

**OFFENCES RELATING TO RELIGION AND THEIR
PUNISHMENT UNDER THE PENAL CODE OF
BANGLADESH**

by

Azizur Rahman Chowdhury

Penal Code of Bangladesh and Religion :

The principle on which the offences relating to religion have been classified and punishment thereof provided in the Penal Code is to respect the religious susceptibility of people of different professions and creeds. The intention of the legislature is that every man should be allowed to profess his own religion and that no man should be suffered to insult the religion of another. The offences described hereinafter fall within the ambit of public order offences as they have a tendency of affecting the community.

Section 295 of the Penal Code narrates the offence in the following words :

"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, with fine or with both."

In *Gopinath V Ramchandra*¹ R.L. Narasimham, C.J. held that section 295 was intended to prevent wanton insult to the religious notions of a class of persons. The word 'object' as specified in this section does not mean animate object and the word, 'defile' must be taken to be used in the sense in which it is generally used with reference to religious matters. It cannot be confined to the idea of making dirty but also extends to ceremonial pollution. No insult to the religion is

1. A. I. R. 1958. Orissa, 220.

committed when upper Caste people break the sacred thread wearing by lower caste people.

The allowing of sacred character to the place of worship requires vesting of the same in the guise of religion. Where a hut on agricultural holding is used as a mosque, the destruction of such hut by the landlord, does not constitute an offence under this section, because the hut is not a place of worship according to law. Dhavle, J. observed in *Beechen Jha v Emperor*² :

"The use of a hut standing on the balagan plot of an agricultural tenant as a public mosque without the landlord's permission is so inconsistent with the purpose for which the land is let as to render the tenant liable to be ejected from the whole of his holding. Such use being entirely unwarranted the mere attempt to convert the hut into a mosque cannot render it a place of worship within the meaning of section 295. The **azan** or public call to prayers by Moulvi at the hut cannot make the hut a public mosque inasmuch as none of the villagers can be said to be in a position validly to make the implied dedication. Nor can the hut be regarded as an object held sacred by any class of persons" within the meaning of section 295 since the attempt to convert it into a mosque is itself contrary to law. The destruction of the hut therefore, cannot constitute an offence under section 295.

In **Okil Ali v Behari Lal**³ Baquer, J. Cited this case and held :

Section 295 speaks of defiling of any place of worship or any object held sacred by any class of persons. This section does not require investigation into the possession or ownership of the land.

In **Veerabadrán Chettiar v Ramaswami Naicker**⁴ the Supreme Court of India observed that whether any object was held sacred by

2. A.I.R. 1941 Pat. 492.

3. (1961). 13 DLR. 305.

4. A.I.R. 1958 S. C. 1032.

any class of persons that must depend upon the evidence in the case, so also the effect of the words of section 295 this court held:

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, namely section 295. It is not absolutely necessary that the object in order to be held sacred, should have been worshipped. An object may be held sacred by a class of persons without being worshipped by them.

Section 295A narrates the deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs and provides imprisonment of either description for a term which may extend to two years, or fine, or with both.

The select committee in its report maintained that this section shall only apply in cases where a religion is insulted with the deliberate intention of outraging the religious feelings of its followers; and to make it clear that the attack on a founder is not omitted from the scope of the section, an insult to the "religious belief" of the followers of any religion has been made specifically punishable. The select committee in view of the argument that an insult to religion or to the religious beliefs of the followers of a religion might be inflicted in good faith by a writer with the object of facilitating some measures of social reform by administering such a shock to the followers of the religion as would ensure notice being taken of any criticism to be made, applied the words with deliberate intention by inserting reference to notice.

Under this section the prosecution must prove more than under S. 298. They must prove insult for the sake of insulting and with an intention which springs from malice alone. As the burden of proof falls on, the words, "with deliberate and malicious intention" have provided a fair amount of protection to a person accused under this section. If the language used transgresses the limits of decency and is designed to vex, annoy and outrage the religious feelings of others, the malicious intention of the writer can be inferred from the language employed by him.

Section 296 deals with the causing of disturbance to any assembly lawfully engaged in performance of religious worship, or religious ceremonies and provides a punishment with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

in order to constitute a disturbance within the meaning of this section it is not necessary that there should be a stopping or an actual prevention of the carrying on of a religious service nor it is necessary that the religious assembly should be really disturbed. An assembly may be disturbed even on a highway. The essential elements of an offence under this section is the doing of an act which causes disturbances to an assembly lawfully engaged in the performance of a religious worship. The mere playing of music before a mosque would not itself, amount to an offence under this section. There is nothing in this section to justify the conclusion that the persons themselves engaged in the performing of religious worship or ceremony cannot cause disturbance to another community. For the purposes of this section three persons gathered together for purpose of worship are sufficient to constitute an assembly.

S. 297 deals with the offence of trespass committed in any place of worship or any place of sepulchre or any place set apart for the performance of funeral rites or as a depository for remains of the dead, and a person 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 liable as such. The provision for punishment as provided in this section is imprisonment of either description for a term which may extend to one year, or with fine or with both. An accused, who commits an offence by having sexual intercourse within the enclosure surrounding a "Pagoda" is punishable under this section for trespassing on a place of worship with the knowledge that the religious feelings of the worshipers are likely to be injured thereby. Disturbing graves of others even on one's own land is an offence under this section.

Section 298 narrates that 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.

In convicting a person under this section the intention to wound the religious feelings of another must be proved as deliberate one. Motive is not to be confused with intention in construing this section. This section treats offences relating to religion and not to those relating to caste. Mere knowledge of the likelihood that the feelings of other persons might be hurt, would not suffice to bring their act within the mischief of section 298 of the Penal Code. It was held in *SK. Amjad v. Emperor*⁵ that where the Muslim are charged with slaughtering a cow and there is no finding that insulting words were uttered, insulting gestures were made or that anything was done with the deliberate intention of wounding the religious feelings of the Hindus, the conviction of the accused under section 298 cannot stand.

Bangladesh Constitution and Religions :

Apart from what has been in the Penal Code of Bangladesh, the Constitution of Bangladesh, in Article 28 has provided adequate safeguards against discrimination on grounds of religion, race, caste, etc. The Article categorically states as follows :

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.

.... No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.⁶

5. A.I.R. 1942 Pat 471.

6. Constitution of the People's Republic of Bangladesh, Article, 28.

Article 41 of the Constitution of the People's Republic of Bangladesh further provides for the freedom of religion in the following manner :

(1) "Subject to law, public order and morality (a) every citizen has the right to profess, practise or propagate any religion; (b) every religious community or denomination has the right to establish, maintain and manage its religious institutions.

(2) No person attending any educational institution shall be required to receive religious instruction or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own".⁷

Blasphemy Law and Modern Controversy :

Recently there was an uproar among the people of a community of Bangladesh as their religious feelings were wounded by the writings of a feminist and demands were made to try the writer under blasphemy law. Unfortunately the law was not in use in Bangladesh and thus pressure was made to introduce a Bill in the Parliament for blasphemy law. As seen above if the writer is tried under section 295A of the penal Code, she may be punished with imprisonment of either description for a term which may extend to one year, or with both, while if she is tried under blasphemy law, death penalty may be inflicted upon her and this latter type of punishment the uproarious people desire to be given to the writer. Now, what is blasphemy? The word blasphemy is a derivative of the Latin word 'Blasphemia' Baker, Dictionary of Christian Ethics has elaborated the meaning of the word as, "Blasphemy is a sin consisting of a verbal utterance or action grossly disrespectful of God, expressing an arrogant rejection of His Majesty or authority, or casting contempt upon this providence, words or works." The Basic sanction of Blasphemy is found in the Second Commandment which runs-stating," Theeshall not take the name of Yahweh, the God in vain or falsely to no good purpose." Blasphemy has been defined in Shorter Oxford Dictionary as profane speaking of God or sacred things. In the Christian religion blasphemy

7. Constitution of the People's Republic of Bangladesh, Article, 41.

has been regarded as a sin by moral theologians. Among the Muslims it is blasphemy to speak contemptuously not only of Allah but also of the Prophet, Muhammed (Sm). Blasphemy in some form or another has been an offence punishable by law in most of the societies. The Mosaic law punished a blasphemer with death by stoning. Emperor Justinian decreed death penalty for it. In Scotland until the 18th century it was punishable by death, and in England it is both a statutory and a Common law offence. Usually, an attack on religion is regarded as an attack on the state. Probably for this reason death penalty has been laid down for blasphemy in most of the countries in whose legal codes its punishment is provided.⁸

Blasphemy is a Common law offence against Christianity. The Common law doctrine of blasphemy was first laid down by Sir Mathew Hale, C.J. in *Taylor's case* in 1675⁹ where the indictment was for words only. This doctrine became complete in 1728 in *Woolston's case*.¹⁰ This case was followed by Lord Mansfield in *Evans v Chamberlain of London* and by Justice Thomas Erskine in *Shore v Wilson*.¹² However, in *Taylor's case* and *Woolston's case* both the accused Taylor and Woolston were sentenced to death, for blasphemous words were not only an offence against God and religion but also a crime against the laws of state and government. The Catholic Church maintained that the king is the representative of God on earth and thus the denying of his authority is equivalent to denying the God Himself and such it is a grossly punishable offence. In France the same ideas and thoughts about blasphemy prevailed under the patronage of the Roman Catholic Church. The rise of the Protestants witnessed a different ideology for which they had to face bitter consequences in history. In 1523 the Pope exhorted the French Monarchy with the warning that the Protestants would not damage the religion, but also destroy the existing morality,

8. *The New Encyclopaedia Britannica* Vol. 2 (Chicago 15th) edn.

9. See *The Encyclopaedia of Britannica* Vol. 3 (Chicago 1959) 701.

10. 1 Fitz-Gc 64.

12. (1842) 9 Cl. & Fin, 534.

aristocracy, law and order and the social stratifications. The use of Blasphemy law started waning in later periods with the decrease of the Pope's political power in the Christian World. Capital punishment is said to have been abolished in England and other developed countries of the West, but the blasphemy law is still in use in some of these countries. About eighteen years ago this law was found in application in England in *R. v Gay News Ltd* in 1977. This law is in vogue in Pakistan, Iran and Israel.

Conclusion :

Recently in Bangladesh a great controversy has arisen on an attempt to amend Section 295 of the Penal Code for providing punishment to the extent of imprisonment for life or death and fine. The proposed changes have been criticized and resented to, on the ground that the severe punishment will negate the constitutional guarantee of the rights of citizens and that it is a violation of the safeguards provided in Article 18 of the Universal Declaration of Human Rights 1948. It has been contended that Allah, the beneficent, the merciful has not empowered any one with the right of inflicting punishment for such an offence and Almighty Allah will punish those infidels in the world hereafter.¹³ There is little need to amend section 295 of the Penal Code. Whatever punishment is provided there that is sufficient to deter criminals from committing this crime. Death can never be the cure of a crime. What is needed in the society is to stir the morality in man and that can be done only through religion and its practice in everyday life. Lord Denning has observed :

"Religion concerns the spirit in man whereby he is able to recognize what is truth and what is justice; whereas law is only the application, however imperfectly, of truth and justice in our everyday affairs. If religion perishes in the land, truth and justice will also. We have already strayed too far from the faith of our fathers. Let us return to it, for it is the only thing that can save us."¹⁴

13. A keynote paper presented in a Seminar of "The Law Review" - The Daily Sangbad, dt. oct, 30. 1994.

14. Sir Alfred Denning, *The Changing Law* (London, 1953), 122.