Muslim because of the thinking that milk in those dairies were infected with coronavirus, and we also see many other examples around us, such as some Muslims assaulting doctors because they believe doctors are intentionally infecting them with coronavirus.

II. THE CONSTITUTIONAL BASIS FOR RELIGIOUS FREEDOM

In view of the complex and comprehensive nature of the freedom of religion, it would be hazardous to assert that our Constitution establishes full religious liberty in India. But the importance attached to this liberty in the Indian Constitution can be seen from the fact that right to freedom of religion forms one of the seven categories into which the fundamental rights given in Part III of the Constitution are divided, religious liberty also figures prominently in the Preamble, as among the objectives which the Constitution has to secure is Liberty of the thought, expression, belief, faith and worship. But to get an adequate idea of the nature and extent of the freedom of religion in India today, we have to pass in review the various articles, scattered all over the Constitution, which make the new Indian polity a Secular State.²

The Indian Constitution, enacted in 1950, is the longest in the world. It includes Fundamental Rights which constitute a quite comprehensive bill of rights as well as Directive Principles, which guide state policies and actions. The Constitution was written during the 1940s a key period in the global development of human rights, including the creation of the Atlantic Charter and the signing of the United Nations Charter. Members of India's Constituent Assembly were sensitive to these currents, which supported their own faith in the validity of written rights.³

¹ Avni Jain & Yamini Meena, *Religious Laws and Religious Crime in India*, 4 [SC]Indian J.L. & Legal Rsch [/SC] 1 (2022)

² J. Patrocínio de Souza, *The Freedom of Religion Under the Indian Constitution*, 13 Indian J. Pol. Sci. 62 (1952).

³ Rajeev Dhavan, *Religious Freedom in India*, 35 Am. J. Compar. L. 209, 418? (1987)

Although the modern State is a Secular State, there is much misunderstanding regarding the idea of the Secular State. A Secular State is not necessarily anti-religious or atheistic. Only, it is neutral in matters religious. It considers that the various religious opinions, whether professed by the majority or minority communities, are deserving of equal treatment. The citizen in a Secular State may have any religion he likes or no religion at all, and the State does not persecute him or impose disabilities on him because of his religious opinion. But the Secular State, while allowing the fullest possible freedom of conscience, would not allow religion to interfere in politics. In other words, the Secular State seeks to draw a distinction between the things that are God's and the things that are Caesar's.⁴

Fundamental Rights Relating to Religion

In conformity with the principle of the Secular State the Constitution establishes a single common citizenship. According to Article 14, 'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India'. According to Article 15(1)⁵, the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 15(2)⁶ in particular, no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

The educational facilities provided by the State are to be enjoyed equally by all the citizens. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them⁷.

The Constitution of India guarantees the right to freedom of religion as a part of its Fundamental Rights, outlined in Part III. The specific articles that protect religious freedom which are, Article 25⁸ of the Constitution guarantees the freedom of conscience and the free profession, practice, and propagation of religion. This article ensures that every individual has the right to practice and propagate their faith, subject to public order, morality, and health.

The Supreme Court has interpreted Article 25 in various cases to mean that the freedom of religion is not absolute and is subject to reasonable restrictions. In the case of *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954)⁹, the Supreme Court held that the freedom of religion is not a fundamental right that is absolute in its scope, but is subject to the limitations imposed by the Constitution.

⁴ Supra 2

⁵ *INDIA CONST.* art. 15(1)

⁶ *INDIA CONST.* art. 15(2)

⁷ *INDIA CONST.* art. 29

⁸ *INDIA CONST.* art. 25

⁹ *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, 1954 S.C.R. 1005

Article 26¹⁰ of the Constitution guarantees the freedom to manage religious affairs. This article ensures that every individual has the right to manage their religious affairs, subject to public order, morality, and health.

Article 27¹¹ of the Constitution guarantees the freedom from taxation for the promotion of any particular religion. This article ensures that no individual can be forced to pay taxes for the promotion of any particular religion.

Article 28¹² of the Constitution guarantees the freedom from attendance at religious instruction. This article ensures that no individual can be forced to attend religious instruction or participate in any religious ceremony.

III. ANALYSIS OF THE BNS PROVISIONS RELATING TO OFFENCES AGAINST RELIGION

Injuring or defiling place of worship with intent to insult the religion of any class

“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 punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both..”¹³

The essence of the offence under s 298 is the intention of insulting the religious feelings of any person or class of persons by destroying, damaging or defiling a place of worship or an object held sacred by any class of persons. Mere defilement of a place of worship is not an offence under this section without the requisite *Mens rea*. Whether there was intention to insult is a question of fact, which can be judged depending on the facts and circumstances of each case. The intention of the person concerned can be gathered by the act itself, or by words uttered or gestures, or any other circumstances that might have accompanied the act.

*Jan Mohammad v Narain Das*¹⁴, in the case certain Hindus were charged under this section for dismantling a mosque. It appeared that the mosque, which was a very small building, was in charge of no one in particular and had fallen into ruin. The accused, whose house adjoined the mosque, removed some building material with the help of some Muslims. The object or the intention with which the materials were removed was not established and hence, it was held that the conviction under s 298 was not warranted because the intention of the accused to insult any religious group was not established. The court saw no reason to believe that the accused in so acting intended to insult the religious feeling of Muslim residents of the village.

¹⁰ *INDIA CONST.* art. 26

¹¹ *INDIA CONST.* art. 27

¹² *INDIA CONST.* art. 28

¹³ § 298 BNS (corresponding to § 295 IPC)

¹⁴ *Jan Mohammad v Narain Das (1883) All WN 39*

Soban Ram v Crown,¹⁵ the accused Hindu had inserted the rafters of his roof for convenience into the walls of a mosque. It was held that although the act of the accused damaged the mosque, it was not the intention of the accused to insult any particular religion and hence he was acquitted.

In the case of *Re Ratna Mudali*,¹⁶ a Hindu had sexual intercourse with a woman within an enclosure surrounding the tomb of a Mohomedan Fakir, which was held in veneration by some of the Muslims. The act was done in secret and at night. Hence, the court held that having regard to the secrecy and time, s 298 would not be applicable. However, s 301 makes trespass into any place of worship an offence and hence, the accused was convicted under s 301, BNS.

Mere defilement of a place of worship is not punishable under s 298. The destruction, damage or defilement should be done with intention to insult the religious feelings of any class of persons or with the knowledge that a class of persons is likely to consider the defilement as an insult to their religion. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention of outraging the religious feelings of that class do not come within the purview of s 298.

The destruction or damage should be a place of worship or a sacred place. Whether a particular place or object is a sacred one, is a question of fact. Generally, temples, churches, mosques, synagogues, kyaungs (place of worship for Buddhists) are all places of worship and hence sacred places. The use of a hut on an agricultural land as a public mosque, without the permission of the owner of the property and conducting prayers there, does not make the hut a place of worship or a sacred place.

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In *Joseph v State of Kerala*,¹⁸ a shed was used as a place of worship by the people. The accused got delivery of the shed through the order of the court. After taking possession, he pulled down the shed and took away the pictures of Hindu gods which were kept in the shed for the purpose of worship. He was charged under s 298. It was held by the Kerala High Court that the accused having got possession of the property through an order of the court, was under the bona fide impression that he had the right to use the property in any manner he liked. He did not want the shed to be used as a prayer hall and therefore pulled it down. In these circumstances, the high court held that the place, which was used as a prayer hall, was a property over which others did not have any right and hence, the accused neither knew nor had any intention that it would hurt the religious feelings of others.

In *S Veerabhadran Chettiar v EV Ramasami Naicker*,¹⁹ the accused was the leader of Dravidar Kazhagam. The complainant filed a petition against him that the accused was out to vilify a certain section of the Hindu community and did propaganda by holding meetings and writing articles. He held a meeting at the Town Hall maidan and broke an idol of God Ganesa. Before breaking the idol, he gave a speech and expressly stated that he intended to insult the religious feelings of the Hindu community. The complainant stated that the act of the accused amounted to offences under ss 295

¹⁵ *Soban Ram v Crown* 67 IC 686

¹⁶ *Re Ratna Mudali*, 10 I.L.R. Mad. 126 (Mad. 1886)

¹⁷ PSA PILLA

¹⁸ *Joseph v. State of Kerala*, MANU/KE/0056/1960

¹⁹ *S. Veerabhadran Chettiar v. E.V. Ramasami Naicker*, 1958 INSC 71.

and 295A, IPC(298 BNA and 299 BNS). The trial court dismissed the complaint stating that the mud figure of Ganesa cannot be held to be a sacred object held in veneration.

Even a Ganesha idol, if it is abandoned by the people, is unworthy of worship and hence loses its sanctity and hence the act would not amount to an offence under s 295, IPC. When the matter was taken up to the high court, it held that the words ‘object held sacred’ will mean only the idols inside the temple and when they are taken in procession on festive occasions. There are several dolls in shops which are the images of deities. These dolls, which are found in shops, have to be distinguished from the objects held sacred, which can only be when they are duly installed in a temple and from which they are subsequently taken out in procession on festive occasions. What was broken by the accused was nothing more than a doll and hence, no offence was made out.

The Supreme Court, which decided the appeal, observed that the high court had given a much too restricted meaning to the words in the section. The Supreme Court observed that by holding that only an idol which is consecrated will come within the meaning of ‘object held sacred’, the high court placed limitations which were not warranted on a plain reading of the section. The court held that idols were only illustrative of sacred objects.

Sacred books like the Bible, Quran or the Granth Sahib are all clearly within the ambit of sacred objects. Any object, however, trivial or destitute of real value in itself, if regarded as sacred by any class of persons, would come within the meaning of the penal section. It is not absolutely necessary that the object held sacred should have been actually worshipped. An object may be held sacred by a class of persons without being worshiped by them. The courts below, the apex court observed, were rather cynical in so lightly brushing aside the religious susceptibilities of that class of persons to which the complainant belongs. Courts, it cautioned, have to be very circumspect in such matters and should pay due regard to the feelings and religious emotions of persons with different beliefs, irrespective of the consideration whether or not they share that belief or whether they are rational or otherwise, in the opinion of the court.

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 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.”²⁰

S 299 does not punish every act of insult to religion. It punishes only deliberate and malicious acts that insult religion or religious beliefs of a class of citizens. Malice is the negation of bona fides. It denotes wicked, perverse and incorrigible disposition. It means and implies an intention to do an act which is wrongful to the detriment of another. Where a person willfully does an act injurious to

²⁰ § 299 BNS (corresponding to § 295A IPC)

another without lawful excuse, it can be said that he has done it maliciously.²¹ This means that where any unwitting or careless remark is made, which might have the effect of insulting the religious feelings of persons, but which is done without any deliberate or malicious intention to outrage the religious feelings of any class, then s 299 will not apply.

Malice is a state of mind and very often it is not capable of direct and tangible proof. In most cases, it has to be inferred from the circumstances having due regard to the setting, background and connected facts. Malice can also be gathered from the language and behavior of the accused. Malice, however, can be presumed on part of an individual if he has done an injurious act without any lawful and just excuse.²²

In *Ramji Lal Modi v State of Uttar Pradesh*,²³ the constitutional validity of s 299 was challenged on the ground that it was violative of the fundamental right to freedom of speech and expression guaranteed in art 19(2) of the Constitution. Upholding the constitutional validity of s 299, the Constitution Bench of the Supreme Court ruled that s 299 is enacted in the interest of the public order, and it penalizes not any and every insult to religion but only the deliberate and malicious outraging religious feelings of a class of persons.

It excludes from its purview insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of a class of persons. It punishes only aggravated form of insult to religion that have tendency to disrupt the public order and the section of class of persons. Such a penalization, the court held, falls within cl (2) of art 19 as being a law imposing a reasonable restriction on the exercise of the right to freedom of speech and expression guaranteed under art 19(1)(a) of the Constitution. *Forfeiture of Offending Material*.

Disturbing religious assembly

‘Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.’²⁴

Under this section, special protection is given to congregational worship. This section does not cover individual worship. A religious procession may be regarded as a lawful assembly engaged in performance of religious worship. It, however, should not interfere with the ordinary use of the streets by the public or contravene any traffic regulations or lawful directions. Such a regulation does not amount to disturbing the religious assembly. Thus, any disturbance caused to a religious procession will be an offence under this section. Where a mosque is abetting on a highway, going in a procession with music at a time when prayer is going on in the mosque, will be an offence, as such

²¹ *Trustees of Safdar Hashmi Memorial Trust v Govt of NCT of Delhi* MANU/DE/0540/2001 ; *State of Andhra Pradesh v Goverdhanal Pitti* 2003 INSC 162.

²² Sarah B. Gordon, *Indian Religious Freedom and Governmental Development of Public Lands*, 94 YALE L. J. 1447 (1985).

²³ *Ramji Lal Modi v. State of Uttar Pradesh*, 1957 INSC 32.

²⁴ § 300 BNS (corresponding to § 296 IPC).

music will necessarily disturb the congregation engaged in the prayer. However, disturbance caused to a procession through a private grove does not warrant s 296.

Trespass into Place of Worship or Place of Sepulture

“Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulchre, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both”²⁵.

Trespass need not necessarily be a criminal trespass for the purpose of s 301 BNS. Trespass implies any violent or injurious act committed with the intention of wounding feelings or insulting the religion of any person. It is used in the section to indicate an unjustifiable intrusion upon property in possession of another.

In *Queen-Empress v Subhan*,²⁶ the respondents, who entered upon a burial place and ploughed up the graves, were held guilty under s 297, IPC (301 BNS), notwithstanding that their entry on the land was by the consent of the owner thereof. Such trespass must be with the intention of wounding the religious feelings of any person. In *Re Ratna Mudali's case*, when a Hindu had sexual intercourse with a woman within an enclosure surrounding the tomb of a Mahomedan Fakir held in veneration by some people, he was convicted for trespassing into a place of sepulture under s 297, IPC, and thereby insulting religion of others.

One of the acts which is an offence under s 301 BNS is causing indignity to a human corpse or disturbing the performance of funeral rites. The word disturbance means some active interference in or hindrance to performance of the funeral ceremonies.

In *Basir-ul-Huq v State of West Bengal*,²⁷ the mother of one Dhirendranath Bera died. He, along with some people, took the dead body to the cremation grounds. In the meantime, the accused had given a complaint in the police station stating that Dhirendranath had throttled his mother and killed her. When the funeral pyre was in flames, the accused, accompanied by the sub-inspector of police, arrived at the cremation ground. The accused pointed out the dead body and told the sub-inspector that if the body was brought down from the pyre, marks of injury would be found on the body.

At this suggestion, the fire was extinguished and the dead body was taken down from the pyre in spite of the protest. On an examination of the dead body, it was found that there were no marks of injury on it. Dhirendranath filed a complaint against the accused under s 297 IPC stating that the

²⁵ § 301 BNS (corresponding to § 297 IPC)

²⁶ *Queen-Empress v. Subhan*, 18 I.L.R. All. 395 (1896)

²⁷ *Basir-ul-Huq v. State of West Bengal*, 1953 INSC 34.

accused, because of prior enmity, out of a mala fide intention to harm his reputation and to wound his religious feelings, had trespassed on the cremation ground and caused the dead body to be taken out. The accused was convicted and sentenced to three months rigorous imprisonment.

However, in *Sudarshan Kumar v Gangacharan Dubey*,²⁸ the accused police officers, who shot dead a criminal in encounter and after post-mortem took the dead body to the deceased's father who refused to take the body. However, in the meantime a large crowd gathered to see the dead body and in order to avoid law and order problem, roped the body to tower for a few minutes to show the public the results of a life to crime, the Madhya Pradesh High Court held the police officers not guilty of showing any indignity to the dead body.

Uttering words, etc., with deliberate intent to wound religious feelings of any person

“Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”²⁹

Both these sections s 299 and 302 of the BNS deal with acts which are done deliberately with an intent to outrage, wound or insult the religious feelings of persons. Section 299 deals with deliberate and malicious acts intended to outrage the religious feelings or insult the religious beliefs or religion of a class of citizens, while s 302 makes deliberate acts of verbal or visible representation intending to wound religious feelings of another punishable.

Section 299 and s 302 use different phrases. The former speaks of deliberate and malicious intention of outraging religious feelings of a class of citizens of India. The latter makes any utterances or gestures done with deliberate intention of wounding religious feelings of a person, punishable. The word outraging is a much a stronger word than wounding. Further, the offence under s 299 is more serious than the offence made punishable under s 302. The punishment provided for outraging the religious feelings (under s 299) is simple or rigorous imprisonment for a term up to three years, while the term imprisonment provided for wounding religious feelings (under s 302) is up to one year.³⁰

Section 302 deals with deliberate intentional wounding of religious feelings of another by words, gestures or exhibitions. For convicting a person under s 302, the prosecution must establish affirmatively that he did the act in question with deliberate intention of wounding religious feelings of a section of the public. Mere knowledge of the likelihood that the feelings of other persons might be hurt by his act is not sufficient for holding him guilty under s 302. It, unlike s 299, does not take into its ambit any written articles purportedly written to wound religious feelings of others.

Nevertheless, it is significant to note here the legislative intent of s 302. It allows fair latitude to religious discussion but at the same time prevents the professors of any religion from offering, under

²⁸ *Sudarshan Kumar & Ors. v. Gangacharan Dubey & Anr.*, 2000 Cri LJ 1618 (MP)

²⁹ § 302 BNS (corresponding to § 298 IPC)

³⁰ P.S.A. Pillai, *Criminal Law* 418 (K.I. Vibhute ed., 12th ed. 2014)

the pretext of such discussion, intentional insults to what is held sacred by others. No person is justified in wounding with deliberate intention the religious feelings of his neighbors by words, gestures or exhibitions. A warm expression dropped in the heat of controversy, or an argument urged by a person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, therefore, does not fall under s 302.

IV. CRITICAL ANALYSIS

The offenses are direct inherited from colonialism, written when British rulers were only trying to prevent ethnic strife between faiths rather than safeguarding individual belief systems. Keeping the laws in their original form in BNS while Parliament was renaming most of the laws and partly modernizing the criminal code shows a complete lack of evaluation of whether these laws can work in a democratic state.

The wording of the provisions, especially the expressions ‘outrage religious feelings’ and insult to religion, is flexible and vulnerable to subjective interpretation. Since liability can result from the response of the complainant rather than from any harmful nature of speech itself, these provisions lend themselves structurally to what is commonly known as the heckler's veto, in which loudest or most easily offended person sets the standard for expression.

Even though the need for a provision in Section 173(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 that mandates conducting an inquiry before the registration of FIR for specific offences related to speech with a punishment ranging from three years to seven years is indeed a progressive step, its utility completely depends on the compliance of the police force, which is something proved by the case of Imran Pratapgadhi.

The value of comparison is clear numerous liberal democracies have done away with the crime of blasphemy altogether or considerably limited its application to only severe cases of incitement to violence. The rationale behind this is that the right not to be offended conflicts with the principle of free debate. India's continued retention of an extensive offense against feelings which is justified primarily on public-order grounds is not due to an accident but rather reflects a political decision motivated by the country's special legacy of communal strife. Nevertheless, this offense causes problems for the implementation of the freedom of expression provisions of Article 19(1)(a).

V. CONCLUSION

In the context of Indian penal law, the area of religious offences has a uneasy but enduring position and stands on a fine line between two constitutionally guaranteed concerns of freedom of practicing one's own religion while standing assured that one's religious beliefs remain intact beyond the freedom of expression, including speaking, writing, and coating without criminal liability.

The era from the Indian Penal Code 1860 to the Bharatiya Nyaya Sanhita 2023 has provided an opportunity to assess the existing balance between the two but the legislature choose to go for an option of considerable continuity, having virtually retained the five same offences with rather

insignificant amendments. Hence, the task of finding the borderline between permissible protection of religious feelings and banned censorship of speech has appeared to remain in the jurisdiction of courts.

The judiciary has been quite successfully engaging in this function since the 1957 Ramji Lal Modi case and till the more recent Imran Pratapgadhi 2025 case. The issue, however, remains whether this judiciary means is sufficient due to lack of proper legislative drafting and relevant procedural guarantees at the investigation stage.