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A Legal Critical Analysis on Gender Based Relgious Violence

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Abstract: As we all know about that a gender-based religious violence refers to harm or discrimination faced by people, especially women and gender minorities, becauseof their gender as well astheirreligious identity. Thisstudyexamines howlawsrespondto suchviolenceandwhetherthey provide realprotection and justice to victims. It looks at constitutionalrights, criminal laws, and human rights principles to understand how legal systems try to prevent violence and punish offenders. The paper also highlights important challenges, such as victims being afraid to report crimes, socialstigma, lackofawareness, and some werebiaswithin institutions likethepolice or courts.

The analysis explores the difficult balance between protecting freedom of religion and ensuring gender equality. In some situations such as cultural or religious practices may be used to justify harmful behavior, which makes legal intervention and more complex. The study uses feminist and intersectional perspectives to explain how individuals can face multiple forms of discrimination at the same time due to gender, religion, and social background.

By reviewing legal cases, policies, and social human rights standards, the research identifies gaps between what laws promise and what actually happens in real life. It argues that stronger legal protections, gender-sensitive approaches, better law enforcement, and improved support systems for victims are necessary. The main aim of the study is to critically examine and encourage the development of fair and effective legal frame works that respect religious freedom while also protecting fundamental human rights. Ultimately, the research seeks to promote justice, equality, and safety for individuals affected by gender-based religious violence.

Introduction - Gender-based religious violence means hurting or treating someone badly because of their gender and religion. It mostly affects women and some times people from other gender groups. In many societies, religion influences how people think about men and women and what roles they should have. Sometimes, religious beliefs are used in the wrong way to control women or deny them equal rights. As we all known about that we are facing so many problems regarding the gender based religious violence which can not be tolerate more. people live in india from different state, different religion, different cast, different colour and even different sex. But even in present condition people are facing religion problem which is not fully justified.

This kind of violence often increases during religious conflicts or communal riots. In such situations, women are usually the most affected. They may face harassment, sexual violence, forced conversion, or social boycott. In many communities, women are seen as symbols of family or community honor, and this makes them more vulnerable during religious tensions.

From a legal point of view, gender-based religious violence is a violation of human rights. In India, the Constitution gives equal rights to all citizens. Article 14 talks about equality before the law, and Article 15 says that no one should be discriminated against on the basis of religion, race, caste, sex, or place of birth. At the same time, the Constitutional so gives people the right to follow their religion.

During the last few year we seen so much problem regarding discrimination on religious caste and this effect directly not towards the society but against the whole nation. At the international level, documents like the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women protect people from discrimination and violence.

A legal critical analysis helps us understand whether the current laws are strong enough to protect women and ensure both equality and religious freedom. A legal critical analysis of gender-based religious violence examines not only the existing legal framework but also its effectiveness, limitations, and gaps. It questions whether current laws adequately protect victims and whether legal institutions are sensitive to the intersection of gender and religion. This analysis also explores the need for stronger implementation mechanisms, judicial activism, and reforms to ensure that constitutional values of equality, secularism, and human

dignity are fully realized in practice.

Meaning of gender based religious violence: There was not a any specific definition regarding on gender based religion violence but we can say that a Gender-based religious violence refers to acts of violence, coercion, or discrimination targeting individuals based on their gender and interpreted through a religious lens, often aiming to enforce specific gender roles or punish violations of religious norms. This includes forced marriage, sexual exploitation, or violence justified by interpretations of religious doctrines.

Objectives of the Study:

1. To understand the meaning and concept of gender-based religious violence and how gender and religion together create discrimination and violence.
2. To study the historical background of gender-based religious violence and examine important examples from India and other countries.
3. To examine the constitutional provisions in India, especially Articles 14, 15, and 25–28, which deal with equality and freedom of religion.
4. To analyze the role of laws and legal systems in preventing and punishing gender-based religious violence.
5. To study international legal protections, such as the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, that promote gender equality and protect women from violence.

Historical approach on Gender-Based Religious Violence: Gender-based religious violence has been present for a very long time. In ancient and medieval times, religion played a big role in deciding how men and women should live. In many societies, men were given more power, and women were expected to stay at home, follow strict rules, and obey male family members. Some religious beliefs and customs were used to justify unequal treatment of women.

During religious wars and conflicts, women often suffered the most. When two religious groups fought, women were sometimes attacked to insult or take revenge against the other community. They faced problems like kidnapping, sexual violence, forced marriage, and forced conversion. Women were seen as symbols of family or community honor, so harming them was used as a way to hurt the whole group.

During the colonial period in India, social reform movements began challenging harmful religious practices. Reformers like Raja Ram Mohan Roy opposed practices such as Sati, which was later abolished under British rule. Similarly, Ishwar Chandra Vidyasagar worked towards widow remarriage rights. These reforms marked the beginning of legal intervention in religious customs that harmed women.

Over time, many countries and international organizations have made laws to protect women from such violence. However, gender-based religious violence still happens in different parts of the world. Gender-based religious violence has been happening for many centuries. In old times, religion strongly influenced society and family life. Men were usually given more power, and women were expected to follow strict social and religious rules. Sometimes, religious teachings were interpreted in a way that limited women's freedom and justified unequal treatment.

During religious wars and conflicts, women often became the main victims. For example, during the medieval Crusades between Christians and Muslims, many women suffered violence, kidnapping, and forced marriages. Women were often targeted because harming them was seen as a way to insult the entire community.

In India, one of the most serious examples is the Partition of India in 1947. When India and Pakistan were separated, large-scale violence broke out between Hindu, Muslim, and Sikh communities. Thousands of women were abducted, sexually assaulted, or forced to convert their religion. Women's bodies were used as tools of revenge and humiliation during this time.

These examples show that when religion and gender discrimination come together, women often suffer the most. Over time, many laws and international agreements have been created to protect women's rights. However, such violence still continues in some parts of the world. Understanding these real-life examples helps us see why strong legal protection and social awareness are necessary to prevent gender-based religious violence.

Problems of Religious Discrimination in Society: Religious discrimination creates many serious problems in society. Some of them are explained below in simple words:

1. Damage to Property and Life Religious conflicts can cause damage to homes, shops, and religious places. Sometimes innocent people lose their lives.
2. Lack of Job Opportunities People may not get jobs or promotions because of their religion. This makes it difficult for them to earn money and live a good life.
3. Use of Religion for Politics Sometimes leaders use religion to divide people and gain support. This increases misunderstanding and weakens unity.
4. Fear and Insecurity People who face discrimination may feel unsafe in their own country. They may avoid public places or hide their religious identity.
5. Restriction on Religious Freedom Some people may not be allowed to wear religious clothes, celebrate festivals, or follow their religious customs freely.
6. Sexual Violence During Religious Conflicts During religious riots or conflicts, women are often targeted. They may face rape, harassment, or assault as a way to insult or take revenge against a community.
7. Forced Conversion and Marriage Some women and girls are forced to change their religion or marry against their will. This violates their freedom and basic human rights.
8. Restrictions on Education In some extremist situations,

girls are not allowed to go to school in the name of religion. This limits their future opportunities.

9. Strict Dress Codes Women may be forced to wear certain clothes or follow strict rules about their appearance based on religious beliefs, even if they do not agree.
10. Limited Participation in Religious Activities Women may not be allowed to enter certain religious places or take leadership roles in religious institutions.
11. Domestic Violence Justified by Religion In some cases, religious teachings are wrongly used to justify controlling or abusing women inside the family.
12. Social Boycott and Isolation Women who refuse to follow certain religious customs may be socially excluded or boycotted by their community.
13. Psychological Trauma Victims of gender-based religious violence often suffer from fear, depression, and long-term emotional pain.
14. Lack of Legal Support Many women do not report such violence because of fear, shame, or lack of proper legal protection.
15. Violation of Fundamental Rights Gender-based religious violence goes against the right to equality and dignity guaranteed by the Constitution of India and international laws like the Convention on the Elimination of All Forms of Discrimination Against Women. While religious discrimination is a serious problem that affects equality, peace, and development in society. It is important to promote respect and understanding among all religions.

Solution regarding gender based religious problem: Gender-based religious violence is a serious issue, but it can be reduced through strong laws awareness, and social change. Some important solutions are:

1. Strong Implementation of Laws The government must strictly enforce laws that protect equality and punish violence. Articles 14 and 15 of the Indian Constitution guarantee equality and prohibit discrimination. Proper implementation of constitutional fundamental right is very important. Because its essentials to every person.
2. Equal Education for All Education plays a major role in changing mindsets. Schools and colleges should teach values like equality, respect, and religious tolerance. Girls must be given equal access to education. It seems that in a village level place are always find out the discrimination on the basis of cultural socio, economic and also on the base of religion also.
3. Awareness Programs Public awareness campaigns should be conducted to inform people about women's rights and human rights. Society must understand that violence in the name of religion is wrong. Government should must also become the part of social awareness. But govt. only approach of social awareness on the of election propaganda.
4. Women Empowerment Women should be economically and socially empowered. Providing job opportunities, skill training, and financial support can help them become independent and confident. Such as educational society and NGO are also help them regarding towards women empowerment.
5. Legal Support and Fast Justice Victims should get quick legal help and protection. Special courts and strict punishment for offenders can reduce such crimes.
6. Interfaith Dialogue Religious leaders from different communities should promote peace and equality. Positive interpretation of religious teaching can help reduce discrimination.
7. International Protection International agreements like the Convention on the Elimination of All Forms of Discrimination Against Women support gender equalityand encourage governments to take action.
8. Strict Action Against Hate Speech The government must take strict action against those who spread religious hatred or violence.

Legal frame work regarding gender based religious discrimination: India is a secular country, and the law protects every person from discrimination on the basis of religion. The following laws apply:

1. Constitution of India

The Constitution of India provides important protections:
Article14– Guarantees equality before the law.
Article 15 – Prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth.
Article16– Provides equal opportunity in public employment.
Articles 25–28 – Guarantee freedom of religion, including the right to practice, profess, and propagate religion.
Article 21 – Protects the right to life and personal liberty, which includes the right to live with dignity.

2 TheBharatiya Nyaya Sanhita (BNS): The Indian Penal Code contains provisions to punish religious hatred and violence:

1. Promoting Enmity and Causing Disharmony (BNSSection196): This section replaces IPC Section 153A and punishes promoting disharmony or enmity between groups through words, signs, visible representations, or electronic communication. It also covers organizing activities intended to train people in violence against religious groups. The punishment is up to 3 years, a fine, or both, with a higher penalty of 5 years and a fine if committed in a place of worship. These offenses are cognizable and non-bailable.

2. Outraging Religious Feelings (BNSSection299): Replacing IPC Section 295A, this section penalizes deliberate and malicious acts, including through electronic means, that are intended to outrage the religious feelings of any group by insulting their religion or beliefs. Offenders can face imprisonment up to 3 years, a fine, or both. This is a cognizable and non-bailable offense.

3. Disturbing Religious Assembly (BNSSection300): This section replaces IPC Section 296 and punishes anyone

who voluntarily disturbs a religious assembly or ceremony. The penalty is imprisonment up to 1 year, a fine, or both.

4. Trespassing/Insulting Places of Worship (BNSSection301): Replacing IPC Section 297, this section prohibits trespassing on burial grounds or places of worship with the intent to insult a religion or wound feelings, as well as offering indignity to a corpse with the same intent. The punishment is up to 1 year of imprisonment, a fine, or both.

5. Uttering Words to Wound Religious Feelings(BNS Section 302): This section, which replaces IPC Section 298, punishes intentionally wounding the religious feelings of any person through words, sounds, gestures, or objects. The penalty is up to 1 year of imprisonment, a fine, or both.

6. Mob Lynching (BNS Section103(2)): A new provision, this section addresses murder committed by a group of five or more individuals based on grounds such as race, caste, community, personal belief, or language. The punishment is life imprisonment or the death penalty.

7. Statements Conducing to Public Mischief(BNS Section 353): Replacing IPC Section 505, this section criminalizes making, publishing, or circulating statements, rumors, or reports that are likely to cause fear, alarm, or incite one community against another. The punishment is up to 3 years of imprisonment.

3. Protection of Human Rights Act,1993: The Protection of Human Rights Act establishes the National Human Rights Commission (NHRC) to protect individuals from human rights violations, including religious discrimination.

4. Representation of the People Act,1951: The Representation of the People Act prohibits the use of religion to seek votes during elections.

1. Corrupt Practices (Section 123(3) and 123(3A)):The Act deems it a “corrupt practice” for a candidate or their agent to appeal for votes or appeal to refrain from voting based on religion, race, caste, community, or language. It also prohibits creating hatred or enmity between different classes of citizens on religious grounds.

2. Promotion of Enmity (Section 125):This section makes it a punishable offense to promote feelings of enmity or hatred between different classes of citizens on grounds of religion, race, caste, community, or language during an election campaign.

3. Disqualification(Section8):A person convicted of offenses related to religious hatred or promoting enmity is disqualified from contesting elections.

5. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

1. Banon Publications Promoting Religious Hatred(OldSection95CrPC) New Provision: Section 135of BNSS(corresponding to Section95 ofCrPC).

Description: This section empowers the state government to declare certain publications (newspapers, books, documents) as forfeited if they promote enmity between different religious groups, cause disharmony, or outrage religious feelings (related to Section 196 and 298 of Bharatiya Nyaya Sanhita - BNS).

Action: A warrant can be issued to search for and seize such publications.

2. Preventive Action Against Communal Violence(OldSections107& 151CrPC)

Security for Keeping Peace (Old 107): Section 138 of BNSS(corresponding to Section 107 of CrPC). Allows an Executive Magistrate to ask a person to execute a bond to keep the peace for up to one year if they receive information that the person is likely to commit a breach ofpeace.

Arrest to Prevent Offences (Old 151): Section 170 of BNSS(corresponding to Section 151 of CrPC). Empowers a police officer to arrest a person without a warrant, if they know of a design to commit any cognizable offence (including communal violence), to prevent the commission of such an offence.

3. Restrictions on Gatherings/Riots(OldSection144 CrPC)

New Provision: Section 163 of BNSS (corresponding to Section144of CrPC).

Description: Empowers District Magistrates, Sub-divisional Magistrates or any other Executive Magistrate empowered by the state government to issue orders in urgent cases of nuisance or apprehended danger.

Usage: It allows authorities to restrict gatherings of five or more people, prohibit carrying weapons, or stop activities likely to cause communal tension or riots.

Duration: Generally valid for up to two months, though the state government can extend it.

6. Unlawful Activities (Prevention)Act (UAPA)

The Unlawful Activities (Prevention) Act (UAPA), 1967, originally designed to handle secessionist movements, has evolved through amendments (2004, 2008, 2012, 2019) to become India’s primary anti-terror legislation, capable of addressing religious violence that threatens the sovereignty, unity, or stability of India. It defines “unlawful activity” and “terrorist act” in broad terms that cover acts, words (spoken/written), and signs that incite enmity or violence.

1. Used to take action against organizations involved in terrorism or activities that threaten religious harmony and national unity.

2. Communal Harmony Violation: It covers activities that cause or are intended to caused is affection against India or disharmony/feelings of enmity, hatred, or ill-will between different religious, racial, language, or regional groups or communities.

7. Protection of Civil Rights Act

1. Although mainly related to caste discrimination, it protects individuals from discrimination in public places, which may also connect with religious discrimination in some situations.

8. Information Technology Act

1. Section 66 and related provisions help punish online hate speech and spreading religious hatred through social

media.

9. National Commission for Minorities Act

1. Establishes the National Commission for Minorities (NCM) to protect the rights of religious minorities in India.
2. Purpose: To protect, monitor, and evaluate the safeguards provided to minorities under the Constitution and laws, as well as advise the Government on minority welfare.
3. Minority Communities: Initially, five religious communities were notified :Muslims, Christians, Sikhs, Buddhists, and Zoroastrians (Parsis). Jains were added in 2014.

10. Places of Worship(Special Provisions)Act

1. The Places of Worship (Special Provisions) Act, 1991 is an Indian law enacted to maintain the religious character of any place of worship as it existed on August 15, 1947, and to prohibit its conversion. It ensures that any temple, mosque, gurudwara, church, or monastery cannot be converted into a different religion's place of worship, preserving communal harmony.

11. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

1. Protects SC/ST communities from violence and discrimination, which may sometimes overlap with religious identity.
2. These laws work to protect equality ,religious freedom, and harmony in India. However, proper enforcement and awareness are necessary to prevent discrimination effectively.
3. Affirmative approach policies towards on Gender based religious violence

1. Goverment should speared the awareness regarding the discrimination on gender based religion. doing such type of activity which encourage the secularism in the country. people belong from any category but he will be not discriminated on the ground of religion, caste, colour, sex. In so many place I have seen that person belong from ST/SC community they were totally restricted to worship in a temple or even they were not organized a marriage ceremony program. They should be go out side of that village or quit the marriage or waiting for police support.
2. Stablishment of more NGO society for stop the discrimination on religion based violence and make a good approachable life towards the people. help them and provide a some guideline towards the benefit of this toxic violence.
3. While there was a most important thing is today's media ,news are play a very important role in the society. under this there was a clear crystal report to be given towards a crime. and also provide a daily circular towards there right in social media platform and ask a question from government that why a women from any community will not get a proper right.
4. It is very important that women who are belonging from any category should known their right. Know we are live in20th century in this era women are self empower now it's a time to get some opportunity and beside all the customs women should become self independent.
5. It is also very important thing is that the Education in non-violence and equality between women and men is to be very important thing in our society. without any type of violence or any type of discrimination women and children should get a proper education.

Case Study

- **Shah Bano Case (1985)–Short Note on Judgment**

Case: Mohd. Ahmed Khan v.Shah Bano Begum, (1985)2 SCC 556

The Shah Bano case is a landmark judgment of the Supreme Court of India dealing with the issue of maintenance rights of a divorced Muslim woman. Shah Bano, a 62-year-old Muslim woman, was divorced by her husband, Mohd. Ahmed Khan, through triple talaq. After the divorce, she filed a petition under Section 125 of the Criminal Procedure Code (CrPC), seeking maintenance from her husband as she was unable to maintain her self. The husband argued that under Muslim Personal Law, his responsibility was limited only to the iddat period (a short period after divorce),and therefore he was not required to provide maintenance beyond that time.

Judgment: The Supreme Court held that Section 125 CrPC applies to all citizens, irrespective of religion .The Court ruled that a Muslim husband is legally bound to provide maintenance to his divorced wife if she is unable to maintain herself, even after the iddat period. The Court emphasized that this provision is a secular law meant to prevent destitution and poverty. The judgment highlighted the importance of gender justice and equality under Articles 14 and 21 of the Constitution of India. It also observed the need for a Uniform Civil Code under Article 44 to promote national integration and gender equality.

Significance:

1. Strengthened the rights of Muslim women to claim maintenance.
2. Affirmed that secular criminal law overrides personal religious law in matters of maintenance.
3. Sparked nation wide debate on personal laws and gender justice.
4. Led to the enactment of the Muslim Women (Protection of Rights on Divorce)Act, 1986.

In conclusion, the Shah Bano judgment was a historic step toward protecting women's rights and ensuring that religious personal laws do not violate constitutional principles of equality and dignity.

- **Shayara Bano v. Union of India(2017)–Short Note on Judgment**

Citation:(2017)9SCC 1

The case of Shayara Bano v. Union of India is a landmark judgment concerning the validity of instanttripletalaq(talaq-e-biddat)underMuslimPersonalLaw.ShayaraBano challenged the practice after her husband divorced her by pronouncing triple talaq in one sitting, which immediately ended the marriage. She argued that this practice violated

her fundamental rights under Articles 14 (Right to Equality), 15 (Non-discrimination), and 21 (Right to Life and Personal Liberty) of the Constitution of India.

Judgment

Ina3:2majoritydecision, the Supreme Court declared instant triple talaq unconstitutional and void. The Court held that:

1. Triple talaq is arbitrary and violates Article14 of the Constitution.
2. It is not an essential religious practice protected under Article25(Freedom of Religion).
3. A practice that allows husband to end a marriage instantly without giving the wife any opportunity for reconciliation is unfair and discriminatory.

Significance:

1. Strengthened the protection of Muslim women's rights.
2. Confirmed that personal laws must follow constitutional principles of equality and dignity.
3. Led to the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019, which made instant triple talaq a punishable offense.

This judgment is an important mile stone in promoting gender justice and ensuring that religious practices do not override fundamental rights

- **Indian Young Lawyers Association v. State of Kerala**

Citation:(2019)11SCC 1

Popularly Known As: Sabari mala Temple Case

This case dealt with the constitutional validity of the practice that prohibited women between the ages of10 and 50 from entering the Sabari mala Temple in Kerala. The restriction was based on

The belief that Lord Ayyappa is a celibates it and that women of menstruating age should not enter the temple.

The petitioners argued that the ban violated fundamental rights guaranteed under the Constitution of India, especially:

1. Article14(Right to Equality)
2. Article15 (Prohibition of discrimination on grounds of sex)
3. Article25(Freedom of Religion)

Judgment:

Ina4:1 majority decision(2018),the Supreme Court held that the exclusion of women was unconstitutional. The Court ruled that:

1. ThepracticeviolatedArticles14and15asit discriminated against women based on biological factors.
2. The right to worship is available to all genders equally.
3. The exclusion was not an essential religious practice protected under Article25.

Justice D.Y. Chandrachud emphasized that such exclusion rein forces stereo types about women and undermines their dignity.

Significance:

1. Strength and gender equality in religious spaces.
2. Affirmed that constitutional morality is above social or religious customs.
3. Highlighted the balance between freedom of religion and fundamental rights.

This judgment is an important step toward ensuring that religious practices do not violate constitutional

Suggestion: As per the whole critically examine I observe that there is so much needs to change the all old right and customs which is now some where binding on the women. as on the basis of this they are not come out side from this culture. Beside that in19th century women and child are abandon from the forced labour but some where in India also a forced labour to be done that should be properly restricted. As per the side also religious discrimination are also to be seen against the men and women also. In my opinion it should be also properly stop. Either by government will make a more strict law for the society and make some also corresponding punishment towards that a person who break a law.

Conclusion: Gender-based religious violence is a serious violation of human rights that affects the dignity, equality, and freedom of individuals, especially women and gender minorities. It occurs when harmful practices, discrimination, or violence are justified in the name of religion and used to control or oppress individuals based on their gender. As discussed in this study, such violence is not only a social problem but also a legal and constitutional issue.

In India, the Constitution of India guarantees equality before the law (Article 14), prohibits discrimination (Article 15), and protects freedom of religion (Articles 25–28). At the international level, instruments like the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women emphasize gender equality and protection from discrimination. India has also introduced several criminal and preventive laws, including the Bharatiya Nyaya Sanhita, to address religious hatred and violence.

However, despite these legal safeguards, the gap between law and implementation remains a major challenge. Fear of social stigma, lack of awareness, institutional bias, slow judicial processes, and misuse of religious sentiments often prevent victims from receiving justice. The study highlights the need for stronger enforcement of laws, gender-sensitive policing, judicial accountability, and effective victim support systems. A balanced approach is necessary to ensure that freedom of religion does not become a shield for discrimination or violence. Legal reforms, awareness programs, women empowerment initiatives, interfaith dialogue, and responsible media practices are essential to reduce such violence.

In conclusion, achieving real justice requires not only strong legal frameworks but also social transformation. Promoting constitutional values of equality, secularism, and human dignity is the key to building a safe and inclusive society where no individual suffers violence in the name of religion or gender.

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