THE PUNJAB DEVIATION: A MULTI-DIMENSIONAL CONSTITUTIONAL CHALLENGE TO THE JAAGAT JOT SRI GURU GRANTH SAHIB SATKAR (AMENDMENT) ACT, 2026

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ABSTRACT

The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Act, 2026 is the first foray by the Punjab Legislature into object-specific, religion-specific criminal enhancement. This paper attempts an eight-fold constitutional challenge to the Act, while also pre-emptively strengthening itself against five possible rebuttals. It contends that the Act, once analysed under the Pith and Substance doctrine, is not a Public Order measure, but rather criminal law, and thus requires Presidential Assent under Article 254(2). It also argues that the Act contravenes the Basic Structure, by failing to uphold secular equidistance, a charge supported by the distinction between criminal law and personal law as tools of State preference. The Act's strict liability feature is demonstrated as qualitatively different from regulatory strict liability, because of its life imprisonment penalty. The Article 14 challenge is rearticulated to accept the under-inclusiveness argument, while showing that the obvious arbitrariness of the quantum of punishment transforms legitimate under-inclusiveness into illicit class legislation. Finally, the paper provides a three-fold remedial framework to fill the remedies gap - reading down, severability, and total invalidity - for the Court's consideration. The Act has to be declared void or, at the very least, read down to meet constitutional criteria.

Introduction

India's constitutional Order has always harboured an uneasy peace with the laws of religious feeling.[1] Section 295-A of the Indian Penal Code, 1860[2] (and its re-enactment Section 299 of the Bharatiya Nyaya Sanhita, 2023 - BNS)[3] found its place in the calibrated balance between safeguarding India's citizens' religious feelings and upholding the freedoms of speech, expression, conscience and inquiry.[4] This was done through an exacting mens rea: the maliciously and intentionally targeted outrage of religious sentiments.[5]

The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Act, 2026[6] (hereafter, the Jaagat Jot Act) breaks this balance. Passed by the Punjab Legislature in the aftermath of various acts of perceived sacrilege relating to the Guru Granth Sahib,[7] the Act provides for a sentence of life imprisonment for "de-colouring," "defiling," "decomposing" or otherwise causing "physical harm" to a particular scripture.[8] This paper calls this the "Punjab Deviation" - a shift away from the general, religion-neutral statutory paradigm of the BNS to a State-specific, object-specific, religion-specific enhancement of criminal liability.

This updated version of the paper puts forward eight dovetailing constitutional challenges and specifically addresses five identified vulnerabilities: the Public Order/Pith and Substance counter-argument;[9] the remedies gap; the Basic Structure overreach concern; the Strict Liability vs. Regulatory Offence distinction;[10] and the under-inclusiveness defence. For each, this paper proposes an anticipatory response and a doctrinal response that blocks the vulnerability from exploitation.

The paper is organised as follows: Part II examines legislative competence with the Pith and Substance argument and finally repugnancy under Article 254.[11] Part III deals with the Basic

[1] S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1.
[2] Indian Penal Code, No. 45 of 1860, § 295A.
[3] Bharatiya Nyaya Sanhita, No. 45 of 2023, § 299.
[4] Ramji Lal Modi v. State of U.P., A.I.R. 1957 S.C. 620.
[5] Mahendra Singh Dhoni v. Yerraguntla Shyamsundar, (2017) 7 S.C.C. 760.
[6] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Act, No. 5 of 2026.
[7] Statement of Objects and Reasons, The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, Bill No. 5-PLA-2026.
[8] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Act, 2026, § 5.
[9] State of Bombay v. F.N. Balsara, (1951) S.C.R. 682.
[10] Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225.
[11] INDIA CONST. art. 254.

Structure challenge with the personal law contrast.[12] Part IV returns to Article 14 with a new under-inclusiveness deal.[13] Part V revisits the Article 19(1)(a) chilling effect.[14] Part VI draws a line between regulatory and penal strict liability. Part VII invokes the void-for-vagueness doctrine.[15] Part VIII invokes Article 21.[16] Part IX provides the court with a three-tier remedial framework. Part X concludes.

II. Legislative Competence: Pith and Substance, Public Order, and the Article 254 Regime

A. The Pith and Substance Doctrine: Double-Edged Sword

The Pith and Substance doctrine requires that the true nature and character of a law - its true purpose and predominant effect - be considered to determine which List the law belongs to.[17] The doctrine, upheld in State of Bombay v. F.N. Balsara[18] and explained in Hoechst Pharmaceuticals Ltd. v. State of Bihar[19], is frequently used to rescue State legislation that tangentially affects Central subjects. But the doctrine, properly applied, also stops States from disguising criminal laws with a handy cover-up - that of "Public Order".

It is not a question of what the Act is called or what the State's intention is. The question is: what is the Act? It defines specific acts. It creates a criminal offence. It provides for a mandatory punishment of life imprisonment. It creates a non-bailable offence. These are, without question, the signs of criminal law, rather than public order.

B. The difference between 'Public Order' and 'Criminal Law' Acts

Public Order laws (as they should be understood) are preventive. It allows the State to arrest people in anticipation of their disturbing the peace; to ban meetings; to impose curfews; to control behaviour that might provoke communal violence. The National Security Act, 1980;[20] the Disturbed Areas laws; preventive detention law - these are examples of Public Order

[12] Aruna Roy v. Union of India, (2002) 7 S.C.C. 368.
[13] Shayara Bano v. Union of India, (2017) 9 S.C.C. 1.
[14] Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1.
[15] Sushil Kumar Sharma v. Union of India, (2005) 6 S.C.C. 281.
[16] State of Madhya Pradesh v. Baldeo Prasad, (1961) 1 S.C.R. 970.
[17] Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna, (1947) 74 I.A. 23 (Privy Council)
[18] State of Bombay v. F.N. Balsara, (1951) S.C.R. 682.
[19] Hoechst Pharms. Ltd. v. State of Bihar, (1983) 4 S.C.C. 45.
[20] National Security Act, No. 65 of 1980.

legislation. They operate prospectively. They do not create new crimes. They do not limit sentence length.

The 2026 Amendment is not one of these things. It does not prevent disorder - it criminalises a particular type of acts after the event. It does not prevent acts in expectation of conflict - it punishes acts and imposes the highest possible temporal penalty in Indian criminal law. The Supreme Court stated in Romesh Thapar v. State of Madras[21]: a law that is primarily concerned with creating liability for past conduct is criminal law, whether or not the conduct that it punishes has a public order dimension.

The Pith and Substance of the 2026 Amendment, on closer examination, is the creation of a new crime with a specific penalty for specific acts towards a specific object. It has a dominant penal purpose. Its dominant effect is penal. The public order justification is incidental - a result of the social sensitivities surrounding the acts in question, not the legal form the Act takes.

C. The Article 254(2) Test: Assent of the Governor Is Not Enough

Once it is decided that the pith and substance of the Act is criminal law under Entry 1 of the Concurrent List[22], the Article 254 regime comes into play. Article 254(1) renders a State law repugnant to a Central law on a Concurrent List subject void to the extent of the repugnancy. The exception is found in Article 254(2): Presidential Assent.[23]

The Governor's Assent that the 2026 Amendment received is irrelevant to this analysis. The Governor's Assent is required for the Act to be validly passed into law under Article 200[24] - not as a surrogate for the Presidential Assent required under Article 254(2) to save a repugnant Concurrent List law. The two are different constitutional requirements with different constitutional purposes.

The Supreme Court in M. Karunanidhi v. Union of India[25] confirmed the irreconcilable conflict test: if a State law prescribes a penalty that cannot be reconciled with the penalty prescribed by the Central law for offences of a similar nature, then it is repugnant. The BNS provides, as maximum, three years' imprisonment for deliberate and malicious acts outraging

[21] Romesh Thappar v. State of Madras, (1950) S.C.R. 594.
[22] INDIA CONST. art. 246, cl. 2, sched. VII, list III, entry 1.
[23] INDIA CONST. art. 254, cl. 1, 2.
[24] INDIA CONST. art. 200.
[25] M. Karunanidhi v. Union of India, (1979) 3 S.C.C. 431.

religious feelings.[26] The 2026 Amendment punishes the same type of acts with life imprisonment, without even the basic requirement of deliberate and malicious intent. This is not a supplement or a gap - it is a repugnant conflict in the structure of punishment.

D. Even if a List II Public Order Law, the Act Fails

Even if we were to accept, arguendo, that the Act is a List II Entry 1 legislation, the Public Order classification does not provide it with immunity.[27] A Law regarding Public Order that attracts a penalty of life imprisonment for an indeterminate act, without intent to cause harm, and is made a non-bailable offence, is unreasonable under Articles 14, 19 and 21[28] for the same reasons articulated in Parts III through VIII of this paper. The List classification establishes the competence of the law-maker, not its immunity from constitutional scrutiny.

III. The Basic Structure Violation: Secular Equidistance and the Criminal Law Distinction

A. Secularism in the Basic Structure: S.R. Bommai

The nine-judge bench of the Supreme Court in S.R. Bommai v. Union of India reaffirmed that secularism is part of the Basic Structure of the Constitution.[29] Indian secularism, the Court explained, does not mean the separation of religion from public life but the State's principled neutrality towards all religions.[30] This neutrality is constitutionally mandated by the Preamble itself.[31] Justice Ramaswamy's concurring opinion put this as the State having 'no religion' and treating all religious faiths with 'equal respect'.[32]

This is the Equidistance Principle[33] - and it is the particular Basic Structure norm that the 2026 Amendment contravenes. In giving a special, high-penalty criminal protection to one scripture, the State no longer equidistant, but partisan.[34]

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[26] Bharatiya Nyaya Sanhita, No. 45 of 2023, § 299.
[27] INDIA CONST. art. 246, cl. 3, sched. VII, list II, entry 1.
[28] INDIA CONST. arts. 14, 19, 21.
[29] S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1.
[30] *Id.* at 233 (Ahmadi, J., observing that secularism implies an attitude of absolute impartiality toward all religions).
[31] INDIA CONST. pmbl. (amended by The Constitution (Forty-second Amendment) Act, 1976, § 2, to explicitly insert the word "Secular").
[32] S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1, 298 (Ramaswamy, J., concurring).
[33] DONALD E. SMITH, INDIA AS A SECULAR STATE 125 (Princeton Univ. Press 1963).
[34] Ahmedabad St. Xavier's College Soc'y v. State of Gujarat, (1974) 1 S.C.C. 717.

B. The Personal Law Analogy: Not Every Abnormality is Constitutionally Abnormal

The State's best argument is the personal law analogy. India tolerates religion-specific personal laws (Hindu succession, Muslim marriage, Christian divorce) that are, of course, not religion-neutral.[35] So why not allow this religion-specificity in criminal law?

Because of their nature and origin. Personal laws are a constitutionally recognised exception - a colonial legacy maintained as a stop-gap measure until the adoption of a Uniform Civil Code under Article 44.[36] They are not a State endorsement of any particular religion.[37] They are a recognition that religious groups can regulate their private affairs according to their religious laws. Importantly, they are inter-privately regulated. The State does not intervene in a Muslim marriage or a Hindu succession dispute. The State regulates, but does not rank.

Criminal law is quite another matter. It is the coercive power of the State used against its citizens.[38] When the State uses criminal law - and the monopoly on violence that is its hallmark - to defend one scripture under a life sentence regime and all other scriptures under a three-year maximum, it does not simply tolerate religious diversity. It coerces a hierarchy of religious sanctity and its enforcement. The State takes sides with one religion's theological agenda.[39] This is strictly against the Equidistance Principle.

The difference is this: personal laws say 'the State will not interfere with your community's self-governance.' The 2026 Amendment says 'the State will use its enforcement capacity to protect your book and not others'. The first is accommodation.[40] The second is preference. Accommodation is constitutionally tolerated. Preference goes against the Basic Structure.[41]

C. Aruna Roy Principle: Recognising vs. Preferring

In Aruna Roy v. Union of India (2002) 7 SCC 368, the Supreme Court clearly distinguished between State's acknowledgement of the place of religion in people's lives and State's privileging of a particular religion.[42] It confirmed that while a secular State may educate its

[35] INDIA CONST. sched. VII, list III, entry 5.
[36] INDIA CONST. art. 44.
[37] State of Bombay v. Narasu Appa Mali, A.I.R. 1952 Bom. 84.
[38] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1.
[39] Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, A.I.R. 1962 S.C. 853.
[40] Aruna Roy v. Union of India, (2002) 7 S.C.C. 368
[41] S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1, 234.
[42] Aruna Roy v. Union of India, (2002) 7 S.C.C. 368, 385.

citizens about religion, it may acknowledge the country's religious history, and it may even defend religious groups from persecution, it may not do so if the acknowledgment or defence comes at the expense of another religion.[43]

The 2026 Amendment does. It does not recognise the importance of the Guru Granth Sahib, it elevates it. It does not afford Sikhs equal protection from harm with members of other faiths - it elevates the Guru Granth Sahib above a level not afforded to any other scripture in India. Once the State starts to rank scriptures on the basis of the severity of the punishment that it attaches to the desecration of the scripture, it enters what this paper terms the 'theocratic danger zone' - the constitutionally forbidden space where the State becomes a theological judge, deciding which scriptures deserve the most rigorous legal protection.[44]

D. The 'Context-Sensitive Legislation' Counter and Its Limits

A conservative bench might treat the Act as a reasonable response to particular local issues of communal conflict in Punjab as an example of context-sensitive legislation, to which the Court should be deferential. This claim needs to be rejected for two reasons.

First, the Basic Structure is that part of the Constitution which is context-independent. The whole point about the Basic Structure doctrine, as enunciated in Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225, is that there are certain norms upon which no legislature - no matter how benevolent, no matter how attuned to context - may legislate.[45] Secularism is one of those norms.[46] Circumstances can shape the way a legislature exercises its constitutional power. It cannot expand those limits.

Second, the law's response to potential communal tension over sacrilege must be religion-neutral. The State could have created higher penalties for intentionally destroying any religious icon or book. The State could have established special courts to try sacrilege cases. The State could have created wide-ranging sacred sites protection laws for all religions.[47]

[43] *Id.*
[44] A.S. Narayana Deekshitulu v. State of A.P., (1996) 9 S.C.C. 548.
[45] Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225.
[46] *Id.* at 285 (Sikri, C.J., identifying secularism as a fundamental and unalterable feature of the Constitution).
[47] *See, e.g.*, The Places of Worship (Special Provisions) Act, No. 42 of 1991 (demonstrating a religion-neutral legislative framework designed to protect the sacred sites of all religious denominations universally).

None of these options were chosen. The decision to protect one scripture only (at life imprisonment) is not context-sensitive. It is constitutionally prohibited to favouritism.

IV. Article 14: Under Inclusiveness, Manifest Arbitrariness and the Equality Guarantee

A. The Equality Code and the Two-Pronged Test

Article 14 protects equality before the law and the equal protection of the law.[48] The old test is: (i) intelligible differentia (a discernible basis of classification); and (ii) rational connection between the differentia and the aim of the law.[49] The Supreme Court in Shayara Bano v. Union of India[50] also added the limb of manifest arbitrariness: a law is invalid under Article 14 if it is arbitrary, irrational or disproportionate.[51]

B. The Strategic Gamble: Under-Inclusiveness is Okay - To a Certain Extent

The under-inclusiveness doctrine is a well-established and accepted doctrine in Indian jurisprudence which means that the legislature need not deal with every case of a problem in one law.[52] In R.K. Garg v. Union of India,[53] the Court observed that classification by the legislature need not be as precise as mathematics, and that the legislature may take a piecemeal approach to reform.

For the sake of argument, this paper accepts that the Punjab Legislature was justified in responding to the particular events of desecration of the Guru Granth Sahib that prompted the 2026 Amendment, but not to legislate for all other sacred texts at the same time.[54] The doctrine of under-inclusiveness means that not having a general statute on sacred objects does not by itself render the Act invalid.

However, the concession stops at this point. Under-inclusiveness is fine as long as the law's treatment of the included class is itself rational.[55] When the law's treatment of the included

[48] INDIA CONST. art. 14.
[49] State of West Bengal v. Anwar Ali Sarkar, A.I.R. 1952 S.C. 75.
[50] Shayara Bano v. Union of India, (2017) 9 S.C.C. 1.
[51] *Id.* at 99 (Nariman, J., declaring that manifest arbitrariness must be an essential component of Article 14 to strike down capricious legislation).
[52] Sakhawant Ali v. State of Orissa, A.I.R. 1955 S.C. 166.
[53] R.K. Garg v. Union of India, (1981) 4 S.C.C. 675.
[54] Statement of Objects and Reasons, The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, Bill No. 5-PLA-2026.
[55] Deepak Sibal v. Punjab Univ., (1989) 2 S.C.C. 145.

class is flagrantly arbitrary - grossly disproportionate to any rational legislative purpose - the under-inclusiveness no longer becomes a legitimate government decision, but a means of unconstitutional discrimination.[56]

C. The Quantity of Punishment as the Critical Factor

Life imprisonment is the pivotal prescription. The landscape of comparative penality: the murder of a human being may attract life imprisonment (BNS Section 103).[57] Rape may attract life imprisonment.[58] Terrorism may attract life imprisonment. The 2026 Amendment places "de-colouring" a page of the Guru Granth Sahib (without the need to prove intent) in the same category as the most severe crimes against individuals and the State.[59]

The Supreme Court clarified, in Navtej Singh Johar v. Union of India,[60] that when the impact of the discrimination is severe, the severity of the impact is what determines if the under-inclusiveness amounts to an Article 14 violation. The Court concluded that when the consequences of a classification are so disproportionately severe for a group that the disproportion in and of itself becomes the constitutional concern, there is manifest arbitrariness.[61]

In this case: a citizen who damages the Quran is subject to up to three years' imprisonment under the BNS.[62] A citizen who damages the Guru Granth Sahib faces life imprisonment under the 2026 Amendment. This is not a case of more or less, but more or less than nothing. Two citizens have done substantively the same act with substantively the same moral responsibility (assuming both acted maliciously) and the State has applied punishments so different that they can only be justified by the State's choice to rank the Guru Granth Sahib as substantively more important for legal purposes than any other religious book in India.[63] It is not per Navtej permissible under-inclusiveness. It is patently arbitrary.

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[56] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1, 158.
[57] Bharatiya Nyaya Sanhita, No. 45 of 2023, § 103.
[58] *See, e.g.*, Unlawful Activities (Prevention) Act, No. 37 of 1967, § 16.
[59] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Act, No. 5 of 2026.
[60] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1.
[61] *Id.* at 180 (discussing how the severity of penal consequences directly implicates the arbitrariness threshold of Article 14).
[62] Bharatiya Nyaya Sanhita, No. 45 of 2023, § 299.
[63] E.P. Royappa v. State of T.N., (1974) 4 S.C.C. 3 (Bhagwati, J., noting that "equality is antithetic to arbitrariness," which is particularly relevant when state actions impose wildly disparate outcomes on similarly situated individuals).

D. No Intelligible Differentia for Life Imprisonment

Even if one does not consider the under-inclusiveness issue, the classification does not pass the intelligible differentia test when applied to the quantum of punishment.[64] The State is unable to offer an intelligible secular criterion underpinning the forty-fold increase in penalty for destruction of one type of scripture than any other. Theological importance is not a secular criterion. Community size is not a secular criterion. Historical events are not a secular criterion - they provide context to the emotional appeal of the law, but do not provide a reason to distinguish between the punishments for the same act done with different objects.[65]

V. Article 19(1)(a): The Chilling Effect, The Shreya Singhal Standard, and Free Inquiry

A. The Shreya Singhal Standard

In Shreya Singhal v. Union of India,[66] the Supreme Court held that Article 19(2) restrictions[67] on freedom of speech must fall within the eight permissible categories, be "reasonable", and not be so wide or vague as to inhibit free speech.[68] The Court emphasised the distinction between expression and advocacy on the one hand, and incitement to cause harm on the other - it is only the latter that is constitutionally prohibited.[69]

The 2026 Amendment,[70] by criminalising acts of "de-colouring" and "defiling" without requiring proof of deliberate and malicious intent, sweeps within its net such a wide array of activities that are not incitement to violence and may not even be deliberate: a scholar working on an old manuscript, a conservator trying to restore a manuscript, a public servant cataloguing public property, a researcher studying the calligraphy of the text, a progressive theologian physically marking passages for analysis.

B. The 'Spark in a Powder Keg' Doctrine and its Constitutional Limits

In S. Rangarajan v. P. Jaganmohan Reddy,[71] the Court acknowledged that the anticipation of

[64] State of West Bengal v. Anwar Ali Sarkar, A.I.R. 1952 S.C. 75.
[65] *See* S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1 (reinforcing that state action must be based on secular, not theological, criteria).
[66] Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1.
[67] INDIA CONST. art. 19, cl. 2
[68] *Shreya Singhal*, (2015) 5 S.C.C. at 130.
[69] *Id.* at 131 (establishing the "discussion, advocacy, and incitement" threshold).
[70] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Act, No. 5 of 2026.
[71] S. Rangarajan v. P. Jagjivan Ram, (1989) 2 S.C.C. 574.

communal violence can inform the grounds of restrictions on expression. But the Court also stated that this expected danger cannot be 'remote, conjectural or far-fetched', it must be 'proximate and direct.'[72] A provision for life imprisonment for acts as generalised as "de-colouring" is not targeted at any proximate or direct danger. The prohibition responds to a ubiquitous potential for community sensibility - in the form of a speculative ban that Shreya Singhal declared to be unconstitutional.[73]

C. The Academic and Reformist Dimension

The chilling effect of the Act is not just physical.[74] Sikh reformist discourse - be it the Singh Sabha movement, or more recently, the discussion around caste in Sikhism, or gender readings of Gurbani - involves prolonged physical and mental engagement with the Guru Granth Sahib as a subject.[75] In the shadow of a life imprisonment provision with vaguely defined operative terms and no mens rea requirement, any physical engagement with the text that might be construed as "defiling" it must be treated as a crime. Scholars, theologians, activists, and artists will self-censor not because they intend any harm but because they cannot know whether their conduct is safe.[76] This is the textbook definition of unconstitutional chilling of protected speech and inquiry.[77]

VI. The Problem of Strict Liability: Regulatory Offence, or a Penal Hell?

[72] *Id.* at 583 (holding that the link between the expression and the threat to public order must have the required proximity, akin to a "spark in a powder keg").
[73] *Shreya Singhal*, (2015) 5 S.C.C. at 118 (striking down Section 66A of the IT Act precisely because it criminalized innocent or innocuous speech based on speculative offense).
[74] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1
[75] W.H. MCLEOD, SIKHS AND SIKHISM (Oxford Univ. Press 1999) (discussing the historical breadth of the Singh Sabha movement and the rich tradition of scholarly engagement with the Guru Granth Sahib).
[76] U.N. Human Rights Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 48, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) (noting that prohibitions on displays of lack of respect for a religion or other belief system are incompatible with the ICCPR, as such laws inevitably cast a chilling effect on academic, theological, and historical inquiry).
[77] Handyside v. United Kingdom, 24 Eur. Ct. H.R. (ser. A) at 23 (1976).

A. The Regulatory Offence: Strict Liability is not a Crime

It is correct that in India, courts have endorsed strict liability in regulatory regimes. Environmental, food and drug control, and financial regulatory laws all impose strict liability.[78] This makes sense: in regulatory contexts, it would be impossible to enforce the law if intent were required and the law would lose its protective purpose.[79]

But there are constitutional limits to regulatory strict liability. This is characterised by: moderate consequences (fines, licence suspension, short prison terms); a regulatory regime with defined standards; a legitimate regulatory interest that cannot be satisfactorily protected by requiring proof of intent; and a proportionality between the regulated conduct and the consequence.[80]

B. Crossing the Life Imprisonment Threshold

The Supreme Court in Sushil Kumar Sharma v. Union of India (2005) 6 SCC 281 delineated the difference between regulatory and penal regimes based on the consequence provided[81]: a regime is penal (and therefore subject to the full panoply of criminal law constitutional standards, including mens rea) if its consequences tread into the realm of serious punishment.

Life imprisonment is not a regulatory consequence. It is the severest temporal penalty in India. It is the punishment for murder, rape and terrorism.[82] The constitutional structure that allows strict liability for offences against food safety (fine, licence suspension) does not and cannot allow strict liability for offences punishable with life imprisonment.[83] The severity of the penalty is what turns a regulatory offence into a crime and the State cannot turn a crime into a regulatory offence just because it says there's a public interest in doing so.

The test is not what the legislature classifies an offence. The test is what punishment is imposed on the citizen. A citizen who 'accidentally de-colours' a page of the Guru Granth Sahib and is sentenced to life imprisonment has not been held liable for a regulatory offence.

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[78] *See, e.g.*, Environment (Protection) Act, No. 29 of 1986; Food Safety and Standards Act, No. 34 of 2006 (illustrating regulatory frameworks relying on strict liability principles for public welfare).
[79] J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers, (1996) 6 S.C.C. 665.
[80] Nathulal v. State of M.P., A.I.R. 1966 S.C. 43.
[81] Sushil Kumar Sharma v. Union of India, (2005) 6 S.C.C. 281.
[82] Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 63, 103, 113.
[83] State of Maharashtra v. M.H. George, A.I.R. 1965 S.C. 722 (Subba Rao, J., dissenting).

They have been subjected to the full force of the criminal law - without the constitutional safeguards required of the criminal law.[84]

C. The Proportionality Demolition: The Triple Test

This article uses a Triple Test to show the glaring irrationality of a strict liability life imprisonment regime:

First, the Proportionality Limb: the maximum non-capital penalty (life imprisonment) is mandated for a range of actions from accidental page tearing to ritual desecration. The maximum punishment is prescribed for the minimum culpability. This is the quintessence of disproportionality, censured in Om Kumar v. Union of India,[85] and endorsed in K.S. Puttaswamy v. Union of India.[86]

Second, the Culpability Limb: a legal system which imposes a maximum penalty of life imprisonment without requiring proof of intent to commit a crime has turned the criminal law on its head. Indian law imposes penalties of this extent because the culpability of the offender, i.e. his or her voluntary choice to commit the crime, justifies the loss of liberty for life.[87] Without intent, the penal justification fails. Punishment without desert remains.

Third, the Coverage Limb: the definition of the Act, without a mens rea requirement, is overbroad. A statute with a materially greater coverage than its purpose is arbitrary - it punishes for more than it says it does.[88]

VII. The Void for Vagueness: Uncertain Terms and the Executive's Role

A. The Vagueness Test in the Indian Constitution

The void-for-vagueness doctrine is well-established in Indian law.[89] In State of Madhya Pradesh v. Baldeo Prasad (1961) 1 SCR 970, the Court upheld a section of the Madhya Pradesh Berar Goondas Act to be unconstitutional for arbitrariness under Article 14 and for

[84] Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248.
[85] Om Kumar v. Union of India, (2001) 2 S.C.C. 386.
[86] K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1.
[87] Directorate of Enforcement v. M/s MCTM Corp. Pvt. Ltd., (1996) 2 S.C.C. 471.
[88] Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1.
[89] Kartar Singh v. State of Punjab, (1994) 3 S.C.C. 569.

breach of the rule of law, as it failed to provide fair warning of the conduct prohibited.[90] In Shreya Singhal, the Court invalidated Section 66A, inter alia, based on the argument that the words "grossly offensive" and "annoyance" could not be defined with certainty, giving the police unfettered discretion to make arrests.[91]

The constitutional test is that a penal law must contain enough clarity to enable: (i) a person of ordinary intelligence to know, with reasonable certainty, what is prohibited; and (ii) executive and judicial officers enforcing the law to have workable standards to avoid arbitrary application.[92] The clarity standard is at its highest when the law prescribes life imprisonment.[93]

B. The Undefined Terms of the 2026 Amendment

The 2026 Amendment uses the following undefined operative terms: "de-colouring", "defiling", "decomposing" and "physical harm". None of these terms have a legal definition in statutory or judicial law. They inject new and undefined terms into a life-sentence criminal offence. The undefined terms are not ancillary - they are the legs of the offence.[94]

For example, is "de-colouring" the application of bleach or the accidental spill of water? Is 'decomposing' the disintegration of old paper or the application of chemicals? Is 'defiling' physical actions or is it also symbolic ones that occur in proximity to the text? Is 'physical damage' macroscopic or microscopic?[95] The Act doesn't answer these questions. The arresting officer answers them all for us: unilaterally, unreviewable, in the heat of the moment.[96]

C. 'Fair Warning' and Arbitrary Arrest

The fair warning principle - that citizens should be given fair notice of what is prohibited before they can be found guilty of a crime - is a rule of law requirement inherent in Article 21's guarantee of personal liberty.[97] In A.K. Roy v. Union of India (1982) 1 SCC 271, the Court stressed that laws that impact personal liberty must be unambiguous, and that imprecise

[90] State of M.P. v. Baldeo Prasad, (1961) 1 S.C.R. 970.
[91] Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1.
[92] *Id.* at 133 (citing the "workable standard" test for criminal statutes).
[93] K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1.
[94] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, Bill No. 5-PLA-2026, § 4, cl. (ii).
[95] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, § 7.
[96] Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1, 142-145.
[97] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, § 6.

laws facilitate selective enforcement and prosecution.[98]

The vagueness of the 2026 Amendment and the non-bailable character converge to create a serious constitutional problem.[99] The Arnesh Kumar guidelines mandate judicial oversight of serious arrests because the likely punishment invites abuse.[100]

VIII. Article 21: The Substantive Due Process and the Non Bailable Dimensio

A. The Maneka Gandhi Doctrine

A seven-judge bench in Maneka Gandhi v. Union of India (1978) 1 SCC 248 ruled that the law's procedure for deprivation of personal liberty must be 'fair, just and reasonable' - not merely valid.[101] The law that authorises the deprivation must be substantive due process: it cannot be arbitrary, whimsical or oppressive.[102] The deprivation of personal liberty in the 2026 Amendment (with a non-bailable offence punishable by life imprisonment) is by a procedure that, according to the analysis in Parts VI and VII, is not fair, just, and reasonable.[103]

B. The Puttaswamy Proportionality Test

In K.S. Puttaswamy v. Union of India, the Court confirmed that proportionality is a part of the Article 21 inquiry.[104] The test is: (i) a legitimate aim; (ii) a rational nexus between the means of the law and the aim; (iii) least restrictive means to achieve the aim; and (iv) proportionality between burden on rights and benefit obtained.[105]

The 2026 Amendment fails steps (ii), (iii), and (iv).[106] Life imprisonment for unspecified acts without intent is not rationally related to deterrence - it is an example of legislative overkill.[107] Alternative less intrusive means were clearly possible: higher penalties (but not life imprisonment) for proven, intentional desecration; expedited prosecution; restorative justice;

[98] INDIA CONST. art. 21.
[99] A.K. Roy v. Union of India, (1982) 1 S.C.C. 271.
[100] Arnesh Kumar v. State of Bihar, (2014) 8 S.C.C. 273.
[101] Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248.
[102] *Id.* at 281-84 (holding that Article 21 does not exclude Article 19, and any law depriving liberty must satisfy the test of reasonableness).
[103] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, Bill No. 5-PLA-2026, §§ 4B, 5.
[104] K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1.
[105] *Id.* at 587 (Chandrachud, J.) (articulating the four-pronged proportionality test).
[106] Modern Dental Coll. & Rsch. Ctr. v. State of M.P., (2016) 7 S.C.C. 353.
[107] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, § 5(1), 7.

community mediation. The penalties are disproportionate to any possible advancement of liberty.

C. The Non-Bailable Trap: Pre-Trial Detention as Punishment

The non-bailable nature of the Act, and the penalty of life imprisonment, combine to create a pre-trial detention trap.[108] The threshold for bail under the BNSS for offences punishable with life imprisonment is high.[109] Someone arrested for accidentally "de-colouring" a page may be held in jail for months before trial - not because they are guilty, but because the State has effectively made the arrest a punishment.[110] This was criticised by the Supreme Court in Sanjay Chandra v. Central Bureau of Investigation.[111] The 2026 Amendment institutionalises it.[112]

IX. The Remedied Hierarchy: The Limits, Severability and Voidness

A. The Hierarchy of Remedies in Indian Constitutional Law

The Indian courts have a hierarchy of remedial options when dealing with an unconstitutional Act. In increasing order of intrusiveness: (i) Reading Down - the court construes the challenged provision in such a way that it complies with the Constitution; (ii) Severability - the court declares certain provisions or words unconstitutional while leaving the rest of the Act intact; and (iii) Complete Voidness - the court declares the Act unconstitutional in its entirety as void ab initio.[113] The court's default position is to adopt the least intrusive option that would make the Act compliant. This paper provides all three options, in primary, secondary and tertiary positions.[114]

B. Tier One: Reading Down (Primary Remedial Position)

The court can read down the 2026 Amendment to ensure it is constitutional by importing two constitutional changes:

[108] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, § 6.
[109] Bharatiya Nagarik Suraksha Sanhita, 2023, § 480 (formerly Section 437 of the CrPC).
[110] Nikesh Tarachand Shah v. Union of India, (2018) 11 S.C.C. 1.
[111] Sanjay Chandra v. CBI, (2012) 1 S.C.C. 40, 52-54.
[112] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, Statement of Objects and Reasons.
[113] Indra Sawhney v. Union of India, (1992) Supp (3) S.C.C. 217.
[114] Govt. of Andhra Pradesh v. P. Laxmi Devi, (2008) 4 S.C.C. 720.

First, read down to import the mens rea requirement of Section 299 BNS.[115] The Act should be interpreted as only covering acts done "deliberately and maliciously with the intent to outrage religious feelings" - as is required by the BNS. This removes the strict liability, chilling effect on innocent behaviour and vagueness-enabled arbitrary arrest issues. It renders the offence constitutionally sensible.

Second, limit the maximum penalty to a proportionate term. Sentencing of life imprisonment for any single act of scripture desecration - even malicious and deliberate desecration - is disproportionate in relation to the BNS's three-year maximum for the same type of conduct.[116] Reading down the maximum sentence to seven years' rigorous imprisonment (aligning with the upper limit of the maximum for serious non-violent offences in the BNS) would remove the proportionality concern whilst still transmitting the parliament's policy goals of deterring deliberate sacrilege more harshly than the BNS.[117]

Reading down unconstitutional provisions is well within the power of the Supreme Court.[118] In Shreya Singhal, the Court did not read down Section 66A because it was too infirm to be read down.[119] In this case, the infirmities are curable: the lack of mens rea and the disproportionate penalty. Reading down as a primary remedy is correct.

Crucially, reading down does not address the Article 254(2) procedural error or the Basic Structure secularism violation - these are separate grounds for invalidity that are not cured by interpretation.[120] The court would have to deal with these prior to the reading-down question.[121]

C. Tier Two: Severability (Second Remedy)

If the court elects not to read down the Act and, instead, strikes down sections of the Act, the doctrine of severability under Article 13 applies.[122] In R.M.D Chamarbaugwalla v. Union of

[115] Bharatiya Nyaya Sanhita, 2023, § 299 (formerly I.P.C. § 295A).
[116] *Id.* (prescribing a maximum of three years imprisonment for deliberate and malicious acts intended to outrage religious feelings).
[117] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, Bill No. 5-PLA-2026, § 7.
[118] Delhi Transp. Corp. v. D.T.C. Mazdoor Congress, (1991) Supp (1) S.C.C. 600.
[119] Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1, 159.
[120] INDIA CONST. art. 254, cl. 2.
[121] INDIA CONST. art. 13.
[122] R.M.D. Chamarbaugwalla v. Union of India, 1957 S.C.R. 930.

India,[123] the Court stated that the test for severability is whether the valid and invalid parts of a statute are inseparably connected so that one cannot be read without thwarting the intention of the legislature.

In this case: the life imprisonment provision may be severed from the rest of the Act.[124] If the court severs the life imprisonment quantum and substitutes the BNS's maximum of three years (by virtue of Article 254(1)), the Act's remaining provision (the definitions, the non-bailable classification, the investigative process) can stand.[125] But the non-bailability is parasitic on the life imprisonment quantum: it was presumably justified by the gravity of the penalty. The retention of the non-bailable classification will produce an inconsistent regime in which life imprisonment is severed. The court would have to sever both.

D. Tier Three: Total Voidness (Thirdly)

If the Article 254(2) procedural flaw is established - there is no Presidential Assent - and if the pith and substance of the Act is criminal law, the Act is void ab initio in terms of procedure.[126] Presidential Assent cannot be read down. The procedural ground alone mandates complete voidness.

Likewise, if the Basic Structure secularism failure is found, there is no reading down. A law that violates the Basic Structure cannot be read down or severed into constitutional validity, it must be struck down in its entirety, as the Basic Structure violation inheres in the fundamental choice to privilege one scripture over all others, which is the Act's core legislative decision, not a peripheral provision.[127]

The three-tier framework therefore resolves as follows: if the court finds the procedural or Basic Structure ground established, complete voidness is the only remedy. If the court declines to reach those grounds and addresses only the substantive rights violations, reading down is the primary remedy, with severability as the fallback.

[123] The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, § 7.
[124] *See id.* at §§ 4, 6 (defining "sacrilege" and classifying offences as non-bailable).
[125] *See id.* at § 6 (inserting § 4B, which classifies all offences under the Act as non-bailable).
[126] Kaiser-I-Hind Pvt. Ltd. v. National Textile Corp. (Maharashtra North) Ltd., (2002) 8 S.C.C. 182
[127] S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1

X. Comparative Analysis and Perspectives

A. The World's Abandonment of Blasphemy Law

The world has moved away from blasphemy laws and in favour of freedom to criticise ideas in constitutional democracies. The European Court of Human Rights (ECHR) in Handyside v. United Kingdom (1976) affirmed freedom of expression for ideas that 'offend, shock or disturb.'[128] The UN Human Rights Committee's General Comment 34 expressly pointed out that blasphemy laws are inconsistent with the International Covenant on Civil and Political Rights.[129] In 2018, Ireland removed the constitutional blasphemy offence via a referendum. The UK abolished the common law offence of blasphemy in 2008.[130]

B. Pakistan as a Case Study

Pakistan's blasphemy laws - some of the harshest in the world - have been widely criticised, including by international human rights bodies, for being inconsistent with the rule of law due to their vague wording, potential for abuse, and excessive punishment: the same traits identified in this paper. Even the Supreme Court of Pakistan, in Asia Bibi v. The State (2018), acquitted a blasphemy accused because the prosecution could not prove the elements of the crime.[131] The point here is not that blasphemy laws per se are unprosecutable, but that ill-defined, intentless, over-punitive blasphemy laws are constitutionally and practically unworkable. The 2026 Amendment repeats all of these failings in an Indian constitutional environment in which they are even less acceptable.

C. The Legislative Isolation of the 2026 Amendment

This is the only law, in any Indian state or Parliament, that protects any religious object or book under a higher criminal regime.[132] No Indian state has enacted heightened penalties for the desecration of the Quran, the Bible, the Vedas or the Tripitaka. The 2026 Amendment is

[128] Handyside v. United Kingdom, App. No. 5493/72, 1 Eur. H.R. Rep. 737 (1976).
[129] UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, ¶ 48, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011).
[130] Thirty-seventh Amendment of the Constitution (Repeal of offence of publication or utterance of blasphemous matter) Act 2018 (Ir.); Criminal Justice and Immigration Act 2008, c. 4, § 79 (Eng. & Wales).
[131] Asia Bibi v. The State, PLD (2019) SC 1 (Pak.)
[132] *Compare* Bharatiya Nyaya Sanhita, 2023, § 299 (providing a uniform three-year penalty for all religions) *with* The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Bill, 2026, Bill No. 5-PLA-2026, § 7 (providing life imprisonment for one specific religion).

unique - a single-religion, single-object, life imprisonment law in a country of 1.4 billion people following dozens of major faiths. Under Article 14, this is not permissible under-inclusiveness. It is unconstitutional class legislation.[133]

XI. Conclusion: The Constitution as the Firm Stance

The Jaagat Jot Sri Guru Granth Sahib Satkar (Amendment) Act, 2026 fails all tests of constitutional validity and this modified analysis has ensured that the five most perilous weapons of escape from the State's arsenal have been rendered useless.

The Pith and Substance doctrine, applied appropriately, demonstrates that the Act is criminal law, not a Public Order law - and therefore that the Article 254(2) Presidential Assent requirement applies. The Basic Structure challenge to secularism is fortified against a "context-sensitive legislation" response by the distinction between criminal law and personal law as tools of State preference: criminal law as the coercive arm of the State must remain religion-neutral. The Article 14 under-inclusiveness concession is strategic but with clear boundaries: the life imprisonment quantum transforms permissible under-inclusiveness into arbitrariness. The distinction between strict liability and regulatory offences is drawn at the threshold of life imprisonment as a consequence too serious to be insulated from the constitutional mandate of penal law by the category of regulatory offences. And the remedies deficiency is redressed by a three-tiered architecture which provides the court with a reading-down option while retaining the better arguments for absolute voidness on the procedural and Basic Structure grounds.

This paper does not argue for the permissibility of desecration. The State has every interest in discouraging malicious, deliberate damage to any religious text. This is already done by the BNS. The 2026 Amendment does not build on this, it tears it apart, by substituting a constitutionally rooted provision with a religion-specific, blunt, strict liability "life imprisonment" regime that fails the test of every facet of Indian constitutional law.

The Constitution of India, its Basic Structure, its equality, free expression, freedom of personal liberty protections and its procedural guarantees, is the means by which to correct the Punjab Deviation. Not because the Guru Granth Sahib is not deserving of respect from the State. But

[133] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1

because the Constitution is the fundamental law of the land, and no scripture - no matter how revered - can take precedence over it.