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The Nature of Hate Crimes and How the Law looks at them?

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A human is a civilised animal with anger, hate, and disgust as key emotions. With time, hate spread amongst diverse communities, distinct castes, and genders in society based on religion, language, culture, civilisations, etc., taking the form of crimes. Apart from being violent, such crimes disrupt communal peace and brotherhood, creating a threat to society. Hate crimes are illegal acts that are prejudice-motivated and committed against a person or a community, property, or institution by a perpetrator(s) targeting a victim(s) because of its connection to a particular social status. Social media adds fuel to the fire by spreading fake news, fabricated information, and false truth, which ultimately increases the hate crime rate. With the emerging cases of 'mob lynching' in India, hate crime was recognised by the Indian justice system. The present article examines the nature of hate crimes in India and how Indian law looks at them. Part I of the work outlines the meaning of hate crimes and the motives behind perpetrators' minds. Part II is about the historical aspect and the up-surging incidents of hate crime in India. Part III of the work briefly outlines the international framework around human rights and provisions against hate crimes. Lastly, Part IV describes major Indian laws around hate crimes.

Keywords: *hate crime, prejudice, bias, discrimination, hate speech.*

INTRODUCTION

Hate Crimes are crimes motivated by prejudice against minority groups, the weaker sections of society, or a group of people for having diverse cultures, origins, castes, creeds, distinct sexual identities, sexual orientations, or religious practices. These are committed across the world and pose a serious threat to communal peace and harmony. There is an involvement of active violence and harassment against a particular group or community making their lives and existence miserable. It is not necessary for the perpetrator to hate the victim but to have a sense of biased motivation on the ideas of prejudice. The core drive of hate crimes is the diversification of social identity in an area. Hate crimes are illegal acts that are prejudice-motivated and committed against a person or a community, property, or institution by a perpetrator(s) targeting a victim(s) because of its connection to a particular social status.[1] These are different from the crimes that occur out of jealousy, anger, revenge, etc.; they are about the perpetrators' values and attitudes. The motives are not personal but rather community.

Crimes like 'mob violence' and 'mob lynching' are rising over the world and thus being talked about. Mob violence does not only hurt innocents physically but leads to the deaths of many unarmed citizens because of the unbreakable and inhumane assault. Bigotry, hate speeches, verbal abuse, property damage, damage to worship places, physical assault, harassment, bullying, genocide, homicide, and whatnot violent acts of prejudice, fall under the ambit of hate crimes or provoke the incidents of hate crimes in one manner or another. Intolerance, inducing hate speeches, is seen everywhere in politicians, politically ruled media, and social media platforms. Hate crimes affect mental health and may develop trauma in victims.

Following their social-religious thoughts, state agencies and law enforcement have failed to curb the situation, this only gives strength to the hatemongers. However, in ***Tehseen S. Poonawalla v Union of India***,[2] the Supreme Court of India emphasized the prevention and punishment of mob violence and lynching and directed central and state governments to create legislation on hate crimes. Rajasthan is the first Indian state to have formed a law to deal with rare crime

[1] Gerstenfeld P. B., *Hate Crime: The Wiley Handbook of Violence and Aggression* (first published 2017)
[2] *Tehseen S. Poonawala v Union of India* [2018] 6 SC 72

against couples. Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances in the Name of Honour and Tradition Bill, 2019, protects married couples from hate crimes and lays provisions of punishment for perpetrators of forming assemblies to stop inter-community and inter-caste marriages in the name of honour.

HISTORICAL ASPECT OF HATE CRIMES IN INDIA

Hate Crimes have been there since the persecution of Christians by the Romans and the eminently horrifying slaughter of Jew families by the Nazis. However, hate crimes as a concept first emerged in the US in the late 70s. Since then, the cases have been an uprising, including the lynching of Afro-Americans, xenophobia based on religious minority groups, and assaults on the LGBTQ community.

In India, since ancient times, there have been many cases of hate crimes on a religious basis. Following Manusmriti's hierarchy of society, Untouchables were subject to bias by the upper castes of the old Indian society. Hindus in India have always been subject to hate crimes since the beginning of the reign of Muhammad ibn Qasim till the fall of the empire. While some rulers did have a relatively peaceful relationship between the two religions, many rulers have been known to be cruel. The destruction of beautiful Khajuraho Temples and the world's greatest education pinnacle - Nalanda University - have been a loss a country could never recover. The persecution of Sikh Gurus and the destruction of ancient educational institutions led to the decline of education and research that set back the country for thousands of years.

UPSURGE IN HATE CRIMES IN INDIA

When there is a wave of prejudice in the minds of people, incidents of hate crimes take place. The oppressor and victim might not directly hate each other but are dedicated to harm because the victim belongs to a section of society that is unacceptable for the offender. Every year, the rate of hate crimes is highly surging in India. No one gets anything out of hate crimes; innocent people lose their lives or get heavy injuries, trauma, loss of property etc. From riots in Delhi to protests against CAA to mob violence in the name of cow vigilantism to hate speech all over the internet targeting a particular person or community biasedly. Without a doubt, the increasing

number of cases have been about hate crimes based on religion and communities. Consider the Gujrat riots in 1969, which started when Muslims attacked the Temple and Hindu Sadhus, and Hindus, in response to that, attacked Dargah. In 2002, the Gujrat riots happened as a result of Muslims burning the Godhra train and the Hindus sitting inside it alive. With thousands of people losing their property and lives, the situation between the two communities has not been any better since then.

Another historical hate crime on religious bias occurred in 1889. Around 300 Kashmiri Pandits were made to evacuate their homeland under the torture of Muslims. Killers with AK 47 on the streets, evacuees in large numbers, and threatening notices to leave Kashmir put on Hindu homes were the horrifying highlights of the hate crimes that made 300,000 to 500,000 Kashmiri Pandits migrate from Kashmir since March 1990.[3] Politics play a major role in instigating hate crimes like hate speech. One of the noted hate crimes is 1984's Anti-Sikh riots leading to the deaths of 2732 Sikhs, hundreds being injured, and many forced to take refugee camps.[4] There were reports of police being ignorant to protect the citizens after the riots caused by the Former Prime minister of India, Smt. Indira Gandhi's assasination.

With time, hate crimes based on caste took the form of honour killings. And the number of cases of hate crimes against people belonging to the LGBTQ community rose as well. Social media adds fuel to the fire by spreading fake news, fabricated information, and false truth, which ultimately increases the hate crime rate. From 2016-17, the National Human Right Commission registered 117 cases of alleged victimization and harassment of members of the minority community. Concerning harassment of Dalits, there was a surge of 33% in the number of cases registered by NHRC. The question is what causes such a mindset of people and whether India should have separate legislation for hate crimes.

[3] Zubair Ahmed, 'Kashmiri Hindus: Driven out and Insignificant' (*BBC*, 6 April 2016) <https://www.bbc.com/news/world-asia-india-35923237> accessed 17 October 2022

[4] Justice Nanavati Commission of Inquiry, *Anti-Sikh Riots 1984 1* (2005)

INTERNATIONAL FRAMEWORK

The United Nations Organization was formed for the upliftment of society as a whole. Several provisions, distinct committees, and numerous conferences were held to discuss how to work for men's civil and democratic rights. Various countries joined the organization to be called the Member States and signed various treaties and instruments to combat hate crimes internationally. Intergovernmental organizations like ICCPR, CERD, OSCE, CoE and the EU have prepared global strategies to fight hate crimes. About 57 participating States of OSCE committed to drafting specific legislation for hate crimes, improvising the investigation process, collecting data, and working on prosecution for hate crimes incorporating special training. The Universal Declaration of Human Rights was formed to recognize human rights. It gives provisions that guarantee inherent dignity recognition, alienable rights, equal rights, non-discrimination, and equal protection of laws — every human being is entitled to all rights without bias on race, sex, colour, religion, language, or any other status.[5]

The International Covenant on Civil and Political Rights (ICCPR) is an international instrument for Human Rights that emphasizes civil and political rights. Its provisions lay strict foundations on the right to life, equality before the law, and effective protection against discrimination. It obligates the Member States to investigate violence based on discrimination. Article 20 states that advocacy of religious, racial, or national hatred leading to incitement to violence, discrimination, or hostility is prohibited.[6] Examples of advocacy leading to incitement can be praises of historic violent acts like the Holocaust, calling out offensive names to a certain group, displaying symbols, or distributing some materials. The Committee on the Elimination of Racial Discrimination (CERD) emphasizes the significance of prosecuting racist acts and obligates the States to implement legislation that curbs racial discrimination, violence, and racist speech to an extent and to investigate such crimes.

[5] Universal Declaration of Human Rights (UDHR)
[6] International Covenant on Civil and Political Rights (ICCPR) 1966, art. 20

HATE CRIME LAWS IN INDIA

A speech with an expression of hatred for a group with an intent to provoke violence is termed hate speech. There is no specific definition of 'Hate Crime' in Indian legislation and no particular provision on the same. However, some provisions of the Indian Penal Code state the punishment for "incitement to hatred." The Representation of People Act under Sections 8, 8A, 123(3), 123(3A) and 125 classifies the offence of committing hate speech during elections. Unlawful Activities (Prevention) Act, 1967, and Information Technology Act, also mention the provisions for hate speech.

Section 153A, IPC: Penalizes the promotion or attempts to the promotion of enmity, disharmony, ill will, or hatred – by words, written or spoken, or signs, or visible representations – between different groups based on race, religion, language, place of birth, caste, etc. – with imprisonment of up to 3 years or fine, or both.[7]

Section 153B, IPC: Punishes the one who asserts, advises, counsels, propagation, makes or publishes any imputation – by words, written or spoken, or signs, or visible representations – that any group or class of persons cannot have the rights as citizens of India because of them being from a racial, religious, regional group or community – with imprisonment of up to 3 years or fine, or both.[8]

Section 295A, IPC: Criminalises the malicious and deliberate intention to insult – by words, written or spoken, or signs, or visible representations – any religion or the religious beliefs of a group – with imprisonment of up to 3 years or fine, or both.[9]

Section 298, IPC: Penalizes the one who utters any word or makes a gesture with the deliberate intent to hurt the religious feeling of any person – with imprisonment of up to 1 year or fine, or both.[10]

[7] Indian Penal Code 1860, s 153(A)
[8] Indian Penal Code 1860, s 153(B)
[9] Indian Penal Code 1860, s 295(A)
[10] Indian Penal Code 1860, s 298

Section 505, IPC: Punishes alarming news or rumour made, published, or circulated to promote enmity, ill will, or hatred amongst different groups – based on race, religion, language, place of birth, caste, etc. – with imprisonment of up to 3 years or fine, or both.[11]

The Hon'ble Supreme Court in ***Tehseen S. Poonawala v Union of India*** termed lynching as targeted violence against public and private property affecting the human body. Lynching covers attacks resulting in murder, harassment, gang rape, etc. There is no exclusive mention of mob lynching; however, Section 223(a) of the Criminal Procedure Code, 1973 penalizes a person for a group attacking a person. There are likewise provisions – Section 302, Section 304, Section 307, Section 323, Section 325 – under the Indian Penal Code.

CONCLUSION

Looking at the rate of increase in hate crimes, it is apparent that India needs specified legislation to combat hate crimes, including hate speech on social media. There is a need to define the level of freedom of speech and expression. Awareness is the key. After all, the citizens will never know the punishments unless the Parliament properly communicates them. A strict force or government cell can be created to take, investigate, and solve hate crimes. Multicultural events and programs should be organized regularly and promoted for boosted inter-community interaction. There should be active involvement and counselling of the youth as they are more vulnerable to committing hate crimes – for the sake of risk, making experiences, or simply pranking – hurting a person based on their caste, religion, class, sex, language, ethnicity, etc.

There is a definite requirement to separate hate crimes from other crimes, but the challenge is determining the real culprit. For a better society, police, courts, and prosecution need to be synchronized. Sometimes, hate crimes are committed by those ignored or prejudiced by society, often leading them to be anti-social or psychopaths. So, it requires more than just creating legislation to prevent hate crimes.

[11] Indian Penal Code 1860, s 505