Beyond the 'Communal' 1920s: The Problem of Intention, Legislative Pragmatism, and the Making of Section 295A of the Indian Penal Code

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Beyond the ‘Communal’ 1920s: The Problem of Intention, Legislative Pragmatism, and the Making of Section 295A of the Indian Penal Code

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Late nineteenth–early twentieth century Punjab has been commonly regarded as a space for ‘competitive communalism’ whereby each of the province’s major religious communities participated in activities that increased hostilities between the communities. Such an assertion has been substantiated with reference to an increasing number of publications that were quickly deemed offensive to one or the other religious community of the Punjab and then banned. This article examines the controversies following the publication of one such pamphlet ‘Rangila Rasul’. These ultimately necessitated the addition of section 295A to the Indian Penal Code (IPC), a section that would punish those who, ‘with deliberate and malicious intention,’ insulted or attempted to insult ‘religious beliefs’ of any class of His Majesty’s subjects. Reading contemporary newspaper commentaries alongside debates in the legislative assembly, I show that legislators were able to rise above the interests of their religious communities (as Hindu or Muslim publicists) to speak for a larger putative ‘Indian’ community, collective, or nation. Far from being a textbook example of communalism, the debates bring into sharp relief an alternate moment in the making of an ‘Indian’ nation.

Keywords: Legislative assembly debates, intention, communalism, Indian Penal Code

Introduction

An invitation to a literature festival, an abstract painting of a Hindu goddess, the publication of a historical book on Shivaji—a ban under section 295A of the Indian Penal Code binds these seemingly disparate instances in contemporary India. This

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article seeks to uncover the debates that preceded and accompanied the passing of this colonial law; a historical exercise whose relevance today can hardly be emphasised.

The context for the passage of section 295A is critical. Although the 1920s have been repeatedly characterised as a time when a whole range of issues—widow remarriage, competitive proselytisation, the abduction of women and children, religious reforms aimed at eliminating shared practices—coalesced to increase antagonisms between religiously defined communities, the actual debates leading up to the framing and passing of section 295A allude to a different possible reality.1 These debates, I will show, take seriously very different conceptions of the role of the state in protecting the rights of religious communities to arrive at a consensus that is negotiated, section 295A.

It was in the summer of 1924, shortly after the failure of the Non Cooperation—Khilafat movement to secure swaraj in one year, that a pamphlet purporting to describe real events in the life of the Prophet Muhammad, made its appearance in Punjab. Consumed by an audience accustomed to such literature, the pamphlet ‘Rangila Rasul’ came to the attention of a broader readership when it was mentioned by Gandhi in a long article on Hindu–Muslim unity. The Mahatma complained in Young India:

A friend has sent me a pamphlet called Rangila Rasul, written in Urdu. The author’s name is not given. It is published by the Manager, Arya Pustakalaya, Lahore. The very title is highly offensive. The contents are in keeping with the title. I cannot, without giving offense to the reader’s sense of the fine, give the translation of some of the extracts. I have asked myself what the motive possibly could be in writing or printing such a book except to inflame passions. Abuse and caricature of the Prophet cannot wean a Musalman from his faith, and it can do no good to a Hindu who may have doubts about his own belief. As a contribution therefore to the religious propaganda work, it has no value whatsoever. The harm it can do is obvious.2 (author’s emphasis)

With these words Gandhi immediately raised the question of motive in the publication of such ‘literature’. First published in May 1924, the pamphlet quickly sold its first edition of a thousand copies; orders had been put in for a second edition in late June when word came of a ban and prosecution under section 153A of the Indian Penal Code (hereafter IPC). As we will see the problem of motive or intention would be seminal to the crafting of section 295A of the IPC.

1For examples of such characterisation, see Jones, Religious Controversy; Gupta, Sexuality, Obscenity; Datta, Carving Blocs; Pandey, The Construction of Communalism.
2Gandhi, ‘Hindu–Muslim Unity’, Young India, 19 June 1924.
Hindu Intention, Muslim Hurt, Early British Interventions

In his statement before the court of C. H. Disney, Magistrate First Class, Lahore, the accused Mahashe Rajpal, publisher of the pamphlet, announced that he had been motivated by a desire for social reform. Rajpal believed that people would be ‘wean[ed] and deter[ed]’ from the ‘evils of polygamy, concubinage, mutas, and gross disparity of age in marriage’ from the pamphlet’s discussion of such practices in the life of the Prophet Muhammad. He held that such discussions were a ‘necessary condition of civilized existence’, particularly so in British India where, ‘on account of the perpetual conflict of creeds and zeal for proselytisation tolera-
tion of religious criticism has been recognised as an essential principle of criminal law.’ After invoking the works of European authors on the life of the Prophet and claiming that the pamphlet relied on facts, Rajpal held that the descriptions were ‘elegance and moderation itself’ and the language ‘sober, restrained and dignified’. In short he had ‘no cause to repent’ and had ‘not the slightest intention of promoting or attempting to promote feelings of enmity or hatred between |different classes of His Majesty’s subjects’ by this publication—the substance of the charge levied against him under section 153A of the IPC. Rajpal also held that the ‘agitation’ on which the prosecution had commenced proceedings was ‘artificial, unreal, and wholly engineered’ and a result of the above quoted article by Gandhi, not the publication itself.3

For over two years the case dragged through the trial court of the District Magistrate, then the Sessions Judge and finally the Punjab High Court. In the first two courts Rajpal was found guilty of creating enmity between classes and the pamphlet was held to be ‘intentionally offensive…undoubtedly malicious in tone and intention...’ The Judge of the High Court appointed for the case, Justice Dalip Singh, quoted the above extract from the ruling of the Sessions Judge and added that although the pamphlet was ‘undoubtedly … nothing more or less than a scurrilous satire on the founder of the Muslim religion…’ he could not find anything in it that showed ‘it was meant to attack the Mahomedan religion as such or to hold up Mahomedans as objects worthy of enmity or hatred.’4 Dalip Singh felt the subject of a malicious satire on the personal life of a religious teacher was outside the purview of section 153A. In a judgement that would be quoted in press and pulpit he said:

It seems to me that that section was intended to prevent persons from making attacks on a particular community as it exists at the present time and was not meant to stop polemics against deceased religious leaders however scurrilous and in bad taste such attacks might be. For instance, if the fact that Mussalmans resent attacks on their Prophet was to be the measure of whether S 153A applied

3 Rajpal, written statement of accused, The Tribune, 22 April 1925.
4 See Raj Paul v. King Emperor, The All India Reporter 1927, Lahore, p. 591.
or not then an historical work in which the life of the prophet was considered and Judgement passed on his character by a serious historian might come within the definition of S 153A. I am unable to hold that S 153A was meant or was intended to prevent all adverse discussions of the life and character of a deceased religious leader.\(^5\) (author’s emphasis)

Conceding that the pamphlet in question could only ‘arouse the contempt of all decent persons of whatever community’, the Justice did not think it would ‘necessarily promote feelings of enmity and hatred between different classes of His Majesty’s subjects. That might be the result but it could not be made the test of the section.’ In conclusion Dalip Singh recommended the addition of a clause to section 297 by which ‘pamphlets published with the intention of wounding the religious feelings of any person or of insulting the religion of any person might be made criminal.’\(^6\) Rajpal was, admittedly reluctantly, acquitted.

The case was decided on the 4th of May 1927. It was almost three weeks before a full copy of the judgement was made available to newspapers although the fact of Rajpal’s acquittal was widely known soon after. The only immediate reaction came from the pulpit of the Jama Masjid in Delhi: Maulana Mohamed Ali predicted that ‘very serious consequences’ would follow the acquittal.\(^7\) The various reviews of the judgement that were eventually published in the press did follow a communal pattern: true to form Hindu papers commended the acquittal while Muslim papers condemned the judgement.\(^8\) The Muslim Outlook took a particularly strong position recommending that an enquiry be conducted into the circumstances under which Dalip Singh wrote his judgement and also that the judge, now damned as ‘incompetent,’ resign.

It was the intervention of the British government at this juncture that reinforced the sense of wrong felt by the Muslim community at large. A deputation of leading Muslims called upon the Punjab Governor, Malcolm Hailey, to protest against the High Court ruling. The Governor’s response, widely published and commented upon, seemed to give a free pass to subsequent Muslim expressions of anger as it sympathised with those Muslims who felt ‘justifiably offended’ by the pamphlet and felt they had no ‘legal weapon by which its repetition could be prevented in the future.’ Hailey admitted that the judgement had left the government ‘much concerned’ for if this type of ‘religious controversy could be carried on with impunity’ there lay a ‘vista of endless trouble before the public’. He also let on that the government had consulted their legal advisers on the appropriateness of undertaking a modification of the law, as Dalip Singh had suggested.

\(^5\) Ibid., p. 592.
\(^6\) Ibid.
\(^7\) Mohamed Ali’s exposition, The Tribune, 30 June 1927.
\(^8\) For an interpretation that emphasises the communal proclivities of the press, see Uprety, Religion and Politics; Thursby, Hindu–Muslim relations.

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However, to begin with, the government was hoping another ‘test case’ could verify whether or not such attacks fell under the purview of section 153A.9 Hailey also emphasised the balance between freedom of expression and public order that the government claimed to want to manage: a balance that resonates with the purported raison d’etat of the postcolonial government of India:

If we have obligations for the preservation of public tranquility, we are also bound to respect the claim for that freedom of discussion which is necessary for the ascertainment of truth, historical or religious. A serious and critical treatment does not entirely exclude the use of satire; but it would certainly stop short at deliberate ridicule. Much therefore will be found to depend on the manner of treatment, and much on the intention of the writer.10 (author’s emphasis)

The government’s solicitude for Muslim sentiments certainly spurred calls for the resignation of Dalip Singh. Kanhayalal Gauba, a rising barrister at the Punjab High Court thought the Governor’s words had given birth to a constitutional point since this was the first time the ‘executive head of a province’ had thought it fitting to publicly criticise the decision of the High Court and proclaim its intention to test the legality of its decision. Gauba also pointed out that section 153A did not exclude historical works from the purview of executive and legislative action, a point that would be underscored by easily offended members of the Hindu Right in India several decades on. Gauba’s words proved to be prescient:

There is often a very narrow margin between satire and ridicule, between history and legend, between criticism unobjectionable and criticism objectionable. There is no reason why, if the personal characters of religious leaders might not be discussed, discussion should be permitted of their disciples…or in fact anyone whom a community chooses to lionize. There is no guarantee that a criticism of the personal character of Ranjit Singh or Aurangzeb will not be penalized or that after the anniversary of Shivaji who has become a new hero to the Punjab, has been celebrated half a dozen times the gates of the jail will not be opened to any one who describes him as a brigand.11

When calls for the resignation of the offending judge continued unabated, the government decided to prosecute the editor and printer of the Muslim Outlook for contempt of court. The editor, Mr D.S. Bukhary, viewed the courtroom as a forum for the redressal of grievances of the Muslim community. In his statement he spelt out the significance of the Prophet to Islam:

9 Deputation to the Governor, *The Tribune*, 14 June 1927.
10 Ibid.; also see Sorabjee, ‘Freedom of Expression and Censorship’.
The feeling dearest to a Muslim’s heart is his passionate devotion to the Holy Prophet of Islam, and the one thing which a Muslim of whatever position or status finds it impossible to endure is an attack on the life or the character of the Holy Prophet. It is difficult fully to describe their feelings in words and it is impossible for any but a Muslim to completely realize the depth of that feeling and the extent to which it dominates the heart of every Muslim.¹²

Bukhary proceeded to narrate the sequence of events as the Muslim community perceived it and voiced their hope that ‘just retribution’ would be served to the man responsible for the ‘grossest and most indecent libel’. But Dalip Singh’s judgement had struck him as ‘contrary to law’ and Bukhary felt ‘fortified’ in his opinion by the subsequent judgement of another High Court judge, Mr Dalal of Allahabad, who refused to agree with Dalip Singh’s ‘nice distinction’ between ‘a book which may hurt the feelings of Muslims and a book which may cause feeling of enmity or hatred between different classes of His Majesty’s subjects.’ Bukhary quoted from the Allahabad High Court judgement:

I look at such a matter not as a somewhat learned Judge of a High Court but as a common or ordinary citizen of a town in India. I would place myself in the position of a Muslim who honours his Prophet and then consider what my feelings would be towards a Hindu who ridiculed that Prophet not out of any eccentricity … but in the prosecution of a propaganda started by a class of persons who are not Muslims. In such a position from the hatred of the author I would as an ordinary man proceed to the hatred of the class to which the author belonged and which instigated the author. There cannot be the slightest doubt that the writings such as that of the book before me, which I am not going to analyse for fear of giving it further publicity, will certainly promote feelings of enmity and hatred between Hindus and Muslims.¹³ (author’s emphasis)

Bukhary insisted that ‘by adopting an erroneous view of the law’ Dalip Singh had made it possible for ‘the lowest scribe to defame and calumniate personalities like Abraham, Moses, Jesus and Muhammad (may peace and the blessings of God be upon all of them) in the grossest and vilest manner with perfect impunity’. Unconvinced by his lengthy explanation, Carden Noad, the government advocate, pointed out that it was not contempt to claim a judicial decision was wrong; the contempt had occurred because the paper had claimed the decision was based on extrajudicial grounds. Bukhary and his printer Nur-ul-Haq were sentenced to terms of simple imprisonment and fines and escorted ‘by the backdoor and taken in a car to the gaol’.¹⁴

¹³ Quoted in Ibid.
This sentence of contempt of court stung some Muslims into recognising that while the dignity of the court could be protected, the dignity of their prophet could not. Lahore’s chief Muslim publicist, Maulana Zafar Ali Khan, put it pithily: ‘the law had given a proof of its potency … by sending two poor Muslims to prison (cries of laanat).’ Khan urged that Muslims continue to raise their just demands: this included 52 per cent of representation in the legislature, universities and services in the Punjab, but in provinces where Muslims formed a minority, they should not demand more than their due. The raising of such material concerns in an increasingly emotional atmosphere was rare. In one other instance a former editor of the Muslim Outlook alleged that Muslim lawyers who called for the resignation of Dalip Singh wanted to create a vacancy on the Bench.

On the whole, the movement to demand a change in the penal code grew exponentially angrier in the days to come. When leaders in a series of public meetings in Delhi and Lahore referred to the sharia permitting death for defamation of the Prophet, members of the Hindu press began demanding that the preaching of violence be checked. Maulana Mohamed Ali, who had been extensively quoted for suggesting that ‘… the demand that the Secretary of State should compel the Judge to resign is … the best illustration of Punjab humour’ now changed his stance, or at least emphasis, by announcing, to 70,000 Muslims assembled at Delhi’s Edward Park facing the Juma Masjid, that only an amendment of the law could prevent the lives of offenders from being in danger. This thinly veiled threat only served to bring back memories of the recent assassination of Swami Shraddhanand. Mohamed Ali’s speech was followed by that of Khwaja Hasan Nizami, who seconded the call for safeguarding the honour and prestige of the prophet and sounded a warning:

…in the ancient capital of the Hindus, the medieval capital of the Mohammedans, and the present Indian capital of the British government that the news which will flash from this place to Persia, Turkey and to other Muhammadan countries will shake the very foundation of this Government.

The above narration of events foregrounds the problem of intention as it was laid bare in the controversial Punjab High Court judgement and then interpreted by an increasingly enraged Muslim public whose anger, stoked by British intervention,

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16 Press interview with Mr Daoud Upson, The Tribune, 3 July 1927.
17 Mohamed Ali’s exposition, The Tribune, 30 June 1927; The Delhi Meeting, The Tribune, 5 July 1927. Shraddhanand was an Arya Samaji leader from the Punjab who gained national prominence because of his participation in Gandhian anticolonial nationalism, and contribution to educational activity in north India. His relationship with Hindu nationalism, Congress politics, and the more controversial practices of shuddhi or reconversion of non-Hindus into the Hindu fold, are documented in Nair, Changing Homelands.
18 The Delhi Meeting, The Tribune, 5 July 1927. Also see article titled ‘The Lahore Meeting’ in the same issue.
sought to ultimately find a way of protecting the honour of their Prophet. The ensuing movement to amend the Indian Penal Code would mark not only the emergence of a new affective urban Muslim public community as has been argued by David Gilmartin, and more recently Asad Ali Ahmed; it would also raise critical questions on the relationship between law, the state and society as the slippery and contradictory interpretations of an earlier law came to upset the ‘feelings’ of ‘ordinary citizens’, and became the subject of litigation itself. The distinction between the ‘ordinary citizen’ and the judge, as invoked in the Allahabad High Court judgement, would be elaborated upon and reconfigured as matters of religious belief came to be debated not only in British India’s bazaars and law courts, but also in that no longer exclusively British institution—the rarefied chambers of the legislative assembly. But first, the problem of intention would be located and sought to be resolved within the four extant corners of the law and the actions of Punjab’s Hindu and Muslim communities.

‘Lighted Match’ and ‘Powder-Magazine’: Locating Intention in Court and Community

In the Punjab, the weeks following the acquittal of Rajpal and the momentous meeting of leading Muslim citizens with the Governor witnessed frequent calls for the resignation of the judge Dalip Singh and an amendment of a law that apparently could not protect the dignity of the Prophet. When these meetings continued to preach violence and threatened to overwhelm the law and order machinery of the government, the deputy commissioner of Lahore prohibited holding of public meetings under section 144 of the IPC. This, in turn, led to a civil disobedience campaign of defiance headed by Khilafatists in Lahore. Although several Muslim leaders including Muhammad Iqbal were able to privately persuade the Khilafat committee to end the campaign since the government was doing everything it could to clarify the bounds of the penal code, this was an impossible position to publicly uphold at a meeting of 15,000 Muslims in the Badshahi mosque—one of the only places to which section 144 did not apply. Here, even as Iqbal recalled that mosques had always served as assemblies for Muslims in times gone by, he was shouted down when he recommended that Muslims cease their civil disobedience movement pending the decision of the test case in the High Court. Only the Khilafat leader Chaudhri Afzal Haq was able to ‘save’ the situation by announcing the temporary suspension of the movement, for only seven days, pending consultations with Khilafat workers from the entire province. This account of intra-Muslim differences reveals the stresses and strains that the community underwent in framing a suitable response to the existing communal stalemate, as it were.

20 Muslims climb down, and Muslim agitation, The Tribune, 10 and 13 July 1927.
The mobilisation of Muslims in Lahore, Delhi and cities across India continued alongside an almost frantic examination of witnesses in the new test case submitted at a district court in Amritsar and quickly transferred to the High Court in Lahore. Here, with no time to lose, a recently published article ridiculing the Prophet in an Amritsar journal, Risala Vartman, was directly linked to the creation of hatred between Hindus and Muslims by an array of witnesses for the prosecution—Khilafatists, Congressmen, police officials, members of the press branch, a district magistrate and a municipal commissioner. Adverting to the movements of shuddhi and sangathan then current in Amritsar, several witnesses deposed that the communal situation in Amritsar, that had been tense, had worsened after the publication of this article. They also affirmed the author and printer of the offending article were representatives of the Hindu community; under these circumstances the silence of Hindu leaders was deafening. Although this last claim of representativeness did not hold under cross-examination, the counsel for the prosecution, Sir Mohammad Shafi, who was charging the crown an impressive 1500 rupees a day, contended that the accused had thrown a lighted match in a powder-magazine. The offending article was the lighted match and the articles previously written by the same author were the powder-magazine.

Like Justice Dalal of the Allahabad High Court whose judgement had been so approvingly quoted by the recently convicted Bukhary of the Muslim Outlook, Shafi contended that the effect of the offending article was to be judged by reference to the class of people who would be likely to read it. ‘The feelings of the man in the street furnished the true test and not the view of highly intellectual people.’ Shafi traced the history of Hindu–Muslim relations in the Punjab emphasising the rival movements of conversion that had taken on a new urgency from 1923 onwards. He quoted from another famous judgement in the Tilak sedition case wherein it was laid down that the time of publication of an article was germane to determining the intention of the accused.

In obvious and stark contrast to Shafi’s arguments, the leading counsel for the accused Mr Bal Raj Puri contended that the article in question was not the lighted match; indeed it was posters put up by the Qadianis adverting to the offending article, that were the ‘lighted match in a self-created powder magazine’. Like Rajpal who had attributed the anger against the pamphlet ‘Rangila Rasul’ to Gandhi’s article that had drawn attention to it, Puri contended that the Qadiani posters that referred to the offending article in Risala Vartman were the real culprit. Puri went on to distinguish between ‘contempt’ and ‘hatred’ and argued that each of the witnesses produced by the prosecution had felt indignation or shock or contempt at the article, but not

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23 The Vartman case, Sir Shafi’s arguments, The Tribune, 30 July 1927, emphasis mine.
24 Mr Puri’s arguments, The Tribune, 31 July 1927.
hatred. Puri argued that although Justice Dalal had chosen to place himself in the shoes of an ordinary man, he had been expected to decide the case as a judge. Puri alluded to earlier publications that had criticised Dayanand Saraswati, the founder of the Arya Samaj, but whose authors had not been prosecuted; the position was reduced to this: that ‘whoever happened to shout the louder was heard.’ Curiously, none of the leading Hindus that the defence summoned were ultimately produced in court. The general tenor of the case argued by the counsel for the defence may be gleaned from this extract published in the *Tribune*:

Proceeding, Mr Puri contended that the article, if at all, was an attack on an individual. It criticized the character of the Prophet in the individual capacity….it was neither an attack on the religion of the prophet nor against the Muhammedans as a class. If, according to some Islamic convention, the prophet is part of Islam, it does not follow that the non-Islamic world is cognizant of that peculiar convention. The Prophet was a great man and a good man and the founder of a religion; but he was a man with a private character.

Mr Justice Broadway: But he was the direct messenger of God.
Mr Puri: A messenger may still be a man. A messenger of God is only a messenger and not part of God.
Mr Justice Broadway: Surely, the Islamic world regards him as a holy man.
Mr Puri: That is true.
Mr Justice Broadway: Are you justifying the attack?
Mr Puri: I am not yet justifying the attack on the merits. I am only endeavouring to show that the section is not applicable.
Mr Justice Broadway: You say, the article may be in bad taste?
Mr Puri: The question of taste does not arise.
Mr Justice Broadway: I am afraid it does.

The give-and-take in the courtroom, the clever legal repartee that was otherwise a hallmark of this smart profession, translated badly into the broader realm of Hindu–Muslim relations. Even as the hearings for the *Vartman* case proceeded in Lahore, the Qadian-sponsored posters were put up in prominent parts of the North West Frontier province and minority Hindu and Sikh residents were forced to leave. Summarising the *Vartman* article and quickly forfeited in the Punjab, these posters stayed on the walls of the settled districts of the Frontier province and also spread to the neighbouring tribal territories. Hindus and Sikhs in parts of the tribal

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25 Puri referred to the recent amendment of the section that had replaced the word ‘ill-will’ by ‘hatred’. The prosecution had failed to prove that that limit had been crossed. The *Vartman* case, *The Tribune*, 2 August 1927.

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territories were asked to dissociate themselves from ‘the doings of down country Hindus’ claimed Sir Denys Bray, foreign secretary to the government of India in the legislative assembly, failing which they would have to leave; other newspaper reports alleged that tribal leaders had proposed severe restrictions on Hindus and Sikhs who wished to remain—these included not charging interest on loans and riding horses without a saddle—or simply insisted they leave immediately. Over four hundred Hindus and Sikhs from the Khyber Agency had arrived in Peshawar as refugees. One of the conditions under which an Afridi jirga was willing to take back the exiled Hindus and Sikhs was a positive judgement in the *Vartman* case.28

It was under these circumstances that Justices Broadway and Skemp, comprising a special and hastily constructed two member Division Bench of the Punjab High Court, were asked to determine whether or not section 153A of the IPC was applicable to cases where the prophet (or potentially any founder of a religious tradition) was insulted. Apart from the rising anger among Muslims that I have documented above, it is important to underline the response of the Hindu community of the Punjab, the province at the heart of the ongoing controversy.

The attitude of and arguments provided by, the legal counsel for the defence, have already been referred to. On the eve of the judgement the prominent Punjabi Hindu leader Bhai Parmanand, then in Srinagar, gave an interview to the *Tej* of Delhi. He thought the meetings comprising thousands of Muslims protesting the acquittal of Rajpal was over a ‘small and petty affair’. He was quite sure that most of these Muslims had not even read the publication against which they were protesting; as a Lahori, he certainly had not. He wished to point out that the publisher Rajpal had been willing to apologise for the publication and this was not accepted by the authorities; could not the Punjab government have confiscated the book and thereby ended the matter quietly?29 This was demonstrably untrue: in fact in his written statement to the court of the district magistrate Rajpal had clearly stated that he had ‘no cause to repent’.30

Parmanand also touched upon the subject of the silence of the Hindu community. He thought it critical that the ‘much blamed’ Arya Samaj had remained ‘scrupulously aloof’ from providing any help to Rajpal and compared the attitude of leading Hindus to that of the Muslim community which had only recently proclaimed the murderer of Swami Shraddhanand as a *ghazi*. But silence could cut both ways and in the *Vartman* judgement it was held to be ‘not surprising if the Muslims of Amritsar came to the conclusion that the article had the approval of the Arya Samaj

29 *Rangila Rasul* agitation. Bhai Parmanand’s views. *The Tribune*, 5 August 1927. This point was also made by Gauba in *The Vartman Case*. Some aspects considered. *The Tribune*, 14 August, 1927.
and Hindu Sabha more especially as since its publication one Hindu gentleman alone publicly condemned it.\textsuperscript{31} Even this gentleman’s later claim that he could not publicly disavow the connection of the Hindu Sabha from the article once it was \textit{sub judice} rang hollow.\textsuperscript{32} Indeed it seemed a particularly strategic move to stay aloof as any evidence of overt support would have helped prove the case of the prosecution that the author and printer were representative of the Hindu community.

Hindus and Muslims did seem to interpret the strategic silence of their community’s representatives differently. Bansilal Sahni of Lahore insisted that a ‘discreet and pacific silence’ on the part of the Hindu community would show their ‘magnanimity’. After all ‘the act of an individual is not the act of the whole community’. However, S.M. Haq, an advocate from Amritsar, argued against the silence of Muslim leaders as the ‘agitation, started by their own initiative and based on truth, distorted by fanaticism’ would only spread further. Haq urged that there was ‘no virtue in a suffering’ that could be ‘helped’ and urged a ‘sober and a long view of the matter’. As for the silence of the Hindu community, Haq pointed out that:

rightly or wrongly Muhammadans believe that the silence of the community to which Rajpal belongs amounts to its approval of his rabid production…. as the Hindu community had nothing to lose in denouncing a writer who reviled a prophet, revered by millions of men, it would have been very proper and tactful on the part of the Hindus to have appeased the wrath of their Muslim brethren with their warm and generous sympathy.\textsuperscript{33}

Within the precincts of the court, neither the intentions of the Hindu community nor those of the author and printer of the offending article in the \textit{Vartman} case were easy to pin down. The case for the prosecution, led by Sir Shafi, rested on external evidence, on taking into account the readership of the \textit{Vartman} and the state of feeling between the two communities on the eve of publication. The case for the defence, led by Mr Puri, relied on the internal evidence supplied by the article and on establishing that the intention of the article had not been to create enmity or hatred between the two communities; that such hatred had to be reciprocal and was clearly not present. When it was time to pronounce their verdict the Justices quite clearly distanced themselves from the problematic Dalip Singh verdict without once mentioning it by name.\textsuperscript{34} Justice Broadway wrote:

a scurrilous and vituperative attack on a religion or its founder (and it seems to me difficult to distinguish an attack on the founder of a religion from

\textsuperscript{31} The \textit{Vartman} case. Full text of the Judgement, \textit{The Tribune}, 7 August 1927.
\textsuperscript{32} The \textit{Vartman} Judgement. Dr Gokul Chand Narang’s statement. \textit{The Tribune}, 11 August 1927.
\textsuperscript{33} See articles and letters in \textit{The Tribune}, 16, 22 and 29 July 1927.
\textsuperscript{34} This point was emphasised by Kanhayalal Gauba in The \textit{Vartman} Case. Some Aspects Considered. \textit{The Tribune}, 14 August, 1927.

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an attack on the religion founded by him) would require a considerable amount of explanation to take it out of the substantive part of section 153A and bring it within the four corners of the Explanation. While therefore I am not prepared to accept the contention of the learned counsel for the Crown that any criticism of a religious leader, whether dead or alive, falls within the ambit of section 153A IPC, I would hold that the writing of a scurrilous and foul attack on such a religious leader would prima facie fall under the said section.35 (author’s emphasis)

The sentence of rigorous imprisonment and fine for the author and printer was hardly surprising given how much was at stake. It would take three months and, in some cases, longer for the exiled Hindus and Sikhs to return to their homes in the tribal territories.36 But the larger question for which the Vartman case had been a test case, namely, a definitive opinion on whether or not insults to religious leaders come under the ambit of section 153A, remained inconclusively settled. It would appear, at least from the tenor of early reactions to the Vartman judgement, that the Indian Penal Code had been found deficient in this regard.

Legislative Pragmatism and the Making of an Amendment

The weeks following the Vartman judgement saw the British government in India preparing hastily for an amendment to the IPC. The evacuation of Hindus and Sikhs from the Frontier and the seemingly endless publication of provocative literature confirmed their worst fears of Hindu–Muslim relations: their intervention—neutral in their eyes—was the need of the hour. Law, as we will see, was rendered accessible, amenable to pressure; it was a reflection of society, not the ‘staging of state sovereignty and legitimacy.’37 This attitude, evident in several of the responses pushing for an amendment to the penal code, is in contrast to the ‘omniscience’ attributed to ‘colonial law’ in the writings of the anthropologist Deepak Mehta38 or the belief that ‘modern law cannot cope with the idea of malicious statements leading to moral or spiritual injury’ as posited by Talal Asad in his critique of The Satanic Verses controversy.39 Indeed, the edifice ‘colonial law’ itself comes into

35 The Vartman case. Full text of the judgement. The Tribune, 7 August 1927. Emphasis mine. The Explanation stated:

It does not amount to an offence within the meaning of this section to point out without malicious intention and with an honest view to their removal matters which are producing or having a tendency to produce feelings of enmity or hatred between different classes of Her Majesty’s subjects.

36 Transfrontier exiles taken back, Touching scenes. The Tribune, 20 November 1927.
questionable relief as non-official elected and nominated legislators would join hands with British officials to amend the law.

It is worth recalling that the legislative assembly in 1927 was a very different political space from the legislative councils of earlier years. Following the Morley–Minto and Montford reforms of 1909 and 1919, the legislative assembly was now a space that included some Indians, a few of whom were elected, albeit under a limited franchise. Their independent assessment of Hindu–Muslim relations and the role of the state would become apparent in the course of these debates. A close reading of these debates also militates against the whole-scale labelling of the 1920s as a time of competitive communalism. Indeed 1927 was also a very different political time: Unlike the debates preceding the Age of Consent Act in 1892 and a failed attempt to broaden the scope of the Special Marriages Act in 1911 these debates suggest that by the 1920s colonial law was responding to the pressures of multiple constituencies—religious communities, as well as particular occupations such as the press, academia and lawmakers, who were taking crucial responsibility for the broader business of governing a diverse country.

I use the term ‘legislative pragmatism’ to emphasise the considerable restrictions that were imposed on legislative power by the legislators themselves. Arriving at their role from diverse positions in society and from a different corner of India with a different experience of communalism and social and religious reform, these legislators acted as a check upon each other, forcing the perspective of a larger India to bear on the amendment of the law. As the wording of the new section passed through the select committee and as various amendments were proposed and mostly rejected, these battle-hardened legislators were engaging with opposing points of view. Adhering to different identities and representing multiple interests, the powerful legislative assembly became the scene for arguments between social reformers and more conservative Hindus and Muslims, between members of the press who espoused a specific understanding of ‘freedom of expression’ and political leaders who proclaimed their ‘representative’ status and urged the (re)consideration of this proposed law on grounds of public opinion. These debates reveal the negotiation of very contrary understandings of ‘religious beliefs’, ‘freedom of expression’ and the role of the state as arbiter to arrive at the consensus that was section 295A of the IPC. Given the abuses of section 295A today it is worth underlining that this consensus entailed making a distinction between the researches of historians of religion, the work of social and religious reform and the ‘scurrilous scribbles’ of bazaar polemicists.

The assembly was, of course, not the only venue for conversations about Hindu–Muslim relations. The year 1927 marked a critical moment in the politics of the country as a whole: the Jinnah-led Muslim Conference was in earnest negotiations

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40 In doing so, I am adapting the phrase ‘judicial pragmatism’ coined by Shylashri Shankar to describe a judicial activism circumscribed by political and bureaucratic factors. Shankar, ‘India’s judiciary’, p. 166.
Beyond the ‘Communal’ 1920s

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with the Congress and the Motilal Nehru-led Report had not yet appeared. Far from representing yet another milestone on the road to increasing communalism and then partition, these debates in 1927 serve as a reminder of the many roads that might have been taken.41

To begin with, the Home Member J. Crerar proposed the bill as a measure to make ‘a scurrilous attack upon religion as the substantive matter’ so that it was no longer necessary to have to prove that feelings of enmity or hatred between different classes had arisen out of the publication in question for it to come under the law.42 The first and most enduring set of objections to this proposal was, in fact, raised by members from across the country. Abdul Haye and Lajpat Rai from the Punjab, M.A. Jinnah and D.V. Belvi of Bombay, Hari Singh Gour from the Central Provinces and T.A.K. Sherwani from the United Provinces all complained that the scope of the bill was too wide.

Spelling out the special circumstances that had given rise to this bill, the Punjabi Hindu representative Lajpat Rai thought the bill ‘retrograde’ although he considered it to be a ‘necessity’ under the prevailing ‘emergency’. He referred to the case of people who criticise their own religion and pointed out that social reform was closely tied with religious reform; foregrounding the problem of intention, Rai requested an explanation or change in language so that ‘bona fide criticism, historical research and all that leads to the interpretation of religious texts in such a way as to lead to progressive reform in social matters will not be affected’.43 M. A. Jinnah, too, felt that the Select Committee to which the bill would be referred, should strive to ‘secure this very important and fundamental principle that those who are engaged in historical works, those who are engaged in the ascertainment of truth and those who are engaged in bona fide and honest criticism of a religion shall be protected’.44 Jinnah added that on this matter there appeared to be no difference of opinion between the government and those seated on his side of the House.

Also in agreement with the principle of the bill was Mr S. Srinivasa Iyengar, leader of the Swarajists in the House who reminded his party that members could vote according to their individual conscience on the bill. Iyengar invoked Ashoka and declared that ‘tolerance’ had been ‘the law of the land’. Now that conditions had deteriorated, the bill was ‘long overdue’. He felt the ‘considerations of a united nation; the considerations of peace and goodwill…and the opportunity that we are denied for doing other things when people break each other’s heads’ made it imperative that the bill, ‘made word-perfect…and consistent with reasonable liberty of the Press, the people and all sections of the House’ be passed. Iyengar also

41 For an elaboration of alternate ways of interpreting key moments in the 1920s and 1930s see Nair, Changing Homelands.
42 The Legislative Assembly Debates, vol. 14. First session of the 3rd Legislative Assembly, 5 September 1927, p. 3926. Unless mentioned, the following paragraphs rely on this source.
44 Mr Jinnah, p. 3932.

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touched on the larger question of what constituted religion when he argued that religion had become ‘but a plaything…but a toy and you use it for the purpose of your secular ambitions and for your secular quarrels and rivalries’. He concluded by appealing to the government for their ‘legislative assistance’ because they wanted the ‘sanction of legislation’ to prevent people from ‘profaning the sacred name of religion’.45

But what, precisely, was the bill supposed to do? The key to confirming guilt under the new law would have to be around the ‘intention’ with which an author wrote about ‘religious beliefs’. Hari Singh Gour pointed out that the penal code already had three other classes of cases dealing with defamation: of the state, also known as sedition (124A); of a class (153A) and of a person (499 and 500). Was this new law simply about defamation of a new category, that of religion? If that was the case, Gour argued, perhaps it should be called the law of blasphemy. He also suggested that ‘intention’ had been analysed in two distinct ways: one, an express intention whereby ‘nothing is said to be done intentionally which is not done with that intention’ and two, a presumed intention whereby ‘every man is presumed to intend the natural consequences of his act’. Given the difficulties of the use of the term ‘intentionally’ Gour suggested its replacement with ‘Whoever with intent…’ This founder Vice Chancellor of Delhi University also spoke strongly for:

Historical writings, of a scientific character, writings even of a polemical character, are not all punishable and should not be punishable under the new clause or under section 153A of the Indian Penal Code, because by doing so you would be gagging the expression of free discussion, and I am perfectly certain that it is the object of the legislature here that there must be the maximum of personal liberty given to the people of this country to express their views without the fear that they would be prosecuted merely for an expression of opinion, that their intention may be to improve other religions, or it may be a mere matter of social reform, or their intention may be merely to publish the views which are the results of prolonged research.46

Pt Madan Mohan Malaviya, a Sanatanist from Allahabad and Jhansi Division, along with several other members, opposed the motion for the circulation of the bill as he believed it would delay a measure that was desperately needed. A clear believer, he emphatically spoke for criticism to be ‘reverential, and well considered’. Alluding to the Rajpal case, Malaviya urged that he was ‘less concerned with the facts of the life of any of these glorious men of the world than with the fact that millions of my fellow-men hold each of them in reverence’. Malaviya spoke for writings that appealed to the intellect, rather than the heart… ‘his heart

45 Mr Iyengar, pp. 3938–39.
46 Sir Hari Singh Gour, pp. 3946–47.
should be left unhurt, it should be respected, as one would wish his own heart to be respected’.

In a similar emotional vein, K.C. Neogy of Dacca Division admitted that he was ‘ashamed and pained’ at the circumstances that had made this law necessary. ‘The criminal law of a country is the index of its civilisation and its social conditions’ and this law would ‘stare us in the face and proclaim to the world the unhappy relations that subsist between the different communities in our land’. M.R. Jayakar, from Bombay, invoked Justice Ranade while asserting that the principle behind the bill had to be kept in mind:

Jayakar asked that the Home Member ‘regard these manias, as I do, from the point of view of an Indian, and treat them as a temporary phenomenon’. He also hoped the government would deal with the real cause of the problem and would bring in, or allow a non-official member to introduce a measure that would make sure that ‘each conversion is really a psychological change of faith and not brought about or in an atmosphere of fraud, deception, promises, threats or even political considerations’. Jayakar thought that the surge in obnoxious publications attacking one or the other community was directly related to the rival movements for conversion that were then in vogue. This kind of legislation could not be a cure; it was merely an ‘expedient measure’.

These heartfelt arguments won the day as a motion to circulate the bill to ascertain, more widely, the views of all provinces, was defeated. Those in the minority such as D.V. Belvi, M.K. Acharya of South Arcot and Thakur Das Bhargava of Punjab deplored the ‘breathless haste’ with which this bill was being sent to the Select Committee; Bhargava and M. S. Aney of Berar also wanted the initiative for prosecution to lie at the hands of individuals, not a government which they regarded as biased; and Ram Narayan Singh of Chota Nagpur assailed the government for lacking the ‘courage … strength … [and] sense’ to legislate for civic rights; the ‘religious quarrels’ were merely another form of false consciousness.

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47 Pt Madan Mohan Malaviya, p. 3948.
48 K.C. Neogy, p. 3959. These sentiments were echoed by Maulvi Muhammad Yakub of Rohilkund and Kumaon Divisions, p. 4477.
49 M.R. Jayakar, p. 3961.
50 M.R. Jayakar, p. 3963, emphasis mine.
51 M.K. Acharya, p. 3937; Thakur Das Bhargava, p. 3951; M.S. Aney, pp. 3956–58; Ram Narayan Singh, p. 3966.
Dissent and Other Responses to the Select Committee

The bill to amend the criminal law went into a Select Committee armed with arguably some of the best legal minds in the country—these included M.A. Jinnah, Srinivasa Iyengar and N.C. Kelkar. The principles underlying its amendment emerged out of the discussions in the assembly: The Select Committee members were particularly concerned to limit the scope of the bill so that it met with several of the objections already raised. As a result, the substantive part of the amended bill read:

After section 295 of the IPC, the following section shall be inserted, namely—

295A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of His Majesty’s subjects, by words, either spoken or written, or by visible representations, 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 two years, or with fine, or with both.52 (emphasis in the original)

The words ‘deliberate and malicious’ were inserted to ensure that the section would be ‘both comprehensive and at the same time of not too wide an application’.53

The bill also came with three important minutes of dissent. The first, a Joint Dissenting Minute, signed by A. Rangaswami Iyengar, Arthur Moore, K.C. Roy, N.C. Chunder and N.C. Kelkar, opined that the bill would not achieve its purpose of deterring people from ‘scurrilous attacks upon religion’. The bill was deemed to be a ‘regrettable concession to intolerance’; it might even ‘increase fanaticism because it creates a new offence’. The dissenting members thought the existing laws were adequate to deal with a breach of peace. The second minute of dissent was a single line authored by Jinnah suggesting the offence be made non-bailable and the third minute, authored by N.C. Kelkar, deemed it better if an exception were added to the section. Such an exception would indicate that:

it would not be an offence under this section to criticize the principles, doctrines or tenets or observances of any religion, with a view to investigate truth, or improve the condition of human society, or to promote social and religious reform. Such an exception may seem superfluous, but would make things quite clear, and be a good guide to the Judge.54 (author’s emphasis)

These dissenting minutes encapsulate the contours of the debate that ensued in the legislative assembly.

52 L. A. Bill no. 39 of 1927 in the Select Committee Report, The Gazette of India, 17 September 1927. The words in italics indicate the amendments suggested by the Committee and were emphasised in the original.
54 Ibid., p. 253, emphasis mine.

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One of the main cleavages between those who supported and those who opposed the amended bill occurred along the lines of occupation. Several members of the press—A. Rangaswami Iyengar of Tanjore, K.C. Roy of Bengal, B. Das of Orissa—felt that the bill did not provide adequate safeguards to the ‘honest publisher’ and the ‘honest printer’. Supporting such arguments, N.C. Kelkar added several other classes of people to those who needed protection: the ‘doughty doubter … the diligent sociologist … the absent-minded philosopher … the mischievous but kindly humourist’. He felt he would ‘go further and claim protection even for the apparently merciless satirist who uses the knife but only in the spirit of a surgeon when performing what may be a necessary operation for the good of society’. Clearly India’s early legislators had a keen appreciation for criticism of many kinds—from the academic disciplines of sociology and philosophy and the portals of the press to genres as complex and critical as satire.

In the course of the debate, one of the authors of the joint dissenting minute, K.C. Roy felt that the bill was inconsistent with the spirit of toleration that had characterized the work of generations of Englishmen and Indians. Roy argued that existing laws including the deportation act were sufficient to deal with men responsible for ‘communal disturbances’ in north India and confined the demand for the bill to a ‘handful of men in the Punjab’. Roy felt that the bill put a ‘premium on intolerance and bigotry’ and did not at all think the bill was a ‘progressive measure’.

Another dissenter, D.V. Belvi, addressed the limits of legislation and called on his fellow legislators to recognise that they were ‘legislating for many crores of people’. He questioned if they could genuinely call themselves ‘democrats’ when the bill had not yet been translated into the various vernaculars or circulated among the various provinces. Belvi proceeded to quote his favourite political philosopher Edmund Burke on ‘the consistency of those democrats who, when they are not on their guard, treat the humbler part of their community with the greatest contempt’ and reminded them that the Official Secrets Act had been rushed through the Imperial Legislative Council in just a few hours. Although not a member of the press, Belvi referred to the large-scale denunciation of the bill in the leading newspapers and suggested that the ‘opinions of people who educate the public’ also be taken seriously.

Others who strongly disagreed with the purposes of the bill included B.P. Naidu of Guntur and B. Das of Orissa. Naidu thought this was a piece of ‘panicky legislation’ that would deal a ‘death-blow to religious and historical research’. B. Das predicted that ‘classic books’ would not be published in India if this bill became law; there would be ‘no real discussion of religious questions, even if they be purely

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55 The Legislative Assembly Debates, vol. 14, 16 September 1927, A. Rangaswami Iyengar, p. 4462, N. C. Kelkar, p. 4464. Unless mentioned, the following paragraphs rely on this source.
57 D.V. Belvi, pp. 4472–73.

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historical’...this was a ‘thoroughly bad piece of legislation’. Das also predicted that the bill would lead to further controversies by followers of various sects and of ‘Gurus, bogus Gurus, of bogus Avatars scattered all over India’.58

**Conclusion: Special Circumstances, Sincere Pleading**

In the wake of such strong denunciation Mr A.H. Ghuznavi of Dacca invoked, once more, the special circumstances that had necessitated the amendment of the law. Meetings in support of an amendment of the law had been held not only in the Punjab, but across India. Ghuznavi referred to discussions in the Select Committee, for which he was duly reprimanded since these were meant to be secret, and emphasised that care and attention had gone into making the bill so that people who made ‘fair comments’ and expressed ‘their honest views as regards religious beliefs’ would be safeguarded. In one of his rare interventions on the debate that day, Jinnah interrupted Ghuznavi with the one-liner: ‘we safeguard an honest man’.59

This brief intervention, along with Srinivasa Iyengar’s more belaboured exposition that ended with his admission that he ‘could not appreciate the logical steps’ by which K.C. Roy had arrived at the conclusion that the bill would put a ‘premium upon intolerance and bigotry’ reveals, I think, some of the unwritten premises behind the efforts of at least some in the select committee.60 Iyengar and Jinnah’s intentions were absolutely sincere. Despite the numerous warnings of their fellow legislators they could not even conceive of the kind of misuse that section 295A would be put to in subsequent decades. Or, as Raja Ghazanfar Ali of the Punjab reminded the Assembly, ‘every law in the Indian Penal Code can be misapplied by the executive if they choose to do so’.61

In the final hours of the debate a series of proposed amendments that would alter the language of the bill in the direction of making it more cumbersome, or in some instances, clear, were defeated. The only amendment that was allowed to pass was that of Jinnah who wished to make the offence a non-bailable one, in alignment with similar sections such as 153A and befitting its status as being triable only by a Sessions Court or a Presidency Court. The Home Member Crerar supported this amendment arguing that the kind of individual most likely to be caught under this law would be ‘some obscure and scurrilous scribbler writing from some obscure den or pot-house in a bazaar, whose appearance in the court could by no means be relied upon’.62 No one, but one legislator imagined that professional artists and

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58 B.P. Naidu, p. 4478; B. Das, pp. 4478, 4480.
60 S. Srinivasa Iyengar, pp. 4492–95.
61 Raja Ghazanfar Ali, p. 4491. One of the most vocal and persistent critics of this legislation, Thakur Das Bhargava, had noted the unrepresentative character of the deliberators. ‘...if India were constituted of inhabitants like those who come into this Assembly there would be no trouble.’ Pt Thakur Das Bhargava, *Ibid.*, 5 September 1927, p. 3951.
authors would be persecuted under this section in the following decades, or that the charge of ‘outraging religious feelings’ would become one quick route to notoriety, if not popularity. That lone legislator, Pandit Nilakantha Das, voiced his fear that the bill would ‘mostly imprison cultured men’ such as ‘free thinkers’.63

Two final amendments recommended adding an ‘Explanation’ to the substantive clause of the section. One of these, moved by T. Prakasam of East Godavari and West Godavari, wished to make it clear that bona fide criticism ‘with a view to remove false notions’ or ‘to prevent forcible conversions’ be added. The debate on this amendment made it clear that in a court of law the debates of the Assembly would not be and indeed, could not be referred to.64 Under the circumstances an Explanation of some sort seemed desirable. Prakasam wished the House would keep ‘its mind open’; he was only asking for an Explanation so that ‘what you did not intend and what you do not intend to come within the mischief of this section would be…made clear’. But this amendment also failed. In the ‘present temper of the House’ the more thoughtful Explanations authored by N. C. Kelkar and referred to in his dissenting minute were not moved. Kelkar announced that he was ‘not going to help in the massacre of the innocents’.65 I append below the Explanations because, left bare, section 295A did seem vulnerable to misinterpretation. It would have been judicious to make clear the intentions of the legislators and embody, somewhere, their aspiration that this piece of legislation be temporary. After all, as had become apparent in the course of this tumultuous session of the assembly, debates within its precincts could not and would not, be referred to in courts of law.

In conclusion it is worth emphasising that several of the adjectives used by the legislators—derogatory, retrograde, expedient, temporary—attest to the ambivalence with which this section was finally allowed to enter the Indian Penal Code. In questioning the need for the bill several legislators were also calling into question the characterisation of Hindu–Muslim relations as particularly dire. In so far as serious differences existed, these legislators also alluded to limitations inherent in the legal system; they hoped the government would have the courage to deal with the ‘real causes’ of communalism by other means. A few leaders inside the assembly, and others outside, most notably Gandhi, held that ‘government protection will not make us more tolerant of each other’.66 Even those who were in favour of the amendment wished to ensure that bona fide criticism of religious traditions fell outside the purview of this piece of legislation. It is a pity that their intention was not made more explicit. The consensus that was section 295A left much to be desired. However, the process of negotiation—the speeches, the interruptions, the contingency, even the urgency—reveal the possibilities for conversation

63 Pandit Nilakantha Das, 16 September 1927, p. 4509.
64 T. Prakasam and D.V. Belvi, Ibid., p. 4513.
65 N.C. Kelkar, p. 4515.
66 Gandhi, ‘Rangila Rasul’, Young India, 22 September 1927.
and dialogue that were still available in 1927. Far from being a time of competitive, obdurate and relentless communalism, the debates leading up to the passing of section 295A hearken to a more fluid and shifting politics of legislative pragmatism.

Section 295A of the IPC was originally introduced to protect the ‘feelings’ of the ‘ordinary citizen’ from those who, ‘with deliberate and malicious intention’ insulted or attempted to insult the religious beliefs of any class of His Majesty’s subjects. This article has elucidated the particular circumstances that necessitated the amendment of the IPC alongside the many ambiguities and ambivalences that attended the debates preceding the amendment. In the eighty-five years since, section 295A has been used to intimidate a wide range of authors and artists, most infamously the painter M.F. Husain and the historian James Laine. Whereas Husain died waiting for the numerous cases filed against him to lead to some resolution, the case of James Laine did eventually conclude in a landmark judgement. On 9 July 2010 the Supreme Court of India firmly stated that ‘the effect of the words used in the offending material must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view’. The ‘ordinary citizen’ of colonial India has morphed into the ‘strong-minded’: would that this were always the case.

Appendix 1

Amendment proposed by Mr N.C. Kelkar but not moved on 16 September 1927. To clause 2 of the Bill the following Explanations be added:

Explanation 1. It is not an offence under this section to set out facts and offer criticism based on such facts, pertaining to the public conduct of founders or saints or representative-men or protagonists of any religion or any sect of any religion, provided that such setting out of facts and such criticism is not malicious.

Explanation 2. It is not an offence under this section to set out facts and to offer criticism based on such facts, pertaining to the principles, doctrines or tenets or observances of any religion or any sect of any religion, in the course of a historical or philosophical or sociological disquisition and with a view to promote social or religious reform.

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67 Laine, Shivaji: Hindu King in Islamic India.

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Appendix 2

The following Act of the Indian Legislature received the assent of the Governor General on the 22 September 1927 and is hereby promulgated for general information—Act no XXV of 1927.

An Act further to amend the Indian Penal Code and the Code of Criminal Procedure 1898 for a certain purpose.

Whereas it is expedient further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for the purpose hereinafter appearing; it is hereby enacted as follows:

1. This Act may be called the Criminal Law Amendment Act, 1927.
2. After section 295 of the Indian Penal Code, the following section shall be inserted, namely:

295A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of His Majesty’s subjects, by words, either spoken or written, or by visible representations, 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 two years, or with fine, or with both.\(^{70}\)

References


*Home Political 217*, National Archives of India, New Delhi, 1928.


\(^{70}\) Taken from *The Gazette of India*, September 24, 1927. I have excluded the changes inserted into the Code of Criminal Procedure.
The All India Reporter Lahore, 1927. University of Virginia Law School Library.
*Young India*, University of Virginia Library, 1924, 1927.