

# RELIGIOUS CRIMES IN INDIA

## Combating Hate Crimes: Religion; Yesterday, Today and Tomorrow

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### ABSTRACT

Religion in India has always been a topic very sensitive to deal with but religious crimes have never stopped increasing in any way rather keep on spreading their forms and unreasonable biases over the nation. Minorities have always been targeted, and the situation is similar throughout the world. Hindus outside face Hindu-phobia, the minorities in our Nation face what we call as hate crimes. While the whole world stays in abeyance due to wars and epidemics, India is struggling internally with issues that are predominantly created by misconceptions of dharma, religion, justice and the like. This seems like no big deal, but these do lay the foundation stones to understand bigger concepts of Secularism, Uniform Civil Code and certainly to combat the hate crimes that are spreading like fire in dry in the namesake of upholding religious sanctity and what not. This short article thus attempts to converse the concepts in a clear manner before moving on to the concepts in Constitution. The paper also subtly addresses the issues at hand both in practical and visionary approach and urges the start of something new.

KEY WORDS: Dharma, Religion, Justice, Secularism, Uniform Civil Code, Hate Crimes.

### INTRODUCTION

#### 1. CONVERSING CONCEPTS

The theme entwines between the prominent concepts of *Dharma*, Law, Justice as well as Religion. Hindu legal theory, is one of the most ancient legal theories originated and developed in India, and when 'Law' is discussed in Hindu legal works, '*Dharma*' is treated as word-equivalent of the same. In Jamini's view, '*Dharma* is that object of welfare which indicates by an injunction.'<sup>1</sup>*Dharma* includes law, but its ambit is very wide.<sup>2</sup>*Dharma*; though have been given a variety of meanings in various vedic literature and *Dharmashastras*, since the ancient times, it has been concluded to mean and refer to 'all

<sup>1</sup>Mimansa, Chapter II, Dr. B.N .Mani Tripathi, Jurisprudence Legal Theory ( 12<sup>th</sup> edn., Allahabad Law Agency 1990) 70

<sup>2</sup>Dr. B.N .Mani Tripathi, Jurisprudence Legal Theory ( 12<sup>th</sup> edn., Allahabad Law Agency 1990) 70

the works of right conduct, observance of which was considered necessary for the welfare of individual and society'<sup>3</sup>. India has seen a number of epic battles for re-instatement of *Dharma* when things went wrong; 'The Mahabharata Epic'; as well known to be written by Vyasa Muni, is the most significant of them. Thus, *Dharma* is semantic equivalent to the Greek word 'ethos'<sup>4</sup> and the eternal source of Law. Now, coming to what is 'Law', Jurisprudence provides us with the three broad schools, that have tried to define Law as was relevant in that period, they are- the idealistic, positivistic and sociological schools respectively concluding it as, 'The body of binding rules and regulations, customs and standards established in a community by its legislative and judicial authorities'<sup>5</sup>, absence of which leads to chaos and anarchy. Therefore, both law and order are essential to be maintained within a nation or state and society, which are done through the administration of justice, by protecting and enforcing the rights and duties according to the law. 'Justice is the exercise of authority or power in maintenance of right; vindication of right by assignment of reward or punishment; administration of law of the form and processes attending it; just conduct'<sup>6</sup>. Hence, the conception of Justice can be understood as 'the reasonable and fair treatment of people.'<sup>7</sup> Coming to Religion, which is widely accepted as the 'belief in a god or gods and the activities connected with this'<sup>8</sup> or 'the human beings' relation to that which they regard as holy, sacred, absolute, spiritual, divine, or worthy of especial reverence'<sup>9</sup>. We say that, India is a 'sovereign, socialist, secular, democratic republic'<sup>10</sup>, and intends to provide all its citizens; Justice (social, economic and political), Liberty (of thought, expression, belief, faith and worship), Equality (of status and opportunity) in a fraternizing way to assure the dignity of an individual, as well as keep nation's unity and integrity intact. Here religion is not seen as a line that divides; rather it is the dot that connects to divinity. Since there is no 'Just' to the way a religion works, only the Constitutional goal to treat all the religions equally leads the secular part of our country. India's secularism does not mean absence of religion, rather the equal treatment of all religions by the state.

Like every other dimension, religion has its own share in crimes that are happening around us, mainly termed as 'crime in the name of religion' or 'Religious Crimes'. Adding to that, the biggest part in this vicious circle is occupied by 'Hate crimes' that are ever increasing each passing day. An accepted conceptual meaning of Religious Hate Crimes could be, 'any incident, which is perceived to be based upon prejudice towards or hatred of the victim because of actual or perceived religion or belief.'<sup>11</sup> Talking about our country, 'Religious Hate Crimes' has risen to a decade-high level in 2018, said a report prepared

<sup>3</sup>Ibid.

<sup>4</sup> Brereton, Joel P., Dhárman in the Rigveda (Journal of Indian Philosophy 2004) 32: 449–89.

<sup>5</sup>Oxford English Dictionary (2<sup>nd</sup> edn. Oxford University Press 2004)

<sup>6</sup>R.K. Agrawal, Agrawala's Legal Dictionary (21<sup>st</sup> edn. Pioneer Printers, Agra 2010) I-113

<sup>7</sup> 'Justice' Oxford English Dictionary (7<sup>th</sup> edn. Oxford University Press 2013)

<sup>8</sup> Ibid.

<sup>9</sup> 'Religion', Britannica Encyclopedia <<https://www.britannica.com/topic/religion>> accessed 11<sup>th</sup> March 2023.

<sup>10</sup>Preamble, Constitution of India Act, 1950.

<sup>11</sup> 'Religious Hate Crimes', Bedfordshire Police <<https://www.beds.police.uk/advice/advice-and-information/hco/hate-crime/what-is-hate-crime/#>> accessed: 11 March 2023

by a multi-organization project led by *FactChecker.in*.<sup>12</sup> Again in 2019 an article headed, ‘What a Rising Tide of Violence Against Muslims in India Says About Modi’s Second Term’ discussed how a 24 year old Tabrez Ansari was beaten and killed by a Hindu Mob in the eastern State of Jharkhand.<sup>13</sup> Then again ‘The Kerala Story’, exodus of Kashmiri Pandits, Kathua Rape case, etc. There are number of instances where violence has taken ‘Religion’ as its main weapon. The ongoing times have been tough for the whole world given; the Russia-Ukraine war that is not ending, civil wars in many other nations, economic crises, global pandemic, bio-wars, and no account of the unseen struggles that we might face in the future, the last thing we want is class and sect struggle in daily lives! So, it is high time that we actually understand that being unified is not a burden for our nation but a blessing for our future.

## 2. RELEVANT LEGAL REGIME

The secularism in India is a biggest flex that we portray in our constitution as well as in various national documents. Being a multi lingual country, we are taught to address and respect all the religions. As the successors of a Vedic land, it is obvious that we stress upon our customs and traditions heavily, without any questions asked. It is evident in our legal system that, the essence of law is mostly derived from customs and traditions only, that is the reason that our laws have been codified taking and keeping them in mind. A very simple example of that would be the saving clause in most statutes that save the local and special laws from the mischief of statutes. Hindu Personal Laws also provide exception in statutes if customs exist otherwise or in opposition to the said statutory provision. Now all these aspects put forward two questions before us-

- How the term ‘Secularism’ works in our common day to day life, leave alone the documents glorifying it.
- Dharma for one person may be dangerous for another, as well as suffocating their choices to conduct certain things.

Now, these are the basic challenges that we successfully choose to ignore just because, religion is a sensitive topic for us Indians. Hate crimes on a specific religion or occupation is happening every day around us, but instead of accepting those flaws, most of us have a mentality to justify it as a correct way of conduct. ‘On Religious Hostilities, India Ranked Just Slightly Better Than Syria. India positioned fourth on the planet in 2015 after Syria, Nigeria and Iraq in social threats including religion to a great extent coordinated towards minorities.’<sup>14</sup>

<sup>12</sup> Religious Hate Crimes in India rose to a decade High Level in 2018’, < <https://scroll.in/latest/907238/religious-hate-crimes-in-india-rose-to-a-decade-high-level-in-2018-report> > accessed 11 March 2023

<sup>13</sup> RanaAyyub, ‘Religious Hate Crimes’, TIME, June 28, 2019 < <https://time.com/5617161/india-religious-hate-crimes-modi/> > accessed on 11 March 2023.

<sup>14</sup>Durai, Hashika and Niranjana, K. and Niranjana, K., ‘A Study on Religious Laws and Religious Crimes in India’ (August 26, 2019). SSRN:<<https://dx.doi.org/10.2139/ssrn.3442697> > accessed 11 March 2023

The government has undoubtedly professed relevant legal regimes soothing the continuance of these atrocities, but it is hard to be termed as effective, as it should be. For crimes such as ‘Hate Speech’ towards any religion, ethnicity or culture, Indian Penal Code prescribes various regulations such as, Sections 153A<sup>15</sup>, 153B, 295A<sup>16</sup>, 298<sup>17</sup>, 505(1)<sup>18</sup> and 505(2). On a similar note, The Representation of People Act 1950, Information Technology Act 2000, Unlawful Activities (prevention) Act 1967 also contain provisions concerning hate speech and its prevention.

Regarding ‘Lynching and Mob Violence’<sup>19</sup> there are specific laws but those acts can be punished under section 223(a) of Criminal Procedure Code, 1973 for any group attack regarding the same. Similarly Sections 302, 304, 307, 323, 325 deals with the cases of hate crimes indirectly which includes attacks resulting to murder, harassment, assault, gang rape etc.

In *Jayamala v State Of Kerala*,<sup>20</sup> The Hon’ble Court held that ‘Offence under Sec.295A of the IPC is punishable with imprisonment up to three years (while offence under Sec.295 of the IPC is punishable with imprisonment up to two years). Since conspiracy is alleged in the commission of offence under Sec.295A of the IPC, punishment for offence under Sec.120B must be the same.’

*Ramji Lal Modi v. State of UP*<sup>21</sup>, The Hon’ble Court held that ‘insult or attempt to insult the religion or religious belief when made with an intention, which must be deliberate or malicious, of outraging the religious feelings of a class of citizens of India, then only the provisions of Section 295A apply.’

### 3. WHERE ARE WE WRONG?

‘Most hate crimes reported in India were targeted towards Dalits and Muslims between September 2015-2019. A total of 902 crimes were reported to be because of alleged hate- varying from caste, religion, to honor killing and love jihad.’<sup>22</sup> Despite being a secular nation, the below have dismantled its unity:

**A. Little Knowledge is a dangerous thing:** The ultimate Religion is humanity and every religion, scripture, ancient books and verses preach about the same as its original essence, but in order to prove one religion mightier or more enigmatic, followers keep on neglecting the ultimate teaching, and keep committing acts of rebellious nature.

<sup>15</sup>Promoting enmity between different groups on grounds of religion, race etc and doing acts prejudicial to maintenance of harmony.

<sup>16</sup> Deliberate and malicious acts, encouraging outrage of religious feelings by insulting their beliefs.

<sup>17</sup>Uttering words with deliberate intent to wound religious feelings of any person.

<sup>18</sup> Sharing any statement or rumor to incite any conflict between communities

<sup>19</sup>Tehseen S. Poonawala v. Union of India [2018] 9 SCC 501

<sup>20</sup> OP(CrL) No. 1332 of [2011] (Q)

<sup>21</sup> [1957] AIR 620, [1957] SCR 860

<sup>22</sup>Arnab Kumar Banerjee, SSRN, March 23, 2021 <:<https://www.statista.com/statistics/980033/identity-of-hate-crime-victims-india/>> accessed on 11 March 2023

- B. Rigid Mentality:** As archaeological excavations at places go on and religious places of worship of two or more cultural groups somehow are found on the same place where one is already in existence, there is no need to demolish and build while we can successfully build a co-existence. After a tiring series of events of Ayodhya (Ram-JanmaBhoomi case)<sup>23</sup> there were many filings about other birthplace cases (eg. *Srikrishna Janmasthan Seva Sangh v. Shahi Masjid Eidgah, 1967*). Thus, in a knack to establish birthplace of Gods who actually reside in our heart and soul, we are posing environmental problems to Mother Earth, as well as to the people who reside in that particular area, by continuous demolition, building, etc.
- C. Ancestral Profession:** ‘*Ab Raja ka beta raja nahin banega, wahi banega jo haqdaar hoga*’ rightly preached in the movie Super 30, also holds this secret inference that ‘*Naukar ka beta naukar nahin banega*’ ‘*pujari ka beta pujari nahin banega*’, etc. Every person has the right to choose his/her dreams and occupation, hence limiting the management of places of worship to a certain household is wrong. For e.g. Ongoing Kashi Vishwanath Case in Supreme Court, Sevayat in Odisha Sri Jagannath Temple. In the ancient rituals of ‘*Krishnadasi pratha*’, where women of a certain family were only eligible as the ‘dasi’ of lord and subsequently as holy prostitutes. These glaring examples provide a need for the correct upliftment of these rigid systems as resisting someone’s valid and legal wish of devotion is also a form of non-tolerance within sect itself.
- D. Love Jihad:** A relatively new form of hate crime. Not all inter-religion marriages where the boy is Muslim and girl is Hindu are coming under Love Jihad, also as rightly held by Delhi High Court in *Satyaprakash Meena v. Alka Meena* case<sup>24</sup>. When an ill intention exists, even if a Hindu boy marries a Muslim girl that also comes under this new concept. Hence, the act of marriage with pre-conceived and ill intention itself should be condemned, irrespective of any religion. Many states like Uttar Pradesh, Haryana, and many more have attempted to combat this with new laws of anti-conversion, while the concept still needs to be defined clearly for proper awareness and effective results.
- E. Discrepancy in Personal Laws:** Amir Khan getting trolled for ‘Triple Talaq’ while he remains a Muslim is the greatest example of how discrepancy exists. The Youth who forms the majority in Indian population calls out wrong as a wrong, without giving colorable religious-shield, hence it is high time we bring Article 44<sup>25</sup> of Constitution to life, because social hate stigmatizing personal aspects is still a form of hate. Facets need coordination, because along with us, society is also moving

<sup>23</sup> M. Siddiq(D) THR LRS vs. Mahant Suresh Das and Others, 9 Nov.[ 2019]

<sup>24</sup> [2000] 8 SCC 587

<sup>25</sup> Uniform Civil Code for the Citizens.

forward and the discrepancies in personal laws is what keeping the nation from unifying against the actual problems that exist.

#### 4. WHAT CAN BE DONE?

I. For issues contained in A, B, C and D above, a 'Regulatory Statute' might come in handy to tackle hate crimes. Since, we have come across many types hate crimes after independence, it wouldn't hurt to get a codified statute that would exhaustively mention the kinds of activities that amount to the same, providing punishment accordingly and thus forming a middle ground between the non- ending conflicts of religious freedom and reasonable restrictions provided as per the Constitution.

- A body to regulate and supervise the functioning and execution of the same may be instituted having members from different region and communities per se, which in order would aware people around the country about the rules that exist and need be followed.

II. For the issues in E and F above, 'Uniform Civil Code' would be an exemplary and effective step. But since this is very sensitive, we can start with making it voluntary up to a certain period as a soft law like International Law, which can be reviewed by the Apex Court through a committee and then further proceedings could be directed down the road. If people welcome it then UCC might become a part of our Legal System and if not, then amendments are always an option. But it's better to start somewhere than never, as time and again being held by the courts addressing the related issues( eg. *Meena v. Meena* case (supra), *Tripple Talaq Judgment*, *Mohd. Ahmed Khan v Shah Bano Begum*<sup>26</sup>, *Sarala Mudgal v. Union of India*<sup>27</sup>, *Lily Thomas v. Union of India*<sup>28</sup> etc).

#### 5. A VISION OF UNIFORM CIVIL CODE (UCC) IN INDIA

As on date 12<sup>th</sup> Feb 2023 UCC is listed as Bill attracting debates as the parliament is testing waters on the issue before putting legs inside literally. Some of the states have begun the process of developing their own UCCs like Uttarakhand, Himanchal Pradesh, Gujarat siding Article 44<sup>29</sup> of Constitution of India. When the bill was introduced in Budget Session in the current year 63 supported while 23 still stood against the idea. The suggestions made in the bill include the following- ban on polyandry and polygamy, restriction on family size, rights of children from live in relationships (succession and inheritance), 21yrs as the minimum age to get married for both men and women, and finally considering codification of rest

<sup>26</sup> [1985] (1) SCALE 767; [1985] (2) SCC 556 AIR [1985].

<sup>27</sup> AIR [1995] , SC 1531.

<sup>28</sup> [2000] (6), SCC 224.

<sup>29</sup> Entry 5 of List III ( Concurrent List), Constitution Of India Act,1950.

of the personal laws meanwhile removing the discriminatory practices for the purpose of resolving the conflict between personal laws and fundamental rights as well as reforming the redundant justification of social evils as religious customs. As of today, India finally has started moving towards the trail that was laid back in 1940 by the National Planning Commission regarding uniting India through UCC. It needs to be clarified that UCC does not *per se* denote equality in personal rights, rather a uniformity that does not disregard any custom that prevails in the country, because every statute conveys how special and local laws and customs always have a higher say even in courts; consequently resulting in a convergence of personal laws and customs but in a harmonious way while tackling the social evils in an effective manner.

#### 6. IMAGINING INDIA AFTER 5 YEARS OF PREVALENCE OF UCC

This might come as a surprise or confirm what the paper suggests; that 5 years down the line after implementation of UCC apart from the names in dictionary, all religions would stand on equal footing with all their essential religious practices intact. As a result, crimes against humanity, in the name of religion would come to a stand-still. The future in short would be a reflection of our golden past where people of all communities together fought the British away, only this time, with a better and evolved mindset, so there would not be any Gandhi and Jinnah or India and Pakistan in future.

#### CONCLUSION

An idealistic standpoint is always treated a luxury, but 'Rome wasn't built in a day'. We Indians proudly portray our unity in diversity in front of others, so it's high time we start to clear our own trash. The nation is already fighting with many unseen viruses and diseases, as well as our trouble making typical neighbors. So, evidently we cannot afford losing to another stride of wave that breaks the unity we ought to have. Even if we can't build a utopia, at least we can knock its door today.