

**HATE CRIME THEIR NATURE AND THE LAWS
CONNECTED WITH THEM**

**A Dissertation Submitted in the partial fulfillment for the
Degree of Master of Law (LL.M.)**

(School of Legal Studies)

(CRIMINAL LAW)

**SUBMITTED BY
UMESH KUMAR BHARTI
Roll No.:1200997057
LL.M-2**

UNDER THE GUIDANCE OF:

**Dr. Lokesh Awasthi
Assistant Professor
BBDU**



SESSION: 2020-21

CERTIFICATE

This is to certify that the research work entitled "**Hate Crime Their Nature And The Laws Connected With Them**" is the work done by a student of Babu Banarasi Das University, Lucknow, under my guidance and supervision for the partial fulfillment of the requirement for the Degree of Master of Law (LLM) in Babu Banarasi Das University Lucknow, Uttar Pradesh. According to the best of my knowledge, she has fulfilled all the necessary requirements prescribed under the University Guideline with regard to the submission of this dissertation.

I wish her success in life.

Date-

**Dr. Lokesh Awasthi
(Assistant Professor)**

ACKNOWLEDGEMENT

It is matter of immense pleasure for me to extend deep sense of gratitude to all persons who helped me in various way in completion of this work. In this respect, first and foremost I would like to bow my head before almighty without whose kind blessing; this work would not be in its concrete form.

Though there are a number of persons who have extended their kind help, but it is not possible to enumerate the name of all of them but at the same time it would be failure in my duty if I will not single the name of those persons. In the series of this I would like to extend my deep sense of gratitude and obligation for valuable guidance provided by my supervisor respected **Dr. Lokesh Awasthi, Assistant Professor**, Department of Law, School of Legal Studies, BBD University, Lucknow, for her cognate attitude, skillful guidance and continued encouragement during the course of this study, despite her extremely busy schedule.

In spite of her pre-occupation, she spent here valuable time in going through the typed script thoroughly and gave her valuable suggestions in the improvement and refinement of this work.

DECLARATION

Title of Project Report: “**Hate Crime Their Nature And The Laws Connected With Them**”.

I understand what plagiarism is and am aware of the University’s policy in this regard.

Umesh Kumar Bharti

I declare that

(a) The work submitted by me in partial fulfillment of the requirement for the award of degree of **LLM** Assessment in this **Dissertation** is my own, it has not previously been presented for another assessment.

(b) I declare that this **Dissertation** is my original work. Wherever work from other source has been used, all debts (for words, data, arguments and ideas) have been appropriately acknowledged.

(c) I have not used this work previously produced by another student or any other person to submit it as my own.

(d) I have not permitted, and will not permit, anybody to copy my work with the purpose of passing it off as his or her own work.

(e) The work conforms to the guidelines for layout, content and style as set out in the Regulations and Guidelines.

Date: 20/05/2021

Dr. SONIA VARSHNEY
ROLL NO. 1200997057,
LL.M. (2020-21)

LIST OF CASES

A.K. Gopalan v. State of Madras
Brij Bhushan v. State of Delhi,
Brothers v. Commissioner of Police
Cheenath S.V.D. v. State of Orissa and another
Mahesh Bhatt v. Union of India & Anr
M.C. Mehta v. Union of India
Mohd. Haroon and others v. Union of India and another
Nandini Sundar and others v. State of Chhattisgarh
R.A.V. v. City of St. Paul & Wisconsin v. Mitchel
Romesh Thappar v. State of Madras
Ram Jawaya Kapur v. State of Punjab
State of Punjab v. Saurabh Bakshi
Shreya Singhal v. Union of India
Tehseen S. Poonawalla v. Union of India & Ors
Union of India v. Naveen Jindal
Union of India v. Sankalchand Himmatlal Seth
Vishaka v. State of Rajasthan'
Dalit Human Rights & Ors. V. Union of India & Ors

LIST OF ABBREVIATIONS

ALAI	Association Litteraire et Artisque Internationale
APNIC	Asia Pacific Network Information Centre
ARIN	American Registry for Internet
ARPANET	Advanced Research Projects Agency Network
BIRPI	United International Bureaux for the Protection ofIntellectual Property
BSA	Business Software Alliance
CBD	Convention ofBiological Diversity
CBD	Conventional Bio Diversity
CD	Compact Disc
CDROM	Compact Disc Read-only memory
CSIR	Council of Scientific and Industrial Research
DARPA	Defence Advanced Research Projects Agency ofthe United States
DBMS	Database Management Systems
DNS	Domain Name System
DSB	Dispute Settlement Body
DVD	Digital Versatile Disc
EC	European Council
EMR	Exclusive Marketing Right

EPO	European Patent Office
EU	European Union
FICCI	Federation of Indian Chambers of Commerce and Industry
GATS	General Agreement on Trade in Services
GATT	General Agreements on Tariffs and Trade
GDP	Gross Domestic Product
GI	Geographical Indication
GPS	Global Protection Services
IANA	Internet Assigned Number Authority
ICANN	Internet Corporation for Assigned Names and Numbers
ICT	Information and Communication Technology
IFPI	International Federation of Photographic Industry
IP	Intellectual Property
IP	Internet Protocol
IPA	Indian Patent Act
IPIC	Intellectual Property of Integrated Circuits
IPR	Intellectual Property Rights
IRDA	Insurance Regulatory Development Authority
ISP	Internet Service Providers
IT	Information Technology

LD	Laser Discs
MNCs	Multinational Companies
MPA	Motion Pictures Association of America
NCE	New Chemical Entity
NIAPC	National Initiative against Piracy and Counterfeiting
NSF	National Science Foundation

TABLE OF CONTENT

CHAPTER 1

1. INTRODUCTION

1.1. Hate Crimes: Meaning

1.1.1 Difference between Conventional & Hate Crimes

1.1.2 Processes of hate crime

1.1.3 Key insights

1.1.4 Understanding the causes of hate crime

1.2 Limitation of Research

1.3 Statement of Problem

1.4 Research Questions

1.5 Research Objectives

1.6 Research Hypothesis

1.7 Research Methodology

1.8 Plan of Study

1.9 Literature Review

CHAPTER –II

2. INTERFACE BETWEEN LAW, SOCIETY AND CRIME

2.1 Difference between Hate Crime & Hate Speech

2.2 Social psychological approaches

2.3 Personality explanations

2.4 Cognitive explanations

2.5 Family and educational factors

2.6 Legal Provisions of Hate Speech in India

2.7 Legislations Around Hate speech:

CHAPTER 3

3. EMERGENCE OF HATE CRIME IN INDIA

3.1 Meaning of Hate Crimes in India

3.2 Hate Crimes: A recent phenomenon?

3.3 Hate Crimes in India: Current Scenario

3.4 The yearly increase in the number of incidents of hate crimes

3.5 Identity of Victims and Nature/Number of Hate Crime

3.6 Few examples of Hate Crimes

CHAPTER 4

4. ROLE OF STATE VIS-À-VIS TACKLING THE MENACE OF HATE CRIMES

4.1 Existing Legislations on various facets of Hate Crime

4.1.1 Indian Penal Code, 1860 (hereinafter as IPC)

4.1.2 The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

4.1.3 International obligations under UDHR, ICCPR, & CERD

4.1.4 Universal Declaration of Human Rights, 1948

4.1.5 International Covenant on Civil and Political Rights, 1966

4.1.6 International Convention on the Elimination of All Forms of Racial Discrimination, 1969

4.2 Role of the Judiciary

4.3 The role of Non-State actors such as VHP, RSS & others.

CHAPTER 5

5. MODELS OF HATE CRIME PREVENTION: A LOOK AT US &

UK'S LEGISLATION

5.1 Hate Crimes legislation in USA

5.1.1 Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, 2009

5.2 Hate Crimes legislation in UK

5.2.1 It therefore defines hate crimes as

5.2.2 In the context of racial hatred, it says :

5.2.3 Further in the context of religion and sexual orientation, it says:

CONCLUSION AND SUGGESTIONS

BIBLIOGRAPHY

CHAPTER 1

1. INTRODUCTION

CHAPTER 1

1. INTRODUCTION

No society is free from crime; the Indian society is, along with conventional crimes, struggling with the issue of hate crimes. The concept of mens rea in whose absence an act does not qualify to be a crime differs in hate crime; Black's Law Dictionary defines it as 'a crime motivated by the victim's race, color, ethnicity, religion, or national origin'¹. However, when examined in India's context, some more characters to hate have to be added including that of one's profession, sexual orientation, freedom to speech, personal choices and beliefs. Therefore, a crime qualifies to be a hate crime only when it is committed along with the motivation arising out of hate towards victim. The criminal justice system, therefore, also requires transformation to curb the emerging evils of the globalizing world. The present provisions of IPC, 1860, Section 153A, 295B & 295A have been ineffective in tackling the menace of hate crimes and resultantly the statistics show the high rise in hate crimes in India in the last few years.

As hate crimes are committed on the ground of hate (specific) towards the victim, they have to be differently characterized from the conventional crimes; the mens rea based on hate has to be given strongest emphasis. However, the above-mentioned IPC provisions do not lay down a proper structure as to recognize a crime as hate crime and lack the specific ingredients which hate crimes are committed with. Hence, they require an

¹ Black's law dictionary, 428 (9th ed. 2009).

amendment or the legislature must come up with a special legislation to protect the society and their foundational rights.

India also being a signatory to ICCPR, 1966 and CERD, 1969 must protect its citizens from such discriminatory treatment and, in the light of above findings, must bring in the appropriate changes in the law to eradicate hate crimes. Although, India is not a signatory to the Rome Statute, the idea of crime against humanity in context of hate crimes must be appreciated. India must also consider other customary international laws that require states to take action against such activities.

1.1. Hate Crimes: Meaning

The term “hate crime” was first used in the United States in 1985 for referring the intent of U.S. Department of Justice to collect the hate crime statistics. However, it must also be remembered that the hate crime is not a new phenomenon. The Black’s law dictionary defines hate crime as ‘a crime motivated by the victim's race, color, ethnicity, religion, or national origin’. On the other hand, the Federal Bureau of Investigation has defined a hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity². These definitions, therefore, refer to the term motivation that is based on certain factors related to the victim which further incites the accused to commit the crime. What can clearly be asserted out of the definitions is the personal biasness of the accused against the victim that is the accused hates the victim and therefore

² Larry Ray, *Violence & Society*, 160 (2018). See also <https://www.fbi.gov/investigate/civil-rights/hate-crimes>

commits the crime. Conclusively, a hate crime takes place when a victim is intentionally selected because of the above characteristics and then is targeted by the perpetrator out of the motivation based on special hate.

Consequently, it also turns imperative to understand the relevance of “hate/hatred” here. For the purpose, let us refer to the meaning given in Oxford English Dictionary which suggests “hatred as the condition or state of relations in which one person hates another; the emotion of feeling or hate; active dislike, detestation; enmity, ill-will, malevolence. Herein, the term active dislike must be given emphasis. In other words, hatred is such a sustained emotion which an individual keeps & cherishes through long part of his life against the one whom he hates and therefore draws pleasure out of his sufferings and injuries. The term sustenance here signify that the feeling of hatred is not one which is momentary but the one which is long lasting.

Therefore the terminology hate has to be placed along with the characteristics which have been described in the above definitions of hate crimes that is the origin of hate is due to the victim’s race, color, religion, sexual orientation etc. It is, in this manner, that a crime qualifies to be a hate crime only when it is committed²⁴ along with the motivation arising out of hate towards victim and where the accused hates the victim’s existence in general.

Before further proceeding, a relevant question also arises as to whether all hateful acts can be considered as hate crimes. It is pertinent to note that it is not every hateful action which will be termed as hate crime. Example: If A cut the queue and come in front of B, B hates A for it, pulls out his gun and shoots A down. Herein, this act of B cannot be termed as a hate crime but an

act of instant anger or rage and can certainly be covered by the criminal legislation of a nation such as Indian Penal Code, 1860 (hereinafter as IPC) in Indian context.

Rather, it is the hatred which persecutes another based on a protected characteristic. It is that hatred which is “fluid, internally conflicted, and overpowering” feeling which demonstrates itself in different contexts in varying hate crimes and has “dynamic racial, political, ideological, and cultural dimensions.

1.1.1 Difference between Conventional & Hate Crimes

As the previous section has already discussed as to what do we mean by hate crimes and what are the particulars required to constitute a hate crime. It is also indispensable to understand how are they distinct from the conventional crimes? In the criminal justice system, the cardinal principle enshrined in the Latin maxim *actus non facit reum, nisi mens sit rea* which means that “an act does not make a person guilty unless the mind is also guilty” is the foundational basis forming the pre-requisite to form a criminal act. According to the maxim, there are two elements of crime, *actus reus* and *mens rea*, meaning thereby the physical element and the mental element³¹. Physical act is the action itself which causes the criminal act while the latter is the element of fault or intent, intent behind the criminal activity.

The Blacks’s Law Dictionary defines *actus reus* as, “the wrongful deed that comprises the physical components of a crime and that generally must be

coupled with mens rea to establish criminal liability³ & mens rea as, “the state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime; criminal intent or recklessness”. Therefore, what it suggests is that unless the mental element, mens rea, is present while committing a physical act, no action of prosecution can be taken against the person committing the act³⁵. There are various kinds of mens rea which can be said to be furthering the said physical act which is forbidden by the law³⁶ such as purposely, knowingly, recklessly, & negligently³⁷. Therefore, criminal law is certainly very strict in its application towards conventional crimes.

Now, when we specifically deal with the concept of hate crimes then we will also have to see whether such a conventional exercise of actus reus and mens rea is applicable in the context of hate crimes also. Certainly, the hate crimes too require fulfilling this criterion of physical and mental element³⁸. Therefore, it must be noted that in order to prosecute the perpetrator of hate crime, the prosecutor must prove the hateful motivation for committing the crime. However, there is still some ambiguity as to how strong should be the causation between the motivation and the crime committed. It is therefore submitted that crimes committed on the basis of any of the characteristics in the definition will be hate crimes as they are committed with those motivations or mental element. For example: If A goes to a night-club and starts beating B on the basis of B being a gay-man. Herein, it is a hate crime as the perpetrator committed the crime by getting motivated out of victim’s sexual orientation.

³ black’s law dictionary, 9th ed. 2009 at 41, “Also known as an overt act or forbidden act”.

Furthermore, the fact that the mens rea criteria of hate crimes also differs in different jurisdictions must also be appreciated. In some countries, the “because of” requirement of motivation is based on the characteristics which have constitutional immunity whereas in other, the said requirement is based upon the maliciousness conditions. In furtherance of this, some states merely require that the perpetrator gets motivated (by perpetrator’s perception of victim’s constitutional immunities or the characteristics) in whole or in part; others require that there should be merely an evidence of prejudice. Therefore, it can conclusively be held that the criterion of the mental element is certainly essential in the context of hate crimes but its application and gravity may vary in various jurisdictions.

1.1.2 Processes of hate crime

The main part of the report sets out contemporary explanations of prejudicemotivated conduct from various arms of the social sciences in order to help practitioners understand why perpetrators commit hate crimes, and in turn how they can best address their causes.

Based on reviews of the academic research on this topic, we found that explanations of hate crime can be split into two broad categories:

1. Social psychological: we focus here on the role of intergroup emotions and how perceived threat (for example, to socioeconomic wellbeing or to cultural values) may be linked to hate crime.
2. Structural: we explore a number of structural factors which may impact on hate crime, including how certain social processes (for example, societal

norms and values) and practices (for example, the practices and interventions used by statutory agencies) may actually create a social context in which certain groups in society can become marginalised or stigmatised.

We conclude with a summary of the commonalities and differences that research suggests exists across various strands of hate crime before proposing how these insights can be used by practitioners, as well as recommendations for future actions.

1.1.3 Key insights

The key points in this report are as follows:

1. Perpetrators of hate crimes are not always motivated by a single type of prejudice or hatred but can be influenced by a combination of different prejudices.
2. There is no single type of hate crime perpetrator. Research shows that in order to fully understand the nature of hate crime, practitioners need to appreciate that situational factors (that is, location and victim–perpetrator relationships) may differ depending on the type of offence (for example, verbal abuse, harassment etc.) and the type of hate-motivation (for example, homophobic, disablist etc.).
3. There is no single type of hate crime. Research shows that some of the most common types of hate crime involve: 1. Incidents that occur during an ongoing local conflict (for example, between neighbours) that has escalated over time; 2. Incidents that form part of a targeted campaign of abuse directed against certain individuals within a neighbourhood; or 3. Incidents that occur in public spaces and are

perpetrated by individuals who feel somehow aggrieved by the victim – sometimes occurring during commercial transactions or on public transport.

4. Hate crimes may also be the product of our social environments. Some researchers assert that hate crimes are more likely to occur where society is structured in such a way as to advantage certain identity characteristics over others (for example, white, male, heterosexual). Systemic discrimination, typically codified into operating procedures, policies or laws, may give rise to an environment where perpetrators feel a sense of impunity when victimising certain minority group members.
5. Perpetrators of hate crime can be motivated by a variety of different factors. Some research (from the US) suggests that there are four ‘types’ of perpetrators, including: thrill seekers (those motivated by a thrill and excitement); defensive (those motivated by a desire to protect their territory); retaliators (those who act in retaliation for a perceived attack against their own group); and mission (perpetrators who make it their mission in life to eradicate ‘difference’).
6. Cyber hate is a growing phenomenon which, reporting figures suggest, vastly outnumbers offline hate crime. There is some research suggesting that perpetrators of cyber hate crime have similar motivations to those who act offline.
7. Evidence of hate crime causation is not yet conclusive. However, there is some evidence within social psychology to suggest that perpetrators may be influenced by their perception that certain groups pose a threat

to them. These threats can be divided into ‘realistic threats’ – such as perceived competition over jobs, housing and other resources, and physical harm to themselves or others – and ‘symbolic threats’ which are concerned with the threat posed to people’s values and social norms.

8. Though there are some dissimilarities between types of hate crime, we suggest that most, if not all, hate crimes are linked by perceptions of threat. Threats can be linked to economic stability, access to social/state resources, people’s sense of safety in society, and/or values and social norms.
9. Some differences in the nature and dynamics of hate crime can be observed across the protected strands. Research suggests that both anti-Lesbian, Gay or Bisexual (LGB) and transphobic hate crime can involve a greater propensity towards physical violence. Disability hate crime evidence shows high levels of sexual violence and property offences. Certain trigger events (such as global terrorist attacks) have been linked to sharp rises in anti-religious hate crime.

1.1.4 Understanding the causes of hate crime

There are many causes that can help to explain the different types of hate crime outlined above. 19 Following, we provide an accessible overview of what we consider to be the central factors that explain why people commit hate crime/incidents.

We show how there is a strong theoretical basis in social psychology for linking prejudiced attitudes, perceptions of threat, and hate crime. We

outline further a number of persuasive arguments that connect structural factors to the perpetration of hate crimes. While there is some empirical evidence to support these theoretical explanations of hate crime, we note that the evidence base on hate crime causation remains relatively weak. This is in part due to a lack of research being undertaken in this area, but it is also due to the fact that there are multiple and intersecting variables that affect people's behaviours. In understanding perpetration it is important to recognise the many different forms, contexts, and drivers of hate crime, while recognising that there are likely to be common factors to perpetration.

1.2 Limitation of Research

This research is an attempt to examine the concept of hate crimes in a holistic manner rather to attenuate it to a specific area such as caste or religion or hate speech. This research deals with the emerging idea of hate crimes in India in a comprehensive manner while dealing with each of such aspect which is responsible for its growth in Indian society. Therefore, the idea is to lay down a broad picture what hate crimes are in India and what is the necessity to tackle them in terms of legislation and other measures.

1.3 Statement of Problem

No society in the world is free from crimes. The Indian society too has such criminal elements that engage in the violation of rights of others and eventually disturb the overall law and order in the society. There are various categories of crimes such as conventional and non-conventional⁹. India has a tremendous rate of conventional crimes being committed in day to day life.

What is significant to note is the immediate increase in another kind that is non-conventional crimes. Hate crimes being nonconventional crimes pose a different kind of threat to the fundamental values of human rights. Their increase in the Indian society is based on various factors which are constitutionally protected which includes one's caste, religion, sex, freedom of speech, profession etc. However, at the same time, some other elements such as non- state actors are also important to be focused upon. Therefore, what is important is to analyze what hate crimes mean in India and their origin. Their impact on the fundamental rights of the people is also one of the themes which require considerable attention. It is equally unavoidable to examine the role and duties of various stakeholders to prevent hate crimes in India. The non-efficacy in its deterrence is also one area to research upon. Therefore, what can be the solutions to tackle such a problem is one of the major concerns which will be dealt by the researcher in the course of the present study.

1.4 Research Questions

1. What are the intrinsic elements behind the emergence of hate crimes in India?
2. How are hate crimes different from the conventional crimes?
3. Does the Indian Penal Code, 1860 have definite provisions to tackle acts of hate crimes?
4. How are various Constitutional and Human Rights being violated by the prevalence of hate crimes?
5. What are the best practices in other jurisdictions that should India adopt in order to stop hate crime activities?

1.5 Research Objectives

1. To analyze the factors behind the increasing hate crimes.
2. To critically examine the scope of relevant provisions of IPC, 1860 with respect to hate crimes.
3. To establish gross human rights violation by hate crimes in recent years.
4. To analyze the similar scenario in extra-territorial jurisdictions of US & UK.
5. To suggest possible reforms in India in order to prevent hate crimes.

1.6 Research Hypothesis

1. Caste system and its practice have highly contributed to the increase in Hate Crimes.
2. Religious intolerance has furthered the disrespect against persons of other religions and therefore resulted in hate crimes.
3. Absence of proper and particular legislation results in failure to deter & punish hate crimes.

1.7 Research Methodology

The present research revolves around the phenomenon of hate crimes in Indian society. As the title of the study suggests, it is concerned with the increase of hate crimes and consequently its impact upon the human rights of people. For the purpose of this study, it is a qualitative research that focuses on the relationship of various constitutionally protected factors such as religion, sex, gender, profession, freedom etc. with the people. It delves into

the questions as to how & why hate crimes are being committed against these protected factors and what is the purpose these crimes intend to serve.

Therefore, data is utilized from the secondary sources such as newspapers, reports, and electronic websites in order to understand the problem of hate crimes in detail. Further, in order to evaluate its effect on the present structure of human rights and laws, the study also applies the doctrinal method to get apprised of all the rights which are getting affected and further to understand the real significance of the present law—whether it is able to tackle this problem. Both kinds of data, primary (legislations, case-laws etc.) and secondary (scholarly articles, reports etc.) are taken into consideration in order to appreciate the issue.

1.8 Plan of Study

To put the issue of hate crimes in a systematic and chronological manner, the present study is divided into seven chapters (first chapter being the introduction) that deal with the specific discourse concerned to hate crimes. In this manner, second chapter unfolds the relationship among the law, society and crime while specifically defining hate crimes at the end. This chapter gives the reader a foresight as to the inevitability of the existence of crime in a society. It at the same time furthers the very idea behind the instrumentality of the law and legal system that is to take action against such elements and provide justice to the victim.

Substantiating the former chapter, the third chapter specifically deals with the emergence of hate crimes in India; how it differ in its approach vis-à-vis Indian society and its circumstances. Therefore, it tries to involve those

factors in the definition which are actually responsible for the crimes in India. Further, it offers an insight as to its historical incidents and establishes that this is not something new but an extensive form of the problem. Thereafter, it focuses on the current ongoing situation in India while taking into consideration data from various sources and shows how they have increased in the half of the last decade (2014-2019).

Discussing the impact of the increase of hate crimes on the rights of people, the fourth chapter delves into the examination of violation of fundamental and human rights under the Constitution of India. It shows that how the basic rights and principles of equality, liberty, freedom, profession, life and dignity of the people are getting violated by the increase of hate crimes. This chapter is further examined by taking into consideration critical analysis of various provisions and judgments of the Supreme Court of India.

In the continuation of the same, the fifth chapter analyzes the role of state in the prevention of hate crime in India. It further discusses various legislations available which merely touches upon the periphery of hate crimes but do not completely address the issue. The chapter further identifies issues with the existing legal framework and their inefficiency to deal with hate crimes. Also, it delves into the role and duties of other pillars of the government that are the executive and judiciary. The recent exercise taken by the Supreme Court in this regard is extensively discussed. It is also found that the present framework of the legislature and the ineffective prevention by the executive are to be taken seriously, if the issue is to be understood & tackled in all its manifestations & peculiarities to the Indian state.

To make the study more holistic and vibrant and also to learn from other jurisdictions that have already tackled with similar problem, the sixth chapter makes a comparative study with the USA, and UK system of laws regarding hate crimes. It emphasizes upon the emergence of hate crimes laws in these nations and how they have provided for the separate kind of rules and regulations for the same. It is also important to note that it provides a sort of example as to how can Indian state can also learn from these jurisdictions along with recent developments in South Africa in terms of the Prevention and Combating of Hate Crimes and Hate Speech Bill, 2016.

1.9 Literature Review

John Harrison Watts (2013) in his book traces the roots of law society. The significance of the role of law in a civil society is shown; how the law manages various factors including the rights of the people. Karabi Konch (2017) in his book explains how the crime is an inseparable factor of the society. Larry Ray (2018) further enunciates this point that how violence cannot be seen as an alien in the social phenomenon. Thomas Gardener et al. (2006), Michael Newton, (2010), & William J Chambliss, (2011) also asserted in their work that the criminal behavior is the result of various societal & psychological factors including poverty, education and so on. Criminal activities are the result of these various factors along with others. They further assert that it is therefore the role of the law to look after such violation of rights and to maintain law and order. Doris

Layton Mackenzie et al., (2014) further points out that there are different types of crimes which are characterized on the basis of distinct elements such

as of them is hate crimes. James B. Jacobs and Kimberly Potter, (1998) in their renowned work analyze how the hate crime poses a different category of criminal category and therefore the criminal law also needs to be seen from the different lens. Willard Gaylin, (2003) notes how the hatred has a psychological factor attached to it which impacts the overall commitment of hate crime.

Phyllis B. Gerstenfeld, (2004) specifically talks about USA and hate crimes, it identifies various causes and impacts of the hate crimes and also examines a number of claims arising out of different treatment of such crimes. Carolyn Turpin-Petrosino, (2015) in his book says that hate crimes contains distinct acts and motives based on the protected characteristics of the victim and therefore offenders are also seen with different parameters wherein the justice is also thought to be different from what we get in traditional crimes.

Theresa Suozzi et al., (1995) in their article bring out how hate crimes are motivated by hatred such as on the basis of Sexual Orientation as asserted by Elizabeth P. Cramer, (1999) in her article. Murad Kalam, (2000) and Eric Shimamoto, (2003- 2004) in their article talk about the specific legislation to tackle the menace of hate crimes.

Furthering the idea, Laura Meli, (2014) in her article moots the issue of similar punishment for hate crimes and advocates different kind of punishment for the crimes based on hate as they impact the victim in many ways. Meredith Boram, (2016) in her article therefore discusses the new Hate Crime legislation in USA, the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act with respect to its ambit and working.

In the Indian context, Gopal Krishna, (2005) traces the history of religious politics and communal violence in India. He asserts that it is not only the post constitutional phenomenon but has been there since long. Christopher Bayly also traces the period of 1700-1860 when there were a number of events leading to religious violence in India that gives a sense of existence of hate crimes in India since long. Neil Chakraborti & Jon Garland, further discusses about the impact of hate crimes and their particular causes. Girjesh Shukla, (2014) takes this discussion further and elaborately discusses hate crime in the Indian context, along with its origin, basis, impact and violation of rights by these hate crimes.

Smita Narula in her article tells how the caste has always been a target factor and even after the arrival of constitution and other statutes, the situation remains the same and even worse at points. Debajit Kumar Sarmah, (2014) also in his article holistically deals with the problem of hate crimes in India and lays down various theories of crime, reasons for increase in hate crimes in India. He also traces back its origin in ancient, medieval and modern period.

Further exploring the subject, he goes on to discuss various national and international laws and provides various suggestions to control this situation of hate crimes. Sriya Iyer & Anand Shrivastava, (2018) in their article rely majorly on religious riots and election politics as one of the reasons behind the increasing hate crimes in India. Whereas, M. Mohsin Alam Bhat, (2018) in his article concentrates majorly upon the problem of data collection of hate crime in India. There being no specific mechanism for data on hate crimes, it becomes problematic as to ascertain the legitimate gravity of the problem in hand.

Further, there are various other sources which provide for the data and other literature which includes Amnesty International's Halt the Hate and Human Rights Watch reports and various other news reporting websites and newspapers. The literature clarifies one thing that there exists the concept of hate crime which includes even the Indian state. The endeavor at this crucial point is to explore the Indian conditions of hate crimes and also the legal mechanism handling it. The ways through which this problem can be effectively taken care of are to be explored and examined while taking all this literature into consideration.

CHAPTER –II

INTERFACE BETWEEN

LAW, SOCIETY AND

CRIME

CHAPTER –II

2. INTERFACE BETWEEN LAW, SOCIETY AND CRIME

The entity of state consists of various elements, some of the most fundamental being the society⁴, law & proper legal system. The population within the society forms an important part of the entire system. In order to maintain peace and order in the society, the institutions of the democratic state through the mechanism of law & order ensures the smooth functioning of the entire society of the state⁵. These mechanisms are often known as the legal system of a country which provide for certain uniform principles to be followed by the people of the state. The role of the legal system is the social control. For this purpose, it has different structures such as the law makers, courts, police etc.

However, in spite of all these machineries, there are certain other entities which pose a threat to this entire functioning of the state and society. These entities too exist within the four corners of the civil society and continuously challenge the various channels of state through which it struggles to maintain peace & justice in the society. Crime is one of such phenomenon which left no society untouched. It is present at every place, in every society in different forms. What also is true that no society can escape from it and everyone feels the impact of crime whether they know it or not. Crime is that act which is made punishable by law.

⁴ BLACK'S LAW DICTIONARY 1518 (2009), "A community of people, as of a state, nation, or locality, with common cultures, traditions, and interests".

⁵ Karabi Konch, Crime and Society (2017).

Crime can be defined as a behavior that causes harm and material damage to others & targets at the very basic rights (guaranteed & protected by the state) of the human beings and the fundamental values (such as peace, law & order) of the state. Consequently, the set equilibrium between the society and the other legal mechanisms gets disturbed and attacked. Consequently, the person against whom the crime is committed is known as the victim or the by-product of the crime committed. The United Nations General Assembly Declaration of Basic Principles of Justice for Victim and Abuse of Power adopted in 1985 provides for the holistic definition of the term victim which not only includes the individual but also his/her surroundings.

Therefore, in order to provide justice to the victim as defined, the law and the legal system provides for the criminal justice system (hereinafter as CJS) which contains all the essential substantive & procedural aspects that not only ensures justice to the victim but also acts as deterrence for future. As eminent thinker Sophocles said that the law can never be enforced unless fear supports them¹⁰. In India, various statutes such as Indian Penal Code, 1860, Criminal Procedure Code, 1973 & Indian Evidence Act, 1872 brings about the system known as CJS¹¹. Emphasizing upon the CJS, the Supreme Court of India in *State of Punjab v. Saurabh Bakshi*⁶ observed that:

“It can never be forgotten that the purpose of criminal law legislated by the competent legislatures is to protect the collective interest and save every individual that forms a constituent of the collective from unwarranted hazards”.

⁶ (2015) 5 SCC 182

The Supreme Court in *Maru Ram v. Union of India*⁷ emphasized that, “a victim of crime cannot be a ‘forgotten man’ in the criminal justice system. It is he who has suffered the most”. Therefore, what is relevant to note is that the society is a mixture of population, law & order, and crime which time to time challenges the very order of the civil society that the law survives to maintain. However, in the globalized world, there are different kinds of crimes which are committed. One of its kinds is the hate crimes which in today’s time have become a grave problem. The present study is therefore concerned with various aspects of hate crimes in the context of India. However, before going into further merits, the following exercise needs to be appreciated:

2.1 Difference between Hate Crime & Hate Speech

One of the most significant debates in the context of hate crimes is the discourse between hate crimes and hate speech. Many questions take place as to—are both of these the same concepts? Or is there a distinction between the both? Or does the hate speech is pre-requisite of a hate crime? Therefore, all such questions need to be examined in the light of current world debates altogether with Indian scenario after the Law Commission of India’s Report, 2015.

Indian laws do not define the term hate speech but there are provisions in various legislations which prohibit the freedom of speech to an extent. The Black’s Law Dictionary defines hate speech as, “a speech that carries no meaning other than the expression of hatred for some group, such as a

⁷ AIR 1980 SC 2147.

particular race, esp. in circumstances in which the communication is likely to provoke violence⁸. Hate speech or the assaultive speech is the one that while carrying hatred is capable of provoking violence amongst the intended group of people. Now the question is whether such a hateful speech should be confined within the hate crimes laws. Therefore, the differentiation between the hate crime and hate speech is also important. For answering the question, let us look into what the constitutions of USA & India inculcate on this point. Let us first examine what the United States of America which is considered to be an epitome for the freedom of speech and expression after the first amendment to the constitution⁴⁶ provides on this confrontation.

In USA, the courts have time and again held that the hate speech is protected by the First Amendment and the persons using it cannot be prosecuted. In this way, there exists a clear cut distinction between the hate crime and hate speech with the former being capable of prosecution but not the latter. As the mental element is a prerequisite in forming a hate crime, therefore, it is of common parlance that there lies a huge difference between having a hateful feeling and executing it through the violent activities; consequently, the Americans are exempted to have hateful feelings until the same are transformed through violent behavior (actus reus). Therefore, the accused while committing a hate crime possess two distinct mental processes—one is “political opinion” and the other is “hate-based mens rea⁹”. Political opinion is generally the hateful thought while the hate-based mens rea is something which is formed into criminal conduct or hate crime. Hence, it is not the

⁸ Black’s law dictionary, 9th ed. 2009 at 1529.

⁹ Id.

former mental process which is being criminalized but the latter. Similarly, the United States Supreme Court has also made it clear that though the hate speech is culpable but it is till protected under the First Amendment. The Court has expressly laid down kind of criterion which is to be followed while prohibiting the hate speech in the two decisions of *R.A.V. v. City of St. Paul*¹⁰ & *Wisconsin v. Mitchell*¹¹. In *R.A.V.*, the court concluded that the states may neither expressly provide for the certain words or expressions as hateful speech nor such speech be used for the enhanced penalty for the acts with which it is not associated whereas in *Wisconsin*, the court concluded that the violent conduct along with hateful crimes is not protected by the First Amendment and therefore various jurisdictions may punish the hate crimes and can use the hate speech as motivation evidence for the enhanced punishment.

Now let us examine the Indian position in this context as to what Indian Constitution and the laws entail with respect to hate speech. The right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the COI. The right is certainly considered one of the most fundamental rights for the human development as the Supreme Court of India in *Romesh Thappar v. State of Madras*¹² observed that:

“The freedom lays at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse.

¹⁰ 505 U.S. 377 (1992).

¹¹ 508 U.S. 476 (1993).

¹² AIR 1950 SC 124.

But the framers of the Constitution may well have reflected with Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, that it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits.

In **Mahesh Bhatt v. Union of India & Anr**¹³, the Court held that the freedom enshrined under Article 19(1)(a) is one of the constitutional pillars and therefore furthers the idea of democratic structure. A general question may arise as to whether one can exercise such a right to a limitless extent. The answer is certainly no as was held by the **Kerala High Court in New Road Brothers v. Commissioner of Police**, Ernakulam, that:

“When a person enjoys his rights under Article 19(1)(a), he must do so causing very minimum inconvenience to others. A person cannot claim his freedom of speech so as to interfere with the human rights and fundamental rights of others”.

Therefore, no right comes as absolute but with certain restrictions and so is the case here with Article 19(2) provides for the reasonable restrictions in terms of 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. The Court in **A.K. Gopalan v. State of Madras**¹⁴, held that:

¹³ 2008 (147) DLT 561.

¹⁴ AIR 1950 SC 27 .

“Man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals.

Therefore, it should now be seen as to what is the extent of restriction with respect to hate speech. The journey of reference to hate speech started just after the Constitution came in the case of *Brij Bhushan v. State of Delhi*,¹⁵ however, the Supreme Court formally used the term hate speech in **Union of India v. Naveen Jindal**¹⁶. Following this, the Court in **Shreya Singhal v. Union of India** held that one’s speech can only be restricted under the circumstances mentioned in Article 19(2) when it is capable of incitement as it is the primary test to determine the constitutionality of the restriction on the free speech. The court further held that all other forms of speech have to be protected under the COI.

The Law Commission of India through its Report no. 267 of 2015 submits that it is not possible to define the hate speech in its entirety and any wrong attempt would trample upon the right enshrined under Article 19(1)(a) such as happened in the case of Section 66A of The Information Technology Act, 2002 which was subsequently struck down by the Court. It would also be wrong to consider the incitement to violence as the sole test because there are speeches which without inciting violence are capable of marginalizing a particular section of the society. Finally, the Commission asserted that in some jurisdictions such as USA it is widely protected but in others such as

¹⁵ AIR 1950 SC 129

¹⁶ (2004) 2 SCC 510

U.K. & Canada, it is subject to the restrictions and sanctions. It consequently provided for the amendments in the Indian Penal Code, 1860 as to stringent the provisions regarding hate speech.

By the above discussion it clear that unlike USA, in India the hate speech even if not leading to the violence is not subject to the constitutional protection and can attract the prosecution.

This chapter underlines the relationship among the law, society and crime and provides the wider understanding as how the crime is an integral part of the society and how the law is meant to act against such criminal activities while preserving the rights. It further highlights the extensive definition of hate crimes along with its understanding through various concepts and differences which includes the idea of mens rea and the hate speech, conventional and non-conventional crimes. In this manner, it lays down proper outline for the understanding of hate crimes in Indian context in the next chapter.

2.2 Social psychological approaches

Given the centrality of ‘prejudice’ to definitions of hate crime in the British criminal justice system, it is worth considering how prejudice has been understood in academic research and how it can help us to explain the phenomenon of hate crime. A concise definition of prejudice has been provided by Abrams (2010):

‘bias that devalues people because of their perceived membership of a social group’ However, most theoretical analyses of prejudice amplify that definition to emphasise its multi-faceted nature and its underlying

antipathy. A recent example would be: ‘any attitude, emotion or behaviour towards members of a group which directly or indirectly implies some negativity or antipathy towards that group’ (Brown, 2010, p. 7)

But why do people hold prejudiced attitudes, emotions and behaviours? Social psychological theories offer several explanations for why perpetrators target people belonging to certain minority groups. These range from the purely psychological (for example, in terms of personality or cognitive processes), through accounts based on education and familial and group influences (for example, learning prejudiced attitudes at school, in the home or from peer groups), to ‘intergroup perspectives’ (that is, where prejudice is seen as the result of conflicts or tensions that exist between groups of people). The next section explores some of these theories in more detail.

2.3 Personality explanations

During the mid-part of the 20th century, some psychologists believed that individuals who displayed high levels of prejudice towards certain groups had what was called ‘The Authoritarian Personality’ (Adorno et al., 1950).

More recent theories echo this, most notably in Altemeyer’s (1998) concept of Right Wing Authoritarianism. The central idea here is that some people’s personal history (in the family or elsewhere) leads them to have an overly deferential orientation towards authority figures, to be very conformist to conventional societal values, and to hold negative attitudes (prejudice) towards a wide range of minority groups since, by definition, such groups can challenge what is considered ‘normal’.

Another similar explanation offered by psychologists is called Social Dominance Theory (Sidanius and Pratto, 1999). The core assumption here is that people differ in the extent to which they desire and seek superior status and power over others. People who desire a greater level of social dominance tend to be more prejudiced towards other groups, believing that their ‘ingroup’ is superior to others.

These two approaches have generated widely used measures of a disposition to exhibit prejudice, Right Wing Authoritarianism and Social Dominance Orientation. Both have been reliably linked to a wide range of intergroup prejudices – for example, towards ethnic and religious minorities, immigrants, lesbians and gay men, and disabled people (Duckitt, 2001; Duriez et al., 2005).

Quite recently, a new measure has been developed to test individuals’ ‘motivation to express prejudice’ (Forscher et al., 2015). People differ not only in their motivation to control their own levels of prejudice but also in their willingness to express prejudice overtly. Although negatively linked, these two motivations are not exact mirror images of each other (Forscher et al., 2015). Motivation to express prejudice is also associated with Right Wing Authoritarianism and Social Dominance Orientation, although not very strongly. This tendency to express prejudiced attitudes may be linked to individuals’ (in)ability to regulate their own emotions and behaviour.

Although plausible, personality accounts of prejudice (and hate crime) suffer from several limitations, not least because they tend to underplay situational

factors, group influences and historical change (see Brown, 2010, ch. 2 for a review).

2.4 Cognitive explanations

Other psychological approaches emphasise the role that cognitive (mental) processes play in prejudiced attitudes and emotions – especially in relation to categorisation of groups and stereotyping (for example, Fiske, 1998, 2005; Tajfel 1969). In this view, the seeds of prejudice are to be found in the way people process information as they seek to simplify, make sense of and justify their social environments. When people attempt to make sense of the world around them they tend to create overgeneralisations (stereotypes) about other people, in some cases these may develop at a subconscious level and so the person may not be aware of them (see Brown, 2010, chs. 3 and 4). Such a perspective has several drawbacks, including that it fails to adequately consider the influence that people's group memberships and intergroup relationships have on their attitudes. It assumes that mental processes operate autonomously, independently of the groups that people belong to and unaffected by whether the groups are in conflict (or not) with each other.

2.5 Family and educational factors

Common sense would suggest that prejudiced attitudes are learnt like any other attitudes, via socialisation in the family and through exposure to media and other societal influences (see sections below). Surprisingly, however, direct evidence for such socialisation effects is neither very strong nor consistent (Brown, 2010, ch. 5). Evidence of the link between parent-to-child prejudices tends to be weak, perhaps because researchers have overlooked the

role of peer group influences which some believe to be stronger (Harris, 1995). Similarly, demonstrating the causal effects of media or political rhetoric on people's prejudiced attitudes or conduct is fraught with methodological difficulties and few convincing studies exist. Some researchers have found correlations between people's educational attainments and their prejudiced attitudes – increased education levels being correlated with lower levels of prejudice.

However, such correlations are usually quite weak and the reasons why increased education is connected with lower levels of prejudice remain to a large extent unexplained (for example, Quillian, 1995).

2.6 Legal Provisions of Hate Speech in India

Responsible speech is the essence of the liberty granted under article 21 of the Constitution. One of the greatest challenges before the principle of autonomy and free speech principle is to ensure that this liberty is not exercised to the detriment of any individual or the disadvantaged section of the society. In a country like India, with diverse castes, creed, religions and languages, this issue poses a greater challenge.

Article 19(2) of the Constitution guarantees freedom of speech and expression to all citizens of India. This article is subjected to certain restrictions, namely, 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.

Hate speech has not been defined in any law in India. However, legal provisions in certain legislations prohibit select forms of speech as an exception to freedom of speech.

2.7 Legislations Around Hate speech:

Presently, in our country the following legislations have bearing on hate speech, namely:-

(i) the Indian Penal Code, 1860 (hereinafter IPC)

- Section 124A IPC penalises sedition
- Section 153A IPC penalises ‘promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony’.
- Section 153B IPC penalises ‘imputations, assertions prejudicial to national-integration’.
- Section 295A IPC penalises ‘deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs’.
- Section 298 IPC penalises ‘uttering, words, etc., with deliberate intent to wound the religious feelings of any person’.
- Section 505(1) and (2) IPC penalises publication or circulation of any statement, rumour or report causing public mischief and enmity, hatred or ill-will between classes.

(ii) the Representation of The People Act, 1951

- Section 8 disqualifies a person from contesting election if he is convicted for indulging in acts amounting to illegitimate use of freedom of speech and expression.
- Section 123(3A) and section 125 prohibits promotion of enmity on grounds of religion, race, caste, community or language in connection with election as a corrupt electoral practice and prohibits it.

(iii) the Protection of Civil Rights Act, 1955

- Section 7 penalises incitement to, and encouragement of untouchability through words, either spoken or written, or by signs or by visible representations or otherwise

(iv) the Religious Institutions (Prevention of Misuse) Act, 1988

- Section 3(g) prohibits religious institution or its manager to allow the use of any premises belonging to, or under the control of, the institution for promoting or attempting to promote disharmony, feelings of enmity, hatred, ill-will between different religious, racial, language or regional groups or castes or communities.

(v) the Cable Television Network Regulation Act, 1995

- Sections 5 and 6 of the Act prohibits transmission or retransmission of a programme through cable network in contravention to the prescribed programme code or advertisement code. These codes have been defined

in rule 6 and 7 respectively of the Cable Television Network Rules, 1994.

(vi) the Cinematograph Act, 1952

- Sections 4, 5B and 7 empower the Board of Film Certification to prohibit and regulate the screening of a film.

(vii) the Code of Criminal Procedure, 1973

Section 95 empowers the State Government, to forfeit publications that are punishable under sections 124A, 153A, 153B, 292, 293 or 295A IPC.

Section 107 empowers the Executive Magistrate to prevent a person from committing a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably cause breach of the peace or disturb the public tranquillity.

Section 144 empowers the District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf to issue order in urgent cases of nuisance or apprehended danger. The above offences are cognizable. Thus, have serious repercussions on liberties of citizens and empower a police officer to arrest without orders from a magistrate and without a warrant as in section 155 CrPC.

CHAPTER 3

EMERGENCE OF HATE

CRIME IN INDIA

CHAPTER 3

3. EMERGENCE OF HATE CRIME IN INDIA

After getting apprised with the basic connotation of hate crime and its related aspects with conventional crimes and hate speech, this chapter seeks to delve into the Indian understanding of hate crimes. It discusses as to how the hate crimes have emerged in India and what the major are factors contributing to their growth. It also focuses on as to how in the recent time, there has been tremendous growth in hate crimes. Therefore, this chapter is intended to chronologically delve into each of such discourse.

3.1 Meaning of Hate Crimes in India

Chapter two discusses the holistic definition of hate crimes wherein it includes various factors such as religion, color, race, nationality etc. upon which hate crime is committed. However, when examined in India's context, the situation is a bit different. Therefore, according to Indian circumstances, some more characters to the definition have to be added. Indian society is a mixture of various, religions, cultures, languages and traditions and therefore people are also targeted on the basis of their caste, profession, sexual orientation, freedom to speech, personal choices and beliefs. Hate crimes, hence, are partly or wholly motivated by the perceived or actual identity of the victims. The incidents such as killing in the name of love-jihad, honour killing, caste-biased killing, mob lynching in the name of cow-vigilantism⁵ and other factors are the examples of hate crime in India.

3.2 Hate Crimes: A recent phenomenon?

Now the question arises whether these crimes are the recent phenomenon or the old one. It must, therefore, be appreciated that the hate crimes are neither new in India nor are they limited to religion. Eminent Historian Romila Thapar notes that there were few instances of religion and caste-based violence in ancient India. In medieval India, there were many such instances. However, such violence did not take place between Hindus and Muslims but between the sub-sects of them. The violence in medieval India did not politicalize; however, it played a major role in the creation of a superstructure of hate crime in today's modern world.

Moreover, in modern India, the state and its institutions (media and political forces) have also been instrumental in the emergence of hate crime; a slight look at linguistic violence of the 1960s, Anti-Sikh riots of 1984, Hindu Muslim riots of 1992 and caste riots of Bihar in 1990s, Godhra riots of 2002 provides one with the reasoning as to how they were openly state-sponsored. Even today, the question may be raised as to whether such violence is state sponsored. In the line, the idea of Sanskritization also needs to be problematized as people in North India who belong to lower caste tries to adopt the practices and beliefs of those of the higher caste and therefore the caste conflict arises.

Indian society is a pluralistic multilingual and multi- religious. Therefore, people of different religion, region, caste, colour conflict with each other because each one tries to surge a head to another. Such instances prove that it is certainly not a new phenomenon but has been existing since long.

Therefore, it would be relevant to examine the origin of hate crime in India which includes historical biasness against caste, religion, sexual orientation or gender in the following manner:

- **Caste bias**

Caste, being the epitome of discrimination in India, is the longest surviving system of social hierarchy. It is that deep-rooted characteristic which is determined by one's birth into a particular caste. It, therefore, provides for the different groups of people who according to their respective castes, descent and occupation are put under four major categories—Brahmin, Kshatriya, Vaishya & Shudra wherein Brahmins are considered at the top and the Shudras at the bottom¹⁶. The fifth category as understood is that of untouchables or Dalits. These castes are divided into 3000 castes and 25,000 sub-castes. Therefore, as per their birth in different categories, they are required to indulge themselves into specific duties—such as Brahmins in priestly activities¹⁷, after Brahmins the next category comes of Kshatriyas who are the political rulers or the soldiers who are known for their strength and powers and are responsible for the protection of the boundaries of the Kingdom and therefore are required to follow the Holy Scriptures and its interpretation by the priestly class in order to do so. Thereafter, the third category is of Vaishyas who are considered the business class or merchants indulged in trade & commerce. At the lowest comes the

¹⁷ Manali S. Deshpande, HISTORY OF THE INDIAN CASTE SYSTEM AND ITS IMPACT ON INDIA TODAY, 14, available at <https://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1043&context=socssp>.

Shudras, the agriculturalist class such as peasants, labourers, and servants who were thought to be servant to the upper three castes and have no rights but duties. What is left below Shudras is the Dalits or untouchables.

Manusmriti & Rigaveda being one of the oldest religious texts of Hindus provides for such a discussion on caste and categories. Therefore, such an irrational hierarchy was prevalent in the society in its strictest sense before the COI came into existence.

Consequently, people of the higher castes continued to commit a number of atrocities against those on the lower pedestal—these acts include the untouchability, slavery, sexual abuse, Dalit's exodus from the villages etc.

However, after India got independence, the Constitution of free India provided for the abolition of such acts of atrocities and enshrined the principles of equality and equal status as under Article 14 & 17. To make the system more robust and protective, the legislature further enacted The Protection of Civil Rights Act, 1955 and the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. However, despite so many laws and legislations, the NCRB data shows the increase in crimes and atrocities against the SCs and STs. The Supreme Court, in National Campaign on **Dalit Human Rights & Ors. V. Union of India & Ors**¹⁸. also observed the vulnerable situation of dalits in society. Increasing hate crimes in society against dalits is one of the factors for the present situation.

¹⁸ (2017) 2 SCC 432.

Therefore, an instantaneous growth in the present time has altogether exhibited India to the era of reconsideration of its stance against such atrocities (that too in the prevalence of fundamental rights given by COI).

- **Religious bias**

Before independence, there are very few incidents of violence on a religious basis. In 1714, there was a first religious disturbance at Ahmedabad when the Sultan had to intervene. However, before 1714, there was no religious violence which was reported as such. It was only after the British came to India that the violence began to increase. As Historian Christopher Bayly writes of few examples of violence in Varanasi etc. However, in the 19th century too, religious violence was not a regular aspect of life. Much violence took place in north India during half of the 19th century but the main cause was the Britishers to take over the areas governed by Muslims. It is important to note that many times the causes for the violence were related to cow slaughter, religious processions etc. which we today are also facing. It is after independence that the nation has seen unprecedented growth in religious violence. Many incidents of violence including anti-Sikh riots of 1984, Gujarat riots of 2002, Muzzafarnagar riots of 2013 are the major examples of religious biases and intolerance in India. Such a state of communal violence is one of the strongest indicator of hate crimes. The NCRB, however, does not record the data of crimes

committed on the basis of religion. It only collects communal violence which it reported to be 2885 between the years 2014 to 2016.

- **Gender bias**

In India, gender bias is so embedded that every year around 2,39,000 girl child are killed. Moreover, when the concept of gender is discussed as being one of the factors for hate crimes then it is necessary to understand the various connotations attached to it such as that of different sexual orientations. Indian society has never been so biased against the people of different sexualities but always considered everyone at the same pedestal¹⁹. It was mostly after the archaic law under Section 377 enacted by the Britishers that the Indian society started atrocities against the persons with different sexual orientation. Such discrimination exists even today after the decriminalization of the law. The people are attacked by the haters on the basis of their sexuality. There are instances when police beat and harassed these people even when they claim their legitimate rights. Moreover, in Telangana, one NGO noted average ten attacks every month against the transgender⁴³. Recently, a violent mob attacked a priest thinking he is a gay. However, the problem is that the NCRB only records the violence based on gender and not on the basis of sexual orientation, it is difficult to trace the exact number of victims.

¹⁹ Manoj Mitta, Ancient India didn't think homosexuality was against nature, The Times of India Newspaper, June 27, 2009, <http://timesofindia.indiatimes.com/india/Ancient-India-didnt-thinkhomosexuality-was-against-nature/articleshow/4708206.cms>. See also, LAW VIS-À-VIS HOMOSEXUALITY: A CRITICAL ESSAY ON LAW, HISTORY& PSYCHOLOGY, in Honey Kumar, CONTEMPORARY INDIA AND GENDER: SOME SOCIO-LEGAL PERSEPECTIVES (2018).

3.3 Hate Crimes in India: Current Scenario

After discussing the relevant facets related to hate crimes, it is also equally important to see how these crimes are being committed in India on the ground of specific characteristics discussed in abovementioned sections. Therefore, this section of this chapter attempts to delve into all the data available to clearly present the different kinds of hate crimes in India. The study is also interested in examining the situation under the UPA and the NDA. As the National Crime Records Bureau (hereinafter as NCRB) does not specifically mention the data on the characteristics of hate crime, the nature of data which has been used here is secondary, particularly in the form of reports by the Amnesty International, special set up called as HALT THE HATE, Human Rights Watch reports, newspaper reports and various articles available in the public domain. However, the Amnesty does not present the data before the year 2015. For this, this research would rely on Factchecker and other mentioned sources. Let us, therefore, delve into this exercise of the understanding as to how there is a sudden & tremendous increase in the number of crimes.

For the purpose, this section will focus on the crimes under various heads such as against particular group of people including Dalits & Muslims along with the statistics providing the total number available by such secondary data.

3.4 The yearly increase in the number of incidents of hate crimes

Before going into the present government period, let us look at the number of incidents took place in the time of previous government. Fact checker

reported 40 incidents between the periods of 2009-2014. The present government has also in a way has accepted this fact by holding that there is an increase of 41% in hate crimes since the year 2014. Now let us look at the growing number in the last few years in the chronological order:

In 2015, amnesty collects the data from September 2015 and reports total of 51 incidents²⁰. The state of Haryana and Uttar Pradesh respectively reported 9 & 10 incidents. In the year 2016, the number reaches 240 with the highest incidents in Uttar Pradesh at 60. In 2017, the number of hate crimes reported by the amnesty stands at 212 again with the highest in Uttar Pradesh at 50. In 2018, the number stands at 218 including 57 in Uttar Pradesh whereas, in 2019, Amnesty did not record any incident; however, the factchecker reports 3 incidents.

It is also to be taken into consideration that these numbers are not exhaustive in nature as the NCRB does not provide for the official data in this regard. Now, the groups which are usually targeted and the nature of harm must also be seen during these years.

3.5 Identity of Victims and Nature/Number of Hate Crime

Ironically, as I discussed earlier in this research these are mainly the Dalits who have primarily been the target of the hate crimes. According to the reports, in 2015 only there were 34 incidents committed against the Dalits out of 50 in total; in 2016, 182 incidents out of 240; in 2017, 140 out of 212 & in 2018, 142 out of 218. After this group of people next come the Muslims (13,

²⁰ Available at <http://haltthehate.amnesty.org.in/map.html>.

40, 53, 50 from 2015-18 respectively), Adivasis, Christians, Transgenders and others.

Nature of hate crimes also becomes an important factor to understand the overall gravity of hate crimes. According to Amnesty International, in 2018 alone there were 97 incidents of Assault, 87 of Murder, 77 of Harassment, 24 of Property Damage, 21 of Rape & 19 of Sexual Harassment.

3.6 Few examples of Hate Crimes

The incidents spreading hate in the Indian soil range from hating someone's caste, profession, personal speech & choice to the gruesome acts of mob lynching and cow-vigilante. Sometimes the acts have been reported to be committed on the mere pretext of doubt related to the victims⁶⁴ constitutionally protected characteristics discussed above in the research. In 2015, a man named Mohammad Akhlaq was attacked in this house by the villagers on the pretext that he and his family ate beef. In another hateful act, four Dalit men were stripped, tied to the car and beaten by a group of cow-vigilantes for skinning a cow.

A report published by Human Rights Watch in February 2019 claims that between May 2015 and December 2018, 44 people were killed in the cases related to cowvigilantes wherein 36 were the Muslims²¹ including a 12-year-old boy traveling to the animal fair in Jharkhand. Discussing the hate crimes against Dalit too, there is a range of issues which shakes the consciousness of the people such as the killing of a Dalit boy as he has the same name as one of

²¹ India: Vigilante 'Cow Protection' Groups Attack Minorities, available at <https://www.hrw.org/news/2019/02/18/india-vigilante-cow-protection-groups-attack-minorities>.

the children of high caste man. A young farmer who belonged to the lower caste in the state of Gujarat was killed for owning a horse. Other Dalit victims were targeted for reasons such as riding a horse, sitting cross-legged, swimming, wearing royal shoes and a Facebook name which belongs to higher caste people. Apart from cow-vigilantism and mob lynching, there are incidents which were committed in the name of social evil such as honour killing and love-jihad.

A slight look at these numbers shows a consistent increase in the hate crimes after the year 2014. Certainly, it not only leads one to question at the very concept of the state which is considered to be the protector of the rights of the people but also compels one to ponder upon the overall approach by the government in the light of its own political interests. However, such claims will be discussed into greater detail in the subsequent chapter of the study.

CHAPTER 4

**ROLE OF STATE VIS-À-VIS TACKLING THE
MENACE OF HATE
CRIMES**

CHAPTER 4

4. ROLE OF STATE VIS-À-VIS TACKLING THE MENACE OF HATE CRIMES

Certainly, the flow of the discourse on hate crimes now comes to the question of prevention or control of such crimes in the society—the questions such as what all are the machinery to protect the people from such crimes?; why still there is no action in this regard? etc. To justify the same, one has to understand the relation of state and the citizens. Purposely, it has been well said that to call a state, a state in a true sense, it has to be seen that how well it maintains the rights of the people²². For the consideration, it may be appreciated that “to establish a welfare state wherein the people have access to all these basic human rights, the instrumentality of state is postulated with the duty to protect and further cherish these fundamental values”.

Undoubtedly, it is the state that has to take care of the rights of the people. The reasoning behind the insertion of Article 122 is itself an indicator which put a heavy duty upon the shoulders of the state to protect and enforce the rights of the people. The state undoubtedly includes all the three pillars—the executive, the legislature and the judiciary. Dr. Ambedkar, in the Constituent Assembly Debates, also emphasized upon the intention behind the said provision and furthered it for the effective enforcement of these rights and despite all the hurdles faced during its drafting, it was finally put in the COI so that the people could enforce them against all those who exercise the power over them. It is, therefore, apparent that the state is under an

²² Harold J. Laski, a grammar of politics (1925).

inescapable duty of protection and proper enforcement of these rights. To keep a check on this duty and also to make it stronger, the constitution-makers have inserted Article 325 and 226 providing the constitutional remedies against the executive and legislature²³ also.

Therefore, this chapter discusses those facets which certainly need to be taken into consideration to understand as to why the state is not being able to protect its citizens from the increasing hate crimes and the violation of their fundamental human rights as examined in the 2nd & 3rd chapters respectively. For this many factors are contributing in different capacity—from the range of inefficient legislations to the non-state elements, this chapter will delve into knowing as to why & how the state is being incapable in fighting against the hate crimes.

4.1 Existing Legislations on various facets of Hate Crime

Let us look into what all are the legislations in India which provides for the punishment for the offences which attack on the discussed characteristics of a person. The following are the Indian legislations:

4.1.1 Indian Penal Code, 1860 (hereinafter as IPC)

Chapter VIII of the IPC lays down various provisions relating to offences against public tranquility wherein, amongst unlawful assembly & rioting²⁴, Section 153A & 153B are the provisions which merely touches upon the area of hate crimes but do not clearly identifies the offence as a hate crime. The language of the provisions is not one which focuses on the rights of the

²³ In Reference case, AIR 1965 SC 745.

²⁴ Id., Section 146, "Rioting".

individual but concerns itself with the public at large. Furthermore, Chapter XV envisages the provisions for offences against religion. Here also, the provisions providing for the punishment for the offences of outraging the religious feelings of any class or person are not so clear as to confine within the well-discussed facets of hate crimes.

4.1.2 The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

As the title itself suggests, the legislation has been enacted to protect the constitutional values of equality, justice, liberty and dignity by providing special protection to one of the most marginalized classes of society, SCs & STs. Section 3 of the Act enlists the kinds of atrocities which are punishable under the law as per the IPC. Section 520 & 721 of the Act lays down the provisions for the enhanced punishment and forfeiture of property respectively. The study has already discussed as to how even in the presence of such a special legislation, the hate crimes have tremendously increased. Other problem is that of this specificity that it only applies in the cases of SCs & STs does not include other acts of hate crimes and hate as such to be punished as a special crime other than the conventional crimes under IPC.

4.1.3 International obligations under UDHR, ICCPR, & CERD

India being a signatory to international instruments such as ICCPR, 1966 & CERD, 1963 is also duty bound to give effect to the principles enshrined within them. Let us therefore examine what are the obligations do they provide for:

4.1.4 Universal Declaration of Human Rights, 1948

The declaration provides for the basic human rights to be protected by the state. It recognizes various rights such as right to life, liberty, freedom of speech and expression and also prohibits the discriminatory treatment of any person. Though the declaration does not expressly talk of any hate crime or discrimination, it provides for the equality before the law without any discrimination²⁵ (for example, discrimination based on caste, sexual orientation & religion etc.) and also provides for the limitation on one's rights against others'²⁶ (for example, prohibition of hate speech).

4.1.5 International Covenant on Civil and Political Rights, 1966

The covenant categorically casts a duty on the member states to ensure the rights of all the people without any discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It also enunciates the right to liberty and security of person. Most importantly, the covenant while recognizing the right to expression clearly talks of legitimate restrictions (such as we see in Indian Constitution under Article 19 (2)) for the protection of national security or of public order, or of public health or morals. Furthermore, it also prohibits the racial or religious hatred that leads to discrimination, hostility and violence³⁰. The covenant also requires the government to protect the rights of the individuals against the violation by private persons.

4.1.6 International Convention on the Elimination of All Forms of Racial Discrimination, 1969

The preamble and articles 1 & 4 of the covenant provide for the abolition of all kind of racial discrimination against the people within a state. It seeks to do so in two ways—by prohibiting incitement to racial hatred and by way of education²⁵.

The above-mentioned Indian legislations clearly depict the situation of insufficiency to tackle the kind of hate crimes we are scuffling with. Therefore, it is the legislature, as the representative of the citizens, which has to bring the changes in the existing legislations or introduce new legislations. However, so far no changes have been introduced. This is therefore one of the reasons as to why the state is not being able to curb the issue of hate crime in India.

4.2 Role of the Judiciary

While discussing the role of legislature and executive, the judiciary's role and constitutional position being the upholder of rights cannot be undermined. However, it must also be remembered that as other two branches act within their sphere and separation of powers, the judiciary also acts as per the same principle. It does not enact the laws as parliament does but interprets the law. Justice Mukherjea in **Ram Jawaya Kapur v. State of Punjab**²⁶ observed that although the Indian Constitution has not indeed recognized the doctrine

²⁵ International Convention on the Elimination of All Forms of Racial Discrimination, 1969.

²⁶ AIR 1955 SC 549.

of separation of powers in its absolute rigidity, the functions of the different parts have been sufficiently differentiated.

However, in **Union of India v. Sankalchand Himmatlal Seth**²⁷, Justice Untwalia called the judiciary as a “watching tower above all the big structures of the other limbs of the state from which it keeps a watch like a sentinel on the functions of the other limbs.” It is therefore clear that if there exists a situation wherein there is an urgent need to intervene the judiciary seems not hesitant—be it in the matter of **Vishaka v. State of Rajasthan**²⁸ or **M.C. Mehta v. Union of India**, Delhi Vehicular case where the court passed the various guidelines. Similarly, the court in **Tehseen S. Poonawalla v. Union of India & Ors** largely discussed the mob lynching and cow-vigilantism violence. On hate crime, it said that, “Hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results in a reign of terror”. The court called lynching as an affront to the rule of law and to the exalted values of the constitution. The court emphasized upon the state’s duty to take action against such acts. The Court further observed that:

“Such vigilantism, be it for whatever purpose or borne out of whatever cause, has the effect of undermining the legal and formal institutions of the State and altering the constitutional order. These extrajudicial attempts under the guise of protection of the law have to be nipped in the bud; lest it would lead to rise of anarchy and lawlessness which would plague and corrode the nation like an epidemic. The State has the primary responsibility to foster a secular,

²⁷ AIR 1977 SC 2328.

²⁸ (1997) 6 SCC 241.

pluralistic and multiculturalistic social order so as to allow free play of ideas and beliefs and coexistence of mutually contradictory perspectives.

Thereafter, the court while expressing high concern over mob lynching and cow vigilantism passed certain guidelines under three heads—preventive measures, remedial and punitive measures. These measures direct the states:

1. To designate a senior police official not below the rank of superintendent of police, to be known as nodal officer who will be assisted by one of the DSP rank officers in the district for taking measures to prevent incidents of mob violence and lynching.
2. To identify Districts, Sub-Divisions and/or Villages where instances of lynching and mob violence have been reported in the recent past, say, in the last five years.

It further required such designated police officials to meet time to time and the DGPs were asked to review such meetings. It further asked the police official to disperse such mobs under Section 129 of CrPC, which, in his opinion, has a tendency to cause violence or wreak the havoc of lynching in the disguise of vigilantism or otherwise. The Home Ministry of India was also required to take measures in consultation with the respective states. It also directed both the states and the centre to curb the spread of explosive videos, messages and speeches which can cause such mobs⁴⁶. Therefore, it also authorized the police to file an FIR under Section 153A, IPC. It also required that the State Governments shall prepare a lynching/mob violence victim compensation scheme in the light of the provisions of Section 357A of CrPC within one month from the date of this judgment. The decision also talks for

the appropriate actions against the officers for not taking an action. The court finally recommended the legislature to create a separate offence for lynching and provide adequate punishment for the same as to instill a sense of fear of law in the minds of people.

It must also be appreciated that this was not the first time when the court has taken note of such incidents. Before this too, the Court in **Nandini Sundar and others v. State of Chhattisgarh**²⁹ held that the state must strive to promote fraternity amongst all citizens so that the dignity of every citizen is protected, nourished and promoted. In **Mohd. Haroon and others v. Union of India and another**³⁰, the court held that it is the state's responsibility to prevent communal violence in any part of the state. Furthermore, Archbishop Raphael **Cheenath S.V.D. v. State of Orissa and another**³¹ the Court held that strengthening of police infrastructure in the district would undoubtedly help in curbing any recurrence of such communal violence.

It is undoubtedly true that the state includes all these tree branches. However, it is also true that the whole mechanism of law and order cannot be made only by a single branch of the state that is the judiciary. It can only guide the state to a direction⁵³ and therefore it is then for the other branches to take the appropriate steps such as making of legislation which still has not been initiated. This is the biggest reason as to why the state is not being able to protect the people.

²⁹ (2011) 7 SCC 547.

³⁰ (2014) 5 SCC 252.

³¹ (2016) 9 SCC 682.

4.3 The role of Non-State actors such as VHP, RSS & others.

It is important to note that while analyzing the role of various state actors, there are some non-state actors which cannot be left untouched as these non-state actors are one who sometimes has considerable influence on the working of state actors itself. In India, one of the contributors of the hate crimes without which the research would be incomplete is the non-state actors. These non-state actors recognize themselves to be real nationalist, patriots, cow-vigilantes (gau-rakshaks), and protectors of the Hinduism and Hindu Rashtra. However, in recent years, they have somehow also affected the social order of the nation by contributing in many ways. Amongst others, Rashtriya Swayamsevak Sangh (hereinafter as RSS), Vishwa Hindu Parishad (hereinafter as VHP) are two of the power structures whom hundreds of millions of people subscribe to. For example, the RSS which is one of the strongest Hindu organizations has also been instrumental for its controversial remarks adverse to the constitutional philosophy of India. The present government led by BJP also seems to have influenced by the philosophy of RSS, such an assertion looks to be correct if a slight look is taken of the states wherein the BJP is in power (saffronization). It is significant to note that the rate of hate crimes has increased significantly in all the BJP supported states. All these factors are also contributing to the atmosphere catalyzing the evil of hate crime in society. The Washington Post reports that after the Modi government came into power, the incidents reported mainly included Muslims as the victims and Hindus as the perpetrators. Apart from these organizations there is Bajrang Dal, Karni Sena, & Hindu Mahasabha etc.

In order to cover social aspects of the RSS activities, VHP was founded in 1964. Similarly, Bajrang Dal is the youth wing of VHP which was founded in 1984 in order to mobilize the youth for Ram Mandir campaign. United States Central Intelligence Agency has classified VHP & Bajrang Dal as the “militant religious outfits. One of the members of the VHP asked the Hindus to evict the Muslims and not selling the properties to them in the areas where there is Hindu majority. These non-state actors, in the spirit of nationalism, involve a lot of volunteers who later become effective as gau-rakshaks and hindu rastrawadi. A professor from the Washington University calls Bajrang Dal as a somewhat pathetic but nevertheless dangerous version of the Nazi S. A. Kundan Ranawat, RSS leader from Ujjain applauded the killing of 2000 Muslims in Godhra riots.

What is also significant is that most of the crimes going unreported that implies the complete injustice to the claims of equal rights of the individuals. Therefore, a slight look at these incidents appraises one of how the hate is getting flourished by these organizations and no strict action is being taken against them. As the present government’s many leaders subscribe to the Hinduwadi organization, RSS, they also seem to be silent in the time of crisis. The government itself accepted the fact of rise in religious based hate crimes³².

In addition to this, what is also apparent is that in the absence of proper data on the crimes based on already discussed protected values of people such as religion, race, sexual orientation etc., it is being very difficult to exactly trace

³² Indian govt admits rise in religion-based hate crime, available at <https://www.ucanews.com/news/indian-govt-admits-rise-in-religion-based-hate-crime/81477>.

the accurate number of the victims; only data which is available is in respect of the caste based crimes, however that too is not sufficient in the sense that it does not inculcate the hate a crime as such. Other problem arises of the unreported crimes, a study from TISS, Mumbai concludes that 75% people do not report crimes in India because of the unfriendly nature of the cops.

If the above discussion is chronologically analyzed, it may become clear that the present legislations are not sufficient to include the special requirement of hate crimes and therefore most of the crimes go unreported or if reported then are being treated as offence in the above discussed provisions of IPC. As the research discussed how hate crimes are different from the conventional crimes, they hence require special treatment. The international obligations as discussed above are not being given appropriate weigh in the current scenario. When one talks of the state, the other branches such as the legislature and the judiciary can certainly not be left untouched.

In the present case, however, these two institutions also seem to be silent. Therefore, it can be well concluded that today's scenario of the Indian society is no less of lawlessness where the state seems to be ignorant of the above discussed lacunae— both in the law and in the societal elements (non-state actors).

All these factors not only show the lawlessness in the state but also question the very existence of the executive which is duty-bound to protect the rights of the people and also to implement the law properly so that the crime does not take place. However, these elements give enough evidence as to appreciate that the executive is not even being able to maintain proper law &

order in the society and such non-state actors are taking advantage of such environment in the society. Even the laws (as mentioned above under various heads) which are applicable on such elements are not being set into motion.

Therefore, it is for the state to take appropriate actions against the changing circumstances in the society; the law being a transformative tool must also be changed as per the present needs. The Law Commission's Report of 2015 must be given effect in order to curb the menace of hate speech that will certainly control the ill-effects of such speech that causes violence in the society. The legislature must also emphasize upon the request for legislation by the Supreme Court in Poonawalla. The respect for the basic human rights enshrined under various international instruments must be shown by taking proper steps.

CHAPTER 5

5 MODELS OF HATE CRIME

PREVENTION: A LOOK AT US &

UK'S LEGISLATION

CHAPTER 5

5 MODELS OF HATE CRIME PREVENTION: A LOOK AT US & UK'S LEGISLATION

Unquestionably, when India is facing such huge crisis in the ongoing era of hate crimes and when the various instruments of the state have also been not giving any weigh to the problem, it would be of utmost relevance to analyze the understanding and the redressal of this evil by looking and analyzing the other jurisdictions of the world. This would not only provide the comparative view as to its appreciation but will also present as to how the other countries timely intervened into the problem and tackled it.

Purposely, this research intends to examine the jurisdictions of United States of America (hereinafter as USA) and the United Kingdom (hereinafter as UK). The reason behind opting these two jurisdictions are threefold—firstly, both the jurisdictions came with specific legislation after many incidents of hate crimes so that makes the legislation more exhaustive & clear; secondly, the legislation provides for provisions such as enhancement of punishment, data collection, treatment of those acts as hate crime which in India are seen as conventional; thirdly, both of them are the common law jurisdictions and so is India. By this comparison, this research intends to reach at some point of conclusion as to what possibly can be done in India also wherein the Constitution has borrowed much from these two jurisdictions including fundamental rights from the USA.

5.1 Hate Crimes legislation in USA

Historically, the blacks are the people who have been targeted as the victims of hate crimes. Being the largest minority group and burdened with the history of racial tension and violence, they are the once who even today face its residual effects³³. Apart from blacks, there has been long legacy of violence against immigrants, and other forms of criminal mistreatment against individuals on the basis of their land of origin, religion, skin colour, language and other traits³⁴. However, the state-level authorities were reluctant to prosecute crimes committed by whites against the blacks which therefore pushed American Congress to pass the Civil Rights Act of 1866. The legislation not only provided for the citizenship for all born in the US but also through the Enforcement Act of 1870 guaranteed the right of due process of law and the equal protection of the law which has been guaranteed by the Fourteenth Amendment. However, the emancipation of black slaves was violently challenged by the formation of Ku Klux Klan in 1867 that pushed a long era full of racist violence and criminality.

Further, the American Congress also passed the Civil Rights Act of 1871 permitting the federal government to prosecute the people depriving others of their civil rights and also the government agents who deprived persons of their rights. In making the system more robust to protect the rights of blacks, the Congress further passed Ku Klux Klan Act of 1871 which enhanced federal government's power to intervene in an enumerated list of activities involving a conspiracy to violate civil rights and most importantly those

³³ a policymaker's guide to hate crimes, monograph, reprinted nov 1999 at 15.

³⁴ Michael Shively, Study of Literature And Legislation On Hate Crime In America, 2 (2005).

practiced by members of Ku Klux Klan against blacks³⁵. Similarly, the Civil Rights Act of 1875 envisaged for the equal treatment of all races in public accommodation, facilities, transport and places of entertainment. The reason for making all these legislations was to ensure the investigation and prosecution of crimes committed against former slaves³⁶.

Thereafter, it was in the twentieth century after the World War II that the prejudice based on race, ethnicity and gender was highly condemned by the American society. Connecticut was the first state to pass a statute called the Connecticut General Statute of 1949 criminalizing the ridiculing an individual based on race, colour or creed.

Then it was during the Civil Rights Movement of 1960s which not only contained black's rights movement but also the women's rights, the gay and lesbians' rights movement of the 1970s and the subsequent disabilities and victims' rights movement when the origin of hate crime laws may be traced. Therefore, the today's modern anti-hate movements have their origin in these diverse social movements which represented the interests of different groups. As a result, it was the Civil Rights Act of 1968 which, as predecessor of modern hate crime laws, though did not aim at hate crimes as such but acted as a catalyst for hate crime legislation. The Act enshrined the provision providing remedy for the violence against the black citizens. The Act further prohibited any such act which interferes with a person's federally-protected rights in cases of violence or threat because of a person's race, colour, religion or national origin.

³⁵ Murad Kalam, Hate Crime Prevention, 37 Harv. J. on Legis. 593, 596 (2000).

³⁶ James B. Jacobs and kimberly potter, hate crimes criminal law and identity politics 36 (1998).

However, many states of the USA started passing specific hate crime legislation—10 states passed hate crime statutes from 1981 to 1984, 14 states from 1985 to 1989 and by 1999 there were 41 states with different hate crime statutes¹⁸. But the most significant modern hate crimes law at the federal level was passed in 1990, The Hate Crime Statistics Act. The purpose was to gather data by the department of justice on bias crimes for five years in order to understand the problem. In 1998 alone, the data collected by FBI reported 9722 victims of hate crimes offences.

Even after the passing of Act of 1968, a number of crimes were reported on the basis of race and sexual orientation of the victims—including 94 black churches were burned between 1995 and 1996³⁷. Many gay people were attacked (beaten, killed, brutally assaulted) between 1995 and 1998. According to FBI data in 1996, 1016 out of total number were based on sexual orientation of the victims. Amongst all these incidents, the killing of James Byrd Jr. and Matthew Shepard brought the nation's attention to the hate crimes.

In June 1998, three white men offered a ride to James Byrd Jr., an old African American man who accepted it. They then instead of dropping at home, beat him, took off his clothes, chained him naked to the back of their truck, and dragged him to his death. In October of same year, Matthew Shepard, a 21-year-old gay college student, was also offered a ride and similarly wa driven to a remote area, tied to a fence, brutally beaten and left to die. What is important to note is that these killings were based on prejudice towards the victim's race and sexual orientation²⁶. The problem arose as to the

³⁷ Supra note 1 at 15.

prosecution of accused of Matthew Shepard as the Civil Rights Act of 1968 did not include sexual orientation as a protected class. It was the reason that the Congress began to redress the Act's deficiencies³⁸.

5.1.1 Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, 2009

Consequently, it was 2009 when the Congress passed the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, 2009 which created a substantive offence for those crimes based on animus. In the act, the Congress says that, "the incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim poses a serious national problem". Therefore, the Act punishes those who willfully causes or attempt to cause any bodily injury to a person on the basis of these mentioned factors. This Act not only provided for the specific discipline of hate crime but also included variety of factors as protected classes which includes sexual orientation, disability and gender³⁹.

The Act while amending the Statistics Act of 1990 made it mandatory to collect data of all the offences committed on ground of hatred of gender or gender identity and also data of hate crime committed by or at the juveniles. To ease the jurisdictional norms between the states, it further provided that in order to convict, the government need not to prove jurisdictional element if the crime was motivated by animus. It while punishing the accused for hate

³⁸ Benjamin B. Wagner, Unique Approaches for a Unique Type of Crime: Prosecuting Hate Crimes, U.S. DEP'T OF JUSTICE, available at <http://www.justice.gov/usao/priority-areas/civilrights/hatecrimes>

³⁹ Id.

crime also seeks to deter them from committing hate crimes by providing the enhanced punishment. The scholars also note that the Act not only punishes the accused with enhanced punishment but also educates the society that if they choose to act with hatred, they will attract enhanced punishment⁴⁰.

The above discussion on the upbringing of hate crime legislation in USA provides a deep reasoning as to how the state took various decisions of passing different legislations to curb the crimes increasing at the moment. However, if one looks at the past and present statistics of hate crimes, one thing comes out clearly that there is no growth as such in the hate crime but what number was there in 2007 is similar to that in 2017⁴¹. That also provides an understanding that the legislation if not fully prevented this phenomenon, it has certainly turned out to be a deterrent.

5.2 Hate Crimes legislation in UK

Despite having a long history of racial violence, it was in the late 1970s & 1980s that the violent activities against black and minority ethnic became visible to the public. Soon after, the Joint Committee against Racism was set up in 1980 to study the widespread problem of racial violence in the society. The government therefore initiated its first study in racial violence and harassment. The study highlighted the grave problem of racial violence in the society. However, no major change was arrived at until the brutal death of a teenager Stephen Lawrence who was killed in 1993 by a group of racially

⁴⁰ Supra note 18 at 948-951.

⁴¹ Incidents and Offences, 2007, available at <https://ucr.fbi.gov/hate-crime/2007>. Incidents and Offences, 2017, available at <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-andoffenses.pdf>.

motivated people. The government gave its support for the introduction for new racially aggravated offences.

However, it was when the new government, Labour Party came into power, it within one year introduced & enacted the Crime and Disorder Act 1998 (hereinafter as CDA) which included various racial offences such as assaults, criminal damage, harassment within Section 28-32 . However, the CDA did not include other protected characteristics such as religion, sexual orientation, transgender identity and disability. It was in 2001 when the Act was amended to include religion and thereafter in 2005, the Criminal Justice Act 2003 (hereinafter as CJA) came into force that required that the court, while sentencing any offence based on the victim's (presumed) sexual orientation or disability, "must" treat such give weigh to such factor that demonstrates hostility . Whereas, Section 145 of the CJA provides for the aggravated punishment for the offences on the basis of race and religion. In 2012, the CJA was further amended as to include the transgender hostilities within the scope of Section 146⁴². It must also be noted that the CJA is more inclusive and expansive than that of 1998—in terms such as the former includes race, religion, sexual orientation, disability and transgender identity while the latter merely includes race and religion.

Section 28 of the CDA defines what is racially aggravated; thereafter section 29 to 32 defines what all is included under racial assaults, racially aggravated criminal damage, public order offence and harassment respectively. Therefore, Crime Prosecution Service (hereinafter as CPS) observes that, "the law protects people against discrimination, prejudice and hostility on the basis

⁴² Sentencing and Punishment of Offenders Act 2012, s. 65.

of disability, ethnicity, gender identity, nationality, race, religion or sexual orientation as these elements are the part of a person's identity as described in the law on equality as protected characteristics"⁴³.

5.2.1 It therefore defines hate crimes as:

“Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or a person who is transgender or perceived to be transgender”.

On the question of the evidence of hostility, it says that the action or words at the time or before or after, of offence may be taken into consideration⁴⁴. Furthermore, it discusses other variety of hate crime that includes the stirring up of hatred on the basis of race, religion and sexual orientation is also an offence under the Public Order Act, 1986 (hereinafter as POA). Section 17 to 29 of POA deals with the racial hatred whereas Section 29A to 29N deals with the religious hatred and the hatred based on sexual orientation. It goes on to define as to what is the meaning of stirring up of hatred in different contexts which is certainly important to discuss for us too.

5.2.2 In the context of racial hatred, it says :

“Stirring up racial hatred is committed when someone says or does something (including posting material online, displaying a poster,

⁴³ Crown Prosecution Service, Hate-Crime-What-It-Is-And-How-To-Supportvictims-And-Witnesses, At 2, October 2016.

⁴⁴ Ibid. at 5.

performing a play or broadcasting on the media) which is threatening, abusive or insulting, and the person either intends to stir up racial hatred or makes it likely that racial hatred will be stirred up”.

5.2.3 Further in the context of religion and sexual orientation, it says:

“Stirring up hatred is committed if a person uses threatening words or behaviour or displays any threatening written material (including posting material online, displaying a poster, performing a play or broadcasting on the media), and intends to stir up religious hatred or hatred on the grounds of sexual orientation”.

It emphasizes on the fact that the hatred must be such which must affect the public order too. As discussed in the previous chapters, such a provision is much needed in the Indian context too which includes these protected elements also. Erasing other doubts, the CPS also lays down that there is no need to confirm a victim’s personal characteristics in order to prosecute, hatred or hostility based on mere misconception is sufficient. It also provides that each hate crime has to be reported to the police and it is the police to decide whether to refer the case to CPS. While recognizing the commitment of hate crime in online mode, the CPS provides that the police will report each such incident on internet, social media etc to it. It also touches upon the victim’s support mechanism during the whole exercise of the hate crime prosecution and provides that the victims who have been intimidated are to be given enhanced support services which can be provided by an application to the court for special measures⁴⁵. These special measures are the series of

⁴⁵ Id. at 7.

provisions that help the vulnerable and intimidated witnesses. What is also important to note is that unlike USA where now there is a uniform legislation on the hate crime, UK has multiple legislations to deal with the separate kinds of hate crimes.

As far as the collection of data of hate crimes in UK is concerned, the Crime Survey for England and Wales (CSEW) is the biggest source to collect the data, along with this, hate crime occurrences are also calculated by police recorded statistics and CPS recorded data on hate crime cases⁴⁶. From 2011, hate crime has also formed part of the annual data requirement for the Home Office and since then has been published as part of the national crime statistics.

Similar developments are also visible in South Africa where the Prevention and combating of Hate Crimes and Hate Speech Bill, 2016 was put to the public domain for the public comments and suggestions and has now been revised (2018) accordingly⁴⁷. After its approval, it will operate as formal hate crime law in South Africa which will criminalize acts based on prejudice, bias or intolerance such as on the basis of race, religion, culture, gender identity or sexual orientation, among others.

Now when we compare these developments in Indian context then there are various factors which need to be appreciated as the comparative law also requires appreciating the culture, tradition and language of two states between whom the comparison is being done. Indian society being a multi-cultural &

⁴⁶ Supra note 45 at 103.

⁴⁷ So what's the status of South Africa's Hate Crimes Bill?, available at <https://www.mambaonline.com/2018/07/17/so-whats-the-status-of-south-africas-hate-crimes-bill/>. Find the revised bill at <http://www.justice.gov.za/legislation/hcbill/B9-2018-HateCrimesBill.pdf>.

multi-lingual requires special examination and just transplantation cannot be done; it certainly requires some changes to fit Indian environment. As discussed earlier, India is a land where the caste and religion disparity is very high and the society is accordingly divided in multiple blocks that have different values. In order to implement some new law, their structured are also required to be studied. Until a deep study is made of societal disparity, cherry picking cannot be done from other jurisdictions. However, at the same time, the very idea to deterrent such crimes as enshrined in these legislations can be taken in terms of enhanced punishment and collection of proper statistics.

CONCLUSION AND SUGGESTIONS

CONCLUSION AND SUGGESTIONS

The undertaken research focused on a number of facets related to hate crimes. It not only tested the wider definition of hate crimes in India but also found out how this phenomenon ever exists in Indian society and it is only the past few years that the rate has increased tremendously⁴⁸. The respective chapters dealing with different themes related to hate crimes summarized the problems in the respective areas—starting from its emergence in India to its impact on rights of people, role of the state and comparison with other jurisdictions.

There were various findings which were discussed and critically examined which particularly included the sudden increase in the hate crimes and the inefficiency of the state in protecting the people in general from these activities⁴⁹. The basic premise or hypothesis upon which the research is based is the role of caste and religion in the increased rate of hate crimes.

The second chapter finds that the caste has from the very beginning been one of the instruments of exploitation of those at the lower pedestal, it consequently also finds that the highest rate of hate crimes is based on caste in the last four years followed by the Muslims which is the second most targeted category of people vis-à-vis hate crimes.

What is relevant to note is that the research suggested that these instances took place on the premise of social disparity in the status of victim and the accused in terms of caste, religion, sexual orientation, personal religious beliefs. These factors are those which the Constitution equally protects

⁴⁸ For reference, see chapter 3

⁴⁹ For reference, see chapter 3 & 5.

irrespective of any discrimination. In similar manner, intolerance is noticed towards other categories which include Christians, sexual minorities and others. All these factors too are constitutionally recognized. In all these instances, one of the hypothesis based on caste and religious intolerance seem to become true and correct. The data shows the acts were committed on the basis of any of such recognized factor and that is all required for a crime to become a hate crime as it ultimately targets constitutionally recognized characteristics of the victim.

One argument may be forwarded as to why this phenomenon has increased now or was it earlier non-existent? Here comes the role of non-state actors and sometimes state actors too. As chapter five enunciates as to how, in recent years, non-state actors have contributed to the violence and intolerance in the society either by way of hate speech or active participation such as through the medium of cow-vigilantism. What lead to more hostility in the situation is incomplete network of existing laws which let the police officers or the concerned officers not to take action; this point even led the Supreme Court's intervention in Poonawalla⁵⁰ case where the court laid down guidelines. However, that too precisely concentrates only on one facet of hate crime that is mob-lynching.

This is important to consider as there are mobs which are existing in the society, be it a road, a colony, a village or a city. What makes these mobs to lynch other people or commit other hateful activities is something utmost important. This research attempt to put forward the premise that it is the existing evils of caste, religion, gender and other biases which incite these

⁵⁰ Writ Petition (Civil) No. 754 OF 2016.

activities when pushed further by the external elements such as non-state actors and the fearlessness of the existence of law and order.

The laws and legislations of India provide for the overall care of the citizens while preserving the basic values of the constitution. It is the ultimate aim of laws to prevent and condemn the adverse elements in society. Indian laws and legislations at present can be said to be not so effective in tackling these values.

The way ahead as highlighted by the present study is for the state to undertake a comprehensive analysis of the situation which includes all the three pillars of the state which are the executive, the legislature and the judiciary.

No phenomenon exists in isolation and same is the case with hate crimes which is amalgamation of various factors such as caste, religion, sex, hate speech, non-state actors and so on which have highly contributed to the growth of hate crimes. Therefore, they also need to be studied together so as to understand the overall approach of the people towards them in the light of existing framework of education, sensitization, awareness programs etc.

Therefore, in order to protect the rights of people and to maintain law and order in the society, the following suggestions to tackle hate crimes have been put forth by the researcher:

Lack of legislation

Chapter five lays down the existing legal framework in India to tackle the problem of hate crimes. The concern is their non-specificity. These legislations enshrine the idea for rare situations such as riots and do not target the individual cases of hate crimes committed on the basis of various constitutionally protected characteristics. The lack of various grounds of hate crimes also makes them insufficient and leaves discretion to the police authorities to take or not to take action. Same is the issue with the SCs & STs Act that limits its walls to these two communities itself.

Therefore, an attempt must be made by the legislature either to bring a separate legislation as there is USA or UK or to amend the present legislation that is IPC. The recent development in terms of Hate Crime prevention bill in South Africa must also be taken into account. Attempts such as made by one of the Member of Parliament, Husain Dalwai introducing bill to amend Section 153A and 153B must be given serious consideration as it specifically provided for the action against crimes committed on the basis of specific grounds against the victim⁵¹. The recommendations by the Law Commission in its Report No 267 of 2015 to further amend the IPC, 1860 to tackle the hate speech must be incorporated by the legislature as it includes all those constitutionally protected factors which are target of hate crimes. It furthers the idea of individual protection from hate speech.

⁵¹ Husain Dalwai presented a bill in the Rajya Sabha to amend the Section 153A and to further add Section 153C, Indian Penal Code, 1860. These provisions specifically provided for the insertion of clause that punishes the accused for committing a crime on the basis of bias of victim's actual or perceived religion, caste, profession, trade, place of residence, choice of attire, appearance or eating habits etc. Further Sub-Section 153C intended to provide for the punishment and prevention of vigilantism on the basis of actual or suspected commission of an offence by the victim. Bill can be found at <http://164.100.24.219/billtexts/rsbilltexts/Asintroduced/ipc-4817-E.pdf>.

Sensitization programs

It is clear from the earlier submissions that this is not only a legal issue which can be solved through the legal deliberation but also entails the issue of a grave social problem. Therefore, the solution lies with the society itself which needs to be made sensitive towards such activities. The grounds of caste, religion, sex, profession etc. need to be made clearer to the people at large through sensitization programs throughout the districts in India with the help of district administration. The issue and ill-effects of hate speech must also be taken into consideration in such sensitization programs where society must be made aware of equal rights of all and the repercussions of bad activities such as divisive and hateful against others on such a basis.

Education & awareness program

Being a social phenomenon, hate crimes can be best handled by educating and making people aware about it. For this reason, the state must take steps to identify areas in the primary syllabus of schools at the primary level to include teachings against such discrimination of caste, religion, sexual orientation, personal beliefs, choices, profession and other constitutional rights, privileges & duties. Students must be taught how these values are a basis for the larger picture of right to life and dignity. Simultaneously, the district administration must also organize such education and awareness camps at the village level with the help of gram sabhas and panchayats in order to educate the people in the villages. They must also be made to understand and sensitized to report against such hateful activities (be it a hate speech or crime) to the concerned authorities.

Activities of non-state actors

In the recent years, there is growth in the criminal activities of the non-state actors— be it in terms of hate speech or otherwise through criminal activities such as moblynching and cow-vigilantism⁵². At the same time, it is also debatable that whether there is growth in the criminal activities of the non-state actor or increase in reportage. What is necessary at this juncture is to take serious actions against such activities which lead to criminal activities in society. The Law Commission's recommendations⁸ to amend IPC, 1860 to combat hate speech are of great relevance to curb the activities of non-state actors too.

Role of the judiciary

The role of the judicial institutions also becomes important in such state of turmoil. As it has exemplary past of upholding rights of people in the **cases of Vishaka and R.D. Upadhyay**⁵³. The Supreme Court of India as the custodian of the fundamental rights of the people must in the case of hate crimes too should send a strong message to the society. As there is no legislation at present, the judiciary therefore must consider this grave situation and recommend the legislature to come with legislation within a deadline. Failing which as in case of Vishaka, it must lay down extensive guidelines to be applicable in the cases of individual or collective hate crimes.

Not only the Supreme Court in particular, but the High Court of various states must also give some weigh to this problem in their states and should mandate

⁵² Supra note 1.

⁵³ AIR 2006 SC 1946.

the executive to be responsible for the increasing growth of such activities and failure to prevent such crimes.

To conclude, the researcher wishes to reiterate that whether a law if made will rectify the issue of not will certainly depend on all these factors. Hate crimes poses a problem which are more social than legal. It can through the above steps along with other measures be brought to a minimal rate. Crime being an inseparable part of the society can never come to an end; however their unnecessary increase and impact can be controlled trough effective measures including those laid down in this chapter. At the same time, it is also true that hate crimes are such which can definitely be avoided; the timely and effective measures in terms of legislation, education and awareness can contribute to it efficiently.

BIBLIOGRAPHY

BIBLIOGRAPHY

BOOKS

1. akhilesh kumar, communal riots in india: study of social and economic aspects, south asia books, 1991.
2. Ben bowling, violent racism, victimization, policing and social context, oxford university press, 1998.
3. Carolyn turpin-petrosino, understanding hate crimes:
Acts, motives, offenders, victims, and justice, routledge, 2015.
4. D.d. Basu, commentary on the constitution of india, vol Ii, Wadhwa, Nagpur, 2007.
5. Doris layton mackenzie et al., different crimes, Different criminals: understanding, treating and Preventing criminal behavior, anderson, 2014.
6. Frederick m lawrence, punishing hate: bias crimes Under american law, harvard university press, 1999.
7. Girjesh shukla, exploring hate crimes in india, radha Publications, 2014.
8. Gopal krishna, communal violence in india, in s.i. Wilkinson (ed.), religious politics and communal Violence, Oxford University Press, 2005.
9. Granville Austin, The Indian Constitution Cornerstone Of A Nation, Oxford University Press, 2008.
10. John harrison watts, cliff roberson, law and society: an introduction, crc press, 2013.

11. K. I. Vibhute, p s a pillai's criminal law, lexis nexis, 2009.
12. James B. Jacobs and kimberly potter, hate crimes Criminal law and identity politics, oxford university Press, 1998.
13. Karabi Konch, Crime And Society, Notion Press, 2017.
14. Larry ray, violence & society, sage publications, 2018.
15. Michael Newton, crime and criminals, Chelsea house Publications, 2010.
16. Nathan Hall, Hate Crime, Routledge, 2013.
17. Neil chakraborti & jon garland, hate crime: impact, Causes and responses, sage publications, 2015.
18. P.B. Gajendragadkar, The Constitution Of India (Its philosophy and postulates), oxford university press, 1969.
19. Phyllis b. Gerstenfeld, hate crimes: causes, controls, And Controversies, Sage Publications, 2004.
20. Ratanlal & Dhirajlal, The Indian Penal Code, Lexisnexis, 2014.
21. Sanker sen, tryst with law enforcement and human Rights: four decades in indian police, aph publishing, 2002.
22. Willard gaylin, hatred: the psychological descent Into violence, public affairs, 2003.
23. William J Chambliss, Crime And Criminal Behavior, Sage Publications, 2011.

24. Thomas gardener and terry anderson, criminal law, Wadsworth publishing, 2006.

25. Udai raj udai, fundamental rights and their Enforcement, prentice hall india learning private Limited, 2011.

STATUTES

1. Crime and disorder act, 1998.

2. Criminal justice act 2003.

3. Indian Penal Code, 1860.

4. Public Order Act, 1986.

5. Sentencing And Punishment Of Offenders Act 2012.

6. The Protection Of Civil Rights Act, 1955.

7. The Representations Of People Act, 1951

8. The scheduled caste and scheduled tribe (prevention of atrocities) act, 1989.

INTERNATIONAL CONVENTIONS

1. Convention against elimination of racial discrimination, 1963.

2. international convention on the elimination of all forms of racial discrimination, 1969.

3. International covenant on civil and political rights, 1966, Article 2.

4. International covenant on civil and political rights, 1966.
5. International covenant on economic, social and Cultural rights, 1966.
6. Universal Declaration of Human Rights, 1948. Articles
 1. Abenaa Owusu-Bempah, Hate Crime and the Legal Process: Options for Law Reform, LSE Law Policy Briefing Series, 28, 2017.
 2. Courtney Klein, Guilty Act, Guilty Mind: establishing Actus Reus and Mens Rea in situations of conspiracy and accessory, 1-2, available at https://www.researchgate.net/publication/261026128_Guilty_Act_Guilty_Mind_establishing_Actus_Reus_and_Mens_Rea_in_situations_of_conspiracy_and_accessory
 3. Debajit Kumar Sarmah, Hate Crimes in India, 33 Delhi Law Review, 147 (2014).
 4. Elizabeth P. Cramer, Hate Crime Laws and Sexual Orientation, 26 J. Soc. & Soc. Welfare 5, 5-6 (1999).
 5. Kamban Naidoo, The Origins of Hate-Crime Laws, 22 Fundamina 53, 55 (2016).
 6. Laura Meli, Hate Crime and Punishment: Why Typical Punishment Does Not Fit The Crime, University of Illinois Law Review, 940, 2014.
 7. M. Mohsin Alam Bhat, The Case for Collecting Hate Crimes Data in India, Vol IV Issue 9, Law & Policy Brief (2018).

8. Maleiha Malik, “Racist Crime”: Racially Aggravated Offences in the Crime and Disorder Act 1998 Part II, 62(3) MLR, 409.

9. Matthew Trout, Note, Federalizing Hate: Constitutional and Practical Limitations to the Matthew Shepard and James Byrd, Jr. Hate Crimes

REPORTS

1. Crimes in india, 2015, statistics, national crime bureau Records, available at <http://ncrb.gov.in/> at 36.

2. Crown prosecution service, hate crime: public Statement on prosecuting racist and religious hate Crime, august 2017.

3. crown prosecution service, hate-crime-what-it-is-andhow-to-support-victims-and-witnesses, october 2016.

4. Indian statutory commission report, 1930.

5. Law commission of canada, what is a crime? Defining Criminal conduct in contemporary society, 9 ubc (2004).

6. Law commission of india report no. 267, 2015.