

**Collected Works  
of  
Justice R.A. Jahagirdar (Retd)  
(1927-2011)**

**Religion**

**Rationalist Foundation**

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## Shias and Sunnis: The Great Divide

In the history of mankind, many schisms have taken place. Most of them were territorial; many were ethnic. All these have been forgotten subsequently. They were often regarded as scams. Now they are mostly in memory, even Balkanization, which took place after WWII got readjusted, partly by force, partly by armed intervention and partly by historic necessity.

When the Soviet empire broke into its 14 constituents all the parties willingly accepted the break-up. Only Chesnia is giving/having trouble depending how you look at it. Putin insists that it is part of Russia and does not want it to go away. Chesnia wants to be separate, partly because it is wholly Muslim. In due course, however it is expected that it will work out, though Chesnia has indulged in terrorism. Some day Chesnia will be indistinguishable from Russia or it may spin away into a new republic.

The schism I am talking is one that took place 1400 years ago (Muhammad died in 632 A.D.) It was not territorial, it was not ethnic. The schism that took place was actually not expected. The actors in the split were all ethnically, racially, even religiously one people.

The split took place after Muhammad's death in 632 A.D. Muhammad had not nominated any successor. He was God's Paigambar. Obviously no one could take his place because God was not going to speak to another. In Quran, Sura 33 (40) specifically says that Muhammad is the seal of prophets. There cannot be any prophets after him.

In Madina, where Muhammad died, people refused to accept that Muhammad had died. It was the wise counsel that Abu Bakar made them believe that the prophet is no more. An assembly of Mussalmans elected Abu Bakar as Caliph. Caliph was the representative of God; as such a personage was felt to be necessary. Abu Bakar's daughter, Ayesha, had been married to the prophet when she was eight years old, but she survived her husband by several years. Abu Bakar was a kind man by the standards of his time. Under him, entire Arabia became Islamic.

Incidentally, Muhammad had ten wives and a concubine, Marie, a Coptic woman. Sura 33, Verse 4 commands a Mussalman not to

marry more than four wives. However the rule did not apply to Muhammad, inferentially he could take any number of wives. (All references to Quran are to the edition of Yusuf Ali)

Umar became the Caliph after Abu Bakar. He was, however, killed when in prayer. This was in the year 644. By election Ottoman became the next Caliph, but he was assassinated in 656 A.D. At last Ali, son-in-law of Mohammad (Fatima's husband) became the Caliph. Ayesha was bitter against him and she waged a war against him. But she was squarely defeated and was conducted safely to Medina where she resided. The war is incidentally known as Camel's War because Ayesha rode on a camel to the war. Ayesha is a hated figure by Shias who never name their daughters after Ayesha.

Those who favoured Ali are called Shias. They believe that Muhammad had nominated Ali as the Caliph and that other caliphs were usurpers. Shias also believe that Ali had contributed certain verses to the Quran - a fact which was scandalous to the Sunnis. Quran was dictated by God who spoke only to Muhammad and who would not speak to all and sundry. Sunnis took things as they were. The role of Ayesha is important in the history of Islam. She was intelligent, sprightly and probably literate. She was the favourite wife of Muhammad. She was responsible for many of Muhammad's sayings and doings mentioned in Hadith who often consulted her. She was also responsible for the rule regarding evidence about adultery in Islam. That is a long story to be told on another occasion. She is responsible for the great divide about which we are talking today.

Shias do not want to underrate the contribution of Ali to Quran. They firmly believe that Muhammad had intended Ali to be the first Caliph. Shias do not accept the first three Caliphs at all. Even Ali is not, according to hem, a Caliph at all but an Imam. Those who accepted the first four Caliphs are Sunnis. The first four Caliphs are Rashidu Caliphs (guided).

This is only the beginning of the story of schism among Moslems. Today Sunnis are predominant. The entire Arab world (except Bahrain) is Sunni. Almost all Muslims in Africa are Sunnis. In the east Malaysia and Indonesia are Sunnis. In India 85% of Muslims are Sunnis. Iran is wholly Shia. In Iraq, 65% of the Muslims are Shias though the country is ruled by a Sunni who belonged to

Bathist party (communists) and did not believe in any religion. In later years he - Saddam Hussein - became a believer of Sunni. Part of the explanation for the decade - old war between Iran and Iraq in the 1980's was that a Sunni was the head of Iraq. Even today activities of Shias in Iraq are financed by Iranians.

Going back to history, one should note that part of the Middle East was ruled by Muawiyya who was related to Muhammad. They belonged to the same tribe, though not to the same clan. In those days it was a tribal society. Ties of tribalism were very strong. Muawiyya laid claim to Caliphite, accusing Ali of not punishing the assassins of Ottoman. Discontent was growing and in 665 A.D. Ali was assassinated by Kharejite (Muslim fanatic). Thus we see that out of the first four Caliphs (Rashidu), three were assassinated. The assassination of Ali caused profound sensation. Three Caliphs were murdered. There remained no male descendent of Muhammad. In a judgment dated 12th Nov 1966, Mr. Justice Arnold of Bombay High Court has suggested "Ali was and deserved to be deeply loved, being clearly and beyond comparison the most heroic of that time fertile in hero's..."

National Geographic magazine mentions that Ali's body was tied to the tail of camel and at the place where it stopped he was buried. A big mosque was erected at that place. It is at Najat, in Iraq of today. Ali left behind him two sons, Hasan and Hussein. The elder of the two was saintly and recluse. He abdicated his right in favour of Muawiyya in exchange for a large amount of revenue and retired to Mecca. He died due to poisoning by one of his wives allegedly bribed by Sunnis.

Eleven years later, Hussein woke up and yielded to the temptation to become the Imam of Muslims. The people of Cufa (now in Iraq) promised to give support to him. Omayid of the clan of Muawiyya met him with a large army. Hussein himself was accompanied by his wife, two children and about 25 horsemen. In warlike situation an arrow pierced Hussein who died with one son with him. The son also was killed and his head was paraded throughout Cufa.

This inhuman and heartless act stirred the heart of Islam. Even now after 1300 years, the Muslim community stands divided worldwide into two communities. Both the communities believe in one God; both believe in Muhammad as the last prophet. But the hatred between the two communities is deep and permanent. Hussein was

killed on the 10th day of Moharram (it was 9th October 680 A.D.) The day is observed by Shias as a day of tears, sorrow and beating of breasts. Devout Shias distribute dates which were denied to Hussein. There is superb Masjid in honour of Hussein at Karbala in the then Mesopotamia (now in Iraq). Though Muslims are not superstitious and Islam does not believe in superstition, the sacred dust of Karbala is made into moulds and kissed by Shias.

The following passage by Mr. Justice Arnold brings out vividly the differences between Sunnis and Shias:

*The Sunni preys five times a day; the Shia only three times. The Sunni with his arms folded across his breast; the Shia with his arms held straight down by the side; the Shia venerates Ali and Fatima as something more than mortal and execrates the memory of Abu Bakar, Omar and Osman; the Sunni pays sincere reverence to those three Caliphs and introduces their names into the Khutaba (or Friday prayer) and into the dedicated inscriptions of his mosque; the Sunni in India at least celebrates the Moharam with ribald buffoonery; the Shia with heartfelt lamentations.*

Proceeding further Mr. Justice Arnold says that Sunnis and Shias agree in little else, hating each other with the most cordial (?) and bitter hatred. The quarrel between Ayesha and Fatima is undying in Islam which is still divided by the fierce enmities of the respective participants and partisans of the wife and the only daughter of the apostle who spurred hatred.

## Caliphate or Pan-Islam

Muhammad said and proclaimed that God spoke to him through Gabriel. According to him, the entire Quran was revealed to him through Gabriel. God dictated the Quran. After him, whatever Muhammad had said and behaved were collected. They are called Hadith. Quran is of much higher status than Hadith, which is also accepted and revered by Mussalmans. There is a proverb in Persian, which says:

*Ba Khuda basha*

*Ba Muhammad hushar*

Translated it means you can abuse God as much as you like but beware when you speak of Muhammad. Mussalmans respect Muhammad in a very high manner – almost like God.

Quran was revealed to Muhammad as stated earlier. It was God's word. Nothing given by God can be altered or changed. Quran is law. Once, when Muhammad was asked whether he could perform a miracle to prove his prophethood, he replied that the Universe was a miracle, Allah was its creator, and men need not search for another miracle. (Surra II, Verse 164; Surra III, Versa 190) (All references to Quran are to the edition of Yusuf Ali which is accepted by all Sunnis. You may also fruitfully refer to the edition of Muhammad Ali which is not accepted by all Mussalmans but which has a better translation).

Sovereignty of the world belongs to Allah who created it. You cannot appropriate a part of it and call yourself a King. No one can be a King who is a monarch of a territory. Muslims are not divided by territory; they are distinguished from others by Islam. Muslims do not belong to State which is naturally a territory. They belong to Umma which transcends all territories.

This is what in fact Sir Muhammad Iqbal, mistakenly thought to be the father of idea of Pakistan, and reminded the Muslims. That is why the Quran says that Muhammad is the prophet of all mankind, and not of nations. Ultimately, the peoples of the entire world are one and will be one. Islam is the religion of the world and not of particular people or of particular nations. That is the vision of Quran. A genuinely convinced Muslim shares this vision and that is why the violence that they have unleashed upon the world is looked upon by them as holy and not as terrorism.

Kingship involves inheritance, despite what Aurangzeb did. But it is inconsistent with Islam. Muhammad Ali, Ahmedia of Lahore School, has quoted chapter and verse from Quran and Hadith to show that hereditary kingship is foreign to Islam. Unlike James I of England, there is no person born as King (The Religion of Islam by Maulana Muhammad Ali). According to Muhammad Ali, Islam is a democratic religion and Muslims are guided and ruled by an elected person who is called the caliph and the rule by the caliph is Khilafat. That brings me to Khilafat. As has already been mentioned, the caliph is to be elected. Caliph means the representative of Allah as reflected in his election. He is elected – sometimes by the entire Umma. Sometimes, he is elected by a few. Still it is called democracy – of some sort. But people obeyed him. He led them; he lived a common life with them. He shared their life and tribulation. He did not only give orders – he led them from the front. He was a man of confidence and trust. How many were there with these qualities? The first four caliphs were called Rashiddin caliphs – noble caliphs whose names are recited in the lecture Khuthba on Fridays in the mosques. There is one exception. Shias recited the name of Ali only as they do not recognise the other caliphs.

Shias strongly believed that Muhammad had designated Ali, his son-in-law, as a caliph. It is indeed believed that Ali has suggested certain stanzas to be inserted in the Quran which was done. Sunnis refuse to accept that Quran was anything but what Allah had commanded Muhammad. That is how the great schism occurred. Shias – partisans of Ali and Sunnis accepted what was practical. Today in the world there are 15% Shias and 85% Sunnis. That explains the repeated attacks on Shias as non-Muslims; Zia-ul-Haq at one time feared that Shias will be declared as non-Muslims. He wanted the votes of Ulemas and declared that wearing sarees was un-Islamic. Fortunately this edict was later not followed.

Neither Muhammad nor Abu Bakar, the father of Ayesha and father-in-law of Muhammad, was important. The word of God was carried through his representative – now called caliph. Anticipating a little, one must remember that Muhammad being a human and must pass away, but as Quran says, there cannot be anyone except Muhammad who can be the voice of God. Therefore there must be an amir – a noble person who will correctly and legitimately carry the voice of God which was in the Quran. Of course, sayings, apart from Quran, were also important. His actions and conduct were also important. His actions and sayings were collected by his companions and clubbed together as Hadith. Quran and Hadith were to be said and



pronounced by the right person who was called caliph – the representative of God. He must in short be a noble person.

It has been mentioned that when Muhammad was absent, Abu Bakar was asked to lead the *namaz*. Muhammad has till his death had not named anyone as his successor. Before he died, however, he named Abu Bakar, almost unanimously, as his successor. Only Ali, Muhammed's son-in-law, sulked. But the population accepted Abu Bakar. Initially the populace refused to accept that Muhammad was dead. It insisted that Muhammad was immortal. In the famous speech delivered after the death of Muhammad, Abu Bakar reminded his listeners that Muhammad was not God. He was a human being and like human beings he was mortal. His ideas were eternal. What he said came from God. So people should remember them.

Under Abu Bakar, Islam conquered parts of the world. Entire Arabia came under Islam. Abu Bakar who lived upto 624 was a compassionate man. His order to the troops was that they must be merciful. They should not slay old men, women or children. Under him the choice given to the enemy was not Islam or sword. It was rather Islam, tribute or sword. It must be remembered that originally, at any cost, the caliphs did not follow the policy of spread of Islam – Omar was an exception. He had good generals; ideas though some of them were cruel.

Abu Bakar died in 624. Omar was, in the words of Will Durant, a man of hot temper, cold logic and of sound judgment. He was the next caliph duly elected. He genuinely believed that Islam should be spread and that was the command of Quran and Muhammad. But as Maulana Muhammad Ali said, neither Quran nor Hadith required *jihad* to spread Islam. Omar wrongly believed that the Holy Prophet had commanded him to fight people until they actually accepted Islam – that is they accepted that Allah is the only God and Muhammad was his prophet.

It is at this point that one story about Omar must be disposed. Did he order that all books in Alexandria library should be burnt. When Commander Amir Ibn Al-As reached Alexandria, he was beset with the question whether Alexandria library should be allowed to remain or be destroyed. The reply traditionally is: "If those writings of the Greeks agree with the Book of God (i.e. Quran), they are useless and need not be preserved; if they disagree, they are pernicious and

should be destroyed". (Durant, Op. cit. p.282). Against this story, it should be noted that –

1. Large part of the library had been destroyed by Christian Order in 392 B.C.;
2. The remainder had suffered such hostility and neglect that most of the collection had disappeared by 642;
3. That between 500 years that it had happened and the first Christian report of it, no other person has reported it.

Will Durant says that the story is now rejected as fable. Sir Edward Gibbon agrees with Durant.

This is not the place to give details of caliphate. It is sufficient to note that under Omar, with Amir as General, Islam spread rapidly and occupied Egypt and Tunisia. Later, in the year 644, Omar was struck down by a slave while he was in prayer. Abu Bakar was the first Caliph to die natural death. As we will see later, two successors of Omar also died violent deaths.

The dying caliph Omar wanted Abd-er-Rehman to be the next caliph but he declined. Omar then appointed a Committee of six to select the next caliph. They named, as Durant points out, the weakest person, Ottoman, as the next caliph. Ottoman was a good man and devoted to Islam. He built several mosques and beautified several.

It must be remembered that society was a tribal society. There was Quresh aristocracy versus Ansaris from Medina. Then there was Umayyad clan led by Muvayya, son of Muhammad's chief enemy, Abu Sufian, though he was now Governor of Syria. Abu Sufian had become Muslim by this time. Somehow or other, Ali was raised to caliphate by Hashemites. Muhammad belonged to Hashemite tribe. It was the contention of Hashemite tribe that only one from their tribe, the tribe of Muhammad, could be the caliph.

In the unsettled conditions, it was difficult to pinpoint who was the caliph. Ottoman was killed by an Egyptian Moslem. Now, as already pointed out, Ali became the caliph – thanks to Hashemites. Ayesha, the young widow of Muhammad, could never get reconciled to this. She tried to dislodge Ali by mounting a war. This war is known as a war of Camel, because Ayesha fought the war on the back of camel – she was utterly defeated and safely conducted to Medina.

But Umayyad, though from the same tribe but from a different clan, was not happy about this. In particular, they accused Ali of not properly pursuing the killers of Ottoman – the third caliph. Some sort of arbitration was held in which Ali was defeated. Ali was killed by a Khajorite.

Abu Bakar	-	died peacefully
Omar	-	killed by a slave
Ottoman	-	killed by an Egyptian
Ali	-	killed by Khajorite.

Thus, three of the four Rashiddin caliphs met violent deaths. Thereafter Khilafat became, like kingdom, hereditary and successors of ten succeeded by bloodshed.

The caliphate passed into the hands of Umayyad who, as history shows, banished Hasan to Medina and killed the entire family of Hasan at Karbala which became a holy place.

Mosque was built where Ali had fallen and mosque was erected where Husen died. In Iraq at present Shias are 65% and the whole of Iran is Shia. Though Shias are in the whole world only 15%, they are rich and educated. The twists and turns of Islam are difficult to summarize adequately and accurately. One thing is certain. The great divide between Sunnis and Shias had taken place. Shias themselves are divided into different sects. Every Imam regarded himself as God and after him successive Imams also did so. One sect regarded that this succession stopped with the seventh Imam who is supposed to be hiding and will emerge in due course. Those people are called Seveners. Another sect called Twelvers believed that Twelfth Imam would be the last.

At this stage it should be mentioned that Caliphs and Imams are different. A caliph is elected as the representative of God while Imam is born with divinity in him. Therefore, Shias never regard Caliphs as the representatives of God. On every Friday in every mosque the Imam in charge praises the exploits and qualities of Rashidun Caliphs i.e. the first four caliphs. But Shias in the Shia mosque praise only Ali, the son-in-law of Muhammad. Both, Shias and Sunnis, are Muslims. Both believe in the same, one God. Both regard Muhammad as *paigamber* and as the last prophet. Yet there is much enmity between the two. They are in fact two religions though persons belonging to both these communities are called Muslims. Readers will not forget the decade long war between Iran

and Iraq between 1979 and 1989. That was purely on the ground that the then ruler of Iraq was a Sunni.

That Umayyad became the caliph after killing Hussen has already been mentioned. In due course, Khilafat passed on to Abbasids, a line of Hashemite tribe. The most famous of Abbasid caliph was Haroon, also called Haron-al-Rashid. The famous Thousand and One Nights took place during Haroon's regime. The Abbasids ruled from Baghdad. The Abbasid caliphate lasted from 750 to 1058. To Haroon goes the credit of building a beautiful Baghdad. Even today Baghdad can boast of beautiful and big buildings. Though water was not plentiful, Baghdad was surrounded by two mighty rivers. That part of Iraq in which Baghdad is situated can be legitimately called doab, like the Gangetic plain in India.

Haroon was fond of good food, good women and good music. He was also, unfortunately, cruel. His sister, an Arab, fell in love with Jafar, a Persian. This was unpalatable to Haroon. The caliph, however, permitted them to marry. The bride even before marriage bore two sons. This infuriated Haroon who ordered his own sister to be executed.

Back to Khilafat, it should be mentioned that though originally a caliph was elected or selected, caliphate went to the strong. Though generally Abbasid caliphs did noble things, gradually Abbasid caliphate declined. For some time Seljuks overpowered the caliphs though they were allowed to retain their religious role. In the meantime, caliphate went to Egypt from where it passed on to Ottoman Empire of Turkey. From Arabs' point of view, the head of the most powerful Muslim nation became the caliph. The Arabs were unhappy because a non-Arab became a caliph – worse a non-Arab remained a caliph till Khilafat was abolished.

Kemal Pasha was a practical man. Ottoman Empire has been defeated in World War I. Iraq became a mandated territory; Palestine became a protectorate; there was nothing over which Turkey or Kemal Pasha could rule as an empire. Moreover, Kemal Pasha was a nationalist. He had no sympathy for Muslims or Islam. He was aware that Indian Muslims had collected money and material for Khilafat. There was a Khilafat movement in India led by Mohmed Ali and Shaukat Ali. Much to the chagrin of Indians, Mahatma Gandhi supported the movement. It had limited national support.

In the meantime, Caliphate was abolished. The abolition was done two years after the abolition of Sultanate. Indian Muslims begged Khilafat to be retained. They even suggested that Kemal Pasha should be caliph which did not interest him. The Rt. Hon'ble Amir Ali and the then Aga Khan sent personal letters to Kemal Pasha who did not take note of them. Amir Ali and Aga Khan were both Shias and it is not clear why they were interested in Caliphate.

Caliphate was a symbol of unity of Muslims. Different Muslims ruled in their own ways; they never consulted caliph. It is said that whenever a new King came into power, the caliph sent his best wishes and probably some advice – that was the consultation. Though originally from the days of Abu Bakar caliph was regarded as the representative of God upon earth and administered the Islamic realm as per Quran and Hadith. After Umayyad, caliphate was forgotten. When Ottoman Empire became the seat of caliphate power, as the Ottomans were the largest Muslims, though not Arab caliphate was administered. Though Muslims were united in caliphate, there was no unity among them.

That is how in 18<sup>th</sup> and 19<sup>th</sup> Centuries caliphate was replaced by the concept of Islamic unity or Pan-Islam. Pan-Islam in effect is a concept, a notion having practically no value. The idea of Islamic unity was propounded from many Islamic countries. It was all from individuals. In India at that time, apart from Mohammad Ali Jinnah, there was no outstanding Muslim. Even Dr. Mohammad Iqbal, the great poet and scholar, wielded little influence upon the masses. Jinnah, though he became the builder of Pakistan later, was not interested in the Islamic cause.

As a result the Muslims were organised, small and big, in different countries. Muslim League of India was one such. But it was not interested in Pan-Islam. Dr. Iqbal at one stage had advised the League that Pakistan, a land of Muslims, was alien to Islamic culture. Pakistan became the programme of the League. Pan-Islam never took root in India.

There was one colourful Muslim at that time who strongly advocated Pan-Islam. He was Al-Afgani. He was born in Shia Afghanistan and it disturbed him that Muslims were divided between Shias and Sunnis. He made brave attempts to bring the two together. He wrote again and again that their differences were a

matter of past relevance and that a *modus vivendi* between them could – and indeed should – be found. It was never possible. The idea of Islamic unity did not die. The Arab countries propounded it. Organisation of Islam Countries (OIC) was born but it has done very little work. Recently, a rich Arab, Osama Bin Laden, has taken up the cause of Islamic unity and founded an organisation called Al Qaida. Readers are aware of the terrorism it has involved in. Far from bringing about Islamic unity, it has alienated the rest of humanity from Islam. Majority of Islamic countries are opposed to the type of terrorism Osama is indulging in. Khilafat came to an end in 1925 when it was abolished by Kemal Pasha now called Kamal Ata Turk (Father of Turks). Turks in general and Turkish Army in particular are totally secular. The Constitution is secular. Turkey is trying to become a member of European Union. Naturally Khilafat came to be abolished there. Moreover, Turkey is neither the largest nor the strongest Muslim country.

Pan-Islam has not found a leader or organisation. Apart from Osama, the world faces no danger or design from Islam.

## Portrait of a Prophet

In 1997, 62 years after the inauguration of the building of the United States Supreme Court, some Muslims woke up to find that Prophet Mohammed has been engraved on a wall inside the building. No Islamism raised its head, no protests were made, and no demonstrations were held against the “blasphemous” act of depicting the prophet of Islam which is prohibited.

The World of Moslems could not be unaware of the fact that a statue of Prophet Mohammed was inscribed in the frieze in the U.S. Supreme Court. It must be remembered that every visitor to the U.S. Supreme Court gets a fact-sheet regarding the building. Till 1997, the fact-sheet mentioned that in one frieze, Mohammed is shown as a law giver, though it is not so mentioned in the frieze.

The architect who constructed the friezes was not aware of the prohibition of depicting portrait or a picture of Mohammed. Since he was dealing with a building concerned with law, he regarded, naturally, the figure of Mohammed was appropriate. Other law givers shown in the frieze which is on the north side of the Court include King John (Magna Carta), William Blackstone (Laws of England) and John Marshall (of Marbury v. Madison fame).

The frieze on the south side shows figures (though allegorical) of Hammurabi of the first Code in the world, Moses and Solomon, and Confucius. It must be remembered that all the figures shown are imaginary inasmuch as during those days there was neither photography nor the art of painting portraits in days when these prophets lived. The figure of Mohammed with a sword in hand is naturally imaginary. The American sculptor, Adolph Alexander Weinman, did his work in good faith and respectfully. The choice of law givers' figures was also appropriate. He could not have imagined the storm that would arise in 1997.

Muslims in U.S. took objection to Mohammed being shown in a figure as it was opposed to Islamic injunction. A group of Muslims in U.S. offered to foot the bill to alter the frieze and replace it with a piece of marble bearing a quote from Quran pertaining to justice.

There were demonstrations in far off Srinagar. An Islamic religious society, Raza Academy, in Mumbai wanted to start a mass movement. They sent a memorandum to the then President, Bill

Clinton, calling upon him to remove the frieze, as if he had any authority to do so. The memorandum said that the Islamic Shariat prohibits photography; nor does it allow the making of any portrait, or sculpture of any living animal.

The prohibition is contained in the Old Testament. It is one of the Ten Commandments originally given to Jews through Moses. Some Christians even now follow the said injunction. Jehovah witnesses do not salute a flag, even of the nation in which they live. It is deeply held religious belief. When Hollywood wanted to bring a film on Prophet Mohammed, without even showing him, Islamic nations protested.

It was pointed out on behalf of the Supreme Court that the sculpture was not idol worship. William Rehnquist was then Chief Justice. The friezes, carved of in original Spanish marble by sculptor Adolph Weinman, only show allegorical figures and procession of 18 law givers. Mohammed is only one of them.

Chief Justice William Rehnquist pointed out that it would be “unlawful to remove or in any way injure an architectural feature in the Supreme Court building”. It was so provided in a Statute of 1949. It declares that it is “unlawful to step or climb upon, remove or in any way injure any statute, sat, wall, fountain or other erection or architectural feature or any tree ... in the Supreme Court buildings or grounds.”

Chief Justice Rehnquist pointed out that the depiction of Mohammed was intended to recognize him, along with others, as an important figure in the history of law. The depiction was not idol worship. Showing a sword in his hand is in tune with the theory that swords are used as symbols of justice. In the four friezes in the Court there were swords in 18 figures. The sword in the hands of Mohammed was not intended to show Islam as an intolerant religion.

The frieze remained but the literature altered. It says: The figure above is a well-intentioned attempt by the sculptor Adolph Weinman, to honour Mohammed and it bears no resemblance to Mohammed. Muslims generally have a strong aversion to the sculptured or pictorial representation of their Prophet.”



Though New Testament commands the Jews not to worship a graven image, the said command is also followed by Muslims. It is not a command to people other than Jews and Muslims. Jews have not taken umbrage at others depicting a God or prophet, Muslims hate any one drawing a picture of Mohammed.

Even in Islamic architecture you will find humans are not depicted. Decoration is done by painting flowers and trees. Orthodox Muslims go still further. Wahabi's of Saudi Arabia do not erect tombs for their dead. Tomb, according to them, represents idol worship. There are no tombs in Saudi Arabia. When a King or Prince dies, he is buried in an unmarked grave.

Picture of Mohammed is prohibited. I often wonder how the founder of the world religions – the Prophets – looked in real life. No contemporary picture is available. From all accounts Mohammed was an unassuming, simple man. He was so honest that his services were sought by the tradesmen of his time. He swept his floor, lived frugally, on dates. Like Arabs, however, he was fond of perfumes.

Ali, Mohammed's son-in-law, describes the latter when he was forty five:

*“middle stature, neither tall nor short. His complexion was rosy white, his eyes black, his hair thick, brilliant, and beautiful and fell to his shoulders. His profuse beard fell to his breast ... There was such sweetness in his visage that no one, once in his presence, could leave him. ... Before him all forgot grief and pain.”*

(“Age of Faith” by Will Durant, p.163)

This is the Prophet's picture – in words.

How did the Buddha, another Prophet look? His portraits and statues are freely available. They are sold on the roadside in Bangkok. Statues made of plastic and clay can be bought; the standing Buddha, the sitting Buddha, the sleeping Buddha, the Buddha in different poses. The Buddha, in his lifetime, had prohibited the making of idols. And yet, the Buddhists had erected a large number of images of the Buddha.

Do the images and idols you see today bear any resemblance to the historical Buddha? The Buddha lived nearly one thousand years before Mohammed and obviously no contemporary picture is

available. Today's idol disclosed a well-balanced, sculpted body. Though the Buddha was originally a prince, when he started his ministry he was nearly forty. The picture of Buddha in all probability is fashioned after a Greek hero. When did he get his crown like tresses? The Buddha was a monk and like monks, he should be clean shaven. All Buddhist literature tells us that he cut off his tresses when he started on his quest for enlightenment. Asit, a rishi, had commented upon Gautam's long ears, almost touching the shoulder, a sign of great men. That alone seems to have been copied by today's makers of Buddha's idols and pictures.

Jesus came on the scene nearly five hundred years after the Buddha and three hundred years before Mohammed. Comments on the unavailability of any contemporary picture or idol of Jesus are the same as in the case of Mohammed and the Buddha. Jesus was the son of a carpenter and he must have helped his father in his younger days. He must have had, therefore, good physique. The statue of Jesus on crucifixion is today in almost every church and chapel and many Christian houses. Probably the statue of Jesus bears a close resemblance to the historical Jesus. Jesus was crucified when he was 32 or 33. But he is seen as a bearded man, probably because in those days it was customary to keep a beard.

Thus we see that the pictures or statues of these two great prophets are imaginary or allegorical as Chief Justice William Rehnquist pointed out in the case of the figure of Mohammed in the frieze. However, the pictures of Muslim Statesmen and Kings are seen everywhere. Jinnah's portraits hang in Government offices, in Pakistan. Portraits of Mogul Kings were painted and their pictures are freely printed in history text books.

## Polygamy under Good Faith!

There are several misconceptions about the many marriages of Prophet Muhammad. After Christ, monogamy became the rule in Christian world. More than six hundred years after Jesus, Muhammad preached the teachings of Quran. Prior to this, in Arabia, there was no limit to the number of wives a man could take. Even in India and among the Hindus polygamy was prevalent.

Chhatrapati Shivaji Maharaj had seven wives. Yet nobody suggests it was as a result of sexual appetite. They were all, except probably the first one, mostly political alliances. Till 1937 in the erstwhile Bombay Presidency, polygamy was permissible. At the instance of Smt. Leelavati Munshi, Bombay Prohibition of Bigamous Act was passed. At that time, Vidarbha was a part of Central Provinces. It is not necessary to mention names, but it is well known that some men in Bombay went to Vidarbha or Central Provinces and took a second wife. In 1956, Hindu Marriage Act was passed and bigamy among the Hindus all over India was abolished. Yet, in Rajasthan, polygamous marriages are taking place. The fact that Muhammad took eleven wives need not cause merriment. One should not forget that in Arabia, a man could take any number of wives during the time of Muhammad. Muhammad put a ceiling on the number of wives a Musalman can take at one time. It should also be remembered that a Musalman could take four wives at one time as permission and not a mandate. The following is the relevant verse of Quran:

*“If ye fear that ye shall not  
be able to deal justly  
With the orphans,  
Marry women of your choice,  
Two, Three or Four;  
But if you fear that ye shall not  
Be able to deal justly (with them),  
Then only one or (a captive),  
That your right hands possess,  
That will be more suitable,  
To prevent you from doing injustice.”*  
(Yusuf Ali’s translation)

Properly interpreted, the verse is pro-monogamy.

Muhammad was famous for honesty and fairness. He belonged to Qureshi tribe which was initially hostile to him. So Muhammad had to leave Mecca for Medina where in a short while he became practically ruler. Before that, however, in Mecca he was appointed as a trade agent of a rich widow. This is rather surprising as we are told Arab women were backward.

Impressed by the shining character of Muhammad, Khadija, the widow, married him. It was a happy marriage. Khadija herself was a noble woman. Some children were born, but only Fatima, who married Ali later, survived. When Muhammad started receiving messages from God through Gabriel, he was mentally disturbed. It was at this time that Khadija assured he was really the recipient of God's messages. In fact Khadija was the first convert to Islam. As long as Khadija lived, Muhammad did not take a second wife. It was a happy marriage. This was Rangeela Rasul? When later the third wife of Muhammad, Aisha, teased Muhammad about his attachment to the memory of Khadija, he said:

“I cherish her memory because she was so loyal to me. When people belied me, she believed in me; when people were afraid to help me, she stood by me like a rock; she was my best companion and bore my children.” From the above it is easily seen that he must have grieved immensely by the death of Khadija. After Khadija's death, Muhammad's life was in disorder. There was none to support him in his mission. Children were small and there was none to look after them. A wife has become a necessity. Friends' suggestion to him to marry again was accepted. It was at this time he took a second wife. One Sauda and her husband were among the earliest converts to Islam. Her husband died as a result of which Sauda was helpless. She had a son to look after. It was then Muhammad took pity on her and also to meet his needs he married her.

Aisha, the daughter of Abu Baker, the first Caliph, was too young. But Abu Baker was too eager to cement his relationship with Muhammad. There is some dispute as to how old Aisha was. In any case she was not a child. Muhammad was persuaded to marry her, though the marriage was consummated long after. Aisha was intelligent, beautiful and sprightly. As a wife she accompanied her husband on many of his expeditions.

Here I feel tempted to narrate one incident in her life. On one occasion, Aisha left the caravan in order to answer call of nature.

While returning she noticed that she had lost her necklace. She returned to search for it but the caravan left her, thinking that she was in the caravan. A young Arab, Safwan, noticing her alone and recognizing her gave his camel to her.

Because of this incident, Muhammad decreed that allegations of adultery should not be easily made. The marriage of Muhammad was not the result of love or carnal desire or conquest in war. Abu Baker was the closest companion of Muhammad and it was he who persuaded Muhammad to marry her. After the passing away of Muhammad, Aisha has contributed the largest number of Hadiths.

Hafsa, the widowed daughter of Umar, a close companion of Muhammad, was the fourth wife. Umar, it should be remembered, later became a caliph. Hafsa's husband had been fatally wounded in the Battle of Badr. In order to relieve the distress of Hafsa, Muhammad took her as his wife. Hafsa was not particularly pleasant. Accounts of her tell that she was temperamental. She was given to jealousy and anger. Muhammad could not have found her attractive to marry her. Even after marriage, she boasted that she argued and quarreled with the Prophet.

But kind hearted and of sweet disposition was Muhammad's fifth wife. Zainaba was the widow of a man who had died in the Battle of Uhud in which Muslims were defeated by the Quraish. She took care of the poor and the destitute. She was so much devoted to the welfare of the poor that she came to be known as "Umm al-Masakin" (mother of the downtrodden). After marriage, she lived only for three months.

Salama's husband had died in the Battle of Uhud and thus became a widow. Salama came from an illustrious family of her time, belonging to Banu Uhud. Though one of the earliest converts to Islam, she was not allowed to go to Medina by the Quraish. It was a form of persecution for having converted to Islam. However, she escaped. She had a son from the marriage but found herself pregnant at this time. Naturally Salama was despondent. It was at this time the Prophet offered his hand in marriage. She was now with two children. The Prophet assured her that he would take care of them as his own. What thoughtfulness! Salama was deeply touched and married him. A widow, with two children initially reluctant to marry, Muhammad married her. Can you say sex was a factor? Salama was the sixth wife.

Salama was no doubt attractive. She was very pious, fasting three times a month. She often prayed. Once, the Prophet disapproved of her wearing a golden necklace. She immediately broke into pieces and distributed them among the poor. She was the last wife of the Prophet to die.

A lot of criticism and controversy surrounds the marriage of Zainab with the Prophet. She was the seventh wife. She was 38 years old when she became the wife of Muhammad. She had been earlier married to Zain bin Haroth who had been adopted by the Prophet. Muhammad desired that Zainab should marry Zain. It must be remembered that Zainab was a cousin of Muhammad who could have married her if he was sexually minded. In fact he had given a handsome present to Zainab on her marriage. Initially she was reluctant to marry Zain but the Quran (33-36) disapproved any one disregarding any decision of the Prophet. The marriage which was actually celebrated for eight years Hijrat turned out unhappy. Both Zainab and Zain were good persons in their own ways, but there was temperamental incompatibility. Zainab was unhappy that she was the wife of a man who was once a slave. Zain ultimately divorced her. Zainab could not be tossed about. Muhammad took her as his wife as a duty.

Some commentators have criticized that Muhammad by this marriage indulged in incestual relationship as Zain was his adopted son and Zainab was thus his daughter-in-law. But the Quran says:

*“We joined her in marriage to thee:*

*In order that (in future)*

*There may be no difficulty*

*To the Believers in (the matter of) marriage with the wives of their adopted sons, when the latter have dissolved with the necessary (formality) (their marriage) with them.” (33-37)*

It was revealed that an adopted son cannot be son; filial affiliation has to be natural. Islam regarded adoption as pagan which is to be destroyed.

Juwairriya was the daughter of Harith Bin Abi Darbar, the chief of a powerful tribe of Banu Mustaliq. She was married to a scion of the same tribe. Both she and her father were inveterate enemies of Muhammad. Her father had taken part in the Battle of Trenches.

Juwairriya was taken as a prisoner in this war. Sometime later her father approached Muhammad and begged her to be released on payment of ransom money. Juwairriya herself suggested that the best course would be for her to marry the Prophet. Everyone was happy and the marriage took place. She was the eighth wife of Muhammad. She became a great friend of Aisha.

The ninth wife was Ramallah, also known as Umm Habiba. She was the daughter of Abu Sufiyan and his wife of Hind. They both hated Muhammad. But Ramallah and her husband had embraced Islam much against the wishes of her parents. They were harassed at Mecca and hence quietly escaped to Medina. Unfortunately, Ramallah's husband took to drinking which ultimately resulted in his death, thus making Ramallah a widow. Ramallah was a helpless woman inciting sympathy in Muhammad's heart. Feeling sorry for her the Prophet took her as his wife. She being one of the earliest converts to Islam and having steadfastly stood by the Prophet's religion, she was of great strength to Islam. Muhammad was thus tempted to wed her hoping that the marriage would help the cause of Islam. She was a widow and for the fact that she was a devout Muslim, Muhammad was attracted by her.

There was strength in her convictions. At the time of her marriage, Ramallah was 38 years old and her life she dedicated to Muhammad and the cause. She had two children from her first marriage but none from Muhammad whom she survived by nearly two decades. Her brother, Muawiya, had become the caliph.

Safiya came from a Jewish family. She was taken as a prisoner of war in the Battle of Khyber. She was married to a well known Jewish poet, Salm bin Mishkan. But the marriage was not successful and her husband divorced her. A Jewish warrior married her but unfortunately he was killed in the Battle of Khyber. It was thus that she was taken a prisoner of war and became a maid to one of the Prophet's companions. The other companions pointed out that she, being the daughter of a tribal chief, ought to be given due honour. She divorced once, widowed once, yet the Prophet decided to give her due honour by marrying her. Safiya was also known as Zainab. She became a Muslim and willingly married the Prophet. She bore the Prophet no children. Though converted to Islam, she continued to have faith for her Jewish kith and kin.

Maimunah bin Harith was the eleventh wife of the Prophet. She was divorced by her first husband and the second husband died in tragic circumstances. She was then 51 years of age and not a young damsel. Her condition was pitiable, though she was the sister-in-law of Abbas, Muhammad's uncle. Abbas was a devout Muslim whose canvassing led to the marriage of Muhammad and Maimunah. Incidentally, Khaled-bin-Waled, the Sword of Islam, was her nephew.

The marriage was between the members of two leading tribes. The citizens of Mecca resented this marriage and they did not allow it to take place in Mecca. So it was solemnized in another town. Maimunah was of a kind and charitable disposition. She liberated many slaves.

The story of Mary or Maria Qibitia needs to be told in some details. Mary and Shirin were sisters. They were slaves of Archbishop of Alexandria. They were not Arabs; they were not Muslims. The Archbishop gave them to Muhammad as slaves. Muhammad himself did not believe in slavery. He freed both of them. There is some difference of opinion between the Western writers and the Islamic ones. Though the Archbishop sent these two maidens to the Prophet but requested the latter to treat them with honour and dignity. It is not explained why a request was made to treat them with honour when they were presented to Muhammad. Anyway he gave Shirin to one of his companions.

As already mentioned, Mary was not an Arab, but she was treated on par with other wives. The Quran says:

*“O Prophet, why dost thou forbid (thyself) that which Allah has made lawful for thee? Seekest thou to please thy wives? And Allah is Forgiving, Merciful.”*

Mary abided with Muhammad. She was beautiful being white with good features. She had black hair. Muhammad was pleased with her. There is some controversy as to whether she became married to Muhammad.

Dr. Rafiq Zakaria says:



“Maria’s case is different; she gave birth to Muhammad’s son, Ibrahim, and has, therefore, been regarded by majority of jurists as his wife”.

*(Muhammad and the Quran, p.44)*

After Khadija, Maria was the only one who gave a son to Muhammad. There is nothing in history to show that Muhammad ever married. Even Zacharia, a devout Muslim, says it is regarded that she was the wife of the Prophet. Be that as it may, it is clearly established that she was treated with equality with the wives of Muhammad.

I have already extracted above the verse which enjoins Muslims to have only one wife; in exceptional circumstances and subject to certain conditions, he can marry two or three and not more than four. Marrying more than one wife is not the pillar of Islam; it is not a mandate but a conditional permission.

Yusuf Ali, authoritative translator of the Quran says:

*“The unquestioned number of wives of the Times of Ignorance was now strictly limited to a maximum of four, provided you could treat them with perfect equality; in material things as well as in affection and immaterial things. As this condition is most difficult to fulfill, understand the recommendation to be towards monogamy.”*

At this stage I must make a brief reference to “Rangila Rasul” case. In that case, one Rajpal was convicted in the lower Court of an offence under Section 153A of the Indian Penal Code on the ground that the author had made several derogatory remarks about the Prophet of Islam. He had made some unsavoury remarks about the many marriages of Muhammad who was, in consequence, called “Rangila Rasul”. In appeal the Lahore High Court set aside the conviction holding that Section 153A “was intended to persons from attack on a particular community as it exists at the present time and was not meant to stop polemics against religious leaders however scurrilous and in bad taste such attacks may be”. Actually, Section 153A made punishable an act which would cause enmity between two communities. “Rangila Rasool” case is of 1927. Subsequently, a new Section has been introduced.

We are dealing with the situation as it existed in the 17th Century when a man could take any number of wives. The restriction by

Muhammad was in fact revolutionary. It was with the advent of Christianity that monogamy became the rule in the West.

For the sake of record I am mentioning the five pillars of Islam which are as follows:-

1. Shahada – the declaration that there is no God but the God (Allah Shahada);
2. Salat requires Muslims to pray five times a day;
3. Zakat – gift of a fixed portion of your money to the poor – Necessity not merely desirability;
4. Sawm is to fast for thirty days during Ramadan; and
5. One must make at least one pilgrimage to Mecca during one's life – Haj.

The merriment about Muhammad having many marriages started in the West which amused that a man can have two wives. Even George Bernard Shaw commented that the celibacy of Jesus was nobler than the wallowing of Muhammad in harem. Muhammad did not have a harem. Raj Pal of "Rangila Rasul" fame echoed the feelings of the West clean forgetting that many of our Kings had many wives. Shivaji had seven; Bhupinder Singh of Patiala is said to have more than 100. The detestable system of 'Kulin' marriages allowed a man to take many wives, though some of them he never saw. Till Bombay Prevention of Bigamous Act was passed in 1937, at the instance of Lilavati Munshi, Hindus were in theory at least polygamous. In practice, however, Hindus were monogamous. It was emotionally and monetarily expensive to maintain two households.

It was only after December 1956, after the Hindu Marriages Act was passed, that bigamy became illegal among the Hindus. If you study census figures carefully, you will notice that there are marginally more bigamous marriages among Hindus than among Muslims. This is so in Rajasthan. Maybe, among poorer people, for economic reasons an additional hand is needed. The upshot of this article is that polygamy, though allowed under conditions among the Muslims, you will not find such marriages. Even in Muslim countries, such as Tunisia and Morocco, polygamy is legally

prohibited. With progress in time and progress in society and with the gradual liberation of women everywhere, bigamy and polygamy will disappear.

## The Burkha: Not a Religious Mandate

This article is appearing late, but it needs to be written and must be made known to all rational minds.

On 22<sup>nd</sup> June, 2009, the President of France, Mr. Nicolas Sarkozy, addressing the French Parliament, damned the Burkha characterizing it a symbol of feminine servitude. He also declared that it was not welcome in France. A law passed in 2004, in fact, bars Muslim girls from wearing the *hijab* in Government schools. By and large, students from other religious backgrounds are also barred from wearing any conspicuous display of religions symbols. It must be remembered that there are today, according to one estimate, five million Muslims in France. They are mostly from Algeria. Algeria today is a secular country, which was formerly a colony or Department of France. Recently laws have been passed in some European countries putting restrictions on Muslim woman's garments. Incidentally, in the year 1905, France has adapted a total secular Constitution delinking the State from the Church which had formerly an all pervasive presence in the State.

If Nicolas Sarkozy had not spoken on the subject and the French Parliament had quietly passed a law barring the wearing of Burkha, the world would not have bothered about it. Because of Sarkozy's public pronouncement, there were loud verbal protests from some Muslims, especially clerics who are thoroughly ignorant of theory or practice of Burkha. The practice of wearing Burkha is prohibited even in some Muslim countries as Tunisia. Muslim women all over the world dress just like other women without feeling the necessity of wearing any special dress to distinguish their Muslim identity. No doubt, Muslims in some countries do wear a *niqab* (a total covering, except the eyes) or a *Burkha*, out of habit or compulsion. Nobody has shown any authority in support of Burkha.

One Bombay Magazine has quoted Professor Zeenat Shaukat Ali as having said that Burkha is more about culture than religion. She did not pose, let alone answer, the question that why is it that Burkha, to the extent it is prevalent, is only among the Muslims than in any other community. No community in the world, cultural or otherwise, sanctioned Burkha for woman. It is essentially a Muslim habit, probably born out of ignorance, or of wrong interpretation of Quran or of compulsion by men. Prof. Zeenat Ali has to explain why it is confined to Muslims.

Worse still is the statement of Muslim Cleric. Maulana Abu Hassan Nadvi Azhari that “Islamic scholars across the world have unanimously held that *Burkha* is a religious symbol” (quoted in the same journal). Where is it mentioned in any scripture that *Burkha* must be worn by Muslim women? Has any religious authority issued any *fatwa*?

Let us see the practices around the world. Indonesia is the largest Muslim State. Women there also do not don *Burkha*. Only in some part of Indonesia, there are few non-Muslims. The country is predominantly Islamic. If *Burkha* were culturally or religiously associated with Islam or Muslims, you would be noticing women wearing *Burkhas*. Meghavati Sukarno, who became the President of Indonesia, could be seen without *Burkha*.

India has the next largest Muslim population of the world. Though here and there you see *Burkha*-clad women, *Burkha* is not the normal wear of Indian Muslim women who have, in fact, protested against any compulsion for wearing *Burkha*. Women work in offices, hospitals, etc., wearing normal clothes which are worn by non-Muslims. You cannot work in an office or as a doctor wearing a *Burkha*. There is Sania Mirza who travels all over the world for playing tennis. She wears scanty dress as required by the game. So do other Muslims who are sports persons. It is not necessary to mention Shabana Azmi or Taslima Nasreen of Bangladesh who are well known non-believers. They will not cover.

Have you ever been to Kashmir? Not a single woman dons *Burkha*. Kashmiri women work outdoors and share work with men. You stand in front of a college and see the girls coming out. You will see them wearing Salwar-Khameez; you will not see *Burkha*. For some time because of the fear of fundamentalist bodies like Lashkar-e-Jabbar, *Burkhas* and hijabs were seen. In no time, however, they went out. Tourist traffic is often attended to by women.

Kashmiri culture does not allow *Burkha*. In the rural areas, most women work in the open fields. They can be seen in knee-deep paddy fields. How can they work in these conditions? They are now living in 21<sup>st</sup> Century – not in the seventh. Women do not need protection now as they did in the unsettled conditions of 7<sup>th</sup> Century. In the rest of India one can see Muslim women going about in saris. Zia-ul-Haq, the dictator of Pakistan who died in 1988, called it un-

Islamic to wear a sari and had banned it in Pakistan. After his death it has returned.

Pakistan is an Islamic country. If *Burkha* were closely connected with the culture of Islam, women there would be going about in *Burkha*. You see the news readers on T.V., doctors who work in the hospitals, politicians addressing public meetings and the Parliament. Where is the *Burkha*? Benazir Bhutto became the Prime Minister without going anywhere near *Burkha*. When you watch Pakistan T.V., you do not see any woman wearing *Burkhas*. Of course, Taliban may change all that. It is reported that a senior Judge in Pakistan has ordered women lawyers not to wear veils in Court rooms. The Chief Justice of Peshawar High Court, the bastion of orthodoxy, told a woman lawyer “You are professionals and should be dressed as required of lawyers.” Muslim women are no longer orthodox. It is woman’s instinct to be attractive, to be seen attractive – not necessarily to attract. Even *Burkha* clad women are not free from this instinct. If you pass by a woman wearing *Burkha*, you will be immediately overwhelmed by some perfume. Beneath her *Burkha*, while going out, the woman has smeared herself with perfume of some kind.

If you are next to a Persian lady going to Iran, the same is your experience. She is wearing jeans. When the plane is nearing Teheran, she immediately puts on *Chador* – a dress prescribed by the moral police of Iran, after the 1979 Revolution. Ayatollah Khomeini dictated *Chador*, not *Burkha*.

It is only in Saudi Arabia that women wear or are forced to wear *Burkhas*. It is probably due to the influence of Wahhabis. Wahhabi influence envelopes Saudi Arabia.

All over the world, women are getting liberated; Muslims no less. They do not want to wear cumbersome clothes – *Burkhas* least of them. Maybe, some small Section of Muslim women cover themselves with *Burkha*. Pratibha Patil, when she was the Governor of Rajasthan, said famously: “The *purdah* was introduced during Mughal rule to save women from Mogul invaders”. After Moguls, the English have ruled over India for 200 years. The English were progressive people and were not definitely after Rajasthani women. *Purdah* did not vanish. The truth of the matter is that even today women pull “*ghungat*” over their faces in front of elders and

strangers which they were wearing even during Mogul rule. Rajasthani women never wore *purdahs*.

Other parts of India show different ways. Women wear saris. In north India women wear Salwar-Khamiz. In South India they wear saris – Maharashtrians in one way, Gujaratis in another way, in Tamilnadu still another way. Till when Rabindranath was a boy, Bhadra Lok women in Bengal did not put on blouses. Covering bosoms either by *dupatta* or by the end of saris is the minimum one expects of modesty on the part of women. Different parts of India have different traditions. If *Burkha* is not a mandate of religion, it is also not anti-secular. Fadela Amara, a Muslim woman of Algerian descent, now in France, calls *Burkha* a coffin which kills the fundamental rights of women. A woman going about in *Burkha* is immediately recognized as a woken in a multi-lateral society. In 21<sup>st</sup> Century, a woman does not need a bulletproof vest or a fabric fortress. Women, even Muslim women, are following different vocations which are inimical to *Burkha* unless it is mandated by religion.

Quran does not mandate *Burkha*.

“O Children of Adam, we have provided with garments to cover your bodies as well as for luxury. But the best garment is the garment of righteousness. These are some of God’s signs; that they may take heed.”

(7.26)

And in a later Sura (24-31), Quran says:

“And say to the believing women that they should lower their gaze and guard their modesty; they should not display their beauty and modesty...”

Quran prohibits women from attracting men by tinkling their ornaments. Sura 33, verse 59, says:

“O Prophet, Tell  
Thy wives and daughters  
And believing women,  
That they should cast  
Their garments over  
Their persons (when abroad)  
That is most convenient,

*That they should be known  
(As such) and not molested  
And God is oft-forgiving,  
Most merciful.”*

Yusuf Ali says that this rule was not absolute. Elsewhere mention is made that women should not indulge in practices which would attract attention. That was 7<sup>th</sup> Century when such guidance was given. We are in the 21<sup>st</sup> Century. Even in Hadith there is not a single instance in support of *Burkhas*. So we cannot take support of obedience to religious scriptures in the case of *Burkha*. A ban on *burkha* will not be an infringement upon religious freedom. At most, it will be interference with tradition rightly or wrongly followed in some countries for some time.

Some arguments in support of *Burkha* may be noted. The security argument is misplaced. A woman is attracting the attraction of a rapist if one is roaming about. A woman is treated as a sex object. *Burkha* is not a fortress.

Is it convenient? It hampers your movements. Male colleagues are often repelled by a woman who is thus secluding herself.

It is a women's choice! Yes, she makes a conscious, reasoned choice. The choice we are talking of is the choice of compulsion of her husband or of society. It is not a free choice. It deprives a woman of light and air. It is unhygienic.

“Religion’ argument is hypocritical. Neither Quran nor Hadith supports such a practice. In fact, one might say that in a country the mandate to wear *Burkha* interferes with her right and even religion.

No one is more knowledgeable than the Al Azar University about Quran. It is the oldest Muslim University. From all over the world, Muslim students flock to it. The teachers are all great Islamic scholars. Egypt's highest Muslim authority has said that he will issue a religious edict against the growing (?) trend for full women's veils or the *naqab*. Sheikh Mohamad Tantawy, dean of the University, called full face veiling a custom that has nothing to do with Islamic faith. Seeing a girl in a school wearing a *naqab*, the Grand Imam ordered her to remove the veil from her face. The Minister for Higher Education has decided to ban women wearing *naqab* from entering University residences.



It was not necessary to become touchy about *Burkha*. Already Muslims are realizing that it has no religious mandate. Women are realizing that if they have to play liberated role in society in 21<sup>st</sup> Century, they cannot afford to don *Burkha*. Today overwhelming Muslim women do not observe it. It will fade away.

## *Talaq :Talaq: Talaq*

Talaq uttered even in one sitting acts as an irrevocable divorce. It may be uttered in the presence of the wife; or it may be uttered in the presence a person who knows the wife. *Talaq* may be said on the telephone; may be on the computer. As soon as it is made known to the wife, the divorce act is complete, irrevocable. The erstwhile husband and wife are free to marry again- not each other.

In Islam, marriage is a civil contract, though it is regarded as sacred. Islam generally, and Muslim Societies, in particular, look upon marriage very seriously, almost in a sacrosanct manner. That is why despite the fact that divorce, more or less easily available, is very rare in Muslim societies. Till 1956, divorce was unavailable among the Hindus, except the Shudras among whom it was known at least in Maharashtra as “Kadimod”. This was available to both wives and husbands. The word *Talaq* need not have been said three times-in one sitting or three sittings.

Till the passing of the Hindu Marriage Act 1956, divorce was not legally or otherwise permissible among the caste Hindus or *savarnas*. That is why it used to be said that Hindu marriage was indissoluble. With this exception, the necessity of divorce has been recognised by all people. Before I proceed further let me dispose of the meaning of Talaq. It is an Arabic word meaning freeing or undoing of knot. In legal terminology, it means *khula* (free) when resorted to by wife. In case of a wife it was not available in pre-Islamic society. Before Islam a man could divorce “at the drop of a hat”. The prophet legitimised divorce by husbands, though as we will see presently the Prophet frowned upon divorce.

It has been mentioned that in Islam marriage is a civil contract. There is no religiosity in it. In other religions, it is religious, sacred. It is made in Heaven. God has ordained it. “Till death do us apart”, the couple are held together. With all inconveniences, tribulation, the wife must continue to live with her unwanted husband and the husband must continue to cohabit with the unwanted wife. In the olden days, a bedridden wife or husband lived with her or his spouse. Of course the husband could take another wife or wives. The disabled wife could not marry again, at least because she was not single, not having been divorced.

This led to several hypocritical practices. I will give only one instance. King Henry VIII (Tudor) married Anne Boleyn, who later became the mother of Queen Elizabeth I. Since she was not able to “give” him a son, Henry VIII wanted to get rid of her. He could not divorce her because divorce was not permissible by the Church. The Pope had at that time regarded King of England as the Defender of the Faith, a title the Monarch carries to this date.

What did Henry VIII do? He took recourse to what lawyers call Henry VIII rule. He executed Anne Boleyn; imprisoned Elizabeth who was very popular among the populace. She later became the Queen Elizabeth I who reigned a long time. She remained unmarried. Henry VIII did not know, as we all know, that the sex of the child is determined by the husband, not the wife (XY chromosomes).

The church resorted to a subterfuge to avoid a divorce. It started ‘annulling’ a marriage on the ground that it had not taken place at all or has been illegally done. That is how even today Catholics get rid of their spouses. It is not necessary to get into details as to how Americans get divorce - just fly into Las Vegas, go before a Magistrate and get divorced probably in two minutes.

That is not so in Islam which has permitted but made it difficult. Let us have a look at the situation in India. But before we do that, let us note some features of marriage and divorce in Islam. It has been already noted earlier that in Islam, marriage is a civil contract. Secondly, before entering into marriage there is a documentary agreement that marriage will be conducted in a particular manner and divorce will take effect in the manner agreed upon by the parties. In case marriage is dissolved, there is a stipulation that a certain amount will be paid by the husband to the wife. This is *Meher* or dowry. This is a pre-nuptial agreement. Pre-nuptial agreements are illegal in non-Islamic countries. One does not marry to get divorce. But Islam does it by way of *Nikahnama* (*Nikah* means marriage and *nama* means a contract).

One, somewhat strange feature of Islam is marriages ought to be noted; see the following mandate in Quran.

Sura II, Verse 30-“so if a husband divorces his wife irrevocably he cannot, after that, remarry her, until after she has married another

husband and he has divorced her.” (References are from the ‘Quran’ edited by Yusuf Ali.)

Some commentators have regarded this as a punishment for the woman. Thus, there are many peculiarities in Islamic marriage.

*Nikahnama* is the agreement before marriage. It is like betrothal before marriage. This *Nikahnama* details the conditions of – would - be marriage. This document records the promise of the parties regarding wedded life.

What does the Qurán say about pure marriage and divorce? On divorce, the Quran is clear that tripple *Talaq* in the same sitting is not permissible. “If you fear a breach between them, appoint two arbiters. One from his famiily, and the other from her’s; if they wish for peace, God will cause their reconciliation.” (Sura IV, Verse 35). There are several verses in Quran which show that *Talaq* is not irrevocable. *Talaq* given in one sitting by uttering *Talaq* three times is contrary to Quran because it is irrevocable. That is why in many Islamic countries like Pakistan and Tunisia resort to Board of Conciliation (Arbiters) is compulsory and permission of the Board is necessary before divorce becomes effective.

In the *Nikahnama* now proposed by the All India Muslim Women’s Personal Law Board it is specifically and explicitly stipulated that tripple *Talaq* in the same sitting is prohibited. The Board also says that *Talaq* given in anger, in intoxication, on phone etc. is invalid. The All India Muslim Women’s Personal Law Board Chairperson Shaista Ambar has said that the new *Nikahnama* explicitly bars men from pronouncing triple *Talaq* in one sitting - or in anger, intoxication, and sleep or on phone.

Dr. Asgar Ali Engineer, an eminent Islamic scholar, has pointed out that in many Islamic countries arbitration is compulsory. “This is completely in line with Quranic injunctions”, says Dr. Asgar Ali Engineer. It will also prevent oppression of Muslim women by men. Quran tells the parties to take the route of reconciliation before *Talaq* is given. Dr. Zeenat Shaukat Ali, Professor of Islamic Law in St. Xaviers’ College in Bombay has similar views. Her book, *Marriage and Divorce in Islam* deals with the subject in great details. She points out that the practice in India of triple *Talaq* is based upon practice or custom and not on Quran.

“What Muslims practice in India are customary laws and Anglo Mohmedan laws created by the British. Islam gives equal rights to the women and men and cannot deny those rights”, says Dr. Ali. Before 1937, Muslims in Kutch practiced Hindu Law of succession. Is all this in accordance with Quran? Quran is ultimately the source of all Muslim law. Ms. Ali says, “There should be a debate within the Muslim community on whether they want laws based on Quran or laws created on the basis of certain customs and rituals.”

The All India Muslim Personal Law Board is entirely a men’s affair. All its 30 members are men, self appointed. They pretend to represent the entire Muslim community. The Board includes followers of Bohra Guru, who is regarded by some at least as a tyrant. This Board has rejected the new *Nikahnama* proposed by the Women’s Personal Law Board. The Board has rubbished the new *Nikahnama* as ‘publicity stunt’, ‘irrelevant’, and ‘impractical’, though it agrees that the triple Talaq in one sitting is contrary to the injunctions of Quran.

Who is to decide whether the divorce on the basis of the triple *Talaq* is the correct Muslim law? obviously the Civil Courts under Section 9 of Code of Civil Procedure. Under the said section all and every civil question including the status of an individual -whether in marriage or divorce has to be decided. During the two hundred years of British rule, all civil questions were decided by the Courts, Federal Court and Privy Council.

All civil suits inter-se the Muslims were and are to be decided by the Civil Courts under the Civil Procedure Code. The law administered is Muslim law unless superseded by the law enacted by the Parliament. A parallel judiciary cannot be set up by any community; it will be illegal. Supreme Court of India is about to decide this question.

“The triple *Talaq* is banned under the Shias and the Ahle Haidars but it is practiced among the Hanifas,” says Maulana Athar Ali, a senior member of the men’s Board. Dr. Asgar Ali Engineer says, “I have seen the Nikalinamas of several Muslim countries including Pakistan. They all disallow triple Talaq and prefer arbitration as mandated by Quran. It is high time the Supreme Court of India decided this question of law which has strangely remained undecided so far.”

## Rangeela Rasul?

There are several misconceptions about the many marriages of Prophet Muhammad. After Christ, monogamy became the rule in Christian world. More than six hundred years after Jesus, Muhammad preached the teachings of Quran. Prior to this, in Arabia, there was no limit to the number of wives a man could take. Even in India and among the Hindus polygamy was prevalent.

Chhatrapati Shivaji Maharaj had seven wives. Yet nobody suggests it was as a result of sexual appetite. They were all, except probably the first one, mostly political alliances. Till 1937 in the erstwhile Bombay Presidency, polygamy was permissible. At the instance of Smt. Leelavati Munshi, Bombay Prohibition of Bigamous Act was passed. At that time, Vidarbha was a part of Central Provinces. It is not necessary to mention names, but it is well known that some men in Bombay went to Vidarbha or Central Provinces and took a second wife. In 1956, Hindu Marriage Act was passed and bigamy among the Hindus all over India was abolished. Yet, in Rajasthan, polygamous marriages are taking place. The fact that Muhammad took eleven wives need not cause merriment. One should not forget that in Arabia, a man could take any number of wives during the time of Muhammad. Muhammad put a ceiling on the number of wives a Musalman can take at one time. It should also be remembered that a Musalman could take four wives at one time as permission and not a mandate. The following is the relevant verse of Quran:

*“If ye fear that ye shall not  
be able to deal justly  
With the orphans,  
Marry women of your choice,  
Two, Three or Four;  
But if you fear that ye shall not  
Be able to deal justly (with them),  
Then only one or (a captive),  
That your right hands possess,  
That will be more suitable,  
To prevent you from doing injustice.”*  
(Yusuf Ali’s translation)

Properly interpreted, the verse is pro-monogamy.

Muhammad was famous for honesty and fairness. He belonged to Qureshi tribe which was initially hostile to him. So Muhammad had to leave Mecca for Medina where in a short while he became practically ruler. Before that, however, in Mecca he was appointed as a trade agent of a rich widow. This is rather surprising as we are told Arab women were backward.

Impressed by the shining character of Muhammad, Khadija, the widow, married him. It was a happy marriage. Khadija herself was a noble woman. Some children were born, but only Fatima, who married Ali later, survived. When Muhammad started receiving messages from God through Gabriel, he was mentally disturbed. It was at this time that Khadija assured he was really the recipient of God's messages. In fact Khadija was the first convert to Islam. As long as Khadija lived, Muhammad did not take a second wife. It was a happy marriage. This was Rangeela Rasul? When later the third wife of Muhammad, Aisha, teased Muhammad about his attachment to the memory of Khadija, he said:

“I cherish her memory because she was so loyal to me. When people belied me, she believed in me; when people were afraid to help me, she stood by me like a rock; she was my best companion and bore my children.”

From the above it is easily seen that he must have grieved immensely by the death of Khadija. After Khadija's death, Muhammad's life was in disorder. There was none to support him in his mission. Children were small and there was none to look after them. A wife has become a necessity. Friends' suggestion to him to marry again was accepted. It was at this time he took a second wife. One Sauda and her husband were among the earliest converts to Islam. Her husband died as a result of which Sauda was helpless. She had a son to look after. It was then Muhammad took pity on her and also to meet his needs he married her.

Aisha, the daughter of Abu Baker, the first Caliph, was too young. But Abu Baker was too eager to cement his relationship with Muhammad. There is some dispute as to how old Aisha was. In any case she was not a child. Muhammad was persuaded to marry her, though the marriage was consummated long after. Aisha was intelligent, beautiful and sprightly. As a wife she accompanied her husband on many of his expeditions.

Here I feel tempted to narrate one incident in her life. On one occasion, Aisha left the caravan in order to answer call of nature. While returning she noticed that she had lost her necklace. She returned to search for it but the caravan left her, thinking that she was in the caravan. A young Arab, Safwan, noticing her alone and recognizing her gave his camel to her.

Because of this incident, Muhammad decreed that allegations of adultery should not be easily made. The marriage of Muhammad was not the result of love or carnal desire or conquest in war. Abu Baker was the closest companion of Muhammad and it was he who persuaded Muhammad to marry her. After the passing away of Muhammad, Aisha has contributed the largest number of Hadiths.

Hafsa, the widowed daughter of Umar, a close companion of Muhammad, was the fourth wife. Umar, it should be remembered, later became a caliph. Hafsa's husband had been fatally wounded in the Battle of Badr. In order to relieve the distress of Hafsa, Muhammad took her as his wife. Hafsa was not particularly pleasant. Accounts of her tell that she was temperamental. She was given to jealousy and anger. Muhammad could not have found her attractive to marry her. Even after marriage, she boasted that she argued and quarreled with the Prophet.

But kind hearted and of sweet disposition was Muhammad's fifth wife. Zainaba was the widow of a man who had died in the Battle of Uhud in which Muslims were defeated by the Quraish. She took care of the poor and the destitute. She was so much devoted to the welfare of the poor that she came to be known as "Umm al-Masakin" (mother of the downtrodden). After marriage, she lived only for three months.

Salama's husband had died in the Battle of Uhud and thus became a widow. Salama came from an illustrious family of her time, belonging to Banu Uhud. Though one of the earliest converts to Islam, she was not allowed to go to Medina by the Quraish. It was a form of persecution for having converted to Islam. However, she escaped. She had a son from the marriage but found herself pregnant at this time. Naturally Salama was despondent. It was at this time the Prophet offered his hand in marriage. She was now with two children. The Prophet assured her that he would take care of them as his own. What a thoughtfulness! Salama was deeply



touched and married him. A widow, with two children. Initially reluctant to marry, Muhammad married her. Can you say sex was a factor? Salama was the sixth wife.

Salama was no doubt attractive. She was very pious, fasting three times a month. She often prayed. Once the Prophet disapproved of her wearing a golden necklace. She immediately broke into pieces and distributed them among the poor. She was the last wife of the Prophet to die.

A lot of criticism and controversy surrounds the marriage of Zainab with the Prophet. She was the seventh wife. She was 38 years old when she became the wife of Muhammad. She had been earlier married to Zain bin Haroth who had been adopted by the Prophet. Muhammad desired that Zainab should marry Zain. It must be remembered that Zainab was a cousin of Muhammad who could have married her if he was sexually minded. In fact he had given a handsome present to Zainab on her marriage. Initially she was reluctant to marry Zain but the Quran (33-36) disapproved any one disregarding any decision of the Prophet. The marriage which was actually celebrated for eight years Hijrat turned out unhappy. Both Zainab and Zain were good persons in their own ways, but there was temperamental incompatibility. Zainab was unhappy that she was the wife of a man who was once a slave. Zain ultimately divorced her. Zainab could not be tossed about. Muhammad took her as his wife as a duty.

Some commentators have criticized that Muhammad by this marriage indulged in incestual relationship as Zain was his adopted son and Zainab was thus his daughter-in-law. But the Quran says:

*“We joined her in marriage to thee:  
In order that (in future)  
There may be no difficulty  
To the Believers in (the matter of) marriage with the wives of their  
adopted sons, when the latter have dissolved with the necessary  
(formality) (their marriage) with them.” (33-37)*

It was revealed that an adopted son cannot be son; filial affiliation has to be natural. Islam regarded adoption as pagan which is to be destroyed.

Juwairriya was the daughter of Harith Bin Abi Darbar, the chief of a powerful tribe of Banu Mustaliq. She was married to a scion of the

same tribe. Both she and her father were inveterate enemies of Muhammad. Her father had taken part in the Battle of Trenches. Juwairriya was taken as a prisoner in this war. Sometime later her father approached Muhammad and begged her to be released on payment of ransom money. Juwairriya herself suggested that the best course would be for her to marry the Prophet. Everyone was happy and the marriage took place. She was the eighth wife of Muhammad. She became a great friend of Aisha.

The ninth wife was Ramallah, also known as Umm Habiba. She was the daughter of Abu Sufiyan and his wife of Hind. They both hated Muhammad. But Ramallah and her husband had embraced Islam much against the wishes of her parents. They were harassed at Mecca and hence quietly escaped to Medina. Unfortunately, Ramallah's husband took to drinking which ultimately resulted in his death, thus making Ramallah a widow. Ramallah was a helpless woman inciting sympathy in Muhammad's heart. Feeling sorry for her the Prophet took her as his wife. She being one of the earliest converts to Islam and having steadfastly stood by the Prophet's religion, she was of great strength to Islam. Muhammad was thus tempted to wed her hoping that the marriage would help the cause of Islam. She was a widow and for the fact that she was a devout Muslim, Muhammad was attracted by her.

There was strength in her convictions. At the time of her marriage, Ramallah was 38 years old and her life she dedicated to Muhammad and the cause. She had two children from her first marriage but none from Muhammad whom she survived by nearly two decades. Her brother, Muawiya, had become the caliph.

Safiya came from a Jewish family. She was taken as a prisoner of war in the Battle of Khyber. She was married to a well known Jewish poet, Salm bin Mishkan. But the marriage was not successful and her husband divorced her. A Jewish warrior married her but unfortunately he was killed in the Battle of Khyber. It was thus that she was taken a prisoner of war and became a maid to one of the Prophet's companions. The other companions pointed out that she, being the daughter of a tribal chief, ought to be given due honour. She divorced once, widowed once, yet the Prophet decided to give her due honour by marrying her. Safiya was also known as Zainab. She became a Muslim and willingly married the Prophet. She bore the Prophet no children. Though converted to Islam, she continued to have faith for her Jewish kith and kin.

Maimunah bin Harith was the eleventh wife of the Prophet. She was divorced by her first husband and the second husband died in tragic circumstances. She was then 51 years of age and not a young damsel. Her condition was pitiable, though she was the sister-in-law of Abbas, Muhammad's uncle. Abbas was a devout Muslim whose canvassing led to the marriage of Muhammad and Maimunah. Incidentally, Khaled-bin-Waled, the Sword of Islam, was her nephew.

The marriage was between the members of two leading tribes. The citizens of Mecca resented this marriage and they did not allow it to take place in Mecca. So it was solemnized in another town. Maimunah was of a kind and charitable disposition. She liberated many slaves.

The story of Mary or Maria Qibitia needs to be told in some details. Mary and Shirin were sisters. They were slaves of Archbishop of Alexandria. They were not Arabs; they were not Muslims. The Archbishop gave them to Muhammad as slaves. Muhammad himself did not believe in slavery. He freed both of them. There is some difference of opinion between the Western writers and the Islamic ones. Though the Archbishop sent these two maidens to the Prophet but requested the latter to treat them with honour and dignity. It is not explained why a request was made to treat them with honour when they were presented to Muhammad. Anyway he gave Shirin to one of his companions.

As already mentioned, Mary was not an Arab, but she was treated on par with other wives. The Quran says:

*“O Prophet, why dost thou forbid (thyself) that which Allah has made lawful for thee? Seekest thou to please thy wives? And Allah is Forgiving, Merciful.”*

Mary abided with Muhammad. She was beautiful being white with good features. She had black hair. Muhammad was pleased with her. There is some controversy as to whether she became married to Muhammad.

Dr. Rafiq Zakaria says:

“Maria’s case is different; she gave birth to Muhammad’s son, Ibrahim, and has, therefore, been regarded by majority of jurists as his wife”.

(Muhammad and the Quran, p.44)

After Khadija, Maria was the only one who gave a son to Muhammad. There is nothing in history to show that Muhammad ever married. Even Zacharia, a devout Muslim, says it is regarded that she was the wife of the Prophet. Be that as it may, it is clearly established that she was treated with equality with the wives of Muhammad.

I have already extracted above the verse which enjoins Muslims to have only one wife; in exceptional circumstances and subject to certain conditions, he can marry two or three and not more than four. Marrying more than one wife is not the pillar of Islam; it is not a mandate but a conditional permission.

Yusuf Ali, authoritative translator of the Quran says:

“The unquestioned number of wives of the Times of Ignorance was now strictly limited to a maximum of four, provided you could treat them with perfect equality; in material things as well as in affection and immaterial things. As this condition is most difficult to fulfil, understand the recommendation to be towards monogamy.”

At this stage I must make a brief reference to “Rangila Rasul” case. In that case, one Rajpal was convicted in the lower Court of an offence under Section 153A of the Indian Penal Code on the ground that the author had made several derogatory remarks about the Prophet of Islam. He had made some unsavoury remarks about the many marriages of Muhammad who was, in consequence, called “Rangila Rasul”. In appeal the Lahore High Court set aside the conviction holding that Section 153A “was intended to persons from attack on a particular community as it exists at the present time and was not meant to stop polemics against religious leaders however scurrilous and in bad taste such attacks may be”. Actually, Section 153A made punishable an act which would cause enmity between two communities. “Rangila Rasool” case is of 1927. Subsequently, a new Section has been introduced.

We are dealing with the situation as it existed in the 17th Century when a man could take any number of wives. The restriction by

Muhammad was in fact revolutionary. It was with the advent of Christianity that monogamy became the rule in the West.

For the sake of record I am mentioning the five pillars of Islam which are as follows:-

1. Shahada – the declaration that there is no God but the God (Allah Shahada);
2. Salat requires Muslims to pray five times a day;
3. Zakat – gift of a fixed portion of your money to the poor – Necessity not merely desirability;
4. Sawm is to fast for thirty days during Ramadan; and
5. One must make at least one pilgrimage to Mecca during one's life – Haj.

The merriment about Muhammad having many marriages started in the West which amused that a man can have two wives. Even George Bernard Shaw commented that the celibacy of Jesus was more noble than the wallowing of Muhammad in harem. Muhammad did not have a harem. Raj Pal of “Rangila Rasul” fame echoed the feelings of the West clean forgetting that many of our Kings had many wives. Shivaji had seven; Bhupinder Singh of Patiala is said to have more than 100. The detestable system of ‘Kulin’ marriages allowed a man to take many wives, though some of them he never saw. Till Bombay Prevention of Bigamous Act was passed in 1937, at the instance of Lilavati Munshi, Hindus were in theory at least polygamous. In practice, however, Hindus were monogamous. It was emotionally and monetarily expensive to maintain two households.

It was only after December 1956, after the Hindu Marriages Act was passed, that bigamy became illegal among the Hindus. If you study census figures carefully, you will notice that there are marginally more bigamous marriages among Hindus than among Muslims. This is so in Rajasthan. Maybe, among poorer people, for economic reasons an additional hand is needed. The upshot of this article is that polygamy, though allowed under conditions among the Muslims, you will not find such marriages. Even in Muslim countries, such as Tunisia and Morocco, polygamy is legally

prohibited. With progress in time and progress in society and with the gradual liberation of women everywhere, bigamy and polygamy will disappear.

## Blasphemy

In the year 399 B.C, an old man of 70 years was arraigned before the citizens of Athens in what can be said to be the first trial in the history of mankind for blasphemy. His name was Socrates. As John Stuart Mill puts it, “there was once a man named Socrates, between whom and the legal authorities and public opinion of his time there took place a memorable collision.”<sup>1</sup> Five hundred persons constituted the jury who were to pronounce on the guilt or the innocence of Socrates, the accused.

The indictment against him was brought forward by Anytus, Meletus and Lycon and read as follows:

“Socrates is a public offender in that he does not recognise the gods that the State recognises, but introduces new demonical beings.”<sup>2</sup>

It was not the charge against Socrates that he was an atheist, which he was not. The indictment did not say that he did not believe in gods but that he did not believe in gods which the State of Athens recognised. In other words, he did not believe in ‘official’ gods. The gods which Socrates believed in were demonical. The charge in effect amounted to saying that not believing in the religion of the State amounted to an offence; an offence which it turned out to be, punishable with death.

The trial was before a popular court (or in a people’s court as in communist country). The citizens were mostly of the less educated class which itself was not the reason why Socrates was found to be guilty. (I am not touching upon another charge leveled against him namely “he has also offended by corrupting the youth”.)<sup>3</sup>

The defence of Socrates has been made available to posterity by Plato in “Apology”. Plato was said to be present at the trial and hence his account has been preferred to that of Xenophon who had left Athens three years before the trial.<sup>4</sup> There are different translations of Plato’s “Apology” but I have always read and therefore I will refer to the one included in *Journeys Through Philosophy* edited by Nicholas Capaldi and two others.<sup>5</sup>

From the contents of “Apology” and from what has been written about the trial it appears that Meletus was the main accuser. Socrates refers to the charge that “Socrates is doer of evil who corrupts the youth; and who does not believe in the gods of the State but has other new divinities of his own.”<sup>6</sup>

Socrates confronts Meletus that if he believed in some gods, he could not be an atheist. To the rhetorical question Socrates puts:

“Or, do you mean that I am an atheist simply and a teacher of atheism?”

Meletus replies: “I mean the latter that you are a complete atheist’.

Socrates points out that he does believe in the godhead of the Sun and Moon. Meletus tells the judges that Socrates does not believe in the godhead of the Sun and the Moon; on the contrary, he says that the Sun is stone and the Moon is earth. Socrates corrects him and reminds him that such a statement is attributable to Anaxagoras. Repeatedly Socrates insists that he does believe in gods though he does not make a positive statement that he believed in gods recognised by the State. At one place he says eloquently:

“For I believe that there are gods, and in a sense higher than that in which any of my accusers believe in them. And to you and to God I commit my cause, to be determined by you as best for you and me”.<sup>7</sup>

Socrates compared himself to a gadfly given to the State by God. He believed in the Oracle of Delphi which told that Socrates was a wiser man than any in Greece. He explains in “*Apology*” why he is so in two lengthy paragraphs. Briefly, referring to one particular person, who was regarded as a wise person, he says, “I am better off than he is, for he knows nothing and thinks he knows; I neither know nor think I know. In this latter particular, then, I seem to have slightly the advantage of him.”<sup>8</sup> Socrates could have bargained for acquittal or after his conviction could have escaped death by any one of the several methods suggested to him. He was defiant, almost to the point of inviting martyrdom.

“Men of Athens, I honour and love you but I shall obey God rather than you, and while I have life and strength I shall never cease from the practice and teaching of philosophy ...”<sup>9</sup> In the same paragraph he defiantly tells “Athenians”, “... and either acquit me, or not: but whatever you do, understand that I shall never alter my ways, not even if I have to die many times”.<sup>10</sup>

And “The difficulty my friends, is not to avoid death, but to avoid righteousness; for that runs faster than death.”<sup>11</sup>

In “*Apology*”, Socrates left the following to be remembered by generations of rationalists and humanists:

“... an unexamined life is not worth living...”<sup>12</sup>



He took leave of his accusers thus: "The hour of departure has arrived, and we go our ways; I to die and you to live. Which is better God only knows".<sup>13</sup>

Socrates was found guilty by a majority of 280 to 220. But he was sentenced to death by a larger majority of 360 to 140.<sup>14</sup>

The following judgement of Cicero on Socrates is quoted in most of the books dealing with Socrates:

"He called down philosophy from heaven, settled it in cities, introduced it into houses, and made it necessary for inquiries to be made on life and morals, good and evil."<sup>15</sup>

However, there is at least one contrary voice; it is as follows:

"As a corpus of evidence the Socratic sources engender little confidence, and the personality which emerges is so infuriatingly improbable that the reader begins to suspect that the father of martyrdom was too noble by half and deserved the hemlock cup twice over; for his insufferable arrogance as well as his caustic humour and irritating logic."<sup>16</sup>

We have already noticed that Socrates had clarified that the person who had said that the Sun was stone and the Moon was earth was not he but Anaxagoras. We must consider the thought of Anaxagoras who was more blasphemous than Socrates.

Anaxagoras (500- 428BC) was born in Clazamane in Asia Minor and came to Athens where he became a close friend of Pericles. He made it known that the object of his life was the investigation of Sun, Moon and heaven. He propounded that the Sun and the stars are glowing masses of rock and when their revolving motion wanes, the stones of the outer layer fall upon the earth as meteors. Elsewhere in Greece and Greek colonies there were philosophers in the fifth century B.C. who taught that the earth was spherical.

The Moon always has its bright portion turned towards the Sun; the earth was not the centre of the universe and it was one among the many planets revolving around a central fire.

All this in an age which was totally devoid of scientific instruments. Anaxagoras had carried his theories farther. Will Durant says:

*"These achievements: the foundation of meteorology, the correct explanation of eclipses, a rational hypothesis of planetary formation, the discovery of the borrowed light of the moon, and an*

*evolutionary conception of animal and human life made Anaxagoras at once the Copernicus and Darwin of his age.*"<sup>17</sup>

Anaxagoras sought natural explanations in all phenomena and it was necessary, as we do today, to deny the existence of the supernatural. Atheism was implicit in his teachings. It was, therefore, inevitable that he would get into trouble. An indictment of impiety was brought against him on the ground on fire. He was convicted and having no taste for hemlock, he fled from Athens. On receiving the news that Athenians had condemned him to death he said: "Nature has long since condemned both them and me."<sup>18</sup>

Prosecution and persecutions for blasphemy have continued since the days of Anaxagoras and Socrates at different times and in different countries till the present day. Only the venues are different; the prosecutors and the prosecuted are different. All Semitic Religions have been guilty of building up the doctrine of blasphemy. Among the Semitic religions, Christianity, the highly centralized and organised religion with a Church headed by an "infallible" person, has the worst record in this regard. Blasphemy being regarded as an offence against religion, religions which have a central corpus of doctrines have assailed blasphemy. An organised religion with a central authority, whether the Catholic Church or a regional church like the Anglican Church, is more militant. It becomes worse if religion is allied with or backed by political power or the State. In this case, treason against the gods is treated as the treason against the State. The concept and the law of blasphemy, unless confined to narrow limits, become destructive of freedom of thought and expression.

Before I proceed to examine blasphemy as viewed in different religions, I must attempt at an analysis of the concept. The word 'blasphemy' is derived from the Greek word *blasphemia* which means slander or offensive speech. It is one of the objectionable expressions which are treated as illegal. Other illegal expressions related to other fields have been conveniently classified as follows:

Political: Treason for extreme material,

Sedition: for serious material.

Personal: Defamation, written (Libel) or spoken(slander).

Social: A relatively new category covering such things as racism and sexism

Sexual: Obscenity for extreme material and indecency for mild material

Religious: Heresy for serious material, profanity for trivial material, and blasphemy for material in between.<sup>19</sup>

Regarding blasphemy as less serious than heresy, in my opinion is, not correct. Blasphemy is regarded as an offence against the community to various degrees, depending upon the identification of a religion with the society at large or the government. Heresy, on the other hand, is a matter of competing claims for doctrinal correctness. The dominant faction will call the minority faction as blasphemous.<sup>20</sup>

As the history of prosecution by religions will show, blasphemy is considered as an offence consisting of, what would be regarded by the prosecutors, scornful, disrespectful or insulting words or actions directed against God.

“In its gravest form, blasphemy is a deliberate, intentional attack on the honor or holiness of God. Blasphemy is generally expressed through speech by imprecations against God or commands for God to curse another, but it may also find expression through actions, shaking one’s fist towards the heavens or even in unexpressed thoughts.”<sup>21</sup>

Since anything said against what is held as sacred will be regarded as blasphemy and since religion, religious doctrine and religious objects of veneration are held sacred, disrespectful things said about the latter are regarded as blasphemous; Moses made it an offence punishable by death.

“And he that blasphemeth the name of the Lord, he shall be surely (put to death, and all the congregation shall certainly stone him...”<sup>22</sup>

I will shortly examine the concept of blasphemy in different religions, but before that let us see what the Romans did in this regard. We have already seen how Athenians dealt with blasphemy by making Anaxagoras run for his life and putting Socrates to death.

In pre-Christian days the Roman emperors tolerated the rivals of their own paganism because the rivals did not question the official and imperial cult. The persons who did not subscribe to Roman paganism made at least token obeisance to the gods and the heads of the state. They burnt incense before the statue of the emperor which was a sign and affirmation of loyalty to the empire. By law the Jews were exempted from emperor worship.

The Christians regarded emperor worship as polytheism and were instructed not to worship the emperor. Christians reviled the Roman gods which act was tantamount to blasphemy. Christians also repudiated the Roman theory that religion was subordinate to the State.

The result was the execution of Peter and Paul. The most notorious persecutor of the Christians was of course Nero who is said to have burnt Christians to light up his games.

Ordinarily the Romans were religious cynics who tolerated different faiths. But Christians by repudiating the Roman gods placed themselves in the position of atheists, regarded as enemies of the emperor fit to be killed. This was not the attitude of only the fiddler emperor. Antonius Pius was very pious. He had, it is said, no faults and he committed no crimes<sup>23</sup> but “being more religious, Antonius allowed more prosecution.”<sup>24</sup> This shows one religion is blasphemy of another.

Marcus Aurelius, the philosopher-emperor, has given to posterity some of the noblest thoughts. One would, therefore have thought that he would be tolerance personified. He was, except towards Christians. Persecutions of Christians which had been for some time suspended were renewed by this saintly Aurelius. He was persuaded that famine and pestilence which swept through his otherwise happy reign were due to the neglect and denial of Roman gods by the Christians. In 177 he issued an edict ordering punishment of sects that caused disturbances by “exciting the ill- balanced minds of men” with new winds of doctrine. Asked by an official what he should do with the Christians of Lloyns whom he has taken as prisoners, “Marcus replied that those who denied Christianity should be freed, but those who professed it should be put to death according to the law”.<sup>25</sup>

The concept of blasphemy is not the speciality of organised or scriptural religions. The Athenians and the Romans had no doctrinal religions, but had gods whom they believed in and whom they worshipped. Wherever there is god, there would be blasphemy.

Let me now turn to what I call regular world religions which are all Semitic. After examining these religions, I will look at the religions east of Aden which are mainly Hindu Dharma and Bauddha Dharma. Shem was the son of Noah (*Genesis* 10:21) and his descendants are called Semites in whom basically are included Jews, Arabs and Assyrians. In course of time “Semitic” came to be applied

to the Jews only. Hence when today the word “anti - Semitic” is used, it means anti- Jewish. I wish to examine religions, Judaism or Jewish religion, Christianity and Islam as belonging to a common ancestry. Christianity today is not strictly Semitic religion. In the beginning, all the converts were Jews; later the religion spread to different countries and embraced people of different races. Similarly, Islam, though a religion of Arabs (Semites) to begin with, rapidly spread in all directions of the world—Asia, Europe, Africa and to some extent Latin America and also to non- Arab races. However, it is advantageous to study them as Semitic religions because all these religions in their origin have descended from the blood of Abraham. In a very illuminating book *The Blood of Abraham*, Jimmy Carter has surveyed the history of the three religions and has suggested that despite the differences that have arisen among these three religions, their common origin viz, the blood of Abraham should inspire the adherents of these religions to bring peace in Palestine.

Judaism or the religion of Jews gives the utmost reverence and adoration to their god so much so that a Jew is not even supposed to utter the name of God. In Exodus 3:14 God does not disclose his name as indeed a god cannot have a name. He only says I AM THAT I AM which has been rendered as Yahweh or Yahveh. The actual pronunciation of the name remains a mystery. However, as it becomes necessary, I will say Jehovah as the Hebrew name of God.

In the religion of Jews, blasphemy consisted of not only insulting god or god’s name; it included uttering the name of god. The priests went into paroxysm when some one uttered the name of God; they would, in order to express their anger and anguish, rend their clothes. This is what happened when in the trial of Jesus, Jesus asserted that he was the son of god.

The roots of the concept of blasphemy as far as Jews are concerned are found in the Ten Commandments, particularly the following:

Thou shall have no other gods before me;

Thou shall not make unto thee any graven image;

Thou shall not take the name of the lord thy God in vain; for the Lord will not hold him guiltless that taketh his name in vain.

The Jews have difficulty in swearing in the name of god while giving evidence in Courts. Briefly, the Jewish law on blasphemy remained severely God- centred. All powers are vested in God.

Miracles cannot be and naturally would not be performed by man. Only Moses did perform some miracles under the direct command of Jehovah. Subsequent prophets or kings like David could not and did not perform any miracles. Nor can a man forgive another man's sins; only God can forgive sins.

A practice which is held very sacred is Sabbath. In the Ten Commandments Moses is asked to remember the Sabbath day, to keep it holy.

Six days shall thou labour, and do all thy work.

But the seventh day is the Sabbath of the Lord thy God; in it thou shall not do any work, thou, nor thy son, nor thy daughter, thy manservant, nor thy maidservant, nor thy cattle nor thy stranger that is within gates.<sup>26</sup>

The embargo is total; you cannot make even your cattle work on the Sabbath day.

It is easier to understand blasphemy among the Jews by studying how they treated and condemned Jesus for his blasphemous word and deeds.

In the first place, Jesus flagrantly violated the law of Sabbath Day and trivialised the Commandment relating to Sabbath. In Jerusalem there was a pool called Bethesda in Hebrew. At the time of a particular Jewish festival an angel went into the pool and disturbed the water. If after this people who were sick especially the lame and the paralysed took a dip into the water, they would be cured of their disease. There was one man, ailing for a long time, lying by the poolside but was unable to enter the pool. Jesus noticing his helpless situation told him

“Arise, pick up your mat and walk”

That man cured, got up and walked away.

It was the day of Sabbath. Jesus committed three blasphemous acts. One he performed a miracle which was forbidden. That man whom he cured could have and should have entered the pool and cured by the divine miracle.

Secondly, Jesus performed the miracle on Sabbath day. When the Jews wanted to slay him for his offence: “... Jesus answered them. My father worked hitherto, and I work.”<sup>27</sup>

Jesus ridicules his accusers by pointing out that the Jews circumcise a man on Sabbath Day. If this could be done, how could they find fault with Jesus who did a good thing on Sabbath Day. By comparing his Sabbath healing to Sabbath circumcision, Jesus aggravated the offence. It has also been said that Jesus abetted the breach of the Commandment regarding the Sabbath Day by asking the cured man to walk by carrying the burden of his sleeping mat.

The third sin of Jesus in this incident was his reference to God as his father. A man cannot be the son of God nor can God be the father of a man except in a proverbial sense. Jesus on more than one occasion proclaimed himself as the son of God.

On Jesus' defiance of the prohibitory edict of Sabbath Day, *Mathew:15* gives some more examples. Jesus' disciples plucked the ears of corn to eat on the Sabbath Day and Jesus justified it. He also cured a man's withered hand by asking him to stretch it out. He asked the Jews if a sheep belonging to them fell into a pit would they not lift it out even on a Sabbath Day?

Another instance of the act of blasphemy on the part of Jesus was the one involving an adulteress. This is the well-known episode in the life of Jesus which is cited for showing his compassion and forgiveness. But it was blatantly an act of blasphemy in Jewish law. Under the then Jewish law, adultery was a sin with a different meaning for men and for women. If a married man had a sexual relations with an unmarried, unbetrothed woman, he would not be guilty of adultery. But a married woman would be adulterous if she had sexual relations with any man other than her husband. The punishment for an adulteress was death by stoning. Consent played no role in these reckonings. Adultery was not seen as merely the betrayal of the husband but as an offence against God.<sup>28</sup>

Quran (Sura 24 "Nur") deals with the subject of adultery. Any person, whether man or woman, committing adultery is to be punished with hundred lashes publicly and "let a party of the Believers witness their punishment". A man guilty of adultery can marry a woman who has been guilty of adultery or an unbeliever may marry a Muslim woman guilty of adultery. In Islam, adultery is regarded not only as a shameful act in itself but also as the destroyer of the foundation of family.

In England, adultery is not punishable, though it can be the basis of a suit for damages.

In India, a man having sexual intercourse with a married woman is guilty of the offence of adultery. If, however, this act has been indulged in with the consent or connivance of the husband of the woman, it would not be an offence. Further, the woman concerned commits no offence, not even the abetment of the offence committed by her paramour. (Section 497 of Indian Penal Code)

A couple of facts which may be regarded as curious also be noted. Prosecution of the adulterer cannot be commenced except on a complaint by the husband who alone is regarded as the aggrieved party. (Section 198 of the Criminal Procedure Code) Why is the wife allowed to go scot-free? An interesting reason was given by the authors of the Penal Code which was drafted one hundred fifty one years ago, namely 1862:

“To make laws for punishing the inconstancy of the wife while the law admits the privilege of the husband to fill his zenana with women is a course which we are most reluctant to adopt.”

Is it discriminatory that the man is liable to be punished while the woman is protected from prosecution?

No, said the Supreme Court in *Soumitri Vishnu v. Union of India* (AIR 1985 SC 1618). The Court said that, in the first place, the legislature is ‘entitled to deal with evil where it is felt and seen most. The woman is usually the passive participant in the act. Dealing with the argument that women, both married and unmarried, have changed their lifestyle over the years and there are several cases where women have wrecked the peace and happiness of marital homes, the Court observed:

“We hope that this is not too right but an under- inclusive definition is not necessarily discriminatory. The alleged transformation in feminine attitude, for good or bad, may justly engage the attention of lawmakers when reform of penal law is undertaken, They may enlarge the definition of ‘adultery’ to keep pace with moving times.”

Or, as I may add, they may delete Section 497 from the Penal Code.

Returning to the story of the adulteress, a woman caught in the act of adultery was brought to Jesus by Jewish priests who reminded Jesus that the law of the Moses required her to be stoned. What would Jesus do? This was a trap. Would he ignore the Jewish law? They persisted with the question. Jesus replied:

“He that is without sin among you, let him first cast a stone at her.”



The priests and the crowd that had accompanied them melted away. Jesus asked the woman whether any man had condemned her (held her guilty), she replied that none had. To this Jesus responded:

“Neither do I condemn thee go, and sin no more.” (John 8:1 to 11)

Jesus indulged in acts of blasphemy by not condemning her; refusing to follow the Law of Moses; forgiving her when God alone could forgive her.

The ultimate act of blasphemy, which made his crucifixion inevitable, was his claim that God was his father and he was the son of God. This claim of his is found at different places in the New Testament. In the trial he gave answers which implied that he was the son of god. The high priest rent his clothes shouting that Jesus had committed blasphemy and no witnesses were necessary. To Pontius Pilate, the Roman governor, he gave a reply which implied that he was the king of Jews. In the gospel of Mark (14:61-65) Jesus answers more specifically that he is the son of the Blessed.

In due course, Christianity became an established religion. What was regarded by the Jews of Jesus' time as blasphemy became a religion. Successful blasphemy has become a religion. This became so even in the case of Islam as will be shown later. The Christians and in particular the Catholic Church built up the concept of blasphemy to such an extent that blasphemy became so bloated with the meanings that it burst all bounds, becoming dangerous in the beginning but by now meaningless.

Initially the Church confused blasphemy with heresy which only meant factionalism or a difference of opinion about the doctrines. Christianity as a religion went through different stages in the early years. Only some of the noblest persons in the history of mankind became the victims of persecution in the hands of the Church with which the State became allied. The persecution was by the church; the prosecution was by the State.

It was in England that blasphemy developed both in theology and in law to the extreme extent. I will, therefore, trace the history of blasphemy in England in some details. But before I do so, I must give you the story of the foremost philosopher of Italian renaissance who was burnt at the stakes for blasphemy in 1600.

“Copernicus had enlarged the world. Who would now enlarge God, and preconceive deity in terms worthy of those numberless and imperturbable galaxies? Bruno tried.”<sup>29</sup> Born in 1548, Giordano

Bruno wandered a lot both geographically and philosophically. He visited Oxford in 1583 where he was heckled while giving a lecture on the immortality of soul and the planetary system of Copernicus. Later he called Oxford the “widow of sound learning, a constellation of pedantic and most ignorance and perception, mixed with rustic incivility that would exhaust the patience of Job?” But Bruno was not Job. Durants say that if philosophy means calm perspective, reasoned restraint, ability to see all sides, tolerance of difference, even sympathy for simpletons, Bruno was no philosopher. He said and wrote enough to invite the wrath of the Church.

Inquisition caught him in 1592 and after eight years of imprisonment and interrogation, he was turned over by the Pope to the secular arm to be burnt at the stakes. If he had recanted, he would have saved his life but he refused to recant. On 19th February, 1600, the impenitent Bruno was bound to an iron stake on a pyre in the Piazza Campo de Fiori and was burnt alive in the presence of a large gathering. I have mentioned the place where he was burnt purposely because on that spot his statue was erected in 1889 with subscriptions collected from all quarters of the world.

It is well known that after the Reformation the hegemony of the Catholic Church waned over large parts of Europe. The breach of England from the Roman Catholic Church took place during the reign of Henry VIII. Protestantism was the religion of both England and Holland in the 17th Century. But Protestantism itself broke up into several sects and sub-sects over the years. At this point I will take note of one sect which emerged in the 17th Century. It was then known as Socinianism after its initial propounder, Faustus Socinus and it became Unitarianism later. The distinguishing tenet of this sect was and is anti-Trinitarianism that is, the rejection of the doctrine of Trinity and the deity of Christ. Socinianism disavowed the Christians doctrines of atonement and original sin.

One Paul Best who was a Socinian was arrested in 1645 and his case of blasphemy was tried by the Committees of the Parliament itself, in several stages over a period of three years. He was ultimately quietly let off. His case is important only for the purpose of noting that the denial of the doctrine of Trinity was regarded and in fact held to be blasphemy. Around the same time another Unitarian, John Biddle, came to the notice of the authorities as a blasphemer. He was a great scholar and, therefore, the authorities regarded him as a great threat. He was arrested and jailed; he was found guilty of blasphemy. Biddle was also allowed to go without punishment.

But Parliament passed the Blasphemy Act in 1648 which provided for death sentence for blasphemy and gave definition of blasphemy. Blasphemy was defined as advocating that there was no God; the Three are not one Eternal God; Christ is not equal with the Father; Christ is not the son of God; Christ did not rise from the dead; Christ did not ascend to heaven; and the Holy Scripture is not the word of God.

By a peculiar combination of law and politics, the Act of 1648 became obsolete by 1653. But prosecution for blasphemy was now taken over by the judges. In 1676 one John Taylor was hauled up for blasphemy before Lord Chief Justice Mathew Hale who convicted Taylor not under a statute but under what the Chief Justice called a common law of crime of blasphemy. He held that “Christianity is a parcel of laws of England: and therefore to reproach the Christian religion is to speak in subversion of the law”. By the invocation of the same fiction there were some prosecutions in America. Thomas Jefferson dubbed this doctrine as judicial forgery. However there have not been many prosecutions for blasphemy in the United States. In one case it was held that an idea was protected regardless of its offensiveness. Freedom of speech was said to be a “preferred liberty” and was upheld against consideration of public welfare. Only speech creating a “clear and present danger” of breach of the peace could be prosecuted. It has been suggested that all but deliberately abusive and obscene utterances inciting the breach of peace would be protected.<sup>30</sup> Blasphemy has never been a serious matter in the U.S. and let us leave the U.S. and return to England.

In the 19th Century, prosecutions for blasphemy were galore. I will not go into the details except to mention that some of the high intellectuals who were free thinkers spent several years in jail. Among them were Richard Carlyle, George Watts, George Holyoake and Charles Bradlaugh. However, some fresh thinking on the subject was set in motion by the appearance in 1833 of a book *Considerations on the Law of Libel, as Relating to Publications on the Subject of Religion*. The author’s name was given as “John Search” but the author was said to be Archbishop Richard Whitely of Dublin. The plea for reconsideration of the law and doctrine of blasphemy made by this book was supported by Reverend Joseph Blanco, a firm believer in the Holy Bible and in Jesus as the Saviour. Baptists generally were opposed to prosecutions for blasphemy. The sum and substance of the arguments for reconsideration of the law of blasphemy was: The Christians believed that only their religion was true and that all other religions

were false and yet the Christians wished to exclude the possibility of their belief being proved wrong.

The Royal Commission of 1841, consisting of distinguished academic lawyers and appointed for the purpose of reviewing criminal law and procedure, examined the law relating to blasphemy although rather summarily. Without referring to the reasoned arguments for abolishing the crime of blasphemy, even the arguments of devout Christians like John Search, the Commission justified the retention of the law for the punishment of offences against religion on two grounds.

First, religion served the purpose of securing obedience to law, especially among the ignorant and the unthinking. Secondly, most people in civilised societies regarded religion as worthy of respect as a law which protects “the feelings and opinions of the community on this subject from wanton assault’, must remain. The Commissioners opined that” open blasphemies against God and wanton utterances of reviling and contentious language respecting Christianity, ought to be prevented by the law of every Christian country.” This was an attempt to save the penalty ostensibly on temporal grounds in a Christian country. The contradiction involved in retaining the law of blasphemy on secular grounds in a religious society was not even noticed by the Royal Commission. The subsequent history of blasphemy was mostly on the lines of legal development and hence I will not mention the details of too many cases. But note must be taken of three cases.

The first one is *Bowman v. Secular Society Ltd.*, (1917) wherein it was held that the objectives of the Society, namely promotion of secularisation, banning religious tests, excluding religious teaching from public schools and abolishing secondary laws and blasphemy laws were not illegal. This case is famous for the opinion given by lord Sumner in memorable words. Extracts from this opinion are quoted in several books.<sup>31</sup>

The next case was known as *Rib Tickler case* (1921) after the title of the book sold by one John Gott. Gott compared Jesus to a circus clown because he rode into Jerusalem on the back of donkey. John Gott was an embarrassing character even for free thinkers. He was a cantankerous atheist who got into trouble repeatedly. Even a moderate judge would have little sympathy for Gott. The judge who tried him was a ‘devout’ Christian whose summing up to the jury was calculated to hold him guilty. He was sentenced to nine months’ hard labour which was regarded as savage. The sentence was not

disturbed by the appeal Court where the Chief Justice dubbed John Gott as a dangerous person. Poor John Gott died immediately after he had served his sentence.

I have referred to two cases which dealt with the law of blasphemy. The first case, *Bowman*, held that promotion of secularism and non-Christian practices was not blasphemous. It was a civil case. The second was a criminal prosecution. After the latter case, which was in 1921, there was no prosecution for blasphemy for over 50 years. Comment has been made on 'the curious conservatism of English legislators, who have continually preferred to allow a bad or unpopular law to remain on the Statute Book and to become dormant rather than to repeal it'.<sup>32</sup>

That brings me to the third case. *Gay News* was a fortnightly of homosexuals. It published a poem which portrayed Jesus as a homo sexual. The State itself did not prosecute the author of the poem and publisher of the magazine, maybe because none but the gays read the magazine. Some months after the publication of the offending material, the magazine fell into the hands of one Mrs. Mary Whitehouse who launched private prosecution. The judge was Alan King-Hamilton, a prominent Jew. He laid down what is regarded as the objective test (wherein the intent of the accused was irrelevant.

"The offence of blasphemous libel today occurs when there is published anything concerning God, Christ or the Christian religion in terms scurrilous, abusive or offensive as to outrage the feelings of any member or a sympathiser with the Christian religion and would lead to a breach of the peace."<sup>33</sup>

This view of law was approved by the appeals Court and later by the House of Lords by a majority of 3:2. The minority held that it was necessary for the prosecution to prove a wicked intent on the part of the offender in the sense that subjectively it was his intention to shock and arouse resentment among the believing Christians. Lenord W. Levy mentions that one bishop of the Church of England had said that Jesus might have been gay; it had no criminal repercussions.<sup>34</sup>

Summing up, I wish to point out that the concept of blasphemy - in the case of Jews centred on God Jehovah. Lord Immanuel Jacobovits, the chief Rabbi of England, has stated that 'the Jewish definition of blasphemy is confined to 'cursing God' and does not include an affront to any prophet, not even Moses, in our case'.<sup>35</sup> In the case of Christians it revolved around the divinity of Jesus. In the

case of Islam, which I will now examine, it is almost entirely about the Prophet Muhammad. None could take liberties with the name and memory of, Prophet Muhammad. A Persian couplet says:

*Ba Khuda deewana basho,*

*Ba Muhammad hoshiyar.*

(You may play madly with God; but be careful with Muhammad)

This despite the fact that Muhammad is not regarded as the son of God nor in any divine terms. At best he was the perfect person who was fit to receive word from Allah.

Blasphemy in Islam became the subject of widespread discussion in the wake of Salman Rushdie's *Satanic Verses* and the well-known fatwa of Ayatollah Khomeini, the Iranian cleric, that Muslims wherever they are should kill Rushdie. In other words, Khomeini passed a sentence of death on Rushdie who was a British citizen. It was a direct instigation to Muslims who were residing in Britain to kill Rushdie for an act which was not an offence under the law of the land where those Muslims and Salman Rushdie lived.

Before I proceed to discuss blasphemy under Islam, I should point that when Muhammad preached monotheism *la ilah il Allah* was in fact challenging the rampant polytheism of his days in Arabia. He attacked idol worship which centred on Kaaba. Within Kaaba, in pre-Islamic days, were several idols representing multiplicity of gods. Was it not blasphemous on his part to do so? The established pagan religion, if it could be called a religion, and the idols the Arabs venerated were directly challenged by Muhammad. There was no State in Arabia nor a government; so there could not be a prosecution of Muhammad. But there was persecution to escape. Muhammad "migrated" to Yathrib which later came to be called Medina. Muhammad did to Arab gods what Christianity did to the gods of Roman Emperors.

Fortunately for Muhammad, there was no State or political government in Arabia. The organisation consisted of kinships or families united in tribes. The Arab's duty was entirely to his tribe for which entity he would lay down his life. That was the extent of his patriotism. Each tribe was headed by a Chieftain who was selected by virtue of his character or wealth or military prowess. Kaaba to these tribes was not only holy but also a source of income because it was the centre of pilgrimage for Arabs.

Muhammad often went to Kaaba and lectured on the one and only god viz., Allah to the pilgrims who came there to worship the gods represented by the idols within the Kaaba. He attacked their idolatry. This meant the denial of legitimacy of what Arabs held to be sacred. Escaping from the Meccan persecutors Muhammad went to Yathrib (Medina) and in due course Islam was embraced by the inhabitants of Arabian Peninsula. As I have mentioned earlier, successful blasphemy becomes religion. It happened in the case of Christianity; it came to happen in the case of Islam.

It should be mentioned here that Muhammad was not only the head of religion but was also the head of the State whose capital was then Medina. Asma, a Medinese poetess, who attacked Muhammad in her rhymes, was stabbed to death by a Moslem; Muhammad commended his act. Afak, a satirist who made fun of Muhammad, was slain when he was sleeping in his courtyard. The third victim of Muslim's wrath was one Kab ibn al-Ashraf, a Medinese poet, who prodded Quereshis to avenge their defeat at the hands of Muhammad. "Who will ease me of this man?", cried Muhammad. Next day the offender's head was laid at the feet of Muhammad. These killings have been justified on the ground that the acts inviting the punishments were acts of treason. The punishments were not, according to some Islamic scholars, for blasphemy. Blasphemy, it is said, is not punishable under Islam; the blasphemer is accountable only to God.

The history of Muslims belies this claim. Sufis, who claimed to come face to face with the ultimate God, were victims of prosecution. Husein al- Hallaji, who said that God was in him and he was in God, was arrested, scourged with thousand stripes and burned to death in 922. Khomeini's fiat or fatwa is a recent example. Taslima Nasreen, a Bangla Deshi author, who had said nothing about Islam, was threatened with death because, it is suspected, in her novel *Lajja* she blamed Muslim fundamentalists for their atrocities against the Hindus. Incidentally it must be mentioned that Taslima Nasreen is a self-confessed unrepentant atheist. In the wake of the campaign against her in 1994, Mualana Ziau Hasan, the secretary- General of Bangladesh Islamic Revolutionary Movement, had stated that Allah had not empowered any human being on earth to punish or pardon Taslima even if she had deliberately insulted the Quranic teachings.

Atheism or even agnosticism is a risky belief in Islamic countries. In Saudi Arabia, a newspaper carried a cartoon strip which seemed to

doubt the existence of god (nothing to do with Islam or the Prophet).The editor who was a Keralite, was sentenced to six years imprisonment. In Pakistan the Christians are walking on razor's edge. In 1995, a Christian member of the National Assembly during the course of his speech read a passage from the Bible, which stated that Jesus was the son of God. The other members immediately denounced him for his blasphemy. How is it blasphemy?

In Sura 19, named Maryam, you will find the following verses:

88. They say “(God) most Gracious Has begotten a son”.

89. Indeed you have put forth a thing most monstrous!

90. At it the skies are ready to burst, the earth, to split as under, and the mountains to fall down In utter ruin.

91. That they should invoke a son for (God) Most Gracious.

92. For it is not consonant With the majesty of (God) Most Gracious that He should beget a Son. <sup>36</sup>

Though Muhammad conceded the legitimacy of prophets who had preceded him, he questioned some of the fundamentals of Christianity such as the divinity of Christ. Muhammad called Jesus a righteous prophet (Sura VI Anam Verse 85) but he denied that Christ was crucified. (See Sura IV Nisaa Verse 157)

‘That they (the Jews) said (in boast),

We killed Christ Jesus The son of Mary, the Apostle of God;’ - But they killed him not, Nor crucified him, ...”

If Jesus was not crucified on Friday, obviously he could not have been resurrected. In effect Muhammad knocked out the three pillars of Christian faith: divinity of Jesus, his crucifixion (symbolised by the veneration of the Cross) and Resurrection.

The Christians in Pakistan are free to practice their religion but cannot propound the concepts of Bible which are superseded by the Quran.

I wish to point out at this stage some of the legal provisions which show the gradations of blasphemy in Pakistan. The Penal Code of India continued to be in force in Pakistan after that State was born. Section 295A, which is common to India and Pakistan, provides a sentence of imprisonment of two years for any intentional act of insulting the religion of any class of persons. A new section, Section 295B, was inserted in Pakistan Penal Code in 1982, providing for



imprisonment for life for the offence of willfully defiling the Holy Quran or an extract thereof. Any critical remark about the Quran which is believed by the Muslims to be the word of God would invite punishment under this Section. Any one defiling the sacred religious books of non-Muslims will suffer imprisonment for life. There is another higher degree of blasphemy in Pakistan. Section 295C of Pakistan Penal Code reads as follows:

“Whoever by words, either spoken or written, or by any imputation, innuendo, or insinuation, directly or indirectly *defiles the sacred name of the Holy Prophet Muhammad* (Peace Be Upon Him) shall be punished with death and shall be liable to fine?” (Emphasis added)

In this connection, another fact needs to be noted. As is well known, when life in Mecca became dangerous, Muhammad escaped from his house and along with Abu Bakr hid for several days in a cavern of Mount Thaur, a hill to the south of Mecca. When it appeared somewhat safe, procuring two camels and travelling by routes not used by others, he reached Yathrib. This escape from Mecca and the travel to Mecca has been so described as the Great Flight. It has been so described by the Rt. Hon’ble Mr. Amir All in his *The Spirit of Islam*.<sup>37</sup> Mr. Amir All describes them as fugitives. Muhammad Marmaduke Pickthall, an English convert to Islam, in the account of the Prophet’s life, given in the introduction of his translation of Quran, calls it “Hijrah the Flight from Mecca to Yathrib” and also calls the two as fugitives.

Maulana Muhammad Ali, a great scholar and author of several books on Islam, has written a very authoritative translation of and commentary on Holy Quran. In his explanation on Verse 12 of Sura 3, the Maulana writes: “There is only one person in history whose flight has become a memorable fact as the beginning of an Era. It was Muhammad (on whom be peace) who, attended by one faithful companion, *fled from the drawn swords of the guards that surrounded his house.*” (Emphasis added)

The Maulana mentions that the battle of Badr took place in the second year of the Flight. In his introduction to Mulla’s Mohmeddan Law (edited by him), Justice M. Hidayatullah has stated that the Flight marked the beginning of Islamic New Year.

Yet the Muslims in Maharashtra indulged in rioting when in a text book in Marathi meant for school children the Prophet’s leaving Mecca for Yathrib was described as Palayan (flight)

Recall the Persian

Ba khuda deewana basho,

Ba muhammad hoshiyar.

I have outlined the law of blasphemy known in Islam as the *Tauhin-e-Risalat*. The conviction of a 14 - year old Christian boy in Pakistan made the human rights activists sit up and take note of the abuses to which this law can be put. Four years ago, Bishop John Joseph was driven to commit suicide when Yaqub Masib, a non-descript Christian, was sentenced to death under the blasphemy law. I am not referring to the lawless acts of fundamentalists and fanatics who have been attacking the minorities and their places of worship); Even the Shias are not safe in Pakistan.

It is not; therefore, correct to say that blasphemy is not punishable in Islam or that the concept of blasphemy is alien to Islam. The following acts are regarded as blasphemous in Islam:

Belief in transmigration of soul or reincarnation, because this amounts to repudiating the belief in life-after-death and the world of the Hereafter  
Rejecting the obligatory nature of rituals such as Namaz or fasting during Ramadan.

Using swear words in respect of messengers of God, Apostles and Prophets and Angels recognised as such by the Holy Quran.

Using belittling words in respect of the moral character or the way of life of Prophet Muhammad.<sup>38</sup>

The rationale behind the concept of blasphemy is easy to understand. Absolute faith is the glue that holds the organised religions. Reduction in the number of adherents of the religion is a great threat to such a religion. Blasphemy constitutes a threat to the strength of a religion. A weak religion may lose its followers to other religions which may be regarded as more attractive.

To summarise, blasphemy historically has consisted of swearing in the name of God, disobeying the laws regarded as sacred, doubting the existence of God, questioning the legitimacy of beliefs, criticising the Prophets and their actions. To put succinctly, anything done or said which would loosen the glue that holds the belief is regarded as blasphemy. This is true of all religions west of Aden.

Blasphemy laws have been destructive of free thought and enlightenment especially when they are allied with political power. A State which regards itself as the guardian of one particular religion, not of religions generally has been the instrument of tyranny.

Let us now turn to the religions of east of Aden. They are two: Hinduism and Buddhism. In both these religions, blasphemy as we have known it is absent. I am not unaware of the fact that some rulers have enforced the caste system sanctioned by the Smritis. One cannot ignore the fact that the Brahmin rulers of Maharashtra viz. Peshwas sustained the concept of the superiority of the Brahmin caste. Untouchability has been practised through the centuries with great cruelty. The alliance of a central power with a particular faith has however been absent in Hindu India.

If we examine the Hindu Dharma, we notice that there is no doctrine which can be said to be central to Hindu Dharma. There is no particular book which is regarded as sacred by all the Hindus. There is no prophet of Hindus. The variety of beliefs, doctrines, practices, many of which are mutually inconsistent, make it impossible to regard Hindu Dharma as a faith which is held together. There is not even a single God among the Hindus. Philosophers and religious Swamis may rationalise the idolatry among the Hindus but to Reason all this appears obnoxious. Are the Vedas and Upanishads the basis of Hindu religion? They did not speak of innumerable gods who emerged later. The Hindus are great inventors of gods. Take, for example Satya Narayan a god who was invented only in 19<sup>th</sup> Century in Bengal and who has now firmly established himself in Maharashtra and Karnataka.

It is interesting to notice how sacredly the Hindus treat the gods they worship. Phallic worship is widespread in India. How did it come into vogue? There are several versions without much variation on the basic nature of the practice. When Shiva had been aroused by Kama, Shiva started suffering from the disease of burning desire to have intercourse with Parvati. Since Shiva was known to be in the habit of seducing sages' wives in the pine forest, the sages uttered a curse which made the linga fall to the earth. The wanderings of the linga began to cause havoc. The sages honoured Shiva who responded that if his linga is held in the yoni of Parvati, it would be calm. Devi, i.e. Parvati was propitiated to accept the ling. Thus the linga-worship was established.<sup>39</sup> There are more repulsive accounts of the origin of linga- worship. Let us ignore them.

What is the shape or form of the phallus which is being worshipped by the Hindus? Nirad C. Chaudhari explains:

“Now, the phallus as it is made today in stone and can be bought in Benares, has no ambiguity whatever. It has the form of the male member, very magnified, and it stands on a platform which is ritualistically called the *gauri-patta* (slab of Gauri or Parvati) but is actually a stylised representation of the vulva and is also quite recognisable as such. Thus the combination is unnatural; for it shows the penis coming out of the vagina”.<sup>40</sup>

Parvati had prepared a statue of the scurf of her body and blowing life into it, ordered it to stand guard outside her abode and not to allow anyone to enter. After his wanderings Shiva came where the guard was posted. On being denied admission to the abode, Shiva cut off his head. On learning that it was Parvati’s creature, he agreed to replace the head with the head of the first being he met. The first being he met happened to be an elephant. That is how “Ganesh” (lord of the herd) was born.

The birth of Skand-kartikeya-Shanmugam is also amusing. There are several versions, but the common theme is the same. Shiva was having a prolonged intercourse with Parvati and the gods became worried. They persuaded Agni to intercept the coitus. Shiva placed his semen in the mouth of Agni (the bird) who went and vomited it in a lake where the wives of six of the seven sages (Saptarishi) were bathing. The seed of Shiva entered the bodies of these six ladies (collectively called *Krittikas*). Later the seed broke out of their bodies and the six parts joined to form one body with six heads. This is the god who is very popular in South. He is called Skand because he is the product of what is spilled (Skand); he is called Kartikeya because he is the son of Krittika. Incidentally, because of this “adultery” on the part of the wives of the six sages, the six sages cursed them to become a constellation which is now the constellation known as Krittika, consisting of six stars and forming the third of the 27 lunar mansions (in English, Pleiades). Arundhati, the wife of the seventh sage, Vasishtha, was unaffected by the spill and hence dwells separately in the sky. To complete the picture, the seven sages (the *Saptarshis*) constitute a separate constellation (Ursa Major).

Shiva’s family is complete with Aiyaner, the folk deity of Tamil Nadu. He is also called Aiyappan. He was born from Shiva who was seduced by Vishnu in female form. It is believed that this deity arose in the folklore of Tamil Nadu as late as in the 19th century.

Despite his arrival so late in the Hindu pantheon, his temple is there in almost every village in Tamil Nadu. Though a Tamilian, Aiyappan's main temple is in Kerala.

I wish to point out an absurd form of idol worship in Maharashtra. In Ganapatipule, a village of Ratnagiri District, there is a temple of an idol of Ganapati which is said to be *Swayambhoo* (formed on his own). The idol has no head. The priests pointed out, and the literature locally available mentions, that the hill of which the idol is a part is the head of this Ganapati idol which means that the whole hill forms one idol. So if you want to do "*pradakshina*" of the idol, you have to circumambulate the entire hill!

Mention must now be made of a mythological story involving Vishnu. There was an asur named Jalandhar and his wife was Vrinda. Vrinda's fidelity to her husband made him invincible. The gods approached Vishnu who under the guise of Jalandhar violated her. By any test Vishnu raped Vrinda. A person commits the rape of a woman if her consent for the sexual intercourse is obtained by making her believe that he is her husband. The rape of Vrinda destroyed all the strength of Jalandhar who was then killed by the gods. When Vrinda realised what had happened, she threw herself on the funeral pyre and reduced herself to ashes. In due course, out of these ashes grew a plant called Tulsi. The earth containing the ash with the plant came to be known as Vrindavan. Vishnu's infatuation for Vrinda got transferred to Tulsi. Vishnu's worshippers are perpetuating Vishnu's perfidy by performing the marriage of Tulsi (Tulsivivah) with Vishnu on the 12<sup>th</sup> day of bright half of Kartika. What is distressing is the fact that Hindu women enthusiastically participate in this ceremony.

There are many such mythological stories which could be read and forgotten like Greek mythologies. But the Hindus' acceptance of these gods as sacred and worthy of worship is blasphemous. In effect, there is no blasphemy in Hindu religion.

The relationship between blasphemy and Buddhism must now be discussed. In the wake of Gay News trial, Buddhists in England were to some extent disturbed. Their fear was that they might be prosecuted because Buddhism has rejected the notion of personal God as detrimental to the moral and spiritual development of mankind. The fear was based upon the possibility of being found guilty for criticising the moral character of Jesus from Buddhist point of view. Sangharakshita (D.P.E. Lingwood ) in his booklet *Buddhism and Blasphemy* <sup>41</sup> regarded this possibility as a Damocles

sword and was not comfortable with the assurance that prosecution of Buddhists as improbable. “A Damocles will derive little comfort from the argument that the sword suspended above his head by a single hair is unlikely to fall.”<sup>42</sup> In any case, denial of the existence of God is not blasphemy in the eyes of Buddhism because Buddhism is based on the non-acceptance of the existence of God.

The next question is whether any abusive things said against the three Jewels constitute blasphemy. Buddha spiritually enlightened human teacher, the Dharma the teaching of the Way to enlightenment, and the Sangh the spiritual community of disciples — these three jewels are objects of veneration for Buddhists. Sangharakshita, in the book cited earlier, has analysed the concept of blasphemy and has canvassed the view that fear of losing the followers is a very strong component of the doctrine of blasphemy. Such fear does not haunt the Buddhists. Example in this regard was set by the Buddha himself. When some of his disciples were speaking of Buddha and his teachings in derogatory words, the Buddha’s response was as follows:

“Bhikkus, if outsiders should speak against me, or against the Dharma, or against Sangh, you should not on that account either bear malice, or suffer heart burning, or feel ill will. If you, on that account, should be angry and hurt, that would stand in the way of your own self-conquest. If, when others speak against us, you feel angry at that, and displeased, would you then be able to judge how far that speech of theirs is well said or ill?”

‘That will not be so, sir.’

“But when outsiders speak in dispraise of me, or of the Dharma, or of the Sangh, you should unravel what is false and point it out as wrong, saying: ‘For this or that reason this is not the fact, that is not so, such a thing is not found among us, is not in us.’

“But also, Bhikkhus, if outsiders should speak in praise of me, in praise of the Dharma, in praise of the Sangh, you should not, on that account, be filled with pleasure or gladness, or be lifted up in heart. Were you to be so that also would stand in the way of your self-conquest? When outsiders speak in praise of me, or of the Dharma, or of the Sangh, you should acknowledge what is right to be the fact, saying ‘For this or that reason this is the fact that is so, such a thing is found among us, is in us.’”<sup>43</sup>

This was nearly 2400 years before John Stuart Mill wrote his *On Liberty*.

Concluding his discussion of Buddhism and Blasphemy, Sangharakshita makes the following suggestions:<sup>44</sup>

The law of blasphemy should be abolished altogether and definitely should not be extended to cover other religions.

There should be complete separation of the Church and the State. (In effect he is suggesting that there should be secularism as in the USA).

Blasphemy should be recognised as healthy in as much as it will encourage introspection, thus contributing to the moral and spiritual development of man.<sup>44</sup>

### **What is the position in India?**

India had never had an official religion. However, India has been inhabited by the followers of different religions and our British rulers thought it fit to provide for prosecution for offences against public tranquility. Indian Penal Code, which was enacted in 1862, was amended in 1898 to include a new section, namely Section 153-A. Any one who by words, signs etc., promoted or attempted to promote feelings of hatred or enmity between different classes of citizens would be committing an offence under this Section. One Raj Paul was unsuccessfully prosecuted for publishing a book with the title of Rangeela Rasul in which he had depicted what the author characterised as the amorous life of Muhammad. It was held that attack on the founder of religion would not attract the penalty for an offence directed against the, class hatred.

In response to the agitation set up by Muslims, a new Section namely Section 295 A, was inserted in the Indian Penal Code in 1927. This Section provides for punishment for deliberate and malicious, acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

The constitutional validity of this Section was questioned after the Indian Constitution came into force. The ground of challenge was Section 295 A contravened the freedom of speech guaranteed under Article 19(1) (a) of the Constitution. The Supreme Court in *Ranji Lal V. State of VP* (AIR 1957 SC 620) repelled the challenge by holding that the Section was a reasonable restriction in the interests of public order, a restriction permitted under Clause (2) of Article 19. The court, however, assured that insults to religion offered unwittingly and without deliberate or malicious intent would not come within the mischief of this Section.

That is the position as it stands today. It is hoped that Indian society will grow stronger and will be able to accept criticism of religion done with a view to showing the weakness of religions and for the purpose of bringing about reforms.

### **Supplement**

A debate on the future of blasphemy has taken place in England. In the wake of the controversy over Satanic Verses, a group of Muslims sought to prosecute Salman Rushdie by seeking to extend the law of blasphemy in respect of Islam also. Rejection of their plea by the Court of the Magistrates was confirmed by the Queen's bench (1991-1 QB 429). Incidentally it may be noted that the campaign for the extension of the law of blasphemy to a non-Christian religion was set up by the Muslims in England; Hindus and Buddhist never bothered about it.

Helen Fenwick of the University of Burnhem in her *Civil Liberties*<sup>45</sup> has examined the question of extension from alternative points of view by trying to find out if there is a philosophical justification for any of them.

In the first place, it is contended that the law of blasphemy should be extended in order to uphold pluralism as shared belief. This argument is put forth by people who know that there is hardly a society where there are shared beliefs. They want to substitute pluralism as a shared belief rather than traditional beliefs. To this argument the simple answer is that the abolition of the law of blasphemy protects pluralism better than the retention of that law.

The next argument is that blasphemy laws are justified because they protect believers from mental anguish. If mental anguish means anguish on account of attacks on deeply held beliefs one must remember that there are other deeply held beliefs such as secularism, rationalism, equality of sexes and most of all freedom of thought and expressions as the best way of arriving at truth. Philosophically it is indefensible to give up this position. Is it not advisable to encourage free discussions of our deeply held beliefs?

Apparently plausible arguments have been advanced in favour of blasphemy on the ground of religious freedom. The difficulties in defining religion itself are under - estimated by this argument. UN documents touching upon religious freedom have avoided defining religion. In the conferences where international covenants on this subject were drafted, no definition could be agreed upon.<sup>46</sup>



Helen Fenwick has in her book examined an argument put forth by S. Poulter in *Towards legislative Reform of Blasphemy and Racial Hatred Laws*. The argument can be regarded as the third argument for extension of the law of blasphemy. Poulter's argument has been quoted by Helen Fenwick<sup>47</sup> "Freedom of religion is ... a valuable human right and it may be doubted whether it can be fully enjoyed in practice if the State allows religious beliefs to be vilified and insulted in a gratuitous manner."

That freedom of religion is a valuable right may be readily conceded. This right is not violated as long as one is not prevented from holding that belief. One step further: one is not prevented from holding belief of one's choice simply because those beliefs are not protected from verbal attacks. How does one resolve the conflict between freedom of religion and freedom of speech? The law of blasphemy severely damages the liberty to write even creatively on religion." Clearly, the damage done to freedom of religion if there is no blasphemy law is far less than the damage done to freedom of speech if there is one.<sup>48</sup>

Professor Keith Ward, Professor of Philosophy of Religion at the University of London, while speaking in the wake of controversy over *Satanic Verses*, confessed that though he has the expertise to answer the question 'What is 'religion'', he could not answer that question.<sup>49</sup>

Any advocacy of hatred on the ground of religion, among other things, should undoubtedly be banned. In most civilised countries laws forbidding hatred of groups, religious and ethnic, are already there.

Arguments in favour of the extension of blasphemy law are too weak to merit serious consideration ... Modified statutory replacement for the present law is beset with greater difficulties. How many religions have mutually contradictory, irreconcilable doctrines? You would literally open a Pandora's Box if you attempt all-embracing law of blasphemy. Most of the religions are ancient. Judaism is more than 3thousand years old; Christianity is 2300 years old. Islam, the younger of the world religions, is now 1700 years old. They have all outgrown their problems of growing years. The mistrust, hatred misconceptions, suspicions, fears which normally accompany the birth of a new religion and are associated at the time of their growth in the earlier years, should now be regarded as spent.

## Notes:

1. *On Liberty*, Thinker's Library, p.29.
2. *The life of Greece*, by Will Durant, Simon & Shuster, New York, 1996, p.453
3. *Ibid.* P 453
4. *Fools, Martyrs, Traitors: The story of Martyrdom in The Western World* by Lacey Baldwin Smith: Alfred A. Knoff, New York, 1997, p.24.
5. Prometheus Books, Buffalo N.Y. 1982
6. *Apology*, p.66 (emphasis added)
7. *Ibid.*, p. 72
8. *Ibid.*, p.65
9. *Ibid.*, p.69
10. *Ibid.*, P.74
11. –
12. *Ibid.*, P.73
13. *Ibid.*, p.75
14. Nicholas Capaldi, p.42
15. *Ibid.*, p.37
16. Lacey Baldwin Smith, *op.cit.* p.24 (Emphasis added)
17. Durant, *op.cit.* p.340
18. *Ibid.*, p.341
19. See *Blasphemy Ancient and Modern* By Nicolas Walter, Rationalist Press Association, London, 1990, p.7
20. See definition of “Blasphemy” in the *Columbia Encyclopaedia*
21. Per Romaeus O'Brien of Catholic University of America in *Encyclopaedia Americana*
22. Leviticus 24:16
23. *Caesar and Christ* by Will Durant, pp. 422-425
24. *Ibid.*, p. 648
25. *Ibid.*, p. 949
26. Exodus (20:2-10) (Emphasis added)
27. John 5:17 *The Western World* by Lacey Baldwin Smith: Alfred A. Knoff, New York, 1997, p 24
28. *Christ: A crisis in the Life of God* by Jack Miles, Vintage Book, New York, p.154
29. *The Age of Reason Begins* by Will and Ariel Durant, Simon & Schuster, New York 1961 p. 616
30. Edwin S. Newman, author of *Civil Liberties and Civil Rights* in *Encyclopaedia Americana* Vol IV, p. 62

31. See, for example, Lord Denning's *Land Mark in the Law* p.300
32. *Blasphemy* by Leonard Levy, University of North Carolina Press, p.503
33. Quoted in Lord Denning's *Land Marks in the Law* p. 302
34. Leonard W. Levy *op.cit.* p.538
35. *Ibid.*, p.565
36. From The Holy Quran, Edited by A. Yusuf Ali Pub. Amana Corpn., St Brantford, Maryland, USA, 1983 edition
37. B.I. Publicatins, New Delhi, 1978
38. From Abd el- Rehaman Jaziri, Mumzur Ashan Abbasi, *Kitab al- figh Ala' al- Madhib al- Arab' ah*; Lahore, Pakistan, Ulama Acedemy 1985, downloaded from Website
39. From *Shivapuram* as quoted by Wendy Doriger O'Flaherty in Siva, O.U.P.1981
40. *Hinduism A Religion to Live* By O.U.P. 1979, p.229
41. Windhouse Publications, London,1978
42. –
43. [*Digha- Nikaya\_No...Dialogues of the Buddha* Translated from the Pali by T.W.R. (London and Boston, 973) Part I, pp2-3]
44. *Op. cit.* p.24
45. (Cavendish, 1994)
46. Helen Fenwick, *op.cit.* p. 186
47. *Ibid.* p.187
48. *Ibid.* p.187
49. *Blasphemy* by Leonard W. Lewy, p.566

## **Multi-Religious Society, Art and Freedom**

M. F. Hussein has again given an opportunity to discuss the question of the freedom of the artist - this time by a nude Sita. Earlier it was a nude Saraswati. Like on a previous occasion, he has tendered an apology. Fortunately for him, in India there is no Hindu Ayatollah. That there is no Hindu Khomeni and India as a State would not tolerate such a person is fortunate for all of us,

In my opinion, the question of artistic freedom or for that matter of freedom generally cannot be discussed properly except in the context of Indian Laws and Constitution against the background of our multi-religious, multi-cultural, multi-linguistic society. Our erstwhile rulers viz. English had decided to be neutral vis-a-vis the different religions prevailing in this country. That is why probably they did not impose a uniform code of family laws in India. Only in respect of those matters in which there is inter-action or inter-relationship between members belonging to different religions did they enact laws which had no connection with the religions. Contracts are entered into by persons belonging to different religions; transfers of properties took place from members of one community to members of another community; offences are committed by Hindus against Muslims and Muslims against Hindus; witnesses in Court belong to different communities. Since all were British subjects, the British naturally thought that there should be one law. Hence Indian Contract Act, Transfer of Property Act, Indian Penal Code and Indian Evidence Act.

Indian Penal Code came into force in 1862. After some years, the Government felt the necessity of making some provision for punishing the acts which would promote enmity or ill-will between different communities.

In India, the first communal riots took place between Muslims and Parsees. In 1873 one Mr. R. H. Jalbhoy published a Gujarati book in which some Muslims discovered an insulting allusion to their Prophet. The author, having been informed of this, expressed regret and tendered apology. This was not enough for the fanatics. On 13th February 1874 – see, there was no sudden provocation - the Muslims started the riots - entered fire temples, tore up the prayer books, extinguished sacred fires. The police did not appear on the scene; when they appeared they pleaded helplessness. This was in Khetwadi area. Pherozechah Mehta, J. N. Tata and C.M. Cursetjee ‘rushed to the scene in a ‘ghodagadi’ (horse drawn carriage) and witnessed the incident. Later Pherozechah Mehta wrote a long letter

to the Editor of the Bombay Gazette giving a detailed account of the incident and deploring the inaction of the police.

In 1893, 36 years after the Indian Penal Code was enacted, a new Section, being Section 153-A, was added to it. Subsequently it has been amended several times, but the basic provision remains the same - that is summarised in its marginal note:

*“Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony.”*

In what is known as Rangila Rasul Case, the first reported case interpreting, wrongly, this provision arose. One Raj Paul had been convicted by the Sessions Judge for the offence punishable under Section 153-A on the ground that he had by his writing made several derogatory remarks about the Prophet of Islam, especially about Mohammed’s several marriages which showed, the author said, the amorous character of the Prophet. Hence Rangila Rasul. In appeal, a single Judge of the Lahore High Court (Dalip Singh J.) interpreted this Section as follows:

*“It seems to me 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.”* (AIR 1927 Lah. 580)

The acquittal was right; the reasoning was totally wrong. The learned single Judge and two-Judges’ bench, both, later failed to notice that the Section was meant to punish an attempt to sow seeds of hatred between two communities. If the religious feelings of one community are outraged, it would not be an offence under Section 153-A as it then stood and as it stands today.

A Division Bench of the same High Court, in Devi Sharan Sharma vs. Emperor (AIR 1927 Lah. 594), held that an attack on the founder of religion was covered by S.153-A of Indian Penal Code. The accused had pleaded before the Division Bench that his case was protected by the Explanation forming part of the Section which then was as follows:

*‘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 have a tendency to*

*produce feelings of enmity or hatred between classes of Her Majesty's subjects."*

'Her Majesty' - because Queen Victoria was the Empress of India when Section 153-A was enacted. The Division Bench held that it was difficult to distinguish an attack on the founder of a religion from the attack on the religion founded by him.

Around the same time in the then United Provinces, one Kali Charan Sharma had written a book in which he described what he regarded as the strange and mysterious events in the life of Mohammed. From the judgement it can be seen that the book had tried to depict the Prophet as a person of abandoned and infamous character. The Allahabad High Court held that the book attracted the penal provision of Section 153-A. (Kalicharan Sharma Vs. Emperor, AIR 1927 All. 649).

Here again, on the merits of the publication the judgement was right but on law it was wrong. The effect of criticism on the founder of a religion may outrage the feelings of a religious community but it cannot be said that it brings about enmity between two communities. Take Salman Rushdie's Satanic Verses which would not fall under Section 153-A. There is no reason to hold that if the book is written by a non-Muslim the effect would be otherwise.

However, in view of the decision in Raj Paul's case, the Muslims set up an agitation to remove the lacuna in law. That resulted in the enactment of Section 295-A in 1927. This Section deals with deliberate and malicious acts intended to outrage religious feelings of any class in insulting its religion or religious beliefs. Salman Rushdie's book or another book of the same type written by any other person would come within the mischief of Section 295-A.

This is the extent of law of blasphemy in India. In England, there is common law offence of blasphemy. English society was unitary of religion in nature. Christian religion itself was considered the law of the land. Common law view was (and technically still is) that attack on Christianity was an offence inasmuch as it tended to destroy those obligations whereby the society was bound together. That is how prosecutions were launched, in some cases with success, against sec like George Holyoke, Charle W. Watts and Charles Bradlaugh.

In practice, however, conviction did not take place merely for advocating principles at variance with Christianity unless there were circumstances of scurrility or intemperance of language. In *Bowman*

vs. *Secular Society* (1917 A.C. 106), Lord Sumner in his characteristic felicitous language said:

*‘In the present day, meetings or processions are held lawful which 150 years ago would have deemed seditious and this is not because the law is weaker or has changed but because the times have changed. The society is stronger than before. In the present day, reasonable men do not apprehend the dissolution or downfall of the society because religion is publicly assailed by methods not scandalous.’*

This view has held the ground and as recently as in 1979 Lord Diplock has, in *R.V. Lamar*, 1979 All E.R. 898, stated,

*‘To publish opinions denying the truth of doctrines of the established Church or even of Christianity was no longer held to amount to the offence of blasphemous libel so long as such opinions were expressed in temperate language and not in terms of offence, insult or ridicule.’*

In England there is a demand from secularists and free-thinkers that the law of blasphemy should be abolished. I would agree with this demand because I think enough criticism of Christianity has been made and nothing that can be said hereafter is likely to contribute significantly to blasphemy of Christianity.

On the other hand, there is a demand from a section of Muslims residing in England that the law of blasphemy should be extended to Islam also. As the law stands today, anything said about Islam would not attract the penalties under the law of blasphemy in England.

My own opinion is that law of blasphemy should be abolished everywhere. I am an unrepentant atheist. But that is neither here nor there. In a multi-religious society like ours where the relation between the larger religious communities has not been particularly cordial, provisions like Sections 153-A and 295-A may be necessary. Both these Sections are constitutionally valid - the freedom of expression as guaranteed under Article (19)(1)(a) but circumscribed by the reasonable restriction in the interest of public order under Clause (2) of Article 19.

Our secularists and intellectuals who show great alacrity in rushing to condemn the attacks on Hussein should also show some sensitivity about the unjustified conduct of other communities. India was the first country in the world to ban the import of Satanic

Verses as the book would attract Section 295- A of IPC and was thus likely to be proscribed under Section 95 of Criminal Procedure Code, 1973 (corresponding to Section 99-A of the old Code). Yet after the book was denied entry into India, the Muslims in northern India thought it fit to indulge in rioting in which some lives of Muslims themselves were lost.

Then there is the case of Prof. Mushrial Hussain who has been hounded and who is living constantly under the threat of murder only because he said Salman Rushdie's book should not have been banned. How many of us have rushed to defend his life?

Some years ago, there was in a text book prescribed in Maharashtra a reference to the 'flight' (Palayan) of Mohammed from Mecca to Yathrib. Muslims in Maharashtra indulged in riots protesting against the use of the word 'flight' which perhaps, according to them, detracted from the perfection of the character of the Prophet. The Government of Maharashtra quickly withdrew the entire book because of one word.

Even today, while some questions relating to Islam, like Islamic calendar, are discussed, if the word 'fled' is used to describe the action of Mohammed of 'going' from Mecca to Yathrib, there is a storm of protest. It is unfortunate that this happens. Muslims themselves should not forget that Mohammed was a perfect man, not divine. To invest him with divinity is blasphemous.

A short look at what Muslim scholars and jurists have said about this episode may be taken. The Rt. Hon'ble Amir Ali, in his delightfully readable book, "The Spirit of Islam", has said on p.47 as follows:

*"In order to keep the attention of assassins fixed upon the bed, he put his own green garment upon the devoted and faithful Ali, made him lie on his bed, and escaped, as David had escaped, through the windows. He returned to the house of Abu Bakr, and they fled together unobserved from the inhospitable city of their birth. They lay hid for several days in a cavern of Mount Thaur, a hill to the south of Mecca."*

And then on p.48 he says "*The fugitives continued their journey...*"

In "The meaning of the Glorious Quran", Mohammed Pickthall refers to the meeting some persons from Yathrib had with Mohammed and then says 'it was then that the Hijrah, the Flight of Yathrib, was decided'.



A little later he proceeds to say:

*“After travelling for many days by unfrequented paths, they reached a suburb of Yathrib.”*

*“Such was the Hijrah, the Flight, from Mecca to Yathrib...”*

The great Islamic scholar Maulana Muhammed Ali of Lahore, in his edition of Holy Quran, has said:

*“There is only one person in history whose flight has become a memorable fact as the beginning of an Era. It was Mohammed (on whom be peace) who, attended by one faithful companion, fled from the drawn swords of the guards that surrounded his house.”*

Mr. Justice M. Hidayatullah in the introduction to “The Principles of Mohammedan Law” says:

*The Prophet and some others fled to Medina in 622 AD. This marks the beginning of a new era, which is known as Hegira.’*

All this is being said not to tease the Muslims but to suggest that they should not create an issue where none exists only to make their presence felt.

Take the case of some Ahemdiya preachers being assaulted in Malegaon by Muslims. The Government of Maharashtra (this is a BJP-Shiv Sena Government) banned the entry of Ahmediyas into Malegaon on the ground that it would result in breach of peace. Indian Muslims should realise that they are living in a multi-religious society protected by the Constitution of India, a Constitution which guarantees not merely the right to profess and practice religion but also to propagate religion. Let us be proud of the fact that when Ahmediyas were prosecuted and driven out of Pakistan, they found in India a haven to profess and practice their faith. Sir Mohammed Zafarullah Khan, a great jurist, later the Foreign Minister of Pakistan, had indulged in vitriolic tirades against India in international forums, more particularly in the United Nations. What did the Islamic State of which he was a representative give him? Exile. Similarly to Prof. Abdus Salaam, a noble and pious person, the only Nobel Prize winner from Pakistan; both of them, if they had desired, would have found in India a hospitable asylum.

The object of my explaining earlier the purpose of the legal provisions is to demonstrate that in India you cannot outrage the feelings of religious community - whether it is Muslim or Hindu or

Christian. The freedom given by the Constitution should not be abused. Each citizen of India must cultivate the culture of living in a multi-religious society. You may not agree with the exaggerated respect shown by the Muslims for their Prophet; you may not approve of the idol-worshipping of the Hindus. The genuine secularists may be amused by the religious practices of the different communities. Critical examination of religious teachings and practices is not prohibited by Section 153-A and 295-A, of the Indian Penal Code. Healthy, vibrant, well-informed discussions and debates about the different religions should be encouraged. It may in fact facilitate understanding the religion of one community by the members of the other communities. Today, unfortunately, people of different religions, despite living together in this country for generations, know so little of other religions.

The religious freedom given under our laws and the Constitution imposes a corresponding duty on us not to outrage the religious feelings of the communities inhabiting this land. This cannot be done under the right of freedom of expression. An artist does not have a greater freedom than any other individual citizen of India.

Bearing this in mind, the two incidents relating to the artists must be examined. The attack on Ghulam Ali's concert was wholly unwarranted. He had said or done nothing that invited even a protest. The professed aim was to teach Pakistan a lesson - that is how another artist of India - Anupam Kher - reacted. Ghulam Ali was not an envoy of Pakistan.

Let us consider the two incidents related to Hussain. In the first one, there was a nude picture of Saraswati - Goddess Saraswati, not the river Saraswati. Saraswati, according to Hindu beliefs, is a goddess of learning and art who is worshipped by the Hindus. In my school days we used to draw a geometric pattern on a slate which we worshipped as Saraswati. In several auspicious occasions, an ode or a shloka on Saraswati is recited. Broadly in English it is as follows:-

*“One whose complexion is like the moon and the shower of snow, one who is dressed in white, one whose hand is adorned by a Veena, one who is seated on a white lotus, one who is worshipped constantly by Brahma, Vishnu, Mahesh and other Gods, one who destroys all coarseness, Oh Saraswati, please forever protect me.”*

In all traditional images of Saraswati, she is holding a book in her hand and a peacock (Mayur) is at her side. I am specifically mentioning this because at one time it was suggested that Saraswati

painted by Hussain was not Goddess Saraswati but an individual woman with Saraswati as her name. It is a fantasizing by Hussain of a female figure.

Hussein's Saraswati is having a Veena, though not in her hand; there is a peacock near her, the word 'Saraswati' is written on the painting. As far as the dress is concerned, she is wearing nothing - except a necklace.

Whether one likes it or not (I do not like it), Sita is regarded as a motherly figure by those who worship Ram and Sita. It is reported that Hussain has depicted Sita in the nude.

Intellectuals in our country have supported Hussain because they say Hussain is a modern artist. Nudity is permissible; nudity can be captured in a great artistic form and that is what has been done by Maqbul Fida Hussain. One critic has rightly asked, 'How many intellectuals will appreciate the artistic picturisation of a nude woman, if that happens to be that of their mother?'

It has been also suggested that in Khajuraho, there are sculptured figures of men and women in the nude. Khajurhao sculptures are not of Gods and Goddesses, but of Yakshas, Kinnars and Apsaras. You must also look to the overall context in which those figures have been sculpted.

Further, Hussain is painting for peddling and selling his canvasses. To condemn Hussain is not to condone attack on his property or person. I do not want any Hindu Talibans and Khomenis in India. But to condemn the attack on Hussain is one thing; to condone his trespasses is another. I am also not suggesting that a Muslim artist should not interpret Hindu themes and icons. Any artist is free to interpret any themes but without outraging the feelings of a community. An artist does not have greater freedom of expression than a writer.

Let us live in peace together. I am dreaming of a day when all religions are forgotten and man will have fraternal feelings for man as a human being - not as a co religionist. Till that time let us not encourage Hussains or Thackerays.

## Christianity in Modern India

While, in the nineteenth century, mission work had been all important in India, in the twentieth century the emphasis has been on the Church as distinct from mission. As a result of the activities of the missionaries, indigenous congregations of considerable numerical strength had sprung up all over India. Most of the missions were under the control of foreign Boards or Churches and the missionaries were mostly paid employees. With the ever-growing numbers of Indian ministers and missionaries, the undesirability and in some cases the impracticability of continuing the old system became obvious. But the general poverty of Indian congregations and organizations made autonomy difficult and the problem is yet to be solved. The withdrawal of the British and the partition of India have made the problem more difficult but the solution imperative.

The identity of interests of different missions in India controlled from different centres of the world led to the formation of the National Christian Council in India in 1914. The Council has its headquarters at Nagpur with 18 Provincial Councils under it. While questions of doctrine and ecclesiastical policy remain outside the purview of the Council, its avowed objects are:

1. To stimulate thinking and investigation on missionary questions, to enlist in the solution of these questions the best knowledge and experience to be found in India and other countries; and to make the results available for all churches and missions in India.
2. To help to co-ordinate the activities of the Provincial Councils and to assist them to co-operate with each other where such co-operation is desirable.
3. Through common consultation to help to form Christian public opinion and bring to bear on the moral and social problems of the day.
4. To be in communication with the International Missionary Council regarding such matters as call for consideration or action from the point of view of the Indian Mission Field as a whole.
5. To make provisions for the convening of a National Christian Conference when such in the opinion of the Council is desirable.

Of greater importance than the Council, is the Church Union movement in India. The pioneers of this movement were the Presbyterians who held a general Conference in Allahabad in 1871 with a view to bring about some union between the different churches and missions in India. An All India Union was at that time considered impracticable, but it was suggested in the Conference that there should be periodical meetings of ministers and elders. As a result of these meetings the Indian Presbyterian Confederation was formed in 1873 and in 1875 the Presbyterian Alliance of India. For some time the idea of an organic union was dropped, but in 1900 the American Arcot Mission and two Scotch missions decided that union could no more be delayed at least in South India. Accordingly a scheme was drawn up which was approved by the Reformed Church in America and the Free Church of Scotland, and the consummation of the Union took place in Madras on September 1902, and the foundation of the United Church of South India was firmly laid. The Presbyterian Alliance of the North found the example stimulating and eight different sections of the Presbyterian church united into one General Assembly.

The union of Presbyters led other missions to reconsider their position, and the London Missionary Society and the Mission of the American Board, having everything in common but kept apart by the fact that one party came from one side of the Atlantic and the other from the other, united in the year 1905. The good work did not stop here, and negotiations were started with a view to a greater union with the South Indian Synod of the Presbyterian Church. The union of Presbyterian and Congregational churches was something new, but in India at least Christians felt that the innovation would be desirable and practicable. As negotiations progressed the idea of a general union of all South Indian Churches began to gain ground. The difficulties were many, but these only stimulated the efforts of the unionists. While the idea was still under discussion the First World War broke out and the German Basel Mission of Malbar joined the Union. This gave an impetus to the movement. After protracted negotiations and determined efforts, the idea of Church Union was formally accepted by a large majority in the General Assembly of the South India United Church in 1946 and a practical scheme was drawn up. Accordingly the Church of South India was inaugurated on 27<sup>th</sup> September 1947, when the South India Diocese of the Anglican Church, the South Indian Provincial of the Methodist Church and the South India United Church (with the exception of the North Tamil Council) became one Church. This

bold measure is capable of wider expansion and the time is not far when other churches would fall into line and a Church of India will be established. In fact, the sponsors of the Union believe that the example of South India will soon be followed elsewhere and not at a very distant date all the Churches of the East and West will unite into a World Church, 'the body of Christ'. The exclusive organization and traditions of the Roman Catholic Church alone appear at present to offer serious difficulties for the realization of this ambitious ideal.

The Catholic Church in India has at present ten arch-dioceses including Ernakulam and Trivandrum of the Syrian Rite and fifty Bishoprics with a papal internuncio Padroado has been finally abolished in India in 1950 and an Indian Archbishop was appointed to the important See of Bombay where before 'the abolition of the Padroado Portuguese and English Archbishops had to rule by turn. In 1952, the year in which India celebrated the nineteenth centenary of the advent of Apostle Thomas, Valerian Gracias, the Archbishop of Bombay, was made a Cardinal the first Indian to be elevated to this eminence.

The Anglican Church, known in India as the Church of India, Burma and Ceylon, has its metropolitan in Calcutta and thirteen diocesan Bishops. The Baptists have four Church Unions and Councils, each autonomous in its own sphere after the practice of the Baptists. The Lutherans have six churches. The Methodist Church of Southern Asia has four Resident and Presiding Bishops in India. And the Mar Thoma Syrian Church has a Bishop at Tiruvalla.

In the twentieth century peculiar problems have risen for the Churches and the Missions in India. The proselytizing activities of the missionaries are viewed with distinct disfavor. Real Christian work, by which was meant humanitarian work, is welcome but conversion is obnoxious. It is doubtful if a mere love of humanitarian work would produce zealots of the type of Francis Xavier, De Nobili, Henry Martyn, Carey, Gordon Hall and George Bowen. Anyway, Christians have accepted the challenge. Wherever there is human suffering the missionary and the minister are there. The splendid work Christian organizations are doing to ameliorate the suffering of lepers in India is unique and too well known to be mentioned in detail here. Christians run about 700 dispensaries, four hundred hospitals and three hundred industrial schools. They conduct about 90 Colleges 800 High Schools, 1500 Middle Schools

and thousands of primary and elementary schools all over the country.

Christian organizations are actively interested in welfare problems in India. The National Christian Council, the Y.M.C.A. and the - American Marathi Mission are the pioneers in welfare movements in India. .

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With the declaration of Indian Independence on 15<sup>th</sup> August 1947, a new era has begun for Indian Missions and Churches and what the future of Christianity in India will be only time can tell. The Constitution of India has been framed by able and conscientious men and women brought up in the liberal traditions of the British, and it guarantees equality of treatment to all castes and creeds, freedom of worship and the right to propagate religious ideas by peaceful methods. The first cabinet of free India was also formed in the spirit of the Constitution and it had members of all important communities in India. The first Cabinet Minister belonging to an Indian Christian community was Dr. John Matthai the well-known financier. Later Rajkumari Arnrith Kaur, a staunch follower of Mahatma Gandhi and a devout Christian lady, was also taken in the cabinet.

All this augurs well for the future, and as long as the present leadership lasts Christians as a community have little to fear. But whether the same liberal traditions will be followed after the passing away of the present generation, the future alone will show.

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## Christians, Conversions and the Constitution

The recent attacks on members of the Christian community by members of, at least one section of the Hindu *pariwar*, has suddenly created a problem where none existed. The recent series of attacks began with the attacks on Christians and their modest, unassuming buildings which they used as churches in Dang district of Gujarat. These attacks were made on the Xmas eve leaving no manner of doubt that the target was Christians as Christians. On the same day, a crib symbolising the nativity of Jesus was vandalised and the Christians proceeding to the Church were assaulted. This incident took place in Borivli, a suburb of Mumbai.

Later two incidents horrendous in nature have taken place in Orissa. One was the killing by burning of Rev. Staines and his sons in the vehicle he was travelling. He was an Australian missionary working in the backward areas of Orissa for over two decades. His work consisted of eradication of leprosy and illiteracy. His widow is not angry but she is sad.

The second took place in South Orissa in which more than two hundred houses of poor Christians have been destroyed - by burning and other means. Some thousands people have been rendered homeless, shelter less, now living only with the sky above. Reports suggest no help of any kind reached these people for several days. Gripped by fright of insecurity, they were unable to make any move. No food, no water for two days for them, who included women and infants. The attackers, say the victims, were shouting "Sia Ram". On a rock in this village, a cross (+) had been drawn in white chalk and it was erased and a 'trishul' was drawn. Trishul (trident) is the weapon of Shiva.

Murali Manohar Joshi, BJP leader and Minister for Education in the present BJP-led Government of India, has been often telling that all Hindu gods are armed with weapons - Krishna, Sudarshan Chakra; Ram is Dhanurdhari, that is, he is armed with a bow - obviously along with arrows; and Shiva has his famous trishul, prototypes of which are seen in plenty in Hindu gatherings, especially where saffron-clad *sadhus* are present. Even a minor deity, Hanuman, also known as Bajarang, wields a *gada* (mace). The Bajarang Dal is named after this deity.

In between the two sets of incidents described above, some other incidents have taken place. In a couple of incidents, some nuns are alleged to have been raped. There is, however, some controversy

over whether they were anti-Christian or merely parts of a series of incidents where women are raped in this country. Leaving aside these incidents the picture of intolerance towards Christians exhibited in several incidents is sufficiently grave to merit a dispassionate study.

The explanation (or is it an excuse?) given is that the Christian missionaries are inviting such attacks by their missionary zeal by converting poor, ignorant Hindus into Christians. This naturally enrages the Hindus who are provoked to teach the missionaries a lesson. Conversions have led to these convulsions. Even Prime Minister Vajapeyee was prompted to call for a debate on conversion. It is surprising that the Prime Minister should invite a debate on conversion because this debate had taken place in the Constituent Assembly before the right to propagate religion was included among the fundamental rights in Part III of the Constitution of India.

Art 25 of the Constitution deals with freedom of conscience and free profession, practice and propagation of religion. This right is not a minority right; it is available to all persons (not merely citizens) in India. A proposal to amend the relevant provision by deleting the word “propagate” made in the Constituent Assembly was rejected. This rejection was at the instance of prominent Hindu members of the Constituent Assembly. Pandit Laxmikanta Mitra in effect stated that this right, right to propagate one’s religion — was not likely to be abused by the Christian community which “happens to be the most inoffensive community in the whole of India”. Krishnaswami Bharati’s experience was that “the Christian community have not transgressed their limits of legitimate propagation of religious view”.

As ardent a Hindu as K. M. Munshi, also a legal luminary, noted that the Christian community laid the greatest emphasis on the word ‘propagate’ “not because they wanted to convert people aggressively but because the word ‘propagate’ was a fundamental part of their tenet”. T.T. Krishnamachari even used the word “convert” as being included in the word ‘propagate’. He argued that every religionist should be given the same right “to propagate his religion and to convert people, if he felt that it is a thing he has to do and that is a thing for which he has been born and that it is his duty towards his God and his community”.

In fact, K. M. Munshi in his speech pointed out that under the freedom of speech guaranteed by the Constitution it would be open to any religious community to persuade other people to join their

faith. Emphasising that “so long as religion is religion, conversion by free exercise of the conscience has to be exercised”, Munshi proceeded to assure that the word ‘propagate’ in this clause is nothing very much out of the way as some people think, or is it fraught with dangerous consequences”. It should be added here that the relevant clause as originally drafted did not include the word ‘propagate’ and when it was pointed out in the Minorities Sub-Committee that certain religions like Christianity and Islam were proselytizing religions and that they should be permitted to propagate their faith, that the word ‘propagate’ was included in the relevant provision.

It is thus clear that the founding fathers of our Constitution had discussed and debated on this question and thereafter the word ‘propagate’ was added. They were clear in their mind and the word ‘propagate’ has not accidentally slipped into Article 25. It also seems clear that the right to propagate includes the right to convert, because successful propagation of religion would result in conversion. It is true that the Supreme Court of India has in *Rev. Stanyslaus vs MP* (AIR 1977 S.C.908) held that right to propagate does not include the right to convert. The context in which it was so held was the constitutional validity of Madhya Pradesh laws which prohibited conversion by fraud, inducement or force. No proselytiser, I am sure, will contend that he has a legal right to convert people by fraud or at the point of sword.

Freedom of conscience necessarily implies freedom to choose (not merely to remain in) one’s religion or to choose no religion. Conversion, therefore, does not in any way interfere with the freedom of conscience as the Supreme Court seems to say in *Rev Stanislaus* but is an extension and fulfillment of the freedom of conscience.

The role of missionaries has been assailed on the ground that they indulge in malpractices such as force, fraud and inducement to convert unwary people. This of course should be prevented - not by Bajrangdal methods. It would be interesting to know that in the early years of English rule in India, missionaries were not allowed to enter India for proselytisation work. Later they were permitted. It is somewhat curious that despite the rule by Christians in India for nearly two hundred years, the Christians remain only at 3 per cent of the population. Moreover the distribution of the Christian population is highly skewed. More than half of it is in South India like Kerala, South Kannada and Goa. North-East India has 13 per cent of the

Indian Christian population while Chotanagpur belt of East India has 11 per cent. In these two latter areas, conversion did not take place of the Hindus but of tribals who had no religion of any kind.

In a recent article in a Mumbai evening paper, Rev. Arun Thomas has canvassed an interesting view. He has persuasively pointed out that Christian missionaries have a mandate to evangelise, not proselytise. Strictly speaking - this is correct. Even St. Paul said in his first epistle to the Corinthians: 'For Christ has sent me not to baptise but to preach the gospel'. Missionaries have rendered great service in the field of education and health including treatment of leprosy. But the distinction has not always remained clear. In a hall of a missionary institution of Pune, where I had an occasion to give a talk, I noticed that on the wall were displayed the statistics of Christians in selected areas on particular dates, the conversions that had taken place after those dates and the cumulative totals. This would give an impression that the main object, if not the whole object, of the Mission was to increase the number of Christians. This is unfortunate.

In any case it is wholly wrong to regard conversion as illegal or Christians as aliens. While it is true that Christians did not ask, at the time of the framing of the Constitution, for reservation of seats (as the Anglo-Indians did) in the Parliament, it is equally true that the Republic of India has accommodated the Christian minority without any discrimination. In the first Cabinet of independent India, an important portfolio was held by Dr. John Mathai. Rajkumari Amrit Kaur, a devout Christian lady, was also taken in the Cabinet. Moreover as Rabindranath Tagore has mentioned in 'Jaganman', an address to the Bharatbhagya vidhata (Dispenser of India's destiny):

"Day and night thy voice goes out from land to land,  
Calling Hindus, Buddhists, Sikhs and Jains round thy throne  
And Parsees, Mussalmans and Christians".

## Conversion and Humanism

Attacks on Christians are taking place again. Five years ago Stanes and his three sons were burnt alive in Orissa. No doubt, one who has done this cruel act has been arrested, prosecuted, convicted and sentenced. It has been alleged that the said person belonged to Bajrang Dal, which is a member of Sangha Pariwar.

Stanes was a missionary working among the poor and downtrodden people of Orissa. He was not engaged in missionary work of conversion or of propagating Christianity. His widow, in what is regarded as Christian spirit, said she was sad but not angry, having lost her husband and three sons.

The incident happened in Orissa which has a sprinkling presence of Christians. One Swami Laxmanand and his associates were killed. There was nothing to show a Christian hand in the killing. If anything, Christians who are in a hapless minority in the State are innocuous people. Orissa and Jharkhand are Naxalites infested States. It is not suggested here, without evidence, that Naxalites are the guilty persons. Nor can it be suspected that Christians are involved. Why, then, attack on Christians?

It is alleged that Christians are indulging in conversion of the gullible and poor people of the State. This is hardly the reason for the killing. If some people are converting to Christianity, it must be because of their conviction and choice. There is, in Orissa, 'The Freedom of Religion Act, 1967', the validity of which has been upheld by the Supreme Court. If any one converts another by fraud, use of force or by inducement (widely defined), he is liable for prosecution. Has any prosecution taken place? Despite two hundred years of Christian rule in India, the Christian population of India is only 3%. Moreover, mostly tribals in the north-east, who had no religion, embraced Christianity, may be because of inducement. Christian missionaries have established schools, colleges, hospitals, etc. Where the menace of conversion?

It is at this place appropriate to take notice of the developments in law. Orissa was the first State to enact legislation restricting religious conversions. The Orissa Freedom of Religion Act, 1967 provides that no person shall "convert or attempt to convert, either directly or otherwise, any person from one religious faith to another

by the use of force or by inducement or by any fraudulent means.” The Act defines conversion as renouncing one religion and adopting another. A person having no religious faith, as John Stuart Mill, adopts a religion. Mill himself has said in his autobiography that he did not shed religious faith because he had none. Does such a man by adopting a religion convert himself?

For culpability, however, the definition in the Act, and not in the dictionary, is relevant. The Orissa Act defines conversion as renouncing one religion and adopting another. It mentions that ‘force’ shall include a show of force or threat of injury of any kind, including the threat of divine displeasure or social excommunication. Inducement, the Act says, shall mean the offer of any gift or gratification. Section 4 is the punishing Section – for conversion. The Madhya Pradesh Act contains a similar provision. The Orissa High Court struck down the Act as being violative of Article 25 of the Constitution which guarantees to every one the right to propagate. If the right to propagate is part of religion, it could not be prohibited. The Madhya Pradesh High Court upheld its State’s Act.

Both the decisions landed in Supreme Court in appeals. The Supreme Court held that the right to convert is not a fundamental right and, therefore, it could be curtailed. “To propagate” does not mean to convert. The Court held that Article 25 does not grant the right to convert. In the unanimous decision in *Rev. Stanislaus v. State of Madhya Pradesh & others* (AIR 1977 SC 908), the Supreme Court held that the right to propagate meant only the right to transmit or spread one’s religion by an exposition of its tenets. While so holding the Court ignored the legislative history of Article 25.

Late H.M. Seervai, in his *Constitutional Law of India*, has sharply criticized the judgment of the Supreme Court by pointing out what the leading members of the Constituent Assembly had said. For example, K.M. Munshi, a devout Hindu, said:

*“Moreover I was a party from the very beginning to the compromise with the minorities which ultimately led to many of these clauses being inserted in the Constitution and I know that it was on this word that the Indian Christian community laid the greatest emphasis not because they wanted to convert aggressively but because the word ‘propagate’ was a fundamental right of their tenet. ... So long as*

*religion is religion conversion by the free exercise of the conscience has to be recognised.”*

Mr. T.T. Krishnamachari pointed out that every one has the right to convert subject to public order and morality. The members recognised that the right to conversion is part of the religions like Islam and Christianity. Even the Arya Samajists claim to convert people lost to Hinduism by *Shuddhikaran*. This conversion never crossed the line of law and order. It is the Bajrang Dal which is causing the disturbance of public order and not the converters. It is thus obvious that there was no warrant for the enactment of laws in Orissa and Madhya Pradesh. It has not been demonstrated that in 1977 or thereabout there was any problem of public order created by conversion.

If one reads the discussion on the subject in the Constituent Assembly, one can easily notice that the right to convert is regarded as a part of religions such as Islam and Christianity which are proselyting religions unlike Hinduism. Traditionally, a Hindu is born, not made. No one can be converted into Hinduism. Arya Samajists make an attempt at what they call “*Shuddhikaran*”; it is in effect reversion. Much success is not achieved by this attempt because a person will ask what would be his caste if he is converted into Hindu. There cannot be a proper or adequate answer to this question. There must be a caste because Hinduism cannot be casteless, though legally untouchability has been abolished.

The hubris of Hindu Pariwar is totally misplaced. In the Parliament of 1892, Swami Vivekananda did not invite any one into the Hindu fold, nor did the representative of any other religion praise Hinduism.

When Mira Ben, Gandhiji’s disciple, wanted to become a Hindu, he advised her to become a better Christian. Similarly he advised a Muslim to become a better Muslim. Gandhiji probably thought that there is an essential unity among all religions. That is what Dr. Bhagwan Das thought. Maulana Wahidulla Khan has rightly pointed out that the basic doctrines of all religions are different and the unity of all religions is an illusion. Jews made Jesus crucified because they thought he was not the Messiah promised in the Old Testament. Christians believe in the divinity of Jesus, in crucifixion and in resurrection. Quran specifically denies all these three basic beliefs of Christians. Moreover, Muslims (and Quran) say that

Mohammed is the last Prophet. Other religions were for particular people and Islam is for all mankind. In this view, Basaveshwar and Nanaka are not prophets and Veer Shaivism and Sikhism are not proper religions.

Humanism says that all religions were born in different times and in different countries depending upon the climate, psychological and emotional, of those countries and those peoples. There is not and cannot be permanence in them. Mahatma Gandhi advised Mira Ben to be a better Christian; he did not advise her or anyone else to become a better human being. "*Aajacha Sudharak*", the Marathi Rationalist monthly, has written that Gandhiji is said to have mentioned as follows:-

There is no religion in the world as Hinduism which lays stress on knowledge, and yet the Hindus are ignorant;

There is no other religion as Christianity which teaches human brotherhood, yet the followers of no other religion have indulged in fratricidal wars;

There is no other religion like Islam which places emphasis on peace, and yet the followers of no other religion have taken part in so many wars;

No other religion in the world stresses non-possessiveness (acquisitiveness) as Jains, yet Jains are acquisitive people.

Buddha has strongly advised against having idols, yet Buddhists have erected the largest number of Buddha.

He could not have expressed the total ineffectiveness of every religion, though he did not necessarily mean it. Humanist does not pretend that he does not commit mistakes. His ethics are based upon utility, and science. What is good for man is not dictated by a mythical God. You cannot refuse to take injection or undergo surgical operations on the ground that they are prohibited by your understanding of religion. Injection or surgery saves life which humanism wants; religion does not. Fasting without medical sanction is unnecessary or undesirable only because religion wants you to starve or fast for a number of days. There should be no order from above through a prophet – that is humanist. Humanist believes and acts on the belief that things in this world are more important



than those of the unknown world. After all, man is his own master. That is the autonomy of the human being. Man is the measure of everything. Unlike religion, humanism looks upon things and events if those are relevant for human happiness. The substratum of every religion has been found to be untrue and false by modern science. How can the tenets of religions be a safe guide to human conduct?

Vinda Karandikar, a Marathi poet, has composed a beautiful poem in praise of Eve for eating the forbidden fruit and thus opening up the gates of knowledge. But for the birth and growth of science, mankind would be in darkness and be shackled to irrational doctrines of religions. A humanist will bemoan the death of human being in a communal riot and does not care whether that person is a Hindu or Muslim. After all he is *insan*. This should be the attitude of a humanist.

And finally, Humanism is that attitude of mankind which seeks values and knowledge from reason and experience and refuses to recognize the authority of any book or a person.

## Defining Divine and Profane

*'Asma, a Medinese poetess, having attacked him (Mohammed) in her rhymes, Omeir, a blind Moslem, made his way into her room, and plunged his sword so fervently into the sleeping woman's breast that it affixed her to the couch. In the mosque the next morning Mohammed asked Omeir, 'Hast thou slain Asma? 'Yes answered Omeir, 'is there cause for apprehension?' 'None,' said the Prophet, 'a couple of goats will hardly knock their heads together for it'. Afak, a centenarian convert to Judaism, composed a satire on the Prophet, and was slain as he slept in his courtyard. A third Medinese poet, Kab ibn al-Ashraf son of a Jewess, abandoned Islam when Mohammed turned against the Jews; he wrote verses prodding the Quraish to avenge their defeat, and enraged the Moslems by addressing love sonnets to their wives in premature troubadour style. 'Who will ease me of this man?' asked Mohammed. That evening the poet's severed head was laid at the Prophet's feet...'*

*(The Age of Faith by Will Durant, p. 168)*

It must be remembered that Mohammed wasn't merely a religious leader, but also a head of state. Therefore, the executions could be legitimate because the actions for which the persons were punished were tantamount to treason. As the head of state, he was in a position to order those executions.

Besides these episodes, it's unknown whether Mohammed ordered executions for blasphemy. The Quran, claimed by Mohammed to be the message Allah revealed to him through Archangel Gabriel, has no secular penalty for harassment. Like the Old Testament, it's full of commands but has no deliberations against heresy or blasphemy. The followers of Mohammed, in fact, were directed not to have anything to do with the infidels and apostates who were to be punished by Allah in hell. No punishment by anyone in this world for blasphemy was contemplated either by Mohammed or the Quran. In this sense, executions ordered by the authorities like Khomeini's fatwa against Salman Rushdie have no Quranic authorisation.

This is confirmed by Maulana Zia-ul Hasan (secretary-general of Bangladesh Islamic Revolutionary Movement) who's gone on record that Allah hadn't empowered any man to punish or pardon Taslima Nasrin even if she had "deliberately insulted Quranic teachings". (Indian Express, June 23)

But what is blasphemy? Derived from the Greek word ‘blasphemia’ it signifies offensive speech, especially in religious matters - broadly, against God/divine beings, religious objects and doctrines, scriptures or liturgies, institutions or practices. In Christianity, blasphemy has points in common with heresy. But it’s not blasphemous to merely deny the existence of God or even to question Christian tenets, but it would be if done in a mocking, derisive or satirical manner.

In England, blasphemy has been defined in a Parliamentary Act as a crime. It doesn’t appear in the ‘statute book but was invented by enthusiastic judges, developed over a series of cases. Blasphemy remained, almost entirely, a judge-made law, giving rise to several difficulties. Fortunately, the law hadn’t been used for a long time; so much so that Lord Denning expressed the common view that “the offence of blasphemy is a dead letter.” This was in 1949. In 1951 Lord Goddard referred to the “somewhat obsolete offence of blasphemy.” They, however, didn’t reckon with the self-styled protectors of morality. A blasphemy charge was successfully laid against Dennis Lemon, Editor of Gay News, in 1977. Right up to the House of Lords and even before the European Human Rights Commission, Lemon failed.

In India, what can be called blasphemy (though the word isn’t used) is to be found in two IPC provisions: Sections 153A and 295A. A proper understanding of this will be facilitated if a reference is made to certain historical events. Section 295A was inserted after the Lahore High Court’s verdict in Rangila Rasool’s case. It decided the scope of Section 153A.

The latter, introduced in 1898, underwent changes in 1961, 1969 and 1972 but its central provision remained the same: namely, it’s an offence to promote or attempt to promote, on religious grounds, disharmony or ill-will between groups. In Rangila Rasool’s case, one Raj Paul had made several derogatory remarks about Mohammed, in particular, to the Prophet’s several marriages.

First, the trial court convicted Paul. However, in appeal a single judge of the Lahore High Court held Section 153A wasn’t meant to prevent an attack on the founder of any religion. The distinction between a publication which promotes hatred among two religious communities and one which outrages the religious feelings of a particular community was recognised. Section 295A was inserted in 1987 (and later amended) in order to cover the latter. Article 19(1) (a) guarantees the right to freedom of speech and expression but

Article 25 guarantees the right to freedom of religion and religious worship - and both are subject to “public order.”

India is a multi-religious, multi-cultural nation. The British thought the adherents of different religions should be left alone. The IPC in effect endorsed the attitude of the Romans, who cynically tolerated all religions professed by different religions brought under their subjection.

The government has drawn flack for banning Satanic Verses. Though a work of fiction, the character of Mohammed has been widely commented upon and caricatured in the book. Muslims don't regard Mohammed as divine as the Christians regard Jesus as the son of God. When Mohammed's follower Omar threatened to kill anyone who said the Prophet was dead (when he was actually lying dead), the wise and moderate Abubeker addressed Omar and the multitude: “Is it Mohammed or the God of Mohammed that you worship? The God of Mohammed liveth forever; but the apostle was a mortal like ourselves and, according to his own prediction, he has experienced the common fate of mortality”. (*The Decline and Fall of Roman Empire*, by Edward Gibbon, Vol.3, Page 113). Muslims don't worship Mohammed but regard him as a perfect man entitled to unqualified veneration. Any deliberate attempt to satirise/ridicule this belief is liable to invoke Section 295A. I am not in a position to comment upon the literary merits of Satanic Verses. But there is no doubt that the manner in which Rushdie has inserted episodes in the life of Mohammed and the manner in which he makes fun of Mohammed (for example by calling him a businessman) can be safely regarded as blasphemous. He calls him Mohound, a name used by Christians, thus evoking the Christian view of Mohound. (Oxford Dictionary describes Mohammed as a false prophet and a false idol). Such treatment of Mohammed appears in Christian classics as Dante's Divine Comedy.

If the book hadn't been banned Rushdie probably couldn't have been prosecuted, he being outside the territorial jurisdiction of Indian courts. In India, the objectionable publications can also be forfeited under Section 95 of CrCP. And where any publication, wherever printed, appears to any State Government to contain any matter covered by Section 295A, it can order the forfeiture of every copy in India. Those familiar with the provisions of Section 295A won't find fault with the Government.

Incidentally, the title of Rushdie's book may be explained. The Meccans had resisted Mohammed's teaching that there's only one

God but were willing to compromise if he made certain concessions. Once when Mohammed visited Mecca, he had a conference with the Qureshis. The Quran mentions, in the Surah of "The Star", that Mohammed was asked: "Have you considered Allat and al-Uzza/And Manat, the third, the other..." The reply by Mohammed was: "They are the Exalted Birds/And their intercession is desired indeed."

The Qureshis were delighted with this admission and they were willing to be Mohammed's followers. Later Gabriel revealed to Mohammed that he had been deceived by Satan and in the Quran now accepted, his reply to the question is as follows: "They are but names which you have named, you and your fathers, for which Allah has revealed no warrant..." This episode is important but not so crucial as to be used as the title of a caricaturist literary work, where not one respectful reference has been made to the Prophet.

But Taslima is no Rushdie. Nowhere has she made a caricature of the Prophet or of the Quran. She only pleads for revision of those provisions which she feels is not fair to women. It's not understood how examination of a holy book can be regarded as blasphemous. There are several provisions in the Quran, conceived in the 7th Century, which can be regarded as unfair to women. No doubt, Mohammed was the first and probably the last Prophet who gave property rights to women, (Christian England didn't do it till 1870) and raised the status of women by curbing polygamy. Hindus could take an unlimited number of wives till 1956. But time flows and what was revolutionary in the 7th century may become archaic in the 20th.

Is it blasphemy to say women deserve fairer treatment even in Islamic States? It may be audacity but not blasphemy. In any case, the Quran prescribes no punishment for blasphemy. There's a wholly unwarranted sensitiveness on the part of Muslim leaders that leads them to take up obscurantist positions, as in the case of the textbook controversy in Maharashtra pertaining to a passage about the Prophet's "flight to Yathrib." Interestingly, Hindus don't regard Krishna as a coward for fleeing to Dwaraka to save his life. On the contrary, they almost adoringly call him 'Ranchhodas'?

Syed Shahabuddin says Taslima should be denied entry to India because she will create communal fissures. This is devoid of any reason or logic. How can statements like the ones made by Taslima create communal fissures? If he means there will be fissures among the Muslims, he must naturally concede there are Muslims who

agree with Taslima. If there is a progressive Muslim, please stand up. But from the behaviour of men like Shahabuddin, its clear Muslims are not prepared to take away their sight from the past. They are getting trapped in a black hole.

## An Autobiographical Exposé

(India's Unending Journey, *Mark Tully*, Published by Rider, an imprint of Random, 1977)

This is the sixth book on India written by Mark Tully, who was B.B.C.'s correspondent when the notorious internal emergency was imposed on India when Indira Gandhi was the Prime Minister. He has been, in fact, in India since 1965 when he came to India as second-in-command to the then B.B.C.'s main correspondent. Later Mark Tully became the main correspondent of B.B.C. Mark Tully was born in India where his father was in service in a tea estate. In his adolescent years, he left for England; he studied in English Universities and also later served in the Army. He has earlier written on India five books, including one on Amritsar. He has lived in India for over 40 years and it seems he will most certainly live in India for the rest of his life. All this shows that he has good knowledge of this country. Reading this book one feels that Tully is in love with this country; he is almost in love with Hinduism. "...it has often been assumed that I have converted to Hinduism and that I am suggesting others should convert too." He says that this is not true. "This is not so, I remain a Christian." (p.5) Tully approvingly quotes Mahatma Gandhi who is said to have advised Miraben not to convert to Hinduism but remain a true Christian. But Tully praisethroughout his book, what he calls pluralism in Hinduism. He says, agreeing with Prof. Amarthya Sen, that "*Discussions and arguments are critically important for Democracy and public hearing.*"

Each of the essays in this book is centred upon cities where Tully studied or lived. Puri, for example, which he had visited when he was a boy and visited, again when he had become an adult, is dealt with in Chapter I of the book. Most of what is written in this Chapter, as in other Chapters, is based upon what Tully saw and heard. He explains that the word "juggernaut" is from the chariot of Lord Jagannath. That much is in any good English dictionary. He narrates, what many Hindus do not know, that pandas exploit gullible pilgrims, especially Hindu women. He vividly describes Jagannath Yatra, though as a non-Hindu he is not allowed to join the same. He takes the trouble of, in this chapter as in other chapters, quoting several authors and books which he has read and which show his erudition. He dwells on the philosophical question of fate and free will and pleads for humility and pluralism.

In the chapter on Marlborough College where he studied, Tully writes on old and new methods of learning and teaching. He recalls

old times and writes about new times. The chapter on Delhi, old times (1960s) and new ones are vividly described. Tully speaks highly of uncertainty as compared with certainty. He recommends pluralism to Christians and Muslims and canvasses the view that Hindus are pluralistic. This is the theme that is present in all the chapters. "Finding Balance in a Time of Change" is the sub-title of the book. He finds pluralism among all the Cities he visited Delhi, Raipur, Khajuraho, Gurgaon, Darjeeling, etc. In the chapters on Western places which Tully has visited, he finds Christianity too stubborn, laying emphasis on rites and rituals, instead of feeling the majesty of God. He, in places, advocates rationalism or humanism properly understood. Throughout the book there is a plea for pluralism. The book is essentially autobiographical the cities he saw, the people he met, the impressions he gathered. The book is topical, and not for all time.



## **The Road to Buddhism Traveled by Dr. B R Ambedkar**

*“I was born a Hindu but I shall not die a Hindu.”*

Thus thundered Dr. Ambedkar in 1935 at Yeola (Nasik District, Maharashtra). Yet he took 21 years to convert to Buddhism. On 14th October, 1956, at a mass ceremony held at Nagpur he converted to Buddhism along with thousands of followers. It was Dassera, a seemolanghan day that is the day on which you cross the border.

Dr. Ambedkar himself had crossed the border of his community nearly 40 years earlier. Education was unknown among the Mahars, a community in which Babasaheb Ambedkar was born. Graduating from the school was unknown among the untouchables in those days. So, naturally, a felicitation ceremony was held when Ambedkar passed the matriculation.

In the meeting a Brahmin teacher, Keluskar, presented a copy of a book on Buddha's life written by him to Ambedkar. Keluskar had seen Ambedkar engrossed in Charni Road Gardens (now S.K. Patil Udyan) in studies in evenings and thus had developed a liking for the boy. Incidentally, in Ambedkar's life on some occasions Brahmins have played critical role. A Brahmin teacher gave the name Ambedkar (originally it was Ambavadekar). A teacher showed that Chavadar Tal (Sweet Lake) which has been “polluted” by untouchables was good for a Brahmin even before it was purified by “panchagavya” by jumping into the lake. In school the Brahmin teachers treated Babasaheb civilly and courteously. There is no account of even a single incident where Babasaheb was treated unfairly by any Brahmin teacher. Babasaheb himself has at one place mentioned that earth is crucial, not birth. Brahmanism should be fought, not Brahmins. This was the robust, healthy approach of Ambedkar whose second wife was a Saraswat Brahmin.

Be that as it may, it was Keluskar who persuaded Maharaja Sayajirao Gaikwad of Baroda to send Ambedkar abroad for higher studies and Ambedkar gave full justice to it.

As mentioned earlier, Ambedkar made the announcement that he would not die a Hindu. Was conversion to some other religion in

his mind? The actual conversion took place in 1956 – 21 years after leaving Hindu fold was announced. Why did Ambedkar take 21 years to implement his decision?

Though Ambedkar had attraction to Buddhism there is no indication that he wanted to be a Buddhist. In the second Round Table Conference, which he attended (and Gandhiji also did), he pleaded for separate electorates. It was Ambedkar's conviction that mere reform of Hindu religion was not enough. What was needed was political power for untouchables. When Gandhi was in Yerwada Jail in 1932, British Labour Prime Minister announced the communal award by which untouchables were given separate electorates.

Gandhi reacted. He did not want untouchables to go out of Hinduism, though he wanted untouchability to go. In order to get separate electorates undone, Gandhi went on a fast. Even at this stage Ambedkar could have embraced another religion. He did not do so because he did not have that in mind. Yeola declaration was yet to come. As is well known, Gandhi ended his fast. Ambedkar had been persuaded to agree to Gandhi's terms. So Yerwada Pact, which abolished separate electorates but seats for untouchables would remain with joint electorates. Reserved seats for which Dalits alone would contest with joint electorates voting for them. Untouchables nominated by the Congress could contest reserved seats number of which was larger than those if separate electorates were in place. Ambedkar was at that time thinking more of power than of Dharmantar. For Gandhi, of course, untouchables were a part of Hinduism, though he piously hoped, untouchability will go. India is a land of many religions, any of which could have been selected. But it appears that till Yeola declaration in 1935, Ambedkar had a resolve no change religion. From a close reading of his writings and speeches, one gains an impression that he still wanted to remain in Hinduism and retain what he regarded his culture. Once, however, his decision to give up became known, there was competition among different religionists to claim status of Scheduled Castes among them. K.L. Gauba, a Muslim leader, telegraphed Ambedkar that the whole of Muslim India was ready to welcome and honour him and the untouchables, and promising full political, social, economic and religious rights. The then Nizam of Hyderabad offered 50 million rupees if Ambedkar could undertake to convert the whole untouchable community to Islam. On behalf of the Sikhs, the then Vice President of the Golden Temple, Managing

Committee, telegraphically invited Dr. Ambedkar into Sikhism. Bishop Bradley of the Methodist Baptist Church, Bombay, was more honest. Though welcoming Ambedkar and his followers to embrace Christianity, they should be real Christians only if they experienced real change of heart. Maha Bodhi Society of (now) Kolkata did welcome the conversion into Buddhism but deplored abandonment of Hinduism.

Thus there was no clear choice before Ambedkar. You must remember that any conversion would not affect him alone but lakhs of his followers because the latter would blindly follow to get rid of untouchability. Unfortunately, there was no able assistance of Ambedkar with whom he could discuss and debate and get a feedback.

Within two years of Yeola conference, World War II broke out and everyone's mind was occupied. Within a short time Ambedkar became a member of Vice-Roy's Executive, first in charge of Labour and then as in charge of Law. Things were moving almost rapidly. Gandhi launched first individual Satyagraha in 1940 and in 1942 Quit India movement. Gandhiji and other leaders of the Congress were imprisoned. The world would have looked at it as opportunistic if Ambedkar, taking advantage of the absence of these leaders, had launched conversion movement. Then followed negotiations, independence, partition, mass movement, and independence. Ambedkar became Law Minister and the Chairman of the Drafting Committee of the Constituent Assembly. It must be regarded as a wonder that in such turbulent times, Babasaheb was cool and collected.

But his mind was not idle. Even before the Yeola conference he had named his newly constructed house as "Rajgriha". Rajgriha was the capital of King Bimbisara who was a lay disciple of Buddha. This shows his attachment to Buddhism whose details he had not yet worked out. Hence probably the hesitation or vacillation before embracing Buddhism even after the Yeola declaration.

Looking back, it must be said that even during his student days Ambedkar was not moving in the direction of Buddhism, Buddha and his teaching had an attraction for him. "Manusmriti" was burnt with a view to attract the attention of Caste Hindus. Sanghrakshita, author of "Ambedkar and Buddhism", says in paragraph 99 that the truth of the matter was that for Ambedkar and his followers "the

question of renouncing Hinduism was a difficult and complex one.” If untouchability were abolished, they would probably remain Hindus partly because they were accustomed to Hindu culture and worshipped Hindu Gods.

In Kavitha, a village in Gujarat, the Caste Hindus penalized the untouchables for daring to send their children to school. This infuriated the untouchables. In 1936, at a conference in Pune (then Poona), Ambedkar announced that even God will not be able to dissuade him from renouncing Hinduism.

Later in an interview with a Buddhist monk, Loknath, Ambedkar promised to consider carefully the question of converting to Buddhism – which means he was not at that time determined to embrace Buddhism.

But his attachment to Buddha and Buddhism was visible. In 1946, he started a College in Mumbai (then Bombay) named it after Siddharth. Another building for the college was named Buddha Bhavan. He was impressed by “Essence of Buddhism” written by P.S. Narasu of Madras and got it reprinted at his own expense. In Aurangabad, a college started by him was named Milind College. In 1948, his elaborate article “Buddha and the Future of Religion”, containing an analysis of Hinduism, Christianity, and Islam was published as an article in the journal of Maha Bodhi Society of Calcutta, affirmed his faith in Buddhism. Even today it remains an excellent exposition of Buddhism and is a challenge or invitation to Buddhist nations.

Dr. Ambedkar had many choices before him. Earlier it has been mentioned that other religionists wooed him. Islamist population would have been doubled. Christians would have increased in population from 3% to 5%. Sikhism would have spread throughout the country instead of being confined to Punjab as of now. Babasaheb studied pros and cons of different actions despite the fact that Buddhism remained first choice.

Studies made by him through his representatives sent to different parts of India convinced him that by conversion to any of these religions would end untouchability but not segregation. Dalits converted to Christianity were made to sit on separate pews in the church. Their graveyard was different. Their graveyard was different. Their new surnames showed from which caste they had

converted. In Islam there were schisms. Sikhism was too difficult for his followers with its five K's.

Dr. Babasaheb Ambedkar visited Ceylon (Sri Lanka) and Burma to observe the form of Buddhism practiced there. He was more than ever convinced that a moral, rational religion like Buddhism was the one for him and his followers. Dr. Ambedkar was an atheist, though he did not announce it from the housetop. In all his speeches and writings he never took the name of God.

Thus by 1956, he had traveled a long way from 1935 – inexorably towards Buddhism, though as he interpreted it. He understood religion to mean morality, freedom, liberty and equality. These only Buddhism possessed. As Gail Omvedt, of Nehru Museum, has said: “He chose to convert to Buddhism partly out of desire to provide a religion for his people that would be binding and would serve as a basis for morality and identity; a religion that would be truly Indian because it would represent the most equalitarian, rational, and ethical strand in India's post.”

He had passed by several milestones on the road to Buddhism. His “*Karmabhoomi*” and “*Punyabhoomi*” remained Bharat.

## Buddha Revisited

Some of the prophets, like the Buddha, are timeless and continuously provide source of information. They inspire you to write about them regularly. Though Buddhism had vanished from India around 5<sup>th</sup> Century after the rise of Adi-Shankaracharya, Buddhist thought has spread to other countries in different forms. Nagarjun transformed it into Mahayana though original Buddhism that was taught was Theravad.

It became Zen (Dhyan) Buddhism in Japan though it did not retain its original form. Even in Japanese marriages, Shintoism, Catholicism and Buddhism, have influence. It is not Buddhist marriage in that sense. A Hindu marriage in India is conducted as per Hindu law; a Muslim law, supposed to be a contract, is carried out in the same way, in the presence of Maulavis; but not so in Buddha marriage in Japan.

Buddhism was practically unknown in India after 5th century. By that time Shankaracharya had unleashed his attack on Buddhism and had in fact included Buddha in Dashavataras Stotra which made Buddha a Hindu God. Hindus regard Buddha as one of themselves though they rarely worship him. Theravad Buddhism travelled to Cylon through the efforts of the sister of Ashok. It can reasonably be assumed that Sri Lanka has retained Theravad Buddhism. Mahayana Buddhism which later was developed brought god, goddess and angels in the religion. They made a distinction between Buddha and Buddhism. The latter eternally engaged in bringing people to Buddhist principle.

After having seen the broad principles of Buddhism, it is inevitable to know the romantic beginnings of Buddhism. Buddha's name was originally Gautama, a prince of Shaka branch, prince class. That is how he is called Shakya Muni. He married his cousin, Yashodhara but for nearly 10 years they had no children. It was only when he was 29 years, he had a son. Gautam was disappointed and he named him Rahu, (who along with Ketu brings bad luck.) In due course, Rahu became Rahul.

It has been mentioned in the other literature that he had seen, when on a tour of Kapilvastu, an old man, a sick man, a dead man. Ambedkar rightly discounts this story, because according to Ambedkar every person, even Gautam in early days, must have seen

old age, sickness and death. These could not have (been d) provoked him to become a parivrajak as the opening part of Brihadharmaya Upanishad, stresses that spirituality is essential to become a parivrajak. It may be, Gautam might not have read Brihadharmaya but the spirit of Upanishad must have gripped him. Like every one born in those days, he thought as Bhagwad Gita taught, '*Jatasya Hi Dhruvo Mrutyu*' i.e. who is ever born must die. But the converse in Gita was not believed or accepted by him. It says that *Mrutasya Hi Dhruvo Janma* i.e. he who dies must also be born. It contained a shade of Karma theory. A deep internal cogitation must have been going on in his mind and that must have led him to become Parivrajak.

After he decided to become a Parivraja, Gautam set out with his famous horse called Kanthak and his horseman. After crossing the outer limits of Kapilvastu, he got down from his horse. He was, however, wearing costly garments and jewellery. Obviously, he cannot stay with them in the forest as Parivrajak persons in similar pursuit would ask him about his clothes and jewellery. A beggar was going by and when Gautam asked him whether the beggar would exchange his clothes, the beggar was filled joy! Clothes were thus exchanged. Gautam was ready to leave. Even Kanthak was in tears; the horseman obviously. It was a great moment celebrated throughout all Buddhist literature. It is a great pity that no proper film on Buddha has been in Bollywood.

Buddha's austerities are in company of five ascetics. He learnt several things but not the one which he wanted to know. Truth about the world's suffering and individual suffering eluded him, though in the process he became emaciated. Seeing the futility of extreme starvation and emancipation, he decided to drive a new path. This was the path of thought and meditation. In this Sujata, the young daughter of the Chief of Village, who was staying with him proved to be a great help. How injured he was? Why he was starving? These and umpteen other questions were agitating the mind of Sujata and her sisters and the answers she did not get worried them immensely.

Though the first discourse Gautam gave was in Mrigavar- deer park- in Saripatta near Varanasi, Sujata being a quick learner, learned from experience. She was not among the five parivrajaks in Deer park. She was soon to be a disciple of the Buddha along with her

relative. This was not an ordinary event. No author or film maker has exploited it as yet.

By this time Buddha, 40 year old had started his ministrations. He led a strict life of eating, sleeping, following a *pettika*- a set of rules; he enjoyed a good and healthy life. There is no record of Buddha falling ill any time. He along with his men withdrew from public life because that was the period of heavy rains, especially in the North. He retreated to many towns, but for some inexplicable reason, he went to Vaishali on retreats.

Every one was welcome to Sangha. If invited to poor man's house, he would willingly go. He had one reservation. Unlike the Jains he did not believe in non-vegetarian but if a *bhik* offered was meat, not specifically prepared for him, he was not averse to it. Buddha himself ate meat. But the condition both for himself and his disciple was that it must not have been prepared for them. When a *Bhikkhu* was going from house to house in search of food, he accepts what is given to him. Obviously no housewife is anticipating that a *Bhikkhu* is coming and that meat is to be prepared for him. She gives him whatever is in the house.

Ambedkar repudiated three noble *dukkhas*. Birth, according to the Buddha, is the first *dukkha*. Ambedkar repudiated it for the simple reason that you cannot determine that birth is itself unhappiness. It is what you make it. It is basically anti-humanistic. Birth is not in your hands. How you groom is in the hands of your parents and the environment. It is here that D.D. Kosambi brings in Marxism. According to him, the structure and superstructure of the society is the determining fact of happiness or unhappiness; the author, however, has regarded this as a mechanistic view. Everything is not dialectical. If, in justice to his fair words, life is no logic, similarly dialectics is not necessarily life. When Buddha said *dukkha* could be eliminated, he obviously did not mean that *dukkha* of death could be eliminated. No human could do it. Only one can attempt to eliminate *dukkha* born of other causes. *Dukkha* of birth/death can never be avoided. Of course, during the course of one's life, many occasions arise when man is unhappy. That unhappiness can be avoided. Indeed it can be escaped.

It can be regarded that *dukkha* in that sense can be the cause of birth. If one lives, one gets *dukkha*. Birth, in that sense, could be said to be cause of death. But to say that birth in itself is *dukkha* is, in a



sense, wrong; it is unhelpful. An improper understanding of this aspect has compelled many authors to say that Buddhism is gloomy/pessimistic. On the other hand, Buddhism can be seen as a way to be happy; because it says in the 2nd and 3rd noble truths that *Dukkha* can be eliminated by the 4th truth.

The many problems to which human flesh is heir - of which Shakespeare spoke in his famous creation, Hamlet - cannot be eradicated by ashtang marga (eight fold path) taught by Buddha. The physical ailments are not within the reach of 8 paths of Buddha. The other problems which are psychological can be handled by the teachings of Buddha. Anger can be conquered; prejudice can be eliminated. Similarly other psychological problems can be evaded or avoided. This does not mean that problems are necessarily the result of birth. Some are the result of living, which is the result of birth and they can be cured by the methods suggested by Buddha. This is the limit to his teachings. It is an enormous mistake to believe that the world be bereft of all troubles and problems if Buddha's eight fold path is followed. In this sense, Buddhism is as ineffective as any other religion. The eight fold paths shown by Buddha will lead one to peace of mind. It is not a medicine for physical problems.

There are many anti-humanist trends in Buddhism. The first of the four noble truths is anti-humanistic. No humanist will ever accept a proposition that birth is *dukkha* (sorrow). Every humanist will teach you what a Marathi poet has said that one should love life, one should love living. Further, life must be lived; not merely endured. The three jewels of Buddhism are also of doubtful validity as far as the humanists are concerned. The first jewel says *Buddham Sharanam Gachhami*. A humanist will not generally agree to go in refuge to any one. A humanist will not say *Dhammam Sharanam Gachhami*. Similarly Buddhists' insistence that every one should be a member of Sangham will be acceptable to a Humanist only if this was for the sake of humanity. Roy as a humanist denounced all types of organisations. Membership of an organisation is anti-humanist. It was only for convenience that Humanist Association was established (revived in 1970). *Dhammam Sharanam Gachhami* is to some extent acceptable because one is taking refuge in principle. By and large *Sharanam Gachhami* is anathema to humanists. There is almost no mythology in Buddhism, no mysticism. But there is a sort of spiritualism in four noble truths,

eight fold path etc. Aldenberg has pointed out that Buddha was not even a social reformer.

Buddhism in one sense is not a religion. Every religion in the world has a god or gods. But Buddhism has none. He pretended that it does not believe in soul which Jainism does. Basically or essentially Buddhism is a guide to an individual though it encourages Sanghas. The effect of Buddha's teaching was the decline in Brahmanism. Buddha probably intended that Brahmanism should decline. Buddha was born in 500 B.C. That is 2500 years ago when Brahmanism was at its highest. Vedic rites had taken hold of the society. Sacrifices were rampant and were taught that they were a key to deliverance. People believed in Karma and craved for a paradise. It was thought a yagna or sacrifice was a visa to paradise. Buddha did not approve it. In innumerable words he denounced this practice and demonstrated that one's salvation is in one's hand. There were no middlemen like Brahmins or priests between men and paradise. This was anti-Brahmanism. Yet peculiarly he praised Brahmin qualities. On many occasions he lauded the Brahmin qualities like learning, concern for others, and indifference to wealth. He subscribed to the poem *Vaishnava Jana to Tene Kahie Je Peed Parae Janere* though the poem was not yet born.

Buddha was unknown to Indians even in 19th Century. Thanks to the efforts of Ms. Rhis Davids, Buddha was born again. (? d) She studies large literature of Buddha but she did not find anti-Brahmanism anywhere. Although, no doubt, Brahmanism practices (which d) were, in no uncertain terms, condemned. As Oldenberg observed, the Brahmanism was not to Buddha an enemy whose conquest he would have been unable to effect. But he often found the local influence of respected Brahmins an obstacle to the Path.

Yet the modern books describe Buddha as if born to fight Brahmanism as Oldenberg himself says. Buddha was Martin Luther to Papacy. Yet, literature abounded in modern literature about the denunciation of Brahmanism in the context or out of context of Buddhism (God as political Philosopher; Buddha's challenge to Brahmanism, 2003) that expected to contain a hatred of Brahmanism. The author of the book, a political philosopher of Hyderabad, is a Dalit. But 'Buddhism in India: Challenge to Brahmanism and caste' (Saga Publication) by Gel Omvedt was expected to be a scholarly book. She is a French lady, probably converted to Buddhism and was a Lecturer in Bhubaneswar. The

book is a scholarly book containing sociological contemporary study but there is hardly any criticism of Buddhism.

During the course of his discourses, Buddha met all sorts of people, Kings, Princes, common men, artisans, courtesans, lepers, cobblers, etc. Yet he had no hesitation in converting them. Ultimately he died of food prepared by Chandala. There is a controversy as to whether what he ate was pork or some similar thing.

Different countries have different kinds of Buddhism. Why not one for India based upon Ambedkar's book on Buddhism? Miss Omvedt calls it *navayana*. The name is apt and attractive. It must have libertarian approach. It will thus bring more men to Buddhism. Scholars should work on those lines.

## Protecting Religious Feelings

Dr. Charles Lionel, editor of “Reason”, the official journal of the Rationalist Association of India and one of its Vice-Presidents, was prosecuted in the Court of the Chief Presidency Magistrate, Bombay for an offence punishable under section 295A of the Indian Penal Code. The prosecution was launched in January 1934 - about 7 years after section 295A was inserted in the Penal Code - on the charge that in the September 1933 issue of “Reason” edited and published by Dr. d’ Avoine, statements had been made by him which were calculated to outrage the religious feelings of a class of His Majesty’s subjects namely the Catholics.

The learned Magistrate who ultimately by his order dated 6th February 1934 acquitted Dr. d’ Avoine, noted in his judgment that section 295A was a new section inserted in the Indian Penal Code as a result of the decision of the Lahore High Court in what is known as Rangila Rasul case. The Rangila Rasul case decided the scope of section 153A of the Indian Penal Code, which section itself had been introduced in the Indian Penal Code in the year 1898 (The Indian Penal Code was by that time 36 years old). Section 153A has subsequently undergone several changes, having been amended first in the year 1961, there after in the year 1969, and again in the year 1972. The central provision of the section, however, remains the same, namely, to make it an offence to promote or attempt to promote on grounds of religion, among others, disharmony or feeling of enmity, hatred or ill will between different groups. In the Rangila Rasul case, one Raj Paul had been convicted for the offence punishable under section 153A on the ground that he had by writing made several derogatory remarks about the Prophet of Islam. In appeal, a single Judge of the Lahore High Court held that section 153A was not meant to prevent an attack on the founder of religion. The Sessions Judge who had convicted the accused had found that the pamphlet was intentionally offensive, scurrilous and wounding the religious feelings of the Mohammedan community. The Sessions Judge had also said that the accused had no other intention except to make a wanton attack upon the Prophet of Islam, to hold him to ridicule, and condemn and ridicule his religion, and thus to wound the feelings of his followers. The High Court did not go into the merits of the writing but held that section 153A 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. “Reacting to the argument advanced on behalf of

the State that the Mohammedan community was more fanatic on the question of religion than other communities; the High Court held that the ignorance or fanaticism of a particular community cannot determine the nature of an act.

This judgment of the single Judge was not followed or agreed with by a larger Bench of the same Court in *Devi Sharan Sharma V. Emperor* (A. I. R. 1927 Lahore 594) though there is no reference in this latter judgment to the judgment of the single Judge delivered earlier. Later in *Kali Charan Sharma Vs Emperor* (A. I. R. 1927 Allahabad, 649) it was held that an attack on the life of the founder of a religion could come within the mischief of section 153 A if it otherwise satisfies the requirement of that section. In the Kali Charan case, a book written on what was described as the strange and mysterious events in the life of Mohammed contained references to the many marriages contracted by the Prophet in his life time. From the reported judgment it can be inferred that the book tried to depict the Prophet as a person of such abandoned and infamous character that Muslims on a calm reflection must necessarily repent upon their belief in him as a messenger from God. The Allahabad High Court found that many of the passages in the book abound in vituperation and sarcasm expressed with the grossest obscenity which could not fail to suggest that they were written deliberately for the purpose of holding up Mohamed to odium and derision so as to present him to the reader as a man wholly unworthy of the reverence of the millions who believe in him and in his doctrine.

It is submitted that though on the merits of the publication the judgment of the Allahabad High Court is correct, the question whether an attack on the founder of a religion could validly attract the penal provisions contained in section 153 A of the Indian Penal Code was not rightly decided. Section 153 A, as it then stood, and despite the amendments made from time to time till today, contemplates an offence of promoting hatred between two communities. The effect of criticism on the founder of a religion or indeed on a religion as a whole may outrage the religious feelings of the community, but it will not necessarily promote hatred between two communities, if for example, a Muslim himself had written the articles which were the subject-matter in both the Lahore and Allahabad High Courts, how could it legitimately be said that it would promote hatred between two communities? Similarly, if a Hindu writes in disparaging terms about the Hindu Gods and Goddesses, it cannot be said that this action would promote hatred

between two communities. This is for the obvious reason that the offending article does not necessarily compare the merits and demerits of two religions and that the author of the article himself may belong to the same religious community. There is no reason therefore why the position would be different if one individual non-Muslim wrote the article.

The Legislature, however, was quick enough to notice the lacuna in the Indian Penal Code. The distinction made between a publication which promotes hatred between two religious communities and a publication which outrages the religious feelings of a particular community was recognized. It is in order to bring the latter type of publication within the scope of punishable offences that section 295 A was inserted in the year 1927. Dr. d' Avoine was charged with the offence punishable under this section.

Dr. d' Avoine himself was born and brought up as a Roman Catholic. He had medical education in France and Belgium and at the time of his trial he had been practicing medicine in Bombay for nearly 25 years. He was the corresponding Secretary of the Rationalist Press Association of London which, as is well-known, was founded by Charles Watt in the nineteenth century. For several years before the trial he had been often writing on rationalism in such papers as *The Times of India* and the *Bombay Gazette*. In 1930, the Anti-Priest-craft Association (later renamed as Rationalist Association of India in 1931) was established and Dr. d' Avoine was one of its earliest members.

The defense of Dr. d' Avoine in the trial was that the impugned article entitled "Religion and Morality" in the September 1933 issue of "Reason" was to make it clear that the rationalist stood for the best and highest moral code and to point out that followers of the traditional religions attached more importance to unimportant spectacular practices and superstitious rites rather than to serious ethical and moral considerations.

This defense was broadly accepted by the learned Magistrate in an extremely lucid and logical judgment. The learned Magistrate pointed out that in the whole article there was nothing to which prosecution could take an objection. The accused may be wrong in stating the Catholic or the Mohammedan point of view. But it was the view of the accused that "morality as such plays but a secondary part in the religious beliefs of the uneducated and uncultured classes".

Dr. d' Avoine could not have been prosecuted under section 153A of the Code because he himself did not propound that one religion was better than the other by holding to ridicule the latter religion. He was Consistent in his criticism of both Islam and Christianity. The prosecution was launched under section 295A of the Indian Penal Code on the ground that the writing of Dr. d' Avoine outraged the religious feelings of the Catholic community.

For a multi society inhabiting this country, sections 153A and 295 A of the Indian Penal Code may be said to be necessary. But they are also capable of great mischief in the hands of an unenlightened community or the Government. Chapter XV of the Indian Penal Code deals with offences relating to religion such as injuring or defiling a place of worship with intent to insult the religion of a class, disturbing religious assembly and desecrating places regarded as sacred by any religious community or otherwise uttering words with the deliberate intention of wounding the religious feelings of a person. It has been said that the Romans were religious cynics and tolerated all religions. They left alone the religions professed by races brought under their subjection. The object of the Indian Penal Code was probably to endorse the Roman attitude and also to insist that followers of one religion shall not make religious beliefs of the others a target for their hostilities.

It may be stated that apart from the criminal conviction which a person is likely to invite under section 153 A or section 295 A of the Indian Penal Code, there is also the possibility of his publication being forfeited by the State Government if it appears to the latter to contain any matter which is punishable under section 153 A or section 295 A. The power of forfeiture is vested in the Government by virtue of section 95 of the Code of Criminal Procedure, 1973 (corresponding to section 99 A of the Criminal Procedure code, 1898). A State Government may make a declaration of its opinion that a publication contains matter which is punishable under section 153 A or section 295 A of the Indian Penal Code. On such a declaration being made, any police officer anywhere in India may seize the guilty material wherever it is found. Against the declaration so made by the State Government, a remedy is provided of making a petition to the High Court. This petition is to be heard by a special bench of three Judges of the High Court. The jurisdiction of the High Court is only to decide whether the grounds mentioned in the declaration made by the State Government justify an order of the forfeiture. It is not the function of the High Court to decide whether the author or the publisher of the publication is

guilty of the offence punishable under section 153A or section 295A of the Code. Apart from examining the grounds which form the foundation of the opinion of the State Government under section 95 of the Code, it is not the duty of the High Court to do anything more and to find for itself whether the book contained any such matter. The scope of the prosecution under section 153A and section 295A of the Indian Penal Code is different from the scope of proceedings arising under section 95 of the Criminal Procedure Code. However in both the proceedings questions arise almost in a similar manner, namely whether religious feelings of a particular community have been hurt or outraged leading to the situation contemplated by section 153A or section 295A of the Indian Penal Code.

Some of the cases which have been decided under the provisions referred to earlier may be conveniently recalled. Dr. B. R. Ambedkar waged a lifelong battle against the evil of untouchability and ultimately embraced Buddhism in 1956. He was also a crusader against the caste system. In his life he had delivered several speeches exhorting the scheduled castes to throw away the shackles of tyranny by repudiating the Hindu religion and by adopting Buddhism. A collection of his speeches translated in Hindi was published by Lalai Singh Yadav. This book was proscribed by the U. P. Government by invoking the provisions of section 99A of the then Criminal Procedure Code. The notification issued by the U. P. Government cited several passages in the book which, according to the Government, “promote or attempt to promote on grounds of religion, caste or community disharmony or feelings of enmity, hatred or ill-will between different religions, castes, or communities and insult or attempt to insult the religion or religious beliefs of a class.” The order of the Government was successfully challenged before the Full Bench of the Allahabad High Court. It was argued on behalf of the Government that the book promoted disharmony between Shudras and Harijans on the one hand and members of the higher Hindu castes on the other and that the book deliberately and maliciously outraged the feelings of Hindus and insulted their belief. This was an extraordinary view taken by the State Government. The view suggested that one could not mount an attack on the evils of untouchability which had been banned under the Constitution of the country. It was rather astounding that in the year 1970, 20 years after the Constitution had been enacted, the Government of the largest State in India should proceed to ban the speeches of the architect of that constitution, especially when those speeches dwelt upon the caste tyranny and the humiliation suffered by the scheduled



castes. It should be noted that a publication or any representation which expresses certain opinions or views contrary to the established opinions of a religion or a community cannot be brought within the purview either of section 153A or section 295A of the Indian Penal Code. Much literature on Islam has appeared from time to time and not all of it is flattering to that religion or to its founder. It is not an offence, for example to say that polygamy is obnoxious and in modern society, it should be banned. A petition which had been filed in the Allahabad High Court for proscribing a film on the ground that the film expressed views which were contrary to the accepted tenets of Islam was rejected because expressing opinions or views contrary to the accepted opinions or views of a religious community by itself could not be brought under the mischief of section 153A or section 295A of the Indian Penal Code.

Recently there was a film (*Nikah*) which attempted to show the predicament of a Muslim woman who is subjected to divorce by the utterance of the word "*Talaq*" three times. Some sections of the Muslim community protested that this was an attack on their religion. Fortunately no attempt was made by anyone to get the film proscribed or to prosecute the producer of that film. An assertion that a particular system prevalent in the community causes hardship and even injustice to some members of the community is, far from being inimical or insulting to the religion of that community, intended to bring about a reform. One D. B. Pradhan, said to be a research scholar and historian, wrote an article published in a Marathi weekly. That article propounded a thesis that prior to the rise of Islam, Hindu religion was prevalent in Gulf countries. The author also propounded that Islamic culture; religion and art were all greatly influenced by Indian culture and religion. A passage which probably was found most objectionable by the State Government which passed the order under section 95 of the Criminal Procedure Code stated that an uncle of Prophet Mohamed had offered prayer to Shiva in the following words: - "Oh Lord Shankar! If I were able to live for even a single day in India where man attains salvation, I would willingly surrender my entire life for that single day,"

The sum and substance of the article was to establish that Hindu religion was prevalent in that part of the world long before Islam came on the scene. Several instances in support of this thesis were offered. For example, 'pradakshina' (perambulation round a deity) which is peculiar to the followers of Hinduism was followed in Mecca by the pilgrims who went around the Kaba. The order of proscription passed by the State Government was set aside by the

High Court of Bombay which had no difficulty in holding that narration of history could not promote violence, enmity or hatred. If the view taken by State Government was accepted, said the High Court, “a day will come when that part of history which is unpalatable to a particular religion will have to be kept in cold storage on the pretext that the publication of such history would constitute an offence punishable under section 153 A of the I.P.C. ‘Historical research cannot be prevented on such ground. Even in earlier cases, such as the Rangila Rasul case and the Kali Charan Sharma case, the Courts had pointed out that historical work on the life of a founder of a religion or on religion as such could not attract the penal provisions of section 153 A of the Indian Penal Code.

Recently there was a large scale public protest and demonstration by the Muslim community in Maharashtra resenting a statement contained in a textbook meant for primary school children that Prophet Mohammed took to flight from Mecca to Yathrib. The objection of the Muslim community was to the use of the word ‘flight’ because it indicated that the prophet was a timid person. It was insisted that Mohamed did not flee from Mecca but emigrated from Mecca to Yathrib. It is unfortunate that members of the Muslim community should have looked at the offending sentence in such a narrow manner. To say that Mohamed fled from Mecca to Yathrib in order to save himself and to carry on his teaching at another place is not to underrate the courage and grandeur of his life after the year 622. Moreover, the use of the word ‘flight’ has not been made for the first time in the textbook in question.

“The Spirit of Islam”, written by the Rt. Hon. Ameer Ali contains a beautiful account of not only the religion of Islam but also of the life of the Prophet. The undisputed fact in the life of the Prophet was that in order to escape possible assassination at the hands of the Koreishis in Mecca, he had to leave that place and proceed to Yathrib. The Koreishis at Mecca had hatched plots to assassinate the Prophet on a particular night. Mr. Ameer Ali says (page 47) “As the night advanced, the assassins posted themselves round the Prophet’s dwelling. Thus they watched all night along, waiting to murder him when he should leave his house in the early dawn, peeping through a hole in the door to make sure that he still lay on his bed. But, meanwhile, the instinct of self-preservation, the instinct which had often led the great Prophet of Nazareth to evade his enemies, had warned Mohammed of the danger. In order to keep the attention of the assassins fixed upon the bed, he put his own green garment upon the devoted and faithful All, bade him lie on his bed, and escaped, as

David had escaped, through the windows. He repaired to the house of Abu Bakr, and they fled together unobserved from the inhospitable city of their birth. They lay hid for several days in a cavern of Mount Thaur, a hill to the south of Mecca.

On a later page Mr. Ameer Ali calls both the Prophet and Abu Bakr “fugitives” which meant persons fleeing from either justice or persecution.

Mohammed Marmaduke Pickthall was an Englishman who became a convert to Islam. He mastered Arabic and proceeded to translate the Quran. He published a book in English explaining the meaning of the Glorious Quran. In the beginning of the book the author has expressed to His Exalted Highness the Nizam gratitude for the most generous grant of leave which enabled the author to complete this work. The author was in the Nizam’s service. It could be safely said that Pickthall had the most profound and the deepest respect for the Prophet of Islam. A convert is, if anything, a true devout if not fanatical. In the introduction to the book Pickthall had given an enchanting, though somewhat summary, account of the life of the Prophet. Pickthall refers to the Prophet and others who left Mecca for Yathrib as “fugitives”. Then he says: “Such was the Hizjah the Flight from Mecca to Yathrib, which counts as the beginning of the Muslim era.”

He has also mentioned that “the Hizjah, the Flight to Yathrib” was decided when 73 Muslims from Yathrib came to Mecca to owe allegiance to the Prophet and invite him to their city.

Passages from several other authors can be easily cited where it has been mentioned that the Prophet fled from Mecca. It is an imperfect understanding of the life of the Prophet which takes objection to the use of the word ‘fled’. The life at Mecca had been, as Pickthall himself says, “The thirteen years of humiliation, of persecution of seeming failure, of prophecy still unfulfilled.” It is Hizjah that marked the beginning of the ten years of success of the Prophets mission.

This last example has been discussed only for the purpose of showing the superficial religious feelings of a community taking offence and the possibility of a Government passing ill-advised orders under section 95 of the Criminal Procedure Code or of launching prosecution on wholly untenable grounds.

## **Justice R.A. Jahagirdar (Retd)**

*Justice RAJahagirdar (Retd) studied economics and politics for his graduation and post graduation. During his college days he took part in dramas, debates, and elocution and Students ' Union activities. He studied Law while in employment and passed Law examinations meritoriously in 1959. Having passed the I.A.S. examination, he chose not to join the Civil Service. He served as Government Pleader, Professor of Labour Law in K.C. College and in the University of Bombay.*

*In 1976 he was appointed Judge in the Bombay High Court and retired from there in 1990. After retirement he was appointed Chairman of Monopolies and Restrictive Trade Practices Commission but did not continue for long for personal reasons. He was also Chairman of the Committee for Fixing the Fee of Higher Education in Maharashtra.*

*In addition to his qualifications in Economics and Law, Justice Jahagirdar is a student of Philosophy, History and Religion. A voracious reader, Jahagirdar is fond of Will Durant and his wife Ariel, the famous philosopher-historian couple and quotes them often. His personal library, containing all the volumes of "The History of Civilization" written by this couple, is huge. Recently he has donated all his books toAcademy of Political and Social Studies and SM Joshi Foundation Library, in Pune.*

*He is connected with free thoughtmovement and organisations and has spoken and written extensively on rationalism and secularism. He had been the Chairman of Indian Rationalist Association, President of Maharashtra RationalistAssociation and Editor of "The Radical Humanist". As a Founder-Trustee of the Rationalist Foundation he has contributed Rs. 5 lakhs towards its corpus.*

*Dr. (Mrs.) Sharad Jahagirdar, daughter of Late Justice P.B. Gajendragadakar (whom Mharashtrians know very well), is a well known and an extremely successful gynecologist. Together, Dr. Sharad and Justice Jahagirdar have very generously donated to the cause of Rationalism, Secularism, Humanism, Social Justice and Freedom of Expression.*



**Rationalist Foundation**