



LAW ET JUSTITIA LAW REVIEW
VOLUME 2 ISSUE 1

E-MAIL: contact@lawetjusticia.com

WEBSITE: www.lawetjusticia.com

DISCLAIMER

(1) The opinions and views in the articles and research papers published on this website are personal and independent opinions of the author. The website and the journal are not responsible for them.

(2) No part of this work may be produced and stored in a retrieved system or transmitted in any form or by any means, electronic, mechanical, photocopying recording or otherwise without written permission from the publisher.

(3) Our policies are subject to change. We, at Law et Justicia, advise you to periodically view this page in order to take notice of any changes. We will notify you of any changes by posting the new policies on this website. The changes will be effective as soon as they are posted.



PUBLISHER DETAILS

NAME: Shrisha Gautam

ADDRESS: 3/4476, New Bhagat Singh Colony, Bajoria Marg, Saharanpur, Uttar Pradesh, India. PIN: 247001

PHONE: +91 8449591799 | +91 9616151718

E-MAIL: contact@lawetjusticia.com

OFFICE HOURS: 5 PM – 7PM

COPYRIGHT POLICY

All copyrights associated with the manuscript are reserved with the author. The author shall be deemed to have transferred to *Law et Justicia Law Review*, an irrevocable, non-exclusive, royalty-free right along with a transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or any other form or media, retrieval systems and other formats now or hereafter known.

No part of the Journal may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of strict educational uses by providing due credits and acknowledgment for the same.

To seek permission for non-educational usage, an individual is required to mail with the subject “**Permission Required**”, name of the article as displayed on the website (www.lawetjusticia.com) along with the volume number and the issue number in bold to contact@lawetjusticia.com. After receiving and evaluating the email, Law et Justicia shall provide with other procedures for furnishing the request.

Law et Justicia reserves the right to decline any permission request on any ground deemed fit by the core team. The decision of Law et Justicia shall be final and binding.

“RELIGION: BELIEF OR A MEAN TO PROMOTE CRIMES?”

AUTHOR: ZOYA ANOUSHA KHAN, Student,
Narsee Monjee Institute of Management Studies, Indore Campus

Link to paper: <https://lawetjusticia.com/religion-belief-or-a-mean-to-promote-crimes/>

Link to Volume 2 Issue 1: <https://lawetjusticia.com/volume-2-issue-1/>

ABSTRACT

Crimes are occurring in India from forever, only the methods and the severity of the crimes committed have changed. During the *Ancient* period, the crimes were actually based on the castes of the people, the most serious crime considered at that time was that of *treason*, i.e., *deshdroh* and its punishment would usually be *desh – nikaala*. Moving forward along the timeline into the *Medieval* period where the most prevalent crimes were mainly theft and murder, but the major difference was that, the punishment during that time was more severe than the ancient times. Then in the colonial period the variety of crimes increased and so did the theories of punishments, this is the same time when the *Indian Penal Code, 1860* was enacted, and since then the theories of punishment has not much changed but the crimes in the name of religion only started in the colonial era, when the Britishers tried to create a rift between the religious denominations by promoting communal riots and communal offences. In the present era, the crimes in the name of religion have increased much more as the people have become less tolerant towards each other and their respective religions, as well as the religion of another person. This paper will discuss a single event as a case study which transpired just in the *name of religion*, its *historical background*, the *remedies* that were available at that time, the impact it still has on people and the relevant *statutory provisions* of the Indian Penal Code. In order to examine the Communal Bill and to state its potency or efficacy there shall be emphasis laid on the infamous episode of *Bilkis Bano rape case*. Lastly,

the paper will be concluded by the opinions and suggestions of the writer as well as some examples of peace set by the people in the course of such devastating and traumatic period.

KEYWORDS

Danda, Indian Penal Code, Offences, Petty Crimes, Religion and Religious Tolerance.

INTRODUCTION

ANCIENT INDIA

The concept and occurrence of crime is not a new phenomenon, it's an age old misconduct which finds its existence from the beginning of the civilization in India. Even though the Indus Valley Civilization is considered as one of the most peaceful civilizations as there were never any records of violence from foreign states, but there are also evidences of copper and bronze weapons that were reportedly used as safety measures to protect one's body or his property, either from the threat of other persons or to protect themselves from the wild animals. So it is entirely to be expected that Harappan villagers had weapons to protect themselves against wild animals and highly likely that the Harappans had some form of armed police to protect the public and deal with criminals.¹ As soon as the human civilization developed, the intensity and methods of committing crime also evolved, during the Mauryan Empire, *Chanakya* laid down the philosophy of *Danda Neethi*, which literally means usage of a stick to maintain peace in the kingdom. *Danda Neethi* gets whatever is currently not there, protects whatever we have, brightens whatever we have and donates whatever we have to the right person.² *Danda Neethi* is one of the part of three theories, namely:

- i. *Anvikshiki*: This is a Sanskrit word which means the theory of *investigation* or *penetration*, investigating or penetrating into the matter and finding out the happenings. It basically means to find out about the crime as to how and why it occurred, and what was the motive and intention of the person committing the crime.³

¹ Jane McIntosh, *How Peaceful was Harrappan Civilization?*, <https://www.harappa.com/answers/how-peaceful-was-harappan-civilization>.

² Shruthi K.R. & Dr. Rajani Jairam, *Anvikshiki, Trayi, Vartha, Dandaneethi, ityadhi vidhyanam ouchityam, prastutata cha*, 73 RESEARCH REVOLUTION (IJSSM). 5, 5 (2015).

³ This philosophy is still being practiced in the modern era and it is said that the concept of investigation has been adopted by the *Anvikshiki* theory itself.

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

- ii. *Trayi*: The second theory talks about, *three folded knowledge* that is a collection of magic spells and hymns of the *Atharvaveda*.
- iii. *Vartha*: The main concern of this theory is agriculture and animal husbandry.

Danda Neethi is not restricted to the policy of punishment but all the social and political affairs of the state come within its jurisdiction with no exception to the courtiers, the army and the king.⁴ It fundamentally translates to the equality of all individuals without giving any benefit to any individual or group of individuals. All things said, the common philosophy of punishment that prevailed was that the punishment must be given by the person with whom or on whom the wrong has been committed.

Medieval India:-

‘As during the most of the medieval period, India was ruled by Muslim rulers and owing to this fact, the principles of law and order as well as administration were influenced by the *Shariyat Law*.’ Under the Muslim criminal law, that was mostly based on their religion, associate violation of public rights was an offence against the State,⁵ also the crimes and their punishments were broadly divided into four categories: *hadd*, *quisa*, *diya* and *tasir*.⁶

- i. *Hadd*: As the word itself suggests, in this particular category there was a ‘pre – defined’ punishment of crimes which were very serious and heinous in nature and would affect the public at large. Once such a crime was committed by any person, he would be given the punishment of *hadd*, and no judge could change the punishment or could modify the existing punishment. The punishment would either be stoning, amputation of limbs, etc.
 - a. One of the category of crime for which a punishment was pre – defined, was *zina* – illicit intercourse, and the punishment was more severe in nature, where the accused person was killed by stoning.⁷
- ii. *Quisa*: This type of punishment was given, when a murder or grievous hurt was inflicted upon the victim, either by the victim himself or by the next of his kin. This was a simple theory of ‘*an eye for an eye*’, but this punishment could only be given if the victim or his kin had asked for this type of punishment.

⁴ R.K. Gupta, *Law & Order Administration In Ancient India*, 65 IPSA 111, 112 (2004).

⁵ K. Varshaa, *Crimes and Punishment in Medieval India*, 2 IJLRS 78, 80 (2017).

⁶ KAILASH RAI, *INDIAN LEGAL & CONSTITUTIONAL HISTORY* 249-51 (Allahabad Law Agency, 2016).

⁷ In order to corroborate an offence of *zina* (unlawful sexual intercourse) or to justify the punishment an evidence was needed. A testimony is needed of four male witnesses to see whether the actual act of penetration occurred or not, this confession was to be made four times and it should not be retracted in later stages.

- iii. *Diya: 'Blood Money'*, it was more of an extension to the punishment of *quisa*, where instead of retaliating, money was given as compensation to the victim or his family.
- iv. *Tasir*: The punishment of *tasir* was discretionary in nature, which meant that it would depend upon the presiding judge and his power of discretion. This was given for offences like forgery, bestiality, etc., and the punishment would range from imprisonment to leaving the accused into the hands of the public.⁸

MODERN INDIA

History of modern India began with the colonial era and the rule of British Empire started. The *Indian Penal Code* by *Thomas Macaulay* was enacted in the year 1860, and since then a few amendments or additions have been made. Most of the offences being committed today, find its definitions as well as their punishments in the *IPC*, indicating the fact that during the Colonial Era, the crimes committed were quite similar to those committed in today's day and age, only the intensity and its punishments, in a few cases, have been altered. The *Indian Penal Code* is an exhaustive manual containing everything from the definition of crime, to general exceptions, to punishments, to division of chapters based upon the similarity of offences or on whom it is committed upon. Therefore it is fair to say that there is similitude of offences from the 1800s to today.

However, in today's age the most threatening and scariest of all crimes is the rioting and offences in the name of religion, the religious tolerance of people have deteriorated making them unendurable towards other persons' religion. To explain this point more clearly we'll take a very recent case study of the *Bangalore Riots (2020)*.

BANGALORE RIOTS (2020)

This particular section of the paper will have a detailed analysis and a comprehensive timeline of the events that occurred which finally led to the unfortunate event to riots and left everyone exposed to violence and almost on the threshold of a hot – scale violent event which could also lead to cold situations between the two involved religious communities and could have created

⁸ Unlike, present scenarios where more reliance in been given to the Judiciary and the Courts of the country for awarding the punishment to the offenders.

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

a huge gap as well. If the situation was not handled with strictness and authoritarian force, it could have led to hostile situations in the city.

The *Garden City* of India witnessed communal disharmony leading to mob attacks, stone pelting, police firing, killing of at least 3 people, injuring more than 100 people and also detainment of more than 200 people. The incident took place at *Kaval Byrasandra* in *Bengaluru*, outside Congress MLA *R. Akhanda Srinivas Murthy*'s house. The mob alleged that a *Facebook* post by the MLA's relative was offensive to *Islam* and its beliefs.⁹

On 11th August 2020, at approximately 7:30 PM, a mob of almost 200 people gathers in protest of the above mentioned defamatory post near the *DJ Halli* police station, which was led by a leader of Social Democratic Party of India – *Muzammil Pasha*, who urges the police officials to file a FIR against the person concerned. The post was put up on the *Facebook* account of *P. Naveen*, relative of MLA *R. Akhanda Srinivas Murthy*. According to the statements of the police officials, a team is sent to arrest the accused, when the police jeep comes back at around 9:00 – 9:30 PM, the mob is of the belief that the accused has been arrested and encircled the van demanding the police to hand over the accused to them; but in reality the police had no idea regarding the whereabouts of *Naveen*, and the search was still in progress. This made the mob violent and they even questioned the integrity of the police officials as a relative of a very popular MLA was involved in this case, a wave of prejudice arose in the mob making them more infuriated than before. A group of more than 900 people gathers outside the premises of the MLA's house, as they were under the impression that the police is not able to locate the whereabouts of the accused, he must be under the protection of his MLA uncle, and demanded that the accused must be given in the hands of the mob or hand him over to the police, but no response came from the other side making the mob exasperated as no significant progress, other than the filing of an FIR, has been made in the case and the people felt devastated. This feeling of injustice, annoyance from the police made the mob think that now the matter would not be solved according to the due process and it is the mob who should take a lead onto it: they set ablaze police jeeps; brought lathis, kerosene and petrol cans; entered into the premises of the MLA's house and vandalized his property; even a few people entered the *DJ Halli* police station in order to threaten the police officials. In response to this, the police *lathi charged* on

⁹ Ralph Alex Arakal, *Bengaluru MLA's House Attacked Over 'Derogatory Post by Relative'*, I.E., (Aug. 13, 2020, 07:15 AM), <https://indianexpress.com/?s=bengaluru%20MLA%27s%20house%20attacked%20over%20derogatory%20post%20by%20relative>.

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

them, but instead of the situation being somewhat peaceful, it just got more worsening because as soon as the mob got to know about the information that *Mr. Murthy* and his family were not at home, they moved from there to *P. Naveen's* place, vandalizing his property and setting some part of it on fire.

At this time *Mr. Murthy* shot and posted a video on a social media platform requesting people to stop the violence and said, I'm making a request to my Muslim brethren. There is no need to be violent. I will ensure that proper legal action is initiated against the perpetrators. I request you to maintain peace and harmony and I will be with you for this.¹⁰ With due course of time, things escalated into violence and even led to the attacks on MLA *Murthy's* home, he gave a statement denying any association with him in recent years.¹¹ "Naveen is my sister's son. I've not had any contact with him for the past 10 years."

Even after this heartfelt appeal to the public, the mob did not pacify their anger and think about their acts rationally. As the night grew the mob became more and more restless, this situation compelled the police to take stringent steps, starting from tear gas but it made the mob all the way more furious than before, making them attack the police station. "Champrajeet constituency MLA *B.Z. Zameer Ahmed Khan* and Shivajinagar MLA *Rizwan Arshad* rushed to the *DJ Halli* police station around 10:30 PM, but the mob was already out of control"¹². There were allegations on the police officials that the police did not worked efficiently and should be more attentive towards this case as this was a sensitive issue and could have been easily elevated to a scale big enough to cause disturbance in the peace and harmony of the city. MLA *Rizwan Arshad* said that the police should have ideally taken a *suo – motu* case in this scenario to diffuse the situation. *DJ Halli* and *KG Halli* are densely populated hyper – sensitive zones, and the police should have dealt with the issue, using their intelligence network.¹³ Things were definitely out of the hands of the police: the tear gas did not work and the number of the mob

¹⁰ Ralph Alex Arakal, *Bengaluru MLA's House Attacked Over 'Derogatory Post by Relative'*, I.E., (Aug. 13, 2020, 07:15 AM), <https://indianexpress.com/?s=bengaluru%20MLA%27s%20house%20attacked%20over%20derogatory%20post%20by%20relative>.

¹¹ *Congress MLA, Whose House Was Burnt In Bengaluru Violence, Seeks Police Protection*, The Outlook India, (Aug 12, 2020, 10:00 AM), <https://www.outlookindia.com/website/story/india-news-congress-mla-whose-house-was-burnt-in-bengaluru-violence-seeks-police-protection/358523>.

¹² Bellie Thomas, *Bengaluru Violence: Police delay allowed matters to go out of Hand: MLA*, BM, (Aug 13, 2020, 0:600 PM), <https://bangaloremirror.indiatimes.com/bangalore/A/police-delay-allowed-matters-to-go-out-of-hand-mlas/articleshow>.

¹³ Bellie Thomas, *Bengaluru Violence: Police delay allowed matters to go out of Hand: MLA*, BM, (Aug 13, 2020, 0:600 PM), <https://bangaloremirror.indiatimes.com/bangalore/A/police-delay-allowed-matters-to-go-out-of-hand-mlas/articleshow>.

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

kept increasing, the police had to open fire on the public, killing 3 people but causing injuries to more than 50 policemen in this whole fidgety episode. Around 60 police personnel including an Additional Commissioner of Police were injured in clashes that broke out over an alleged inciting social media post, in DJ Halli & KG Halli police station areas, as told by the Bengaluru Commissioner *Kamal Pant*.¹⁴

In the late night of the same day, the police officials finally caught hold of *P. Naveen*, the accused of the offensive post. After a brief investigation it was revealed that the post was deleted within a few minutes of it being posted, although before the post could be deleted, its screenshots were already in circulation. It was unfolded by the mob and the neighbors of the accused – it wasn't the first time that such a demeaning and a defamatory post was put up by *Naveen* and it was a constant practice on his part. His father, *Pavan* said, "*Naveen's* phone was stolen two days before the incident and we suspect that someone might have uploaded the post on purpose."¹⁵

Three people died in the police firing. The families of the deceased claimed that there was no involvement of them in the mob either in agitating the situation or in participating in any violent activities, but they were merely passersby. The police officials arrested over 200 perpetrators, who were identified by the police to be the perpetrators or initiators of riots, the families of some of the detained persons claim that their children were innocent and were arrested for no reason and even so without any evidence. *Mohammad Shafiullah*, father of one of the accused who has been arrested by the police said, "My son is only 23 years old and works at a call center. He was at home the whole night. At around 3 AM, the police barged in our house and took him away with them stating that he was one of the suspects."¹⁶

The more important thing in circumstances like these is to be humane and never lose humanity in the name of one's religion. Even in this tensed and troublesome situation, we saw many examples where people put their humanity and compassion above religion and helped the people in need. The most astonishing and lulling news which came during this riot was of the

¹⁴ *Bangalore: At least 3 dead, 150 arrested after violence erupts over alleged Derogatory Social Media Post about Prophet*, DNA, <https://www.dnaindia.com/india/report-bangalore-at-least-3-dead-150-arrested-after-violence-erupts-over-alleged-derogatory-social-media-post-about-prophet-2837238>.

¹⁵ Pragna L. Krupa, *Bengaluru violence: Our kids innocent, claim families of the arrested*, BM (Aug 13, 2020, 06:00 PM) <https://bangaloremirror.indiatimes.com/bangalore/others/our-kids-innocent-claim-families-of-the-arrested/articleshow>.

¹⁶ Pragna L. Krupa, *Bengaluru violence: Our kids innocent, claim families of the arrested*, BM (Aug 13, 2020, 06:00 PM) <https://bangaloremirror.indiatimes.com/bangalore/others/our-kids-innocent-claim-families-of-the-arrested/articleshow>.

people forming a human chain around the temple of that area in order to protect it from the rioters, who may in the fit of rage cause damage to the property. “Initially, it was the local Muslim youth who formed the human chain so that we could protect the temple and prevent any further escalation of communal unrest. We ensured that nobody came near the temple. We stayed there until 12:30 am in the morning when the police dispersed us” said *Nadeem*, a resident of that area and the brains behind this concept. Here we can see a stark difference in the mindset and the approach of the people, on one hand, there are individuals whose sentiments are so fragile that are hurt by a Facebook post and they resort to violence and aggression; on the other hand, we see people who actually believe in kindness and respect everyone’s beliefs and ideals and they resort to calming down the situation and help in whatever way possible. *Saqib*, another person who was part of the human chain, said that the people who started the chain did not have any political affiliation. He pointed out, “Yesterday there were two types of people, one who wanted violence and one who wanted peace. There is no need to bring religion into this.”¹⁷

STATUTORY PROVISIONS INVOKED DURING THIS INCIDENT

1. *Section 153A*:-

Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony –

- a. By words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities...¹⁸

The post put up by *Naveen*, can be said to be invoking *Section 153A* as the defamatory post promoted enmity on the grounds of religion. The post, which was posted without any intention, but it still led to disharmony between the communities and a lot of

¹⁷ Saumya Chatterjee, *Bengaluru Violence: Muslim Youths Form Human Chain to Protect Temple*, TQ, (Aug 13, 2020, 09:25 AM),

<https://www.thequint.com/news/india/bengaluru-violence-muslim-youth-form-human-chain-to-protect-temple>.

¹⁸ The Indian Penal Code, No. 45 Of 1860, India Code (1860)

peoples' sentiments were hurt, causing riots and disturbance of peace in the city of Bangalore.

2. *Section 425*:-

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".¹⁹

Most of the rioters, who were arrested by the police officials, were held liable under this very *Section 425*, for vandalism as they caused a lot of destruction and loss of property to MLA *Murthy* as well as *P. Naveen's* property. The section clearly states "wrongful loss or damage...destruction of any property" will be punished under this section. *Vandalism* in itself is not considered to be a very serious crime, but it is a great threat to the property and sometimes to the lives of the people associated to it as well, which is why there is a liability attached to it with some proportion of imprisonment or fine, and if this gets escalated can even lead to much more loss therefore it is necessary to put a halt, through punishment or fine, in the initial stages only.

3. *Section 501*:-

Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.²⁰

Even though *Prophet Muhammad* is now dead, he is still respected and is considered as an ideal person in the beliefs of every Muhammadan. Thus, a defamatory post on him hurt the sentiments of each and every person who treats him as an ideal person in living their life.

Stressing on the point that the rioters must be penalized for their acts of vandalism and causing injuries to the police officials as well as their fellow rioters.

¹⁹ The Indian Penal Code, No. 45 Of 1860, India Code (1860)

²⁰ The Indian Penal Code, No. 45 Of 1860, India Code (1860)

CHAPTER XV – IN RELATION TO INTENTION

Chapter XV contains *Sections 295, 295A, 296, 297 and 298* specifically talks about any offence relating to religion.

1. *Section 295* deals with the defiling or injuring any place of worship, with an intention to insult the sentiments of any religion. In this particular section, there must be intention as well as knowledge to cause such destruction, damage or insult to any religion to invoke any punishment as per described in the section.
2. *Section 295A* deals with deliberate and malicious acts which are intended to outrage the feelings of any community or religious group by insulting or defaming the religious sentiments or beliefs. In this section the main element is ‘*deliberate and malicious intention*’, which means there must be deliberate and wrongful intention on the part of the accused in voluntarily insulting or an attempt to insulting the beliefs of any religion, by words (either spoken or written) or by signs or by visible representations,²¹ shall be punished as per the description of the punishment in the section.
3. *Section 296* deals with the disturbance in the religious assembly. When any person or group of persons ‘*voluntarily*’ causes disturbance to any religious assembly which is formed for the performance of any religious ceremony, shall be punished under the provisions of this specific section.
4. *Section 297* deals with any kind of trespass on burial places. Even in this section, the key element is that there must be *intention* of hurting the religious sentiments of a person as well as he has the *knowledge* that his act will gravely affect the religious sentiments of another, and he will be punished accordingly.
5. *Section 298* deals with any words spoken or through any gestures with *deliberate intent* to cause harm to the religious feelings of any person of any community, and the punishment attached to it.

All these sections directly or indirectly talks about two key elements, i.e., *intention* and *knowledge* about the particular act which may insult or may be an attempt to insult the beliefs, sentiments or feelings of any person belonging to any community. But if we talk about the unconventional episode of the *2020 Bangalore Riots*, neither there was an intention on the part

²¹ The Indian Penal Code, No. 45 Of 1860, India Code (1860)

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

of the accused to deliberately cause any hurt or damage to the religious sentiments of the people, nor did he had any knowledge that a simple post put up by him on Facebook, which was even deleted within a few hours, could cause a stir in the calm and peaceful neighborhood of *Bangalore* and a stir up the emotions of the people who were affected by the post.

We have evident provisions which talk about any type of offences in relation to the religion and also the punishment or fine attached to it, but it only comes to play when the accused has the *intention* and the *knowledge* that his act may hurt the religious sentiments of an individual or group of individuals. In an ordinary course of action, when there is *intention* as well as *knowledge* about his action and its impact on others, there is no confusion or any point of further discussion. A point of deliberation occurs only in situations like the abovementioned riot, where nobody *intentionally* or *voluntarily* wanted to cause any harm to the religious sentiments, but did that anyway, without having any intention about committing such offence and without the knowledge of what could the repercussions his act be. Law is quite transparent about the essential elements, ingredients of the said provision and also about the punishments attached to it, as is the case with this chapter of the IPC. However, for anybody who is affiliated with the Judiciary and the law, due diligence has to be given on the point where no intention or knowledge is evidently visible. It is essential to penalize the actions even with the absence of intention and knowledge because:

- a. It still harms the feelings and the religious sentiments of any person belonging to the particular *attacked* community,
- b. If the situation gets out of hand and the matter is escalated, it will lead to riots, vandalism, loss of lives and property. The accused can easily take the defense that he had neither the *intention* nor the *knowledge* that the matter would escalate and cause damage and havoc in the area,
- c. *Bangalore Riots* caused a huge toll of loss of property, leaving 3 dead and many more injured. There wouldn't have been so much damage unless the post was put up, therefore, someone should be held liable for the damages. There is no denying of the fact that the rioters and the perpetrators should be penalized for the destruction they have caused like setting ablaze the police vehicles; damaging the properties of police station, MLA *Murthy's* and *Naveen's* property, injuring police officials and the local people and causing a havoc in the city and be given stringent punishments so that they think twice before acting rashly. Saying that, it is also very important to trace back the episode as

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

to how the whole incident originated and what was the main reason for the incident to even begin and finally coming onto who was the main suspect of it.

Therefore, to avoid such clashes and to bring justice to all, it is important to create provisions in order to punish the persons who were the main brains behind such offences relating to religion. As religion is something which is very personal and very dear to each and every individual, they hold it very close to their hearts and are even ready to throw away their lives for it, it is important to respect that feeling and honor each and every religion, otherwise a small spark can cause a huge fire of communal violence and communal disharmony in the society. A small gesture or a few words can cause agitation and a stir in the communal harmony and communal balance of the society, which is why *deterrence* plays a major role. Humans in general are very protective of their name and their position in the society that is why they are all the way more cautious and horrified to any kind of punishment which may ruin their status in the society, and that is something which acts as a restraint for a person to indulge into the world of crimes and illegal activities.

In order to create a fear in the minds of the people from preventing them to indulge into crimes, especially of the crimes relating to the concept of religion, a *Communal Bill* known as the *Prevention of Communal and Targeted Violence (Access to Justice and Reparation) Bill, 2011*. The NAC-drafted Communal Violence Bill is a disaster. It shows how creating a law on the basis of one Gujarat tragedy can derail the larger goal of communal harmony. It needs to be jettisoned for it will exacerbate communalism and damage the federal structure of India.²² The bill was formulated by the *National Advisory Council* in order to prevent any kind of atrocities or damages that could occur in near proximity in relation to the religion. The bill was last presented in the 2014 *Lok Sabha* session, but did not pass as there was no majority. There was a brief debate over the fate of the bill between the BJP's leader *Arun Jaitley* and the Union Minister *Kapil Sibal*. Mr Jaitley countered that the bill includes direction on what sort of action should be taken against state government officials who fail to prevent riots, and provides guidelines for the maintenance of public order. These topics, he said, "are exclusively within the domain of the state executive."²³ This was the main contention put up by *Mr. Jaitley* for

²² R. Jagannathan, *9 Reasons Why the Communal Violence Bill is itself Communal*, FirstPost, (May 30, 2011, 05:15 PM),

<https://www.firstpost.com/politics/9-reasons-why-the-communal-violence-bill-is-itself-communal-17573.html>.

²³ Amit Chaturvedi & Sunil Prabhu, *After fierce debate, anti – communal bill is dropped. Here's why?*, NDTV, (Feb 5, 2014, 07:52 PM),

<https://www.ndtv.com/cheat-sheet/after-fierce-debate-anti-communal-violence-bill-is-dropped-heres-why-54988>.

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

dropping the *Communal Bill*. Not only this, but the BJP also alleged that the Congress wanted this bill to pass so that they could get a majority of Muslim voters in the upcoming elections as when the bill was being drafted by the NAC, *Sonia Gandhi* was the chairperson of the committee. Also many Chief Ministers of the States did not approve of this bill as they said that this bill encroaches the authority of the State Government and gives it in the hands of an autonomous body. Albeit the bill did not pass, there are certain extraordinary provisions in the draft of the bill which very clearly holds a person liable for any kind of disturbances which can or had escalated into *Communal Riots*. Moreover, the NAC drafted a specific provision to constitute an autonomous body which will exercise the powers and perform any function assigned to them under this particular act, which is unerring as the committee would not be influenced by any pressure put by any pillar of democracy, people, media, judiciary, etc., and the outcome of their investigation would not be biased and justice would prevail.

- a. *Chapter I* (Sections 1 – 4): It contains the title, its extent (all over India with consent of the State of Jammu and Kashmir, as well as any person liable under any Indian Law), the day it (will be) can be commenced, definitions of some terminologies and knowledge of the person.
- b. *Chapter II* (Sections 5 – 17): It contains offences which are communal and targeted in nature, its conflict of interests with the *SC/ST Atrocities Act* and what will happen if there is any overlapping between the said act and the *Communal Bill*. It also talks about any kind of sexual assault which may happen at the time of such a communal riot (this was formed keeping in mind the *Bilkis Bano* incident during the *2002 Gujarat Riots*)²⁴. This point requires a special mention because in any riots, be it communal or non – communal, atrocities and damages are caused to people of both the sides, but nothing should escalate to a level where sexual assault is committed on a woman just because she belongs from a different communal group. This section also talks about torture any public servant inflicts during his professional capacity.
- c. Furthermore, there is a separate *Chapters* that talks about *National* as well as *State Authorities for Communal Harmony, Justice and Reparation*, and deals with the appointment, tenure and work of the members to be appointed for this committee by the *President*. It also states the *investigation, prosecution and trial*

²⁴ *Bilkis Yakub Rasool V. State of Gujarat*, (2019), SCC OnLine SC 763 (India).

as the main works of the committees, which is in one way in conflict with the works and duties of the police department.

GUJARAT RIOTS (2002)

The episode of ‘Gujarat Riots’ is known to everyone and the atrocities occurred in the due course of the unfortunate event. The main concern in this particular sub – topic is not the merits or the exact timeline of the event, our main point of contention is the relevance of the Bilkis Bano Rape Case to the Communal riots and the said Communal Bill.²⁵

It is important to discuss the unfortunate event of the *Gujarat Riots* in coordination with the infamous episode of *Bilkis Bano Case*, as it was the base line on which the Communal Bill was laid out. As already discussed, Communal Bill can be quite useful if implemented in a correct manner and keeping in mind due effects that could occur. Under no circumstances, however severe the situations get, no individual’s dignity and integrity should be harmed, such should always be there in the deep – rooted conscious of a human being.

India being a diverse country, with different ethnicities, castes and religions have witnessed the religious or communal differences, and in order to curb these communal differences and the violence they may incur, it is very important to lay down legislations that not only punishes the offenders but also act as a deterrent method in promoting peace and harmony in the country.

One of the most beneficial provisions of this *Bill* is the clause of an autonomous body that will work on such offences separately and bring justice to any and every person injured. It could be inferred from the duties mentioned in the *Bill*, the duties of the committee is quite similar to those of the CBI (Central Bureau of Investigation) especially the duty of *investigation* and also will act as an autonomous body working independently without any pressure from any side.

The *Communal Bill* was drafted keeping the tragic incident of the *2002 Gujarat Riots* in the mindset of the framers of the draft, but framing such a controversial *Bill* from only one event it is quite unfair, because there were episodes of riots which were communal in nature way

²⁵ The series of the Gujarat Riots began with the burning of a train in Godha on 27th February 2002, causing deaths of 58 Hindu pilgrims’ karsevaks, and leading to the violence and riots in the state of Gujarat. According to speculations the burning of the train was an act of the Muslim community which was already in minority. After the burning train incident, the Muslim Community was attacked and the riots escalated into a hot – scale event.

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

before the formation of the Constitution itself. Some of the provisions mentioned in this *Bill* are obliquely inclined towards the victims of the abovementioned riots, for example *Section 12* of the *Communal Bill* talks about the mental or physical torture committed upon any person by the police officials in order to extract some information or confession from him or her, during the 2002 *Gujarat Riots*, police officials picked up a few people from a particular community asking them their connections with big shots of the underworld and declaring them as *anti-nationalists*. In addition to this, the *Bill* was created to provide for an equal footing to all the religions to avoid any kind of favoritism or biasness of any kind, but taking consideration of only one particular incident is not in any way just and equitable. The *Bill* on one hand talks about *targeted violence* and *communal offences* not being specific to any religious group, yet on the other hand it talks about specific group of the SC/ST in accordance with the SC/ST Atrocities Act. There must be a few additions in the *Bill* as well, like there is no mention of *Murder, Vandalism, Loss of Property and Theft*, these are very important provisions which have no acknowledgement of it in the entire *Bill*.

Prevention of Communal and Targeted Violence (Access to Justice and Reparation) Bill, 2011 is quite inclusive in itself but it also has certain lacuna which should be filled by adding certain extra provisions to make it more comprehensive, including the rights for each and every religious group, removing the special provisions favoring any particular group. The main focus of the *Bill* should be on the investigation, the persecution and the speedy disposal of the cases so that justice could be given to the victims of the riots, also there should be no distinction on any grounds and every person, belonging to any communal group, should be treated equal and should be punished for his acts or for anything he does which may eventually lead to or had led to *Communal Riots*.

CONCLUSION:-

The love for an individual's religion is going on a very different level, where one wants the person belonging to some another community to respect the ideals' and the beliefs' of their religion, and on the parallel grounds wants the freedom to ridicule the beliefs' of the other religion. There is no denying of the fact that our *Constitution* gives each and every person the *Freedom of Speech and Expression* [Article 19 (1) (a)]²⁶ of one's ideas and one's opinions but

²⁶ (1) All citizens shall have the right
(a) to freedom of speech and expression.

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

this is also exercisable only within certain limits as there are certain restraints and exceptions added to it.[Article 19 (2) (a)]²⁷. Nevertheless this provision of the Constitution cannot contradict the reality that the tolerance or the acceptance level of a person has degraded so much that even a small gesture is enough to instigate the person to dwell into crimes just in the name for the protection of their religion. Connecting this opinion with our main case – *Bangalore riots* (2020), it is humbly suggested that there was fault of both the parties:

- a. A mob has no face, and they commit a lot of crimes as they are of the idea that no single person can be held liable for all the damages and destruction caused by the whole group. All that said still, the rioters must be held liable for all the destruction they have caused to the property of *Mr. Murthy* and *P. Naveen* as well as for the injuries caused to their fellow rioters and the police officials therefore it is important to create a deterrence, otherwise without no fear of punishment people will take the matters in their hands and the previous incidents, whether it is *The Exodus of Kashmiri Pandits* (1989) or it is that of *The Anti – Sikh Riots* (1984) or that of *The Gujarat Riots* (2002). Any person who has experienced any of the said communal riots, would never want anything like this to happen ever again because it not only causes damage of the property or havoc in the society, but because the mental and emotional torture they went through cannot be experienced again and the rioters just in the name of religion, being a part of the mob could easily escape.
- b. We live in a global world where each and every person is connected through technology and one tweet by even an unknown person could reach to the other end of the world, let alone to that within the borders of a country. Therefore, in such a connected world, *Freedom of Speech and Expression* doesn't give a person the right to post anything on a social media platform, one can exercise this fundamental right only within certain limits. Even all the social media platforms be it *Facebook*, *Instagram*, *Twitter*, etc., for us the major importance, here, is of the *Facebook*.

²⁷ (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 4 [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

Facebook has certain community guidelines which must be followed so that no one's rights are encroached upon and their sentiments are not hurt.²⁸

Furthermore, every religion teaches humanity, compassion, kindness and love for each and every human and every community. The main ideology is of *peace* and that is something every religion preaches and aspires for. There is no religion which promotes enmity between the sects of their own religion or any other religion. The *Vedas* (and *Upanishad*), the *Bible* and the *Quran* have verses portraying that every religion teaches peace and more importantly respect for all the other religions.

Om Bhur Bhuvah Swah

Tat-savitur Vareṇyam

Bhargo Devasya Dheemahi

Dhiyo Yonah Prachodayāt

Rig Veda (Mandala 3.62.10)²⁹

The *Gayatri Mantra* can be plainly translated to:

“Let's meditate on the Supreme God, Creator of the universe, who is fit to be worshipped;

He is the remover of sins and ignorance. May God enlighten our intellect!”

There is no mention of any specific name of the *God*, it even goes to the extent of saying, ‘creator of the universe’ and ‘whoever is fit to be worshipped’ should be worshipped, giving away the idea that there are different religions and one must respect each of them.

Om Sarve Bhavantu Sukhinaḥ

Sarve Santu Nirāmayāḥ

Sarve Bhadrāṇi Paśyantu Mā Kaścidduḥ Khabhāgbhaveta |

Om Sāntiḥ Sāntiḥ Sāntiḥ ||

Brihadaranyaka Upanishad (1:4:14)³⁰

²⁸ We define hate speech as a direct attack on people based on what we call protected characteristics — race, ethnicity, national origin, religious affiliation, sexual orientation, caste, sex, gender, gender identity, and serious disease or disability.

²⁹ <http://www.sathyasai.org/devotional/gayatri>.

³⁰ <https://resanskrit.com/sarve-bhavantu-sukhinah-the-peace-mantra>.

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

There is no specific source for this *shloke*, but some historians trace this back to the *Brihadaranyaka Upanishad*, which vaguely translates to:

“May all sentient beings be at peace, may no one suffer from illness.

May all see what is auspicious, may no one suffer.

Om peace, peace, peace.”

This prayer is for any person who can perceive or feel things, that he must not suffer from any illness and may there be peace upon him. Everyone must be able to see things which are favorable and at the end it all wishes for is *Peace*.

God blesses those whose hearts are pure,

For they will see God.

Matthew (5:8)³¹

God treats all his children equally, but then there are those who are pure at heart, i.e., they do only good deeds and do not have any ill feeling for any person, and those are the chosen people whom God loves the most. This is the motivation for the followers to do good deeds and to remain away from ill – deeds, which in a bigger picture promotes peace and love towards all.

God blesses those who work for peace,

For they will be called the children of God.

Matthew (5:8)³²

This is yet another motivation to the followers to promote peace in the neighborhood as only the person who believes, promotes and follows the ideology of *Peace* will be called as the children of God. From peace we can infer, that it indirectly speaks about love and brotherhood, which means in all possible ways there could be the spread and promotion of peace.

We sent you not, but

As a mercy for all the creatures.

Al – Anbiya (Surah 21: Verse 107)³³

³¹ The Bible.

³² The Bible.

³³ The Quran, translated by Abdullah Yusuf Ali.

LAW ET JUSTICIA LAW REVIEW
VOLUME 2 ISSUE 1

Acknowledging every caste, creed and race, this verse talks about all nationalities wanting his followers to respect the spirituality of every human being of every caste or race as well as show mercy, compassion and kindness to each and every human being on this land whether he belongs to any religion, caste, creed, race and nationality.

What has come to me by inspiration is that,

Your God is One God.

Al – Anbiya (Surah 21: Verse 108)³⁴

This verse recognizes different religions and their Gods, giving importance to all Gods, but also says that humans may believe in different Gods, yet in the end there is only *One Universal God*, who has created all the human beings, and He loves them and cherishes them.

When one commits or even attempts to commit a crime just in the name of their religion, one must have a thorough knowledge of their own religion. No religion teaches to fight over the existence of the religion and that is something which is clearly mentioned in the holy books. One who is a true follower and true devotee of any religion would never resort to the means of violence because he knows that his God loves peace and in no way any God promotes hatred or ill – feeling for other religions, only those who have partial or very little knowledge about their religions are the ones who are most instigated by small occurrences. Human beings go to the extent of saying that “*our religion must be protected or our religion is in grave danger or our God is in danger*, so we must protect it all cost, but they do tend to forget that we are only mortals, God is way more supreme and powerful than us and “He” does not need any protection from mortal beings, what “He” actually wants is for everybody to live in peace, with compassion and kindness and love for all humans, belonging to any sect or caste or religion.

³⁴ The Quran, translated by Abdullah Yusuf Ali.