

The by visible
representations, or
otherwise. the
existence



**ASSIGN
BUSTER**

The section requires the proof of a deliberate or malicious intention on the part of the accused to outrage the religious feelings of any class of Indian citizens only, and not others.

With such guilty mind he must insult or attempt to insult the religion or religious beliefs of that class. This must be done by either spoken words, or by written words, or by sings, or by visible representations, or otherwise. The existence of this section in the Indian Penal Code is partly because of the upheaval caused by the decision of the Lahore High Court in *Rajpaul v. Emp.*

more famous by the name of 'Rangila Rasul case'. The accused was convicted by the magistrate under section 153-A of the Code for writing in bad taste about the intimate life of Prophet Mohammad. The Lahore High Court set aside the conviction holding that the section applied only to attacks on a particular community which is in existence on that day, but drew attention to the fact that this lacuna in law deserved to be taken care of at the earliest. The decision caused a furore amongst Muslims after which the present section was enacted. Subsequently, however, a division bench of the same High Court held in *Devi Sharan Sharma v. Emp.*, popularly known as the 'Risala-i-Vartaman case', that a foul, scurrilous and vituperative attack on a religion or its founder did attract section 153-A of the Code, but the *Rajpaul* case was not even cited in this case. The Allahabad High Court shared the latter view in *Kali Charan Sharma v.*

Emp. wherein it dissented from the *Rajpaul* case and held the book 'Vichitra Jiwani' dealing with the life of Prophet Mohammad generated animosity and enmity between Hindus and Mohammadans and so section 153-A was

attracted. The Supreme Court held section 295-A of the Code constitutionally valid in *Ramji Lai Modi v. State*, where the court punished the petitioner, printer and publisher of a magazine 'Gaurakshak' under this section for publishing an objectionable article in it. While observing that freedom of speech and expression guaranteed by Article 19 (1) (a) is not violated by this section as it imposes a reasonable restriction, the court pointed out that freedom of religion under Articles 25 and 26 of the Constitution is subject to public order, morality and health. The Allahabad High Court also held likewise in *Sant Das Maheswari v. Babu Ram* Tearing of the sacred thread of a person of low caste was held to be not punishable under this section.

The section does not say that ill-will or enmity against specific persons is needed to be proved. An attack on even an incredible belief through staging a drama could cause hurt to the feelings of Christians and whether the belief is rational or irrational is of no consequence. Truth is not a defence to a charge under this section. It is long settled that deliberate and malicious intention of an author has to be gathered from the entire book or writing and not from stray portions here and there. In *Nand Kishore Singh v. State*, the author quoted in his book 'Vishwa Itihas' small parts from two outstanding works, 'Outlines of History' by H. G.

Wells and 'History of World Civilization' by Davis relating to life and character of Prophet Mohammad which were regarded as offensive. He also wrote that he did not agree with the same and gave his own assessment of the matter lauding the prophet. The Patna High Court held that section 295-A was not attracted. The forfeiture of the book under section 95, Code of Criminal Procedure, 1973 was, therefore, held to be untenable.

<https://assignbuster.com/the-by-visible-representations-or-otherwise-the-existence/>

Subsequently, the Calcutta High Court also agreed with the above view in Chandanmal Chopra v. State, wherein the prayer for the grant of the writ of mandamus on the State of West Bengal to forfeit all copies of the 'Koran' under section 95, Code of Criminal Procedure, 1973 was rejected.

The court observed that the book has to be read as a whole and passages here and there could not be allowed to be read out of context. It was also held that forfeiture of the 'Koran' would be violative of the preamble and Article 25 of the Constitution and also section 295 of the Code. In Lalji Singh v. State, the Allahabad High Court was seized of the question as to whether the author of a book titled 'Samman ke liye dharm parivartan karen' was punishable under section 295-A of the Code and also whether the notification of the State government forfeiting the book was valid in law. The book in question contained certain speeches of Dr. B.

R. Ambedkar urging people belonging to the lower castes to join 'Buddhism'. The State government argued that the book promoted disharmony, hatred, enmity and ill will between the low caste and high caste people. It was held that rational and unmotivated criticism of unfair disabilities existing in a community in restrained language could not amount to an offence under section 295-A and that the order of forfeiture was bad in law. No court can take cognizance of an offence under section 295-A of the Code except with the previous sanction of the concerned government under section 196 (1) of the Code of Criminal Procedure, 1973. In Shalibhadra Shah v. Swami Krishna Bhart, it was argued that necessity of a previous sanction for an offence under section 295-A but not under section 298 of the Code violated the equality rule under Article 14 of the Constitution. It was held that the <https://assignbuster.com/the-by-visible-representations-or-otherwise-the-existence/>

classification was rational as the offence under section 295-A was much more serious than in section 298 of the Code.

In *Trustees, Shafdar Hashmi Memorial Trust v. Government of NCT of Delhi*, the Delhi High Court observed that the basic requirement of section 295-A is deliberate and malicious act. Malice in one sense is negation of bona fides. One who alleges malicious and deliberate act on the part of another has to prove it. In *Zac Poonen v.*

Hidden Treasure Literature Incorporated in Canada, the petitioner accused was charged for an offence under section 63 of the Copyright Act, 1957 and under sections 295, 295-A and 500 of the Indian Penal Code. The complainant, a Christian group alleging infringement of copy of translation of songs and mutilations of sacred writing of books published by the petitioner alleged that the translated work of the petitioner in his book conveyed a different meaning and different interpretation from the original. There was no evidence showing that the complainant had acquired copyright in respect of songs published by the petitioner in his book.

The Karnataka High Court held that mere doctrinal disagreement will not constitute an act of outraging or insulting any religion or religious belief and that there was no prima facie case against the petitioner. The proceedings were therefore quashed. In *Sujato Bhadra v.*

State of West Bengal, the facts are that a book 'Dwikhandita' written by Taslima Nasreen of Bangladesh is the third volume of autobiographical trilogy of the author. The offending passages in the book are written in the context of position of women in her motherland. The Calcutta High Court <https://assignbuster.com/the-by-visible-representations-or-otherwise-the-existence/>

held that it does not reflect any intention of outraging religious feelings to insult religion or religious belief of that class of citizen in India. The intention of the author is not deliberate and malicious for achieving any object of religious hatred and thus the order of forfeiture of the said book is liable to be set aside.

The offence under section 295-A of the Code is cognizable, non-bailable and non-compoundable, and is triable by magistrate of the first class.