



## **Freedom of religion and criminal laws for religion**

**Rajnish Hooda**

Advocate, Chamber No. 167, District Court, Rohtak, Haryana, India

### **Abstract**

Freedom of religion is a principle which supports a person or community to express religion or belief in teaching, practice, worship, rituals and customs without government influence or interactions in public or private places freely without any interference. It includes the freedom to change the religion or belief by an individual at any stage of his life. Unfortunately, crime in religion is an everyday fact that occurs in the world and millions of people are unaware of it. Religious crimes often take place and it is a global problem from the ancient times. This paper describes how religion and criminal law should be involved or should not be involved with each other from the point of view of the right to freedom of religion. The main focus is on examining the justification for the existence of a criminal prohibition against the freedom to express word that harm or that has the potential to harm, a person's religious sensitivities and religious belief.

**Keywords:** freedom of religion, criminal laws

### **Introduction**

Freedom of religion is a principle which supports an individual or community to express religion or belief in teaching, practice, worship, rituals and customs without government influence or intervention in public or private freely without any interference. It also includes the freedom to change the religion or belief by an individual. Freedom of religion is taken into consideration by many people and most of the countries to be a fundamental human right.

Unfortunately, crime in religion is the daily fact that occurs around our world and still millions of people are unaware of it. Religious crimes date back through ancient times since the mankind can recall. Religious crimes often take place and it is a global problem from the ancient times. Fortunately, there are many countries that have opened their arms and refugees are found. These discriminations are caused due to the fact that their governments lack a justice system that protects crimes against religions in other countries.

In India, there are total 9 religions. India is a land of different religions which are characterized by various religious practices. People of India have a strong belief in religion as they believe that these religions add purpose to their lives. Indians are so much connected to religion that they can do anything for their religion.

**Religious Laws:** Religious law means ethical and moral codes taught by religious traditions. It includes Christian Canon law, Islamic sharia, Jewish halakha, Buddhism, Jainism and Hindu law. The two most prominent systems, Christian law and Islamic law differ significantly in such a way that Christian law is based on a codified Catholic, Anglican and Orthodox law, whereas Islamic law is derived from a number of sources which includes analogical reasoning and juridical consensus.

**Crimes related to Religions:** Religious crime is a term that describes where religion is either the subject or the object of criminal behaviour. Religious crime is the crime that is

motivated by or in response to religious precepts, texts, or doctrines. This includes crime against religious institutions, people, objects, or events when the crime is motivated by some religious aspect of the target or by the precepts of the attacker to some extent. Religious crime does not refer to the acts committed by religious groups. It includes acts committed by secular groups against religious groups.

Crime is a very vast concept and it is also difficult to explain it because it can be used against non-human objects. It denotes a wide variety of experiences such as blood shedding, physical harm, forcing against personal freedom, passionate conduct or language, or emotions such as fury and passion.

Religion is very complicated and problematic concept. It is a modern western-compartmentalized concept that was not found anywhere before the 1500s. Generally, religion is conceived as an abstraction which requires beliefs, doctrines, and sacred places even though the ancient cultures that wrote Holy Scriptures (e.g. Bible, Quran, and Bhagwad Gita etc) did not have such a concept in their Holy Scriptures, language, or history. Various researches (anthropological, sociological, and psychological) show that the religious beliefs and values are highly integrated in an individual's mind or that religious practices and behaviours follow directly from religious beliefs is actually rare. People's religious ideas are fragmented, exploded, loosely connected, and context-dependent just like in all other domains of culture and life. India is the 4th worst country for religious violence and crime. To hurt someone's religion is a crime in India.

In general, religions, ethical systems, and societies rarely promote crime as an end in itself since crime is universally undesirable. At the same moment, there is a universal tension between the general desire to avoid crime and violence and to accept justifiable uses of violence to prevent a "greater evil" that permeates all cultures. Religious crime is a cultural process that is context-dependent and very complex. Over

simplifications of religion and crime lead to misguided understandings and amplifications of causes for why some people commit crime and why mostly do not commit. Religious crime is the primary domain of the violent "actor", which may differentiate between individual and collective forms of crime. Overall, religious crime is accomplished for a wide variety of reasons and is generally only one of the contributing social and political factors that lead to unrest.

Religious crime often concludes that crime is strongly driven by ethnic resentment rather than by religious worldviews. The question arises that upto what extent religious, political, economic, or ethnic aspects of a conflict are meaningful. Some observe that the very concept of "religion" is a modern invention and not something that is universal across cultures or historical and thereby makes "religious crime" as just a myth. Since all cases of crime and war include social, political, and economic dimensions and since there is no consensus on definitions of "religion" among disciplines and no way to isolate "religion" from the rest of the motivational dimensions, it is incorrect to label any violent event or crime as "religious". Many cases of religious violence such as the Thirty Years War, the French Wars of Religion, the Protestant-Catholic conflict in Ireland, the Sri Lankan Civil War, 9/11 and other terrorist attacks, the Bosnian War, and the Rwandan Civil War were all primarily motivated by social, political, and economic issues rather than religion.

Laws for Religious Crime: According to international human rights law, the emphasis of this contribution is the International Covenant on Civil and Political Rights (1966) and the European Convention on Human Rights (1950). The 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (the 1981 UN Declaration), the American Convention on Human Rights (1969), and the African Charter on Human and People's Rights (1981) will only be considered in so far as these instruments or the jurisprudence based there on provide relevant direction on the issues. Finally, it is important to note that the human right to freedom of religion is generally considered to include both religion and fundamental non-religious beliefs. Thus, in any case, is the meaning by which the right is understood here. Examples of such non-religious beliefs are disbelief, agnosticism, pacifism, and communism.

The Government of India understands the feelings and emotions of people of India. It is the reason behind the setup of rules and regulations so that no-one hurts the emotions of other religion. In India, people tend to follow more religion than any other country. People of India is so connected with religion that sometimes they can insult other religions. Insulting another religion and showing hatred to other religion is also very common in India. For that government has to interfere in between. Government has provided punishment for people who spread religious hatred either in public or on social media.

### **Punishments for religious crime**

#### **Section 153A of IPC**

Section 153A of IPC states that whoever promotes hostility between different groups of religion and doing acts prejudicial to maintenance of harmony will face punishment. Whoever

1. Either by spoken or written words or by signs or by visible

representations or otherwise promotes religion disagreement or feelings of enmity or hostility, hatred or ill-will between different religious or

2. Commits any act which is harmful to the maintenance of harmony between different religious and which disturbs or is likely to disturb the public calmness shall be punished with imprisonment which may extend to three years or with fine or with both.

#### **Section 295A of IPC**

Section 295A is meant for Deliberate and malicious acts, intended to indignation religious feelings of any class by insulting its religion or religious beliefs.

Whoever with deliberate and malicious intention of outraging the religious sentiments of any class of citizen of India by words, or by signs or by visible representations insults to attempts to insult the religions or the religious belief of that class shall be punished with imprisonment of either description of a term which may extend to 3 years or with fine or with both.

This provision was introduced in 1927 as to protect the religious feeling which was hurt by a published book called "Rangila Rasul". The book contained the marriage life of Prophet Muhammed. There was no provision against the insult of religion, so the publisher was released. But the publisher was killed later by Ilm-ud-din. The killer was honoured and called Shaheed. The Indian Muslim demanded provision against the insult of religious feelings. Hence, section 295A was introduced by the government.

Also, this provision was declared constitutionally valid in *Ramji Lal Modi v State of Uttar Pradesh*; a five-judge bench of the Supreme Court upheld its constitutionality under Article 19. That means that now for making it unconstitutional, a seven-judge bench is required. To make it unconstitutional means you should have a strong and thrilling reason.

#### **Section 298 of the IPC**

Any person uttering words etc with deliberate intent to hurt the religious feelings of any person will be punished under this section. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places, any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

#### **Section 66A of IT Act**

Section 66A of the IT Act states the punishment for sending abusive or wounding messages through communication services etc. Any person who sends any information which is offensive or any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, barrier, insult, injury, criminal menacing, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device. This section is only through communication services like social media. This section provides punishment with imprisonment for a term which may extend to three years and with fine.

But this provision is scrapped by Supreme Court as this

section was unconstitutional. In 2015, Section 66A of IT Act was declared unconstitutional by the Supreme Court. The court struck down Section 66A of the IT Act for being “open ended, undefined, improper and vague”.

Myth of religious crime: It is unreasonable to attempt to differentiate "religious crime" and "secular crime" as separate categories. The idea that religion has a tendency to promote crime and crime is part of the conventional wisdom of Western societies and it underlies many of our institutions and policies from limits on the public role to promote liberal democracy in the Middle East.

Religion is not a universal and trans-historical phenomenon. What counts as "religious" or "secular" in any context is a function of configurations of power both in the West and lands colonized by the West. The distinctions of "Religious/Secular" and "Religious/Political" are modern Western inventions.

- The invention of the concept of "religious crime" helps the West reinforce superiority of Western social orders to "non secular" social orders, namely Muslims at the time of publication.
- The concept of "religious crime" is used to legitimate crime against non-Western "Others".
- Peace depends on a balanced view of crime and recognition that so-called secular ideologies and institutions can be just as prone to absolutism, divisiveness, and irrationality.

All cases of crime, violence and war include social, political, and economic dimensions. Since there is no consensus on definitions of "religion" among scholars and no way to isolate "religion" from the rest of the more likely motivational dimensions, it is incorrect to label any violent event as "religious". European wars of religion show that people from the same religions fought each other and that people from different religions became allies during these conflicts; the motivations for these conflicts were not about religion. The wars of religion ended after rulers agreed to practice their religions means that the conflicts were more related to political control than about people's religious views.

Religious conflicts such as the Crusades, Spanish Inquisition, and the European wars of religion were political conflicts at the core, not religious ones. People from different faiths constantly became allies and fought each other in no consistent manner. During the Enlightenment, religion began to be seen as an individualistic and private thing and that modern secular ideals like equality of all human beings, intellectual and political liberty were things that were historically promoted in a religious idiom in the past.

Anthropologist Jack David Eller asserts that religion is not inherently violent, arguing "religion and crime are compatible, but they are not identical." He asserts that "violence is neither essential to nor exclusive to religion" and that "virtually every form of religious violence has its nonreligious corollary." He argues that religion "may be more a marker of the conflicting groups than an actual point of contention between them". Historians such as Jonathan Kirsch have made links between the European inquisitions. Stalin's persecutions in the Soviet Union, Nazi Germany, McCarthy blacklists, and other secular events as being the same type of phenomenon as the inquisitions.

## Conclusion

Hate Speech on Social Media is the easiest way to show hatred toward other's religion. But punishment that is given under the IPC Act makes it difficult. Showing hatred toward someone's religion can't be acceptable anywhere in the world. If someone is following a religion then we can't stop them because Constitution of India allows them to. Hate Speech can lead to many dangerous situations like acting in a dissipated way, war, strikes etc. We should not talk about anyone's religion on Social Media. Instead "SPREAD LOVE, NOT HATRED".

## References

1. ECtHR GC. Judgment of, 41340/98, para 90 (Refah Partisi the Welfare Party v. Turkey, respectively I-ACtHR, Judgement of 5 February 2001, para 79 'The Last Temptation of Christ' Olmedo-Bustos *et al.* v. Chile, 2003.
2. Dickson Brice. The United Nations and Freedom of Religion', ICLQ. 1995; 44:332.
3. All the human rights instruments mentioned in this contribution are published in Van Kempen, P.H.P.H.M.C. (ed.) International and Regional Human Rights Documents, Nijmegen, Wolf Legal Publishers, 2010.
4. Nongbri Brent. Before Religion: A History of a Modern Concept. Yale University Press, 2013, ISBN 030015416X.
5. Chaves, Mark. SSSR Presidential Address Rain Dances in the Dry Season: Overcoming the Religious Congruence Fallacy. Journal for the Scientific Study of Religion. 2010; 49 (1):1–14. doi:10.1111/j.1468-5906. 2009. 01489.x.
6. Rowley, Matthew. How Should We Respond to Religious Violence? Fifteen Ways to Critique Our Own Thoughts (PDF). Ethics in Brief. 201521 (2).
7. Omar Irfan Duffey. Michael (Eds.). Introduction. Peacemaking and the Challenge of Violence in World Religions. Wiley-Blackwell. p. 1. ISBN 9781118953426.
8. Morreall John, Sonn Tamara. Religion Causes Violence. 50 Great Myths of Religion. Wiley-Blackwell, 2013, 39-44. ISBN 9780470673508.
9. Russell, Jeffrey Burton. Exposing Myths about Christianity. Downers Grove, Ill.: IVP Books, 2012, 56. ISBN 9780830834662.
10. <http://www.mapsofindia.com/maps/india/religionsinindia.htm>
11. [http://www.huffingtonpost.in/2017/04/21/stop-misusing-law-against-hurting-religious-sentiments-says-sup\\_a\\_22050257/](http://www.huffingtonpost.in/2017/04/21/stop-misusing-law-against-hurting-religious-sentiments-says-sup_a_22050257/)
12. <http://www.ndtv.com/india-news/no-censorship-for-social-media-but-laws-must-be-followed-sibal-569120>
13. [http://www.huffingtonpost.in/2017/04/13/on-religious-hostilities-india-ranked-just-slightly-better-than\\_a\\_22037994/](http://www.huffingtonpost.in/2017/04/13/on-religious-hostilities-india-ranked-just-slightly-better-than_a_22037994/)
14. Section 153(a). Of Indian Penal Code. And Section 295(a) of Indian Penal Code, and Section 298 of Indian Penal Code, and Section 66A of Information Technology Act, 1860.