

necessary that the object, in order to be held sacred, should have been actually worshipped.^{7.}

3. 'Class of persons'.—In order that a body of persons may form a class there must be a principle of classification.^{8.}

[s 295.2] CASES.—

The damaging or destroying of a sacred thread worn by a person, who is not entitled under the Hindu custom to wear it or for whom the wearing of the sacred thread was not part of his ceremonial observance under the Hindu religion, in assertion of a mere claim to higher rank, was held to be not an insult to his religion.^{9.} Where a pastor of the church who himself was a Christian was running a nursery school and a charitable dispensary in a portion of the Church, it could not be said that by using a portion of the Church property for such secular and non-religious purposes he was insulting the religion of a class of persons within the meaning of [section 295, Indian Penal Code, 1860 \(IPC, 1860\)](#).^{10.}

1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

2. *Gopinath v Ramchandra*, (1958) Cut 485.

3. *Sivakoti Swami*, (1885) 1 Weir 253.

4. *Imam Ali v State*, (1887) 10 All 150 (FB); *Romesh Chunder Sannyal v Hiru Mondal*, (1890) 17 Cal 852 .

5. *Imam Ali*, *sup*; *Ali Muhammad*, (1917) PR No. 10 of 1918 (FB).

6. *Romesh Chunder Sannyal v Hiru Mondal*, *supra*.

7. *Veerabadran v Ramaswami*, AIR 1958 SC 1032 [LNIND 1958 SC 95] : 1958 Cr LJ 1565 . See also *Zac Poonen v Hidden Treasure Literature Incorporated In Canada*, 2002 Cr LJ 481 (Kant).

8. *Benarashi Lal*, (1956) 98 CLJ 139.

9. *Sheo Shankar*, (1940) 15 Luck 696 .

10. *DP Titus v LW Lyall*, 1981 Cr LJ 68 (All).

THE INDIAN PENAL CODE

CHAPTER XV OF OFFENCES RELATING TO RELIGION

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11.[s 295A] 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 ^{12.}[citizens of India], ^{13.}[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 ^{14.}[three years], or with fine, or with both.]

State Amendment

Andhra Pradesh.—*In Andhra Pradesh the offence is cognizable vide A.P. G.O. Ms. No. 732, dated 5 December 1991.*

COMMENT.—

This section was brought into [IPC, 1860](#) by the [Criminal Law Amendment Act, 1927](#) (25 of 1927) following the wide spread agitations erupting from the decision in *Rajpaul v Emperor*,^{15.} commonly called as "Rangila Rasul's case", rendered by the Lahore High Court. Interpreting [section 153A of IPC, 1860](#), which alone was there in the Statute then, it was held that no offence would lie thereunder however indecent be the comments made against a deceased religious leader. In fact a few months before *Rangila Rasul's* case was decided by the Lahore High Court, a totally dissenting view over the application of [section 153A of IPC, 1860](#) had been rendered by the Allahabad High Court in *Kali Charan Sharma v Emperor*,^{16.} holding that scurrilous and bad taste remarks against a religion or its founder promoting ill feelings between sects of different faith could be proceeded under [section 153A of IPC, 1860](#). It was at that stage; the Legislature stepped in and brought in a new penal provision under section 295A in [IPC, 1860](#). [Section 295A of IPC, 1860](#) does not penalise every act of insult but penalises only deliberate acts of insult, so that even if by any expression insult is in fact caused, that expression is not an offence if the insult offered is unwilling or unintended.^{17.} In order to attract the mischief of the provision of section 295A, the following ingredients are to be satisfied, viz., a person (1) by written words (2) with deliberate and malicious intention (3) of outraging the religious feelings (4) of any class of citizens of India, (5) insults or attempts to insult the religion or the religious beliefs of that class. In other words, (1) the intention has to be deliberate and malicious both and (2) for outraging the religious feelings (3) of a class of citizens of India (4) in order to insult or attempt to insult the religious or religious belief of that class, i.e., in India (5) by written words.^{18.} Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that

class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.^{19.}

The essence of the offence under this section is that the insult to religion or the outrage to religious feelings must be the sole, or primary, or at least the deliberate and conscious intention. In order to bring the case within this section it is not so much the matter of discourse as the manner of it. The words used should be such as are bound to be regarded by any reasonable man as grossly offensive and provocative and maliciously and deliberately intended to outrage the feeling of any class of citizens of India. It is no defence to a charge under this section for anyone to plead that he was writing a book in reply to the one written by one professing another religion who has attacked his own religion.^{20.} In order to establish malice as contemplated by this section, it is not necessary for the prosecution to prove that, the applicant bore ill will or enmity against specific persons. If the injurious act was done voluntarily without a lawful excuse, malice may be presumed.^{21.} Malice is often not capable of direct and tangible proof and in almost all cases has to be inferred from the surrounding circumstances having regard to the setting, background and connected facts in relation to the offending article.^{22.} The truth of the allegation is not a good defence to a charge under this section.^{23.}

The Supreme Court, while quashing a complaint observed that section 295A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. Further the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.^{24.}

[s 295A.1] Constitutional validity.—

This section is well within the protection of clause (2) of [Article 19 of the Constitution](#) and its validity neither is beyond question,^{25.} nor is it inconsistent with the right guaranteed by [Article 25\(1\) of the Constitution](#).^{26.}

Where the arrangement of the scenes and the script of the drama outraged the religious feelings of the Christian community, an offence under this section was held to have been committed irrespective of the fact whether the beliefs which were made the subject-matter of the attack were rational or irrational. An attack on even an incredible belief may be capable of causing hurt to feelings.^{27.} Where the articles published by the accused highlighted the ideological differences that existed between the members of a Christian group and the members of the Christian fellowship centre, it was held that an expression of opinion by a person who is having a different religious belief did not amount to defamation.^{28.} An offence under this section has been made a cognizable and non-bailable one under new [Code of Criminal Procedure, 1973](#) (Cr PC, 1973).

[s 295A.2] Sanction.—

No Court can take cognizance of an offence under this section except with the previous sanction of the concerned Government under [section 196\(1\), Cr PC, 1973](#).^{29.}

In the matter of the publication of a book outraging the religious feelings of a section of the society, a Notification was issued directing forfeiture of the book under [section 95, Cr PC, 1973](#). It was held that the order contained in the Notification was not violative of [Article 19\(1\)\(a\) or 19\(1\)\(g\) of the Constitution](#).^{30.}

[s 295A.3] CASES.—

It is well settled that the offending publication has to be viewed as a whole and the malicious intent of the author has to be gathered from a broader perspective and not merely from a few solitary lines or quotations.^{31.} The same view of the law was taken in *Chandanmal's* case by the High Court of Calcutta to say that [section 295A, IPC, 1860](#), does not punish every act of insult to religion. It punishes only aggravated acts of insult, etc., which are deliberate and malicious. And in judging if a publication falls within the mischief of this section the publication has to be judged as a whole. "Isolated passages picked out from here and there and read out of context cannot change the position".^{32.}

A petition was filed to protest against the practice of printing and pasting photographs of Gods and Goddesses of Hindu religion on fire crackers. The practice in question had been going on since long without any objections. The Court viewed it as a whimsical petition and dismissed it.^{33.}

In this connection see also sub-para entitled "Cases" under section 153A *ante*.

1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

11. Ins. by Act 25 of 1927, section 2.

12. Subs. by the A.O. 1950, for "His Majesty's subjects".

13. Subs. by Act 41 of 1961, section 3, for "by words, either written or spoken, or by visible representations" (w.e.f. 12-9-1961).

14. Subs. by Act 41 of 1961, section 3, for "two years" (w.e.f. 12-9-1961)

15. *Rajpaul v Emperor*, [AIR 1927 Lahore 590](#) .

16. *Kali Charan Sharma v Emperor*, [AIR 1927 Allahabad 649](#) .

17. *Jayamala v State*, [2013 Cr LJ 622](#) .

18. *Sujato Bhadra v State of WB*, [2006 Cr LJ 368](#) (Cal).

19. *R V Bhasin v State of Maharashtra*, [2012 Cr LJ 1375](#) (Bom) (FB); *Ramji Lal Modi*, [AIR 1957 SC 620](#) [[LNIND 1957 SC 36](#)] : (1957) SCR 860 [[LNIND 1957 SC 36](#)] .

20. *Shiv Ram Dass v Udasi Chakarvarti*, (1954) Pun 1020 (FB).

21. *Khalil Ahamad*, [AIR 1960 All 715](#) [[LNIND 1960 ALL 96](#)] (SB). *Trustees of Safdar Hashmi Memorial Trust v Govt. of NCT of Delhi*, [2001 Cr LJ 3689](#) (Del), the basic requirement of the

section is that of deliberate and malicious act. Malice is a negation of *bona fides* and one who alleges it has to prove it.

22. *Sujato Bhadra v State of WB*, [2005 Cr LJ 368](#) (Cal); [2005 \(4\) CHN 601](#) [LNIND 2005 CAL 620]
The Trustees of Safdar Hashmi Memorial Trust v Govt. of NCT of Delhi, [2001 Cr LJ 3869](#) (Del) (FB).
23. *Henry Rodrigues*, [\(1962\) 2 Cr LJ 564](#) .
24. *Mahendra Singh Dhoni v Yerraguntla Shyamsundar*, [AIR 2017 SC 2392](#) [LNIND 2017 SC 217] : 2017 (2) RCR (Criminal) 746 : [2017 \(5\) Scale 83](#) .
25. *Ramji Lal Modi*, [\(1957\) SCR 860](#) [LNIND 1957 SC 36] .
26. *Henry Rodrigues*, *supra*.
27. *T Parameswaran v Distt. Collector*, [AIR 1988 Ker 175](#) [LNIND 1987 KER 607] .
28. *Zac Poonen v Hidden Treasure Literature Incorporated in Canada*, [2002 Cr LJ 481](#) (Kant).
29. *Shalibhadra Shah*, [1981 Cr LJ 113](#) (Guj). *Acharya Rajneesh v Naval Thakur*, [1990 Cr LJ 2511](#) (HP). *Manoj Rai v State of MP*, [AIR 1999 SC 300](#) : [1999 Cr LJ 470](#) , proceedings quashed because of no sanction.
30. *Baragur Ramchandrapa v State of Karnataka*, [1998 Cr LJ 3639](#) (Kant—FB).
31. *Nand Kishore Singh*, [1985 Cr LJ 797](#) (Pat—SB).
32. *Chandanmal Chopra*, [1986 Cr LJ 182](#) (Cal).
33. *Bhau v State of Maharashtra*, [1999 Cr LJ 1230](#) (Bom).

THE INDIAN PENAL CODE

CHAPTER XV OF OFFENCES RELATING TO RELIGION

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[s 296] 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.

COMMENT.—

Assemblies held for religious worship, or for the performance of religious ceremonies, are hereby protected from intentional disturbance.

The object of this section is to secure freedom from molestation when people meet for the performance of acts in a quiet spot vested for the time in the assembly exclusively, and not when they engage in worship in an unquiet place, open to all the public as a thoroughfare.^{34.}

[s 296.1] Ingredients.—

To constitute an offence under this section—

- (1) There must be a voluntary disturbance caused.
- (2) The disturbance must be caused to an assembly engaged in religious worship or religious ceremonies.
- (3) The assembly must be lawfully engaged in such worship or ceremonies, i.e., it must be doing what it has a right to do.

[s 296.2] CASES.—Disturbance caused by saying 'amin'.—

A mosque is a place where all sects of Mohammedans are entitled to go and perform their devotion as of right, according to their conscience; and a Mohammedan of one sect pronouncing the word "amin" loudly, in the honest exercise of conscience, commits no offence or civil wrong,^{35.} though he may by such conduct cause annoyance in the mosque to other worshippers of another sect who do not pronounce that word loudly.^{36.} But any person, Mohammedan or not, who goes into a mosque not *bona fide* for a religious purpose, but *mala fide*, for the purpose of disturbing others engaged in their devotions, will render himself criminally liable.^{37.}

[s 296.3] Religious procession.—

Persons of every sect are entitled to take out religious processions with music through public streets provided that they do not interfere with the ordinary use of the streets by the public or contravene any traffic regulation or lawful directions issued by the Magistrate. A religious procession does not change its character merely because the music is temporarily stopped in front of a mosque.^{38.}

1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste.

Note j.

34. *Vijjaraghava Chariar*, (1903) 26 Mad 554, 574 (FB).

35. *Ata-Ullah v Azim-Ullah*, (1889) 12 All 494 (FB).

36. *Jangu v Ahmadullah*, (1889) 13 All 419 (FB).

37. *Ibid.*

38. *Mohamud khan*, (1948) Nag 657.

THE INDIAN PENAL CODE

CHAPTER XV OF OFFENCES RELATING TO RELIGION

The principle on which this chapter has been framed is a principle on which it would be desirable that all governments should act, but from which the Government of India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion and that no man should be suffered to insult the religion of another.^{1.}

[s 297] Trespassing on burial places, etc.

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 ¹ or on any place of sepulchre, or any place set apart from the performance of funeral rites ² or as a depository for the remains of the dead, or offers any indignity to any human corpse, ³ 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.

COMMENT.—

This section deals more especially with trespasses on places of sepulchre and places set apart for the performance of funeral rites and as depositories for the remains of the dead. It extends the principle laid down in section 295 to places which are treated as sacred. The essence of the section is an intention, or knowledge of likelihood, to wound feelings or insult religion and when with that intention or knowledge trespass on a place of sepulchre, indignity to a corpse, or disturbance to persons assembled for funeral ceremonies is committed, the offence is complete.^{39.}

1. 'Trespass in any place of worship'.—'Trespass' here implies not only criminal trespass but also an ordinary act of trespass, i.e., an entry on another's land without lawful authority with the intention specified in section 441.^{40.} The term 'trespass' means any violent or injurious act, committed in such place and with such knowledge or intention as is defined in this section.^{41.}

The trespass must be in a place of worship with the knowledge that the religious feelings of persons would be wounded thereby. Where some persons had sexual connection inside a mosque, it was held that they were guilty of an offence under this section.^{42.}

2. 'Funeral rites'.—The section contemplates disturbance of persons engaged in performing funeral ceremonies. But a *moharram* procession is not a funeral ceremony within the meaning of this section.^{43.} Obstruction to the performance of obsequies comes under this section.^{44.}

3. Indignity to corpse.—What is indignity to corpse is not defined anywhere. Indignity is generally synonymous to humiliation or disgrace. A conduct to be criminal in the sense

of [section 297, IPC, 1860](#) should be spiteful to become humiliating or disgraceful. In a particular situation, an act may not cause disgrace or may not humiliate, but, in other situations that very act may cause disgrace or humiliation. So the intentions of the person concerned as well as surrounding circumstances are important factors.^{45.}

1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

39. *Burhan Shah*, (1887) PR No. 26 of 1887.

40. *Subhan*, (1896) 18 All 395 ; *Jhulan Saib*, (1913) 40 Cal 548 ; *Ratna Mudali*, (1886) 10 Mad 126; *Umar Din*, (1915) PR No. 23 of 1915.

41. *Mustan*, (1923) 1 Ran 690; *Sanoo v State*, (1941) Kant 316.

42. *Maqsud Husain*, (1923) 45 All 529 .

43. *Ghosita v Kalka*, (1885) 5 AWN 49.

44. *Subramania v Venkata*, (1883) 6 Mad 254 : 257. *Sudarshan Kumar v Gangacharan Dubey*, 2000 Cr LJ 1618 (MP), killing of a criminal in police encounter. His body was roped to a tower for a few minutes in order to show to the public the results of a life in crime. This being not an indignity to the body, no offence under the section was made out.

45. *Surdarshan Kumar v Gangacharan Dubey*, 1999 Cr LJ 1618 (MP).

THE INDIAN PENAL CODE

CHAPTER XV OF OFFENCES RELATING TO RELIGION

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[s 298] Uttering words, etc., with deliberate intent to wound religious feelings.

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.

State Amendment

Andhra Pradesh.— *In Andhra Pradesh the offence is cognizable vide A.P. G.O. Ms. No. 732, dated 5-12-1991.*

COMMENT.—

The authors of the Code observe: "In framing this clause we had two objects in view: we wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding with deliberate intention the religious feelings of his neighbours 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 will not fall under the definition contained in this clause."^{46.} This section does not apply to a written article.^{47.}

This section can be made cognizable by the State Government by a notification in the official Gazette under [section 10 of the Criminal Law Amendment Act, 1932](#).

The malicious intention should either be shown to exist or should be apparent from the nature of the act alleged to constitute an offense.^{48.}

[s 298.1] CASES.—

Interpolation of forbidden chant.— Interpolation of a forbidden chant in an authorised ritual is an offence under this section.^{49.}

[s 298.2] Exhibiting cow's flesh.—