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# Religious Law and Hate Crime in Developing Countries Special Reference to India

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## ABSTRACT

*Secularism is an integral part of India where freedom of religion is a fundamental right provided to all citizens where religion is considered most important aspect of all most every citizen of the country. The Indian constitution and many other law states about protection of religious belief, religion is a sensitive topic it only involves morals of person but also includes upbringing of an individual. The undeniable fact is there are many flaws are accepted and rectified, violence in the name of religion is becoming part of daily activity, tackle the hate crimes. The majority of hate crimes are mostly done through the social media and other various modes. Author in this article concentrate on religious law and crimes to accept the flaws know the drawbacks and come up with effective legislation and bring unity among the people. In 21st century although we are ahead in technology, still we are finding it hard to Religious is basis of human life which is not mere a belief but way of living as the livelihood of each religious follower differs from other.*

**Keywords:** *religious law, crimes, secularism, freedom of religion and religious belief.*

## I. INTRODUCTION

Secularism being an Integral part under The Constitution of India, every individual is been enshrined with a freedom to profess religion as religion has a broader concept which includes both tradition and emotions. The religion also has certain disadvantages although it being considered as a guideline for a person to be a better human. India is been land of diverse religion and that religion has also contributed in a negative way where violence in name of the crime is being practiced which is a major threat for the society.

In the current scenario where the country is being marching towards technology and development still these hate crimes are in existence which shows major drawback in civilized society. Before existing of state, law democracy the people were bound to follow religious duties and claimed their rights which the religion recognized.

Religious played a vital role in maintaining peace and harmony in the ancient society hence it

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establishes that law and religion are interdependent as the role and objective of law was achieved through religious moral duties in ancient period.

## **II. EVOLUTION OF LAW FROM RELIGION**

During 3000B.C, Ancient Egyptian law had a civil code that was divided in 12 books which was based on the concept of math characterized by tradition, Equality and impartiality. The torah from Old Testament is probably the oldest body of law. Still relevant for modern legal system dating back to 1280 B.C.

## **III. RELIGION (INDIAN PERSPECTIVE)**

Ancient Indian has distinct traditions of law. The Arthashastra (400B.C) and manusmriti (100A.D) were the influential heritages that were considered for authoritative legal guidance.

Indian has established religious diversity and in both law and custom throughout the history of Indian religious is a core element. Where majority of Indians have associated themselves with a religion.

According to All Indian Religion census data 2011 Honorius amount 79.80% of the total population. The second largest religion is Muslim with 14.23% followed by Christians with 2.30% Sikh with 1.72%, Buddhist 0.70%, Jain 0.37%, other 0.66%.

Indian religious tolerance extends to highest level of government. The supreme law of land the constitution of India recognizes “secularism” as integral part of the nation, freedom of religion is fundamental right provided to all citizens.

The Indian constitution and other domestic laws of the nation recognize protection of religious belief but also penalized people who misuse those laws. Religion is considered to be betterment of unbinding any individual, but if betterment and rectified in context of religion, flaws would led to crime relating to hatredness among the follower of various religious community.

## **IV. NEGATIVE IMPACT OF RELIGION**

The major issue which developing countries are facing is crime is nexus with religion. Crime in religion has rapidly growth over the period of year. The nation is driven by the malafied ideologies in the name of religion where parties or community with such ideology have achieved breakthrough in electoral system in many countries such as India, Egypt, Turkey ,Israel, Iran, Afghanistan and have also established theocratic government.

In 21<sup>st</sup> century where technology is amusing us on one side the other side. The crimes are also

increasing which ranges from abortion, same sex marriage, religion phobia, mob lynching, discrimination on lower and backward class, harassment etc.

## **V. HATE CRIMES**

- **9/11 ATTACK:** In 9/11 attack when hijackers were responsible for killing innocents were influenced by the malafied ideology of Al-Qaeda in the name of religion.
- **NAZI SLAUGHTER OF JEWS :**The final solution an official code name for murder of all Jews within reach of Nazi was also an act amounting to hate crime
- **SRI LANKAN CIVIL WAR:** Civil war fought on island of Sri Lanka beginning on 23 July 1983 where there was a clash between the Liberation Tigers of Tamil Eelam (LTTE) and the government.
- **FRENCH WARS OF RELIGIONS:** A popular unrest between Catholics and Protestants in France between 1526 and 1598 which was considered as the second deadliest religious war in European history.
- **RWANDAN CIVIL WAR:** Fought between Rwandan Armed Force Patriotic Force due to a long running dispute between Hutu and Tutsi groups within the population.
- **GUJARAT COMMUNAL RIOTS (1969):** Religious violence broke out between Hindus and Muslims which started due to an attack on a Hindu temple in Ahmedabad and later expanded in major cities of Gujarat.
- **ANTI SIKH RIOTS (1984):** Sikhs in Punjab sought for autonomy due to the domination of Hindus which led to an attack of armed forces on the Golden Temple and costed thousands of lives of Sikhs.
- **EXODUS OF KASHMIR HINDUS:** Many Kashmiri Hindus were killed where masked men ran in streets with AK-47s shooting to kill Hindus who refused to leave Kashmir.
- **CHAMBA MASSACRE:** 35 Hindus were persecuted by Islamic terrorists in Chamba district of Himachal Pradesh in India.
- **RAGHUNATH TEMPLE BOMBING:** The suicide bombings in 2002 by suicide bombers where terrorists hurled grenades and fired indiscriminately on innocents.
- **AKSHARDHAM TEMPLE ATTACK:** On 24 September 2002 two armed men attacked the temple, killed approximately 30 members and injured more than 80.
- **GODHRA TRAIN BURNING:** Train was attacked by a mob of around 2000 people. After some stone pelting and coaches were set on fire, stone pelting and coaches were set on

fire victims were Hindu Pilgrims who were returning from city of Ayodhya after religious ceremony at dispute Babri Masjid site.

- **MOB LYNCHING:** A young Muslim man tied up, bleeding profusely all over his body was being lynched by mob that forced to chant “JAI SHRI RAM”.
- **GREIVIOUS HURT:** A Muslim teacher who taught in religious seminar was thrown out of train in West Bengal when mob thrown him out for chanting “JAI SHRI RAM”. Similarly on June 27 2019 a Muslim cab driver , 25 year old was beaten up by group of people when begged for mercy he was asked to chant “JAI SHRI RAM”.The U.S commission of international human rights condemned lynching of Ansari and observing the recognizable pattern of hate crime against vulnerable that marks Indians dangerous slide into a majoritarianism.
- **DADRI MOB LYNCHING:** The case of mob lynching in which mob of village attacked home of 52 year old Muslim man and killed him for suspicious of slaughtering of cow
- **PRASHANTH POOJARY:** A member of bajrang dal from dakshina kannada a flower seller was stabbed with blades by 6 assailants as they were against the victim involvement against illegal slaughter of cows.
- **UNA FLOGGING 2016:** 7 member of dalits family were assaulted by group of people in protest of cow protection in Una (Gujarat) where 43 people and 4 police officer were arrested. The hon’ble apex court state that it’s the duty of state to ensure that the machinery of law and order functions efficiently and effectively in maintaining peace. It also asked the legislature to create separate offence for lynching and provide adequate punishment for same.<sup>2</sup>

Hate crime is typically involving violence that motivated by prejudice on basis of race, religion, sexual orientation where it targets a victim because of their affiliation with certain social groups.

There is a rising tide of concern both internationally and domestically to tackle hate crime. In today’s era we can see how hate crime due to religion have caused irreparable damage in all dimensions of society.

Considering the situation of Syria where the attack on Syria citizen have taken the religious hate crime to next level. Where the society are being vulnerable towards a certain community who have vague ideology towards their affiliates which hamper tranquility among the society.

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<sup>2</sup> Tehseen S. Poonowalla v. UOI and ors

## **VI. ROLE OF RELIGIOUS LAW IN HATE CRIME**

As discussed above were few examples of hate crimes where it was among two distinct religions, but there is one more dimension of hate crime which need to be tackled on priority basis those are the religious laws.

Its an undeniable fact that every nation across the globe have accepted laws on basis of their religious teachings and those laws are been backed with penal provision,

However the major drawback of such laws are they are not tested whether it can be applied to the present generation as we all know that its hard to follow a law which is rigid in nature.

The author would like to throw light on certain laws which are accepted based on religious ideology but its object would discriminate gender and communities.

## **VII. GENDER BASED LAWS**

Saudi Arabia: For decades women in Saudi Arabia were unable to make major decisions without permission of male “wali”(official guardian, father, brother,uncle,husband)

And were not allowed to travel abroad without the consent of male and neither they could register for birth marriage or divorce .Although certain relaxation have been given to females to travel alone ,but still the law recognizes that women still cannot marry or leave a prison or domestic violence shelter without consent of male.

The right to seek justice impossible to victims because there is requirement of guardian authorization to file criminal complaint. The dress code of women is governed by strict interpretation of Islamic law

Interaction with opposite sex is limited where majority of public building, bank, university have separate entrance based on the sex. In case of any act considered to be unlawful and women being party to it shall face harsher punishment.

In 2015 Saudi Arabia proposed hosting Olympic games without women and Saudi female were sent to London 2012 Olympic accompanied by male guardian and were asked to cover their hair, Saudi Arabia is considered to be world’s most segregated nation but things are slowly being modernized.

Similarly the native American faced the legal barriers to vote when 97 years ago in the 19<sup>th</sup> amendment was ratified and added to constitution by giving voting right only to the white women, and court had permitted the state to ban women from practicing law<sup>3</sup> .

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<sup>3</sup> Bradwell V. Illinois 83 U.S 130

A Nigerian husband is permitted to hit his wife for correcting her<sup>4</sup> whereas this being an irrelevant law is still being recognized and practiced where the gender discrimination is been recognized by the law guardians. In Israel women needs her husband permission to get divorce where the access to justice is been discriminated on the grounds gender,

In Arab republic of Egypt a married women can leave the house only for the purpose allowed by law or custom otherwise she need her husband permission or else she will lose her right to financial support. In Maryland, Alabama, Mississippi, Minnesota, North Dakota, Wyoming and New Mexico rapist ca claim parental rights. Russia's gender equality legislation which prohibits discrimination on basis of sex is still pending. In Srilanka women cannot legally buy alcohol or work in place that produces or sells alcohol, sex without consent of wife is not a crime in Ghana, Indonesia, Oman, Singapore. Malta, EL Salvador, Dominican republic Nicaragua and Vatican city abortion is considered to be legal in all circumstances irrespective of the impact on women's life.

Rape victims can be charged with crimes for leaving house without male companion<sup>5</sup>. Today there is a need for legislation which shall prevent hate crime and also religious law are in review stage which must be reviewed and amended with an objective to uphold equality and curb hatredness .

Every religious law which reflects hatred or violence towards any other individual or any such statute which neglects the rights or an vulnerable community or individual must be carefully examined and removed. They are several instances where the Indian Judiciary have played a vital role I quashing the religious law which would lead to hate crime.

In case of Triple talaq which was actually an hate crime where the shariat law allowed talaq to be pronounced three times at one instant where it would amount to separation of spouse without any scope of reconciliation had actually discriminated the female community of the Islamic religion.

Similarly the Apex court<sup>6</sup> ensured the protection of the married women who could claim maintenance under the statute<sup>7</sup> which was uniformly applicable to women irrespective of the religion she belongs .Now there is also requirement for uniformity of bigamy as an offence which exempts the Muslim individuals under the codified law <sup>8</sup> .

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<sup>4</sup> Under section 55 of Penal Code

<sup>5</sup> Qatif girl case

<sup>6</sup> Shah bano Case

<sup>7</sup> Crpc 125

<sup>8</sup> Section 494 ,Indian Penal Code

According to Indian history which is very evident to prove how secular the democracy is thrived, however marching towards the road of development we have faced challenges to tackle hate crimes which I one of the major drawback of any country. Some of the problems which have emerged in furtherance of hate crime are still unresolved which highlights the lack of proper mechanism in the country to overcome such issues.

One of the major aspects which stand unrecognized is the use of fundamental right<sup>9</sup> as a tool to abet the crime, where we have envisaged the intolerance concept which was highly celebrated by the extremist group and also created atrocities in the state.

The religious law and hate crime are two parallel concepts which go hand in hand the religion has not only played a vital role in contribution of law while considering the history but also in current scenario the religious law have also contributed towards the hate crime.

In this article the authors have thrown light on how the law which were coined on basis of religious community have discriminated not only these community fellow members of other religion.

Today India has moved technologically forward and have also applied technology on tackling crimes this shows the up-gradation towards tackling crime, unfortunately we lack the separated database to record hate crime as these crime are been categorized under various other crime but not separately under the section of hate crime ,NCR<sup>10</sup> lacks the data storage of hate crime as and separate crime which has made the state difficult to recognized the importance and implement new steps to curb the same.

These hate crimes if not addressed effectively it shall lead to emerging of extremist group which shall again burden the development and peace of the society. Study relating to hate crimes show that there is rapid increase over the past few years.

Amnesty International India have shown 721 such incident which happened in 2015 and 2018,Where in 2018 alone hate crimes were tracked out of which 142 were against dalits ,50 against muslim,40 against women,8 against Christian, adivasi and transgender.

## **VIII. HATE SPEECH AND HATE CRIME**

The constitution of India and its hate speech law aims to curb the speech which creates hatredness among the religious community, The laws allow a citizen to seek punishment of anyone who shows the citizen disrespect on grounds of religion, caste, place of birth

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<sup>9</sup> Article 19(1)(a) ,freedom of speech and expression

<sup>10</sup> National Crime Reporter

residence etc, where the constitution do not provide religion for a state, where all person are equally entitled to freedom of conscience and right freely to profess, practice and propagate religion<sup>11</sup>

Law relating to restricting freedom of speech and expression where, India prohibits hate speech by several sections of the codified statutes <sup>12</sup>which put limitations on freedom of speech and expression<sup>13</sup>

## **IX. JUDICIAL OBSERVATIONS**

In 1957, Supreme Court upheld the decision of lower court which found the publisher Ranji Lal Modi guilty for publishing a cartoon and article which insults religious beliefs of the Muslims under section 295(a) of IPC.

In 1961 Supreme Court found Henry Rodrigues guilty for insulting the religious beliefs of the Roman Catholics which was published in Crusader magazine, where he was sentenced and also was fined for the same.

In 1960 Supreme Court upheld the decision of Uttar Pradesh government to forfeit all six books written by Bab Kahlil Ahmad because it contained derogatory references to Muawiya (governor of Syria)

National Crime Reporter the federal database that tracks crime across the country, collects information on various crimes does not count hate crimes as there is no specific law to deal with such crimes, where the NCR had issued a media report stating that they would intend to record data on lynchings. However even after, nine months the bureau failed to release any data relating to hate crime.

Hate Crime Watch a database on religious database which was launched in October 2018, was recognized as reliable source by the Apex court, as hate crimes are different from other violent crimes because they affect not just the victims of such crime but also alienate entire communities.

The National Crime Watch has recorded 282 attacks which resulted in 100 deaths and at least 704 injuries, Muslims who comprise 14% of the total population were victims in 57% incidents, Christians 2% of the population were victims in 15% cases, Hindus were victims of 13% cases.

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<sup>11</sup> Article 25(1)

<sup>12</sup> IPC CrPc

<sup>13</sup> Section 153(a), 295(a) IPC

**X. SUGGESTION:**

1. The government must define what hate crime is and what the ingredients that would constitute hate crime.
2. Establishment of governing and administrating authority for all social media operating in India.
3. Mandatory government censorship for all online streaming services.
4. Stringent penal provision for streaming unlawful content on internet
5. Guidelines regarding intermediaries by Ministry of Electronics and Information Technology.
6. Need for Robust legislation to curb religious violence.
7. .Implementation of Helpline for hate crime victims
8. Fast track courts to hear hate crime cases on priority basis
9. NCR to collection data on religious crime as an separate category.
10. Recognition and encourage projects like Hate Crime Watch.

India is known for its unity and diversity which holds various religion and culture together and today there is an alarming need to ensure that there is unity and brotherhood prevailing in the country as we all are equals within the eyes of law, hence irrespective of the religion we belong we all belong to same country which recognizes secularism as its integral part ,hence duty lies upon every citizen to boycott such crimes which are committed in the name of religion and maintain the tranquility of the nation as its we the people who have recognized our duties and rights under constitution.

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