

## RELIGIOUS CRIMES AND ITS GOVERNING LAWS

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*“All Religions are founded on the same moral laws. My ethical religion is made up of laws which bind men all over the world.”*

*-Mahatma Gandhi*

### ABSTRACT

*Most people in India, as well as most of the world's population, believe that religion is their most essential component. According to the Indian Constitution's preamble, the state will not have an official religion, and all its residents would have the same freedom to practise and spread any religion they want. Since its independence, India has seen several instances of what is known as hate crimes or communal violence. Muslims, Sikhs, and Christians, among other religious minorities in India, have been severely impacted by this sectarian violence. The major purposes of this kind of violence are for achieving social, economic, and political goals. Religion is a difficult topic that calls for a person's emotions and upbringing in addition to their principles.*

### INTRODUCTION

Religious laws are legislation that is founded on the morals, duties, and laws of a particular religion. Religion and law have always coexisted peacefully. Everyone in India has their own religious beliefs, adheres to their religion, and belongs to a distinct caste. Their level of religious belief is determined by a series of rules. When creating these standards, respect is always given to the habits and traditions of many cultures. Since the colonial era, Indians have abided by these regulations.

India has a limited set of "personal laws" based on community and religion that provide residents with the choice to choose between them and counterpart secular laws. Hindu law, Muslim law, and Christian law are only a few examples of personal laws that have undergone varying levels of codification and reform. Law and religion are intertwined, and religion plays a big part in maintaining legality in traditional social institutions all over the world.

Hate crimes and other forms of intergroup violence have been commonplace in India since it attained independence. Christian, Sikh, and Muslim communities in India have suffered

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\* LAW GRADUTE.

because of a long history of religiously motivated violence. This kind of violence is regularly utilised in the quest for power or influence in business or society. Government officials are occasionally directly involved in these instances because they either intentionally encourage vigilantism through hate speech or minimise the need for a full inquiry into the acts that took place. These incidents frequently end in violent mob outbursts.

## **RELIGIOUS CRIME**

Horrific crimes are often done in the name of religion unknown to the great majority of people. Religious bigotry, a sort of hate crime, is any behaviour that gravely distresses persons who profess a particular religion or that directly or indirectly infringes the right to freedom of religion of another individual or group. Numerous types of violence exist, and they usually have a theological justification.

Examples include fighting, discrimination, violence, blasphemy, and other types of oppression.

Since the beginning of human existence, atrocities perpetrated in the name of a particular religion have been a problem everywhere in the globe.

## **TYPES OF RELIGIOUS CRIME**

There are multiple types of violence, which include;

**Religious war:** This is one of the worst examples of discrimination based on religion. Conflicts sparked by religious conflict have decimated several countries. The Indo-Pakistani War of 1947–1948, Muslim invasions, Spanish invasions, etc. are a few instances.

**Gender Violence:** Women and children are disproportionately impacted by religious violence. The women's oppressors subject them to rape, abduction, enslavement, and other crimes against humanity.

**Insulting holy places:** Vandalism against places of worship, including mosques, temples, and cathedrals, is a frequent act of violence. This action is referred to as disrespecting sacred sites. The most vulnerable religious groups are encouraged to engage in more violence by these actions.

## CAUSES OF RELIGIOUS CRIMES

Violence driven by religion can have numerous root causes,

*Communal ideology:* Ideologies shared by a group of people are irreconcilable with the dominant cause of religious violence. Since every religion has a fundamentally distinct conception of what life's purpose is, there is conflict among them.

*Political organisations:* Governments and political parties foster religious intolerance by favouring a certain religion. Religious minorities in the nation thus feel fear and are more likely to commit crimes.

*Inappropriate application of secular ideas:* Secularism is a strong ideology in many countries throughout the world. The Indian Constitution<sup>1</sup> expressly lists the fundamental principle of our secularism as one of the goals of the country. Political interference causes religious law to take precedence over the law, which usually results in violence.

*Ineffective crime-handling procedures:* This unintentionally results in religious violence. Unfortunately, most violent attacks against religious groups go unpunished or are not even recorded.

*Religious intolerance:* People of many faiths are generally seen to be tolerant of one another in nations like India, which is famed for its variety.

*Economic interests:* In terms of material wealth, there is a big difference between the various religions. Governments regularly enact laws that discriminate against people of other faiths. As a result, tensions between adherents of various religions escalate and, on occasion, even become violent.

## EVOLUTION OF RELIGIOUS CRIMES IN INDIA

India is a nation with rigorous traditional values, and both the law and customs are quite flexible. Religion has played a significant role in Indian culture ever since the country's founding. According to India's growing population figure, a maximum of its citizens identifies as Hindu. Islam is the second most popular religion. And, Christianity is the third-largest faith. Sikhism is the fourth most popular religion.

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<sup>1</sup>The Constitution of India, 1950

With the various strict convictions, there have been frameworks in India today that have left an impact aside from proximity and the emergence of local religion. Other indigenous religions include Buddhism and Jainism. India saw two philosophical rivers in antiquity; the Shramana and the Vedic religion coexisted for many years and had parallel norms. Buddhism and Jainism derive from the Shramana ritual, and these two religions carry on the tradition, whereas Hinduism now continues the Vedic custom. Together, the two traditions have often been spirited and potent. Zoroastrian and Jewish adherents coexist in India and have a long relationship with that country.

India's rigid strength relaxes under even the most improbable forms of leadership. According to the Indian Constitution, "the country is a regular commonwealth which should maintain the freedom of the people to openly revere and support any religion/minority or conviction". In addition, the Indian Constitution declares that the right to practise one's religion is a fundamental right.

In addition to local groups, international human rights organisations like Amnesty International and Human Rights Watch share information on instances of extreme religious brutality in India. While Madhya Pradesh saw the highest annual death rate per 100,000 people between the years of 2005 and 2009 due to mob lynching, Maharashtra displayed the most astounding scale number of strictly violence-related deaths throughout those five years. A total of 97 people lost their lives in 2012 due to religious violence and other situations fraught with unrest in India.

Approximately 33% of state governments upheld anti-change or potentially anti-bovine slaughter laws against non-Hindus and organisations bent on ruthlessly targeting Muslims or Dalits whose families have long been involved in the dairy, cowhide, or burger trades, as well as organisations opposed to Christians who choose to become Christians.

## **RELIGIOUS CRIMES AND MINORITY IN INDIA**

“When someone commits a crime motivated by hate, it is not just an attack on one innocent person, but an attack on the entire State”

India's population is projected to be close to 1.3 billion, of which 200 million people belong to religious minorities. The Ministry of minority affairs is a division of the Ministry of social justice and Empowerment in the Indian government. The national commission for Minorities Act of 1992's section 2(c) designates it as the top body of the union government for the

minority communities in India, which include Sikhs, Muslims, Buddhists, Christians, Jains, and Zoroastrians. The Indian constitution does, however, give minorities in India specific basic rights that allow for their preservation and progress. In the Indian constitution itself, the word "minority" is not used.

**MUSLIMS:** The Muslim religious minority in India, which arrived as immigrants soon after the spread of Islam in Arabia, found favourable conditions for growth and subcontinental dominance. Over the course of a century, interreligious tensions and wars transformed India as a result of historical events.

#### Various Crimes Against Muslims

- Laws Against Conversion Renouncing one faith and converting to another is what is meant by "conversion" under state laws. State-level freedom of religion laws have been passed to control forced, fraudulent, or other inducement-driven conversions to a different faith. Anti-conversion laws were primarily aimed at Muslims who wanted to convert non-Muslims in the 1980s. Even though the Indian constitution explicitly recognises the right to freedom of religion or belief.
- Mob lynching is described as the execution of a person (by hanging) by a mob without authorization or consent from a court. In other words, lynching is one example of vigilantism, which is when a group of individuals acting on their initiative executes the law.

**CHRISTIANS:** With almost 28 million adherents, Christianity is the third-largest religion in our nation after Islam and Hinduism. The types of hate crimes committed against Christians range from physical assaults to attacks on property. Victims may be singled out for abuse just because they identify as Christians or because they follow a specific branch of Christianity.

- Laws Against Conversion Allegations of forced and coerced conversions are one of the main reasons for violence against the Christian community. On January 14, 2016, authorities in Madhya Pradesh, a state in central India, detained 13 persons, among them a blind couple, for allegedly attempting to convert a small number of locals by employing coercion or force. Although it is a constitutional right, the fulfilment of this right rests on the state governments, which oversee maintaining peace and order. Several states ironically termed "freedom of religion" laws continue to be a significant source of harassment for Christians in society. The police and non-state organisations

continue to use Sections 295A and 153A of the IPC<sup>2</sup> as their go-to tool for beating and arresting Christians. *Rev. Stanislaus v. State of Madhya Pradesh*<sup>3</sup> is the fundamental court decision on the legality of anti-conversion statutes.

**SIKHS:** Despite being a small minority, Sikhs play an important role in Indian society. Sikhs in India have long struggled to demonstrate their linguistic, religious, and political identity in the face of a mostly Hindu population. Violent conflicts between Hindus and Sikhs in the Punjab state occurred in 1980 as a result of rising intercommunal hostility. Some sources put the death toll between 8,000 and 17,000, whereas government authorities put it at 3,350 worldwide and 2,800 Sikhs in Delhi.<sup>13</sup> This incident falls under the category of religious crime since it was motivated by religious animosity towards Sikhs.

**ZOROASTRIAN:** Throughout history, the community has been persecuted. Zoroastrian fire temples are said to have been demolished by Muslims, and mosques were erected in their stead. They lost a lot of their cultural legacy when several libraries were torched. The number of Zoroastrians who believed in them drastically reduced as Zoroastrian persecution increased in frequency and scope. Most were coerced into conversion as a result of Islamist adherents' mistreatment and prejudice. Small children from this community's first forced conversion to Islam were taken to an Islamic school called a madrasa to learn about Islam, which caused many individuals to lose their religion.

## RELIGIOUS FREEDOM AND SECULARISM

The basic, inalienable right to freedom of religion is also a sign of a civilised society. It enables the individual to maintain a direct divine connection with supernatural energy. The opportunity to practise one's faith freely allows for willing veneration of the divine. The choice to proclaim, profess, practice, and grant any strict confidence by his convictions are all included in the religious opportunity. It is currently a fundamental right that is fully guaranteed to all citizens or restricted groups in most popularity-based countries across the world. Additionally, we are aware of how well-respected religious freedom is in secular countries.

In addition to their official religion, religious governments also provide for religious freedom. There, people of various religions are free to observe their religious customs. In any case, the

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<sup>2</sup>The Indian Penal Code, 1860

<sup>3</sup>1977 AIR 908, 1977 SCR (2) 611

potential is limited when it is situated outside of developed nations. In the larger sphere of society, the strict opportunity is not absolute and is bound by certain restrictions. Each Citizen is expected to value this opportunity within a few reasonable bounds. The state quickly intervenes to take action to ensure a calm social environment on the off chance that any individual/strict gatherings elude the strict opportunity of persons of various strict confidence. By ensuring equal opportunity for all and pursuing a secularist philosophy, advanced governments are thereby performing an adjusted role.

### **FREEDOM OF EXPRESSION AND OFFENCES AGAINST RELIGION**

The offences punishable under these provisions are:

- (i) Degrading or harming a place of worship with the intent to offend any group's faith;
- (ii) An act that is intended to intentionally hurt the religious sensibilities of any class of persons by violating their severe religious views;
- (iii) Disrupt a religious assembly that is lawfully engaged in religious worship or rituals;
- (iv) Trespass in a place of worship or a cemetery, or disturb a gathering for a memorial service with the intent to offend someone's religious sensibilities;
- (v) Speaking or acting in a way that is intended to offend someone's religious sensibilities. The Code<sup>4</sup> also forbids making, disseminating, or flowing (inside or outside of a position of love or strict gathering) any announcement, rumour, or report to incite one network to commit an offence against another network or advance sentiments of hostility, contempt, or malice between different strict gatherings or networks based on a network's religion. Detention for up to three years and fines are the recommended sanctions for these various violations.

State rules about the military allow conviction by a court, military punishment, and discipline of those covered by the Act if they commit an offence that damages a place of worship, offends a religion, or hurts the religious sensibilities of another person. Electioneering is prohibited under Indian political legislation, which declares it to be both a reason to exclude a rival and a criminal offence.

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<sup>4</sup>The Indian Penal Code, 1860

All these arrangements of the Penal Code, military regulations, and political race legislation are equally relevant to all major world religions and do not explicitly mention any religion. Under the free speech and articulation clauses of the Constitution, the legality of some of these agreements has been challenged in court, but the courts have, for the most part, upheld the same.

According to the provisions of the Penal Code mentioned above, the State governments are empowered by the Code of Criminal Procedure to prohibit any newspaper, book, or report that they believe to be anti-religious and/or promotes strict animosity or disharmony or offends the strict sentiments of any network. An order made under this agreement is appealable to the High Court, which has the power to overturn it if it disagrees with the administration's theory. Additionally, this arrangement's constitutional legality has been upheld.

In a few instances, both the State governments and the High Courts have used their respective authority under this structure; among the books, films, and plays that have been prohibited are those that Christians, Muslims, and Hindus have deemed offensive. Despite the common and religiously tolerant constitution of India, widespread religious representation in various spheres of society, including the administration, the dynamics pretended by independent bodies, like the National Commission for Minorities and the National Human Rights Commission of India, and the ground-level work being finished by non-legislative associations, sporadic and occasionally genuine demonstrations of religious brutality will generally happen as well as the following:

## **LAW ON RELIGION**

Incitement to violence against any religion is prohibited by the International Covenant on Civil and Political Rights of 1966, the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. According to Article 4 of the ICERD, any religion that declares its supremacy in a way that can cause hostility amongst all religions in society, against any religious organisation, or towards individuals of different races, will be regarded to have committed a criminal offence. In 2005, all heads of state swore to defend their people against horrors including genocide, war crimes, crimes sparked by religious intolerance, and crimes against humanity.

In the preamble of its constitution, India is described as a "sovereign socialist secular democratic republic". The 42nd Amendment Act of 1976 added the word "secular" to the Preamble. It demands the acceptance and equality of virtually all religions. India does not have an official state religion, although respecting the right to profess, preach, and spread any religion. Government-funded schools do not cover religion in their curricula. The Supreme Court of India declared that secularism was an essential aspect of the Constitution in *S. R. Bommai v. Union of India*<sup>5</sup>.

### **RELIGION (INDIAN PERSPECTIVE)**

The history and traditions of Indian law are distinct. Both the Manu smriti and the Arthashastra were held in high esteem. Religion has had a significant impact on the development of social standards and practises, as well as the creation of the legal system in Indian culture. The Indian government is tolerant of all religions at the highest levels.

While "secularism" is recognised in the constitution of India, which is the country's highest legislation, everyone is free to exercise their faith in whichever way they see fit.

Religious convictions are protected by Indian law; however, violators are subject to legal repercussions. Although many people view religion as a means of achieving freedom, there are serious problems within the religious community that, if not addressed, might lead to crimes motivated by hatred of other faiths.

### **NEGATIVE IMPACT OF THE RELIGION**

The relationship between criminal activity and religious beliefs is the biggest problem confronting developing countries. The number of offences connected to religion has increased during the previous 12 months. In various countries, including India, Egypt, Turkey, Israel, Iran, and Afghanistan, parties or communities with such beliefs have made electoral system breakthroughs and established theocratic governments. This is because the country is driven by a perverted ideology in the name of religion. This holds even when a nation is ruled by abhorrent ideals. Electronics of the twenty-first century confound and amuse us in equal measure. Unions between identical partners and abortion Only a few of the crimes that are on the rise involve gender, religious intolerance, mob lynchings, and prejudice towards persons from lower-class and more disadvantaged backgrounds.

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<sup>5</sup>1994 AIR 1918, 1994 SCC (3), 1, JT 1994 (2)215, 1994 SCALE (2)37

## RELIGION AND HUMAN RIGHTS

The term "religion and law" is now widely used to refer to the greater sphere of modern life that is allegedly controlled by protections for religious freedom in national constitutions, international treaties, and other legal texts. The Enlightenment's guarantees of religious freedom in the West have proven insufficient in the face of mounting pressure to recognise and protect a wider range of religious practises from both established religious communities and emerging religious movements, some of which are unwilling to accept the legal ramifications of secularisation. It is challenging to achieve the widespread requests for contemporary, secular legislation to recognise (or at least appear to accept) the significant influence religion has on individuals and communities because of the universalist presumptions that underlie such laws.

### CASE LAW ANALYSIS

The Dargah Khwaja Saheb Act<sup>6</sup>: Rajasthan's Khwaja Garib Nawaz Saheb Dargah is in the district of Ajmer. It is well-liked across all Indian faiths. It represents the nation's uprightness and unity. This law was approved by the Rajasthani state assembly to regulate Dargah's common organisation. It was declared to be genuine and established, and the court concluded that although the state may intervene in strictly religious matters, secularism is a vital component of the Indian constitution, and as such, the state is responsible for protecting it and may interfere with common Dargah rituals.

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In *Dargah Committee, Ajmer v. Syed Husain Ali*<sup>7</sup> the Supreme Court of India ruled that because the Act's goal is to regulate property, which is a normal religious practice, it cannot be determined if it violates Article 26 of the Indian Constitution.

Andhra Pradesh Devadasi Protection Act 1988: In the Andhra Pradesh region, married women who lost their husbands used to or were encouraged to do sati for their significant others. This was a dreadful tradition. On earth, it was universally revered as sacred. In the town where she died, a shrine is constructed. Everything was carried out as an essential component of Hinduism. This Act presents a test as a constitutionally prohibited intrusion on the right to practise one's faith. The Supreme Court of India ruled that the Act is valid and

<sup>6</sup> The Durgah khawaja Saheb Act, 1955

<sup>7</sup> 1961 AIR 1402, 1962 SCR (1) 383

sacrosanct since it protects women's health and guarantees them an honourable life. This law was passed and upheld by the legal executive.

*Ramji Lal Modi v. State of UP*<sup>8</sup>, whereby the Apex Court stated that insult to religion delivered accidentally, recklessly, or without deliberate or malevolent anticipation to shock the rigid sensibilities of that class doesn't approach the segment while upholding the legality of the abovementioned provision, Therefore, only the provisions of Section 295A would apply to any assault or attempt to affront religion or strict conviction done to offend the religious sensibilities of a class of Indian citizens. This motive must be intentional or malicious.

*Jayamala vs. State of Kerala*<sup>9</sup> Section 468 of the Code<sup>10</sup> prescribes a period of limitation for some of the above crimes. A violation of IPC Section 295A has a maximum sentence of three years in jail, as opposed to two years for a violation of IPC Section 295. The punishment for the offence under Sec. 120B must be the same as the punishment for the primary violation, which is Sec. 295A of the IPC, because conspiracy is claimed to have occurred during the commission of the offence under Sec. 295A of the IPC. As a result, the maximum penalty for a violation of Section 120B is three years in jail.

## **SUPREME COURT AS GUARDIAN OF RELIGIOUS FREEDOM AND SECULARISM**

The most important and dominant organ of the state is typically speaking one of the three lawful executive organs. Every state entity is essential for efficient administration since we adopted an egalitarian form of governance. Delay inequality is currently our legal system's most fundamental problem. The legal executive is India's leading authority on adjudication. This body is also known as the definitive interpreter of the Constitution and the guardian of the major privileged groups. The Indian constitution uses the phrases "religious freedom" and "secularism" to distinguish between the two. The primary duty of the legal system is to uphold secularism in the country and guarantee that individuals have the freedom to practise their faith. Before the legal executive, there were a variety of distinct scenarios that required the legal executive to decide whether to protect individual freedom as well as the right to practise religion. In this sense, the Constitution ensures that the state is impartial in this

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<sup>8</sup> 1957 AIR 620, 1957 SCR 860

<sup>9</sup> OP(CrL).No. 1332 of 2011(Q)

<sup>10</sup> The Indian Penal Code, 1860

matter. Since rights are not absolute, neither is this one. Given the importance of this pretended by the legal executive, it is crucial to understand what kind of pretended is being used in certain circumstances.

## CONCLUSION

Secularism is a way of thinking and a way of existence. It guarantees the peaceful coexistence of all believers in all religions. In India, religion is the belief in spiritual things. Numerous religions exist, including Hinduism, Islam, and Sikhism. Individuals are free to make their own decisions. People can alter and join any religion of their choosing based on their urges and desires. Some individuals believe that because religion fosters apathy towards material things in life, religion and secularism cannot coexist. This disregard for religion encourages acts categorised as religious crimes, such as conversions, mob lynchings, and love jihad. There are now six classes of minorities in India.

Religious crimes have caused them greater harm. Instead of defining a single offence under the Indian Penal Code (IPC), 1860, it defines a category of crimes. Additionally, it violates several rights, including minorities' legal and constitutional rights. The government must put tough rules in place to prevent hate crimes from happening in the future. India's secularism is fundamentally based on religious tolerance. Islam, Christianity, Sikhism, and Buddhism all advocated for tolerance, equality, charity, and brotherhood.