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# Hate Crimes: A Constitutional and Statutory Analysis of the Menace

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## ABSTRACT

*India consists of people with diverse beliefs, customs, religion, caste etc. Everyone in India has rights and liberty to live and grow, prosper notwithstanding from the identity they belong to. However, over the period differences in the different groups are becoming apparent. This leads to hatred because of developed prejudices and results into hate crimes.*

*This paper present the analysis of constitutional and other statutory provisions envisioned to form a socio-cultural environment based on the principle of unity in diversity. In addition, in order to see whether these norms governed our socio-cultural environment or not; this paper analyse the current conditions of hate crimes in India to identify the gap and to suggest corrective measures.*

## I. INTRODUCTION

*“No one is born hating another person because of the colour of his skin, or his background, or his religion. People must learn to hate, and if they can learn to hate, they can be taught to love, for love comes more naturally to the human heart than its opposite.”<sup>3</sup>*

– Nelson Mandela (1994)

India consists of people with diverse beliefs, customs, religion, caste etc. Everyone in India has rights and liberty to live and grow, prosper notwithstanding from the identity they belong to. Therefore, diverse religions, castes, creeds, races, etc. live together in India. However, over the period differences in the different groups are becoming apparent. This leads to hatred because of developed prejudices. India is a land where people follow the principle of ‘Vasudev kutumbakam’, but when these prejudices take over a sense of humanity, it results into hate crime. These crimes motivated by self -created differences and prejudices by the victim's race, colour, ethnicity, religion, or national origin is a hate crime<sup>4</sup>. When we look into the context of

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<sup>3</sup> Nelson Mandela, *Long Walk to Freedom* (Little, Brown and Company, South Africa, 1994).

<sup>4</sup> BLACK'S LAW DICTIONARY, 428 (9TH ED. 2009).

hate crimes committed in India, a few more reasons are added like profession, sexual orientation, freedom of speech, personal choices and beliefs.<sup>5</sup> Hate crime unlike other crimes is based on a prejudice or stereotype against a particular group or category. Hate crime consists of two elements, strict bias led motivation and crime.

Hate crime episodes might go from hate addresses, actual attack, provocation, harassing, affronts, obnoxious attack, and harm to property and so forth. These are largely criminal demonstrations that are spurred by inclination plans against a gathering of people. The human progress developed with various networks, areas, religions, convictions, solaces, race, sex, ideology and every one of the various layers that characterize that variety is the rule of nature to keep up with the equilibrium of the environmental elements. Everybody holds fast to his or her own belief systems and perspectives. It is the point at which the public chooses the normal conviction that is expressed to be right by the greater portion of the population; they look for savagery as an action to force that over minorities. Consequently, minorities feel denied, assaulted, and hated, so in reprisal they respond with animosity.

Hate crimes that can be committed are of two kinds one under the Indian Penal Code and second under the special and local laws. Crimes like murder, kidnapping etc. take place because of motivated bias against a particular person or group or category of people will come under the Indian Penal Code and crime like denying any opportunity and discriminating based on gender, caste, creed or religion covered under special and local laws. However, both of these kinds of hate crimes are punishable.

This paper present the analysis of constitutional and other statutory provisions envisioned to form a socio-cultural environment based on the principle of unity in diversity. In addition, in order to see whether these norms governed our socio-cultural environment or it has been overlooked and became the dormant letters with no relation with reality.

## II. CONSTITUTIONAL MANDATE

*“I like the religion that teaches liberty, equality and fraternity”*

**-Dr Babasaheb Ambedkar**

Constitution was made after a lot of discussion in the constituent assembly on each subject. At that time also, there were instances of hate crimes due to diversity in castes and religion in the

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<sup>5</sup> Editorial, “Honour killings: More than 300 cases in last three years”, *The Times of India*, SEPTEMBER 22, 2018, available at <https://timesofindia.indiatimes.com/india/honour-killings-more-than-300-cases-in-last-threeyears/articleshow/65908947.cms>. (Last visited on SEPTEMBER 12, 2021)

country. Major issue was of untouchability, which brought in the right to equality. Equality is the one thing which every citizen should get, irrelevant of his/her caste, creed, colour, race, gender, occupation or anything. Constitution contains many articles that directly and indirectly abstain inequality. Recently in last few years, the instance of hate crime has increased tremendously defeating the aim of constitution.

The fundamental values of a dignified normal life as specified into the heavenly text of the preamble to the Constitution of India can unquestionably be accomplished when the rights under Part III and Part IV are protected, ensured and promoted. It is, hence, pertinent to study and understand the rights whom the Constitution of India gives an unrivalled assurance of protection.

#### **(A) Article 14 Of The Constitution Of India**

This article involves the principal thought of equality, which is absolutely one of the most important features of a nation with democracy. It says, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”<sup>6</sup>. It contains two principles, "equality before the laws" and "equal protection of the laws". It builds up the reasonable position that each individual is equivalent and the law will treat everybody similarly. Article 14 is one of the most specific provision, which is violated if any hate crime is committed because hate crimes are committed out of a biased prejudice against a particular group or category of people.

#### **(B) Article 15 Of The Constitution Of India**

Article 15 is “Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”<sup>7</sup> Article 15 is not very different from article 14; it promotes the intention of Article 14 of the equality and prohibits it, based on race, colour, caste or gender. Hate crimes against LGBTQs, women, SC/STs, are the ones that violate article 15, as they are committed because of gender based, colour based and religion-based prejudices. In *National Legal Services Authority v. Union of India*<sup>8</sup>, the apex court said that gender identity and its dignity is the aim of Article 15. Later on, in *Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors*<sup>9</sup>, it was reaffirmed that “Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the

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<sup>6</sup> The Constitution of India, art. 14.

<sup>7</sup> *Id.*, art. 15.

<sup>8</sup> (2014) 5 SCC 438.

<sup>9</sup> (2017) 10 SCC 1.

Constitution.” In addition, when the court was striking down section 377, in *Navtej Singh Johar v. Union of India*<sup>10</sup>, in 2018, the importance of equality under article 15 was stressed upon.

### (C) Article 17 Of The Constitution Of India

Article 17 talks about Untouchability. It abolishes untouchability and says that the practice of untouchability is forbidden under law. In *Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors.*,<sup>11</sup> Supreme Court said, “Article 17 is the constitutional promise of equality and justice to those who have remained at the lowest rung of a traditional belief system is founded in graded inequality. Article 17 is enforceable against everyone - the State, groups, individuals, legal persons, entities and organized religion – and embodies an enforceable constitutional mandate.”

In *State of Karnataka v. Appa Balu Ingale & Others*<sup>12</sup>, the court held that “the provision significantly furthered the idea of upliftment of the marginalized class of people including the scheduled castes and tribes.”

### (D) Article 19 Of The Constitution Of India

Article 19 is known to be the heart of the Indian constitution. It says that everyone has a right to express himself/herself. Without any restriction or discrimination, everyone it may be a prisoner or the prime minister of the country, everyone has this right. Supreme Court in the case of *Jamuna Prasad v. Lachhi Ram*<sup>13</sup>, said that these rights are not given to people, these rights are inherent and natural in nature.

Article 19 includes the freedom of press as well, which brings on the *Romesh Thappar case*. In the case of *Romesh Thapar v State of Madras*<sup>14</sup>, the court said that freedom of expression is integral to any person. This was reaffirmed in the case of *Mahesh Bhatt and Anr. v. Union of India*<sup>15</sup>.

### (E) Article 21 Of The Constitution Of India

Article 21 is right to life and personal liberty. It says, “No person shall be deprived of his life or personal liberty except according to a procedure established by law.”<sup>16</sup> Article 21, has been interpreted by the Supreme Court many times. The Supreme Court has given every possible

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<sup>10</sup> (2018) 10 SCC 1.

<sup>11</sup> (2019) 11 SCC 1.

<sup>12</sup> 1995 Supp (4) SCC 469.

<sup>13</sup> (1955) 1 SCR 608.

<sup>14</sup> 1950 SCR 594.

<sup>15</sup> 2008 SCC OnLine Del 159.

<sup>16</sup> *Supra* note 6, art. 21.

explanation and broadened its purview. In the landmark judgement of **Maneka Gandhi v. Union of India**<sup>17</sup>, Supreme Court said that right to life includes living with dignity. Same was reaffirmed in the case of **Olga Tellies v. Bombay Municipal Corporation**,<sup>18</sup> Supreme court said that right to life doesn't only mean just bare survival, it includes right to live with dignity and various other things.

In Justice **K.S. Puttaswamy (Retd) ... vs Union of India and Ors**<sup>19</sup>, Supreme Court said that the right to privacy is a fundamental right. The Supreme Court in many cases has interpreted Article 21 and widened its scope. Hate crimes violate Article 21, in every aspect. People are withheld from exercising their rights fully just because of prejudices. Crimes like mob lynching, take away the basic of right to life and personal liberty and these are not even properly recognised as crimes.

Juridical analysis of these articles raised a very fundamental question why this constitutional wisdom is not possible to experience by India even after reiteration of these mandates number of times by the Indian Judiciary with border and liberal interpretation. In addition, why there is no deterrent consequences against the mastermind of these crimes. Is it a failure of administrative machinery of India?

### III. LEGISLATIVE MANDATE ON HATE CRIMES

Law has always been looked as 'harbinger of social change'. Ehrlich has written thus:

*"At the present as well as at any other time, the centre of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself. This sentence, perhaps, contains the substance of every attempt to state the fundamental principles of the sociology of law."*<sup>20</sup>

### IV. HATE CRIMES IN INDIAN PENAL CODE, 1860

In Indian penal code, offences like unlawful assembly<sup>21</sup>, rioting<sup>22</sup>, promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintains of harmony<sup>23</sup>, Imputations, assertions prejudicial to national-integration<sup>24</sup> indirectly touches upon the area of hate crime.

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<sup>17</sup> (1978) 2 SCR. 621.

<sup>18</sup> (1985) 3 SCC 545.

<sup>19</sup> (2017) 10 SCC 1.

<sup>20</sup> V.D. Mahajan, *Jurisprudence and Legal Theory* 524 (Eastern book Company, Lucknow, 5<sup>th</sup>).

<sup>21</sup> Indian Penal code, 1860 (Act 45 of 1860), s. 141.

<sup>22</sup> *Id.*, s. 146.

<sup>23</sup> *Id.*, s. 153A.

<sup>24</sup> *Id.*, s. 153B.

Hate crime is yet to get separate recognition in Indian penal laws, despite steep surge in such incidents. An initiative was taken by MP Hussain Dalwai when in 2017, he presented a private member's bill titled 'Indian Penal Code (Amendment) Bill, 2017' to further amend and criminalize offences committed out of bias and prejudice.<sup>25</sup> In other words, the amendment would have given separate existence to 'hate crimes' in Indian penal code. The bill lapsed with dissolution of house.

## V. HATE CRIMES IN SPECIAL LAWS

Even in special laws, hate crimes are indirectly incorporated. Section 123 of Representations of Peoples Act, 1951 discusses about the corrupt practices in the elections, which may cause hatred or enmity between different classes of the citizens of India on grounds of religion, race, caste, community, or language.<sup>26</sup> Section 3 of the Scheduled Castes and the Scheduled tribes (Prevention of Atrocities) Act, 1989 provides kinds of atrocities and makes it punishable.<sup>27</sup> Section 5<sup>28</sup> and Section 7<sup>29</sup> further provide for enhanced punishment.

## VI. INTERNATIONAL VIEW ON HATE CRIMES

At international level, world community had identified these crimes since long and therefore, practicing hate crime has been discouraged for the sake of humanity and development in true sense. In many international instruments, hate crimes have been specifically recognised, to which India is also a signatory. This instrument includes Universal Declaration of Human Right, 1948, International Covenant on Civil and Political Rights, 1966, International Convention on the Elimination of All Forms of Racial Discrimination, 1969.

### (A) Universal Declaration of Human Rights, 1948

The General Assembly of the United Nations has adopted Universal Declaration of Human Rights on 10 December 1948. Motivated by the experiences of the preceding world wars, the Universal Declaration was such an event in the history where countries agreed on a comprehensive statement of inalienable human rights. The Universal Declaration begins by recognising that 'the inherent dignity of all members of the human family is the foundation

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<sup>25</sup>Rosamma Thomas, "MP Husain Dalwai introduces Bill to amend IPC to prevent hate crimes", *The Times of India*, AUGUST 5, 2017 available at <https://timesofindia.indiatimes.com/india/mp-husain-dalwai-introduces-bill-to-amend-ipc-to-prevent-hate-crimes/articleshow/59934472.cms> (last visited on SEPTEMBER 8, 2021)

<sup>26</sup> Representations of people Act, 1951 (Act 43 of 1951), s. 123.

<sup>27</sup> The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989), s. 3.

<sup>28</sup> *Id.*, s. 5.

<sup>29</sup> *Id.*, s. 7.

of freedom, justice and peace in the world’.

The Universal Declaration is not a treaty, so it does not directly create legal obligations for countries. However, it is an expression of the fundamental values, which are shared by all members of the international community. In addition, it has had a profound influence on the development of international human rights law. Some argue that because countries have consistently invoked the Declaration for more than sixty years, it has become binding as a part of customary international law.<sup>30</sup>

Pertinent to mention that, though, the declaration does not explicitly mentions about hate crime, but it provides for equality before the law without any discrimination. Article 1<sup>31</sup> of the declaration succinctly lays down the motive with which this declaration was agreed and adopted. Article 3 prohibits discrimination of any form based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>32</sup> Article 5 of this declaration propounded that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>33</sup>

### **(B) International Covenant On Civil And Political Rights, 1966**

The United Nations International Covenant on Civil and Political Rights (ICCPR) attempts to ensure the protection of civil and political rights. It was adopted by the United Nations’ General Assembly on December 19, 1966, and it came into force on March 23, 1976. The ICCPR recognizes the inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights. Countries that have ratified the Covenant are obligated “to protect and preserve basic human rights... [and] “compelled to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.”<sup>34</sup> There are currently 74 signatories and 173 parties to ICCPR. India acceded to it on 10 April 1979.

This covenant enunciates the enjoyment of civil and political rights by men and women

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<sup>30</sup> “What is the Universal Declaration of Human Rights?” *Australian human rights commission*, available at <https://humanrights.gov.au/our-work/what-universal-declaration-human-rights> (last visited on SEPTEMBER 12, 2021).

<sup>31</sup> All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

<sup>32</sup> *Id.*, art. 3.

<sup>33</sup> *Id.*, art. 5.

<sup>34</sup> “International covenant on civil and political rights”, *Canadian civil liberties association*, OCTOBER 27, 2015 available at <https://ccla.org/summary-international-covenant-on-civil-and-political-rights-iccpr/> (last visited on SEPTEMBER 12, 2021)

equally.<sup>35</sup> It envisages inherent right to life by all<sup>36</sup>, protection against torture or to cruel, inhuman or degrading treatment or punishment.<sup>37</sup> This covenant lays emphasis on right to freedom of thought, conscience and religion of all<sup>38</sup>. It advocates that national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by enforcement of laws<sup>39</sup>. Although ICCPR may not explicitly use the term ‘hate crime’, however is cognisant of ‘bias and motivation-based crimes’ and casts the duty on the states to prohibit it by law.

## VII. CURRENT SCENARIO ON HATE CRIMES IN INDIA

Currently, India witnesses hate crimes mostly on accounts of religion, sexual orientation, political affiliation. The foremost limitation to discuss current scenario of hate crimes in India is that it does not officially maintain the record of hate crimes committed, similar to what is maintained by FBI’s Uniform Crime Reporting Program in USA. However, National Crimes Records Bureau have taken the initiative in 2017 to prepare separate statistics of hate crime and even collected the data for the same. However, the data was not included in the final report, as it was found to be ‘unreliable’<sup>40</sup>.

### (A) Hate Crimes on Religious And Caste Identity

The religious diversity of India is world famed leading India to be known for its ‘Unity in diversity’. However, at certain issues religious groups have been witnessed in direct clashes. Mainly such issues are cow slaughtering, consumption of beef and inter faith marriages. Hate crime committed targeting religion has seen the steep rise in the recent years. Such incidents are reported from every corner of the nation.

In Jammu & Kashmir, a 24-year-old returning home with a buffalo in Thanamandi area of Jammu and Kashmir’s Rajouri was beaten by a group of people, leading to his death. Protesters claimed and blamed ‘cow vigilantes’ for mob lynching<sup>41</sup>. In Himachal Pradesh, villagers lynched a man for smuggling cows<sup>42</sup>. In a shocking incident in Punjab, a 37-year-old Dalit

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<sup>35</sup> International Covenant on Civil and Political Rights, 1966, art. 3.

<sup>36</sup> *Id.*, art. 6.

<sup>37</sup> *Id.*, art. 7.

<sup>38</sup> *Id.*, art. 18.

<sup>39</sup> *Id.*, art. 20(2).

<sup>40</sup> Aneesha Bedi, “Why NCRB collected data on lynching, cow slaughter & hate crime, but left it out of report”, *The Print*, OCTOBER 23, 2019 available at <https://theprint.in/india/why-ncrb-collected-data-on-lynching-cow-slaughter-hate-crime-but-left-it-out-of-report/309823/>. (Last visited on SEPTEMBER 8, 2021).

<sup>41</sup> Express News Service, “J&K man ‘returning home with buffalo’ lynched, locals blame cow vigilantes”, *The Indian Express*, JUNE 23, 2021 available at <https://indianexpress.com/article/india/jk-man-returning-home-with-buffalo-lynched-locals-blame-cow-vigilantes-7371290/>. (Last visited on SEPTEMBER 8, 2021)

<sup>42</sup> Editorial, “Mob kills man in Himachal for smuggling cattle”, *India Today*, OCTOBER 17, 2015 available at <https://www.indiatoday.in/mail-today/story/mob-kills-man-in-himachal-for-smuggling-cattle-268534-2015-10->

construction worker 'Jagmail Singh' from Punjab's Sangrur district died in a hospital in Chandigarh, nine days after being beaten up and forced to drink urine by upper-caste men<sup>43</sup>. In Uttarakhand, a 29-year-old man was lynched for entering a temple in drunken state.<sup>44</sup> In 2017, Pehlu Khan died in hospital, two days after a mob attacked his cattle truck on suspicion of cow smuggling in Alwar district of Rajasthan<sup>45</sup>. In Delhi, Mohammed Akhlaq, was dragged out of his house near New Delhi over rumors that his family killed and ate a cow.<sup>46</sup> In Uttar Pradesh, Mohammad akhlaq was lynched by his fellow villagers because of cow slaughtering. This led to massive deployment of paramilitary forces to control the tension.<sup>47</sup> In Bihar, a youth was lynched to death for alleged cattle theft.<sup>48</sup>

In Ghaziabad of Uttar Pradesh, a mob stopped inter-faith marriage and beat up a Muslim man in front of marriage registrar office.<sup>49</sup> In another incident of Delhi, security personnel had to be deployed as a mob attacked a house over interfaith marriage<sup>50</sup>. In 2021, a 17-year-old Hindu boy Gopal from Schedule Caste community, Kalyanpuri, Delhi, was brutally murdered by Muslim mob over inter-faith marriage.<sup>51</sup>

## **(B) Hate Crimes against Sexual Orientation**

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17. (Last visited on SEPTEMBER 8, 2021).

<sup>43</sup> Avtar Singh, "9 days after torture, Dalit labourer from Punjab's Sangrur dies in Chandigarh hospital", *Hindustan Times*, NOVEMBER 16, 2019 available at <https://www.hindustantimes.com/chandigarh/9-days-after-torture-dalit-labourer-from-punjab-s-sangrur-dies-in-chandigarh-hospital/story-oO1xfTck8hO4PotMvJ6sJI.html>. (Last visited on SEPTEMBER 8, 2021).

<sup>44</sup> Express News Service, "'Drunk' man enters temple in Uttarakhand, gets lynched", *The New Indian Express*, APRIL 8, 2021 available at <https://www.newindianexpress.com/nation/2021/apr/08/drunken-man-enters-temple-in-uttarakhand-gets-lynched-2287562.html>. (Last visited on SEPTEMBER 8, 2021).

<sup>45</sup> Express Web Desk, "What is the Pehlu Khan lynching case?", *The Indian Express*, AUGUST 14, 2019 available at <https://indianexpress.com/article/india/what-is-pehlu-khan-lynching-case-alwar-mob-attack-cow-vigilantes-5905473/>. (Last visited on SEPTEMBER 8, 2021).

<sup>46</sup> Saif Khalid, "Indian mob kills man over beef", *Al Jazeera*, OCTOBER 1, 2015 available at <https://www.aljazeera.com/news/2015/10/1/indian-mob-kills-man-over-beef-eating-rumour>. (Last visited on SEPTEMBER 8, 2021).

<sup>47</sup> Internet Desk, "The Dadri lynching: how events unfolded", *The Hindu*, OCTOBER 3, 2015 available at <https://www.thehindu.com/specials/in-depth/the-dadri-lynching-how-events-unfolded/article7719414.ece>. (Last visited on SEPTEMBER 8, 2021).

<sup>48</sup> Dev Raj, "Dalit youth lynched in Bihar for alleged cattle theft", *The Telegraph Online*, AUGUST 31, 2021 available at <https://www.telegraphindia.com/india/dalit-youth-lynched-in-bihar-for-alleged-cattle-theft/cid/1828662>. (Last visited on SEPTEMBER 8, 2021).

<sup>49</sup> India Today Web Desk, "Mob stops inter-faith marriage in Ghaziabad, man beaten up", *India Today*, JULY 24, 2018 available at <https://www.indiatoday.in/india/story/man-beaten-up-at-marriage-registrar-office-for-trying-to-marry-hindu-girl-1294480-2018-07-24>. (Last visited on SEPTEMBER 8, 2021).

<sup>50</sup> Editorial, "Mob attacks man's house over interfaith marriage", *The Hindu*, MARCH 22, 2021 available at <https://www.thehindu.com/news/cities/Delhi/mob-attacks-mans-house-over-interfaith-marriage/article34126795.ece>. (Last visited on SEPTEMBER 8, 2021).

<sup>51</sup> Webdesk, "Another Hindu Man, Gopal, Belonging to the Scheduled Caste lynched to death by Muslim Mob in Kalyanpuri, Delhi", *Organiser*, MAY 28, 2021 available at <https://www.organiser.org/another-hindu-man,-gopal,-belonging-to-the-scheduled-caste-lynched-to-death-by-muslim-mob-in-kalyanpuri,-delhi-2083.html>. (Last visited on SEPTEMBER 8, 2021).

In *Navtej Singh Johar case*<sup>52</sup>, Supreme court observed that sexual orientation is integral to the identity of the members of the LGBT communities. It is intrinsic to their dignity, inseparable from their autonomy and at the heart of their privacy. The presence of the provision on the statute book has reinforced stereotypes about sexual orientation. It has led the authority of the state to the suppression of identities. This landmark judgement emphasized on the inclusivity of Indian culture, struck down the popular notion against homosexuality as being abnormality or a disease, and reversed it to something unique.

However, the pain and suffering of the LGBTQ community did not end there. The emergence of a nightmare referred to as 'corrective rape' is yet again becoming a snag for LGBTQ community. Corrective rape is a hate crime based on unscientific and illogical argument that 'homosexuality can be cured'. Even people practicing it shamelessly hold corrective rape as a measure of cure. In corrective rape, rape is used as a tool to correct the sexual orientation of LGBT people with the objective of getting them to toe the societal norms. The term was coined in South Africa where such crimes are rampant. Often the family members of the victim facilitate it in misconceptions. According to statistics of the Crisis Intervention Team of LGBT, there have been 15 instances of 'corrective rapes' that have been committed in the group within five years, from 2010 to 2015, in Telangana.<sup>53</sup> Individually, such instances are hard to find to be reported, as the perpetrators are generally family members.

### **(C) Hate Crimes and Political Affiliation**

India is the biggest democracy of the world and witnesses' election almost every year. Thus, it can be safely said that election season is never off in India. These elections are marked by speeches from leaders presenting their vision and at the same time unfortunately, sometimes the elections have led to riots, killings of people who are or subscribe to the ideology of opposite political party. These killings are not committed out of a personal feud; the only reason for such killings is that they do not follow the ideology of perpetrators of such crime.

Recently, after the conclusion of elections in West Bengal, violence was witnessed to such an extent that Chief Minister Mamata Banerjee had to appeal for peace, announced compensation for those who died and Union Home ministry sent a team to take stock of the situation.<sup>54</sup> The

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<sup>52</sup> (2018) 10 SCC 1.

<sup>53</sup> Rupam Jain, "Parents use 'corrective rape' to 'straight'en gays, *The Times of India*, JUNE 1, 2015 available at <https://timesofindia.indiatimes.com/life-style/relationships/parenting/Parents-use-corrective-rape-to-straighten-gays/articleshow/47489949.cms>. (Last visited on SEPTEMBER 8, 2021).

<sup>54</sup> Shiv Sahay Singh, "A week after election results, violence continues in Bengal", *The Hindu*, MAY 8, 2021 available at <https://www.thehindu.com/news/national/other-states/west-bengal-violence-barrage-of-fake-videos-posts-surface-on-social-media/article34513532.ece>. (Last visited on SEPTEMBER 8, 2021).

National Human Rights Commission (NHRC) in its report submitted that at least 1,934 police complaints were lodged between May 2 and June 20 about Hate crimes. These included 29 murder charges, 12 complaints relating to rape and sexual assault and 940 complaints of loot and arson. The report said that out of the 9,304 people named as accused, less than 3% are currently in jail<sup>55</sup>. Because of lack of awareness in voters, political parties are able to take advantage of them by influencing them.

It is not the first time that poll related violence has erupted. In 2014 Lok Sabha elections, 16 political workers were killed across India in poll-related violence; seven of them were in West Bengal. Between 1999 and 2016, violence in West Bengal saw 365 politically motivated murders<sup>56</sup>. Such incidents are not restricted to west Bengal. In Uttar Pradesh after the conclusion of panchayat elections, six people, including women, were killed in post-poll violence in Azamgarh, Gorakhpur, Jaunpur and Deoria districts in the state.<sup>57</sup> Similarly, in Tamil Nadu poll related violence erupted and Mohammed Ashraf Kalathil, a presiding officer in Payyanur constituency in Kerala's Kannur, was hospitalized after ruling Communist Party of India (Marxist), or CPI (M), activists allegedly attacked him for preventing a man from voting without an identity document. The voting was stopped for half an hour and another officer was appointed to replace Kalathil.<sup>58</sup>

## VIII. CONCLUSION AND SUGGESTIONS

Hate crime differentiates from other crimes only because of the intention, prejudiced thoughts of a person or group of people lead to a hate crime. Prejudiced thoughts and intention are something, which are intrinsic and are difficult to figure out. There are crimes, which are specified in the legislations, but hate crimes are not. There are no specific grounds, elements, or characteristics of hate crimes for punishing the offenders.

UK and USA have specific provisions on hate crimes to deal with it. Even South Africa has

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<sup>55</sup> HT Correspondent, "NHRC calls for CBI probe into Bengal poll violence", *Hindustan Times*, JULY 16, 2021 available at <https://www.hindustantimes.com/india-news/nhrcreport-slams-bengal-govt-over-post-poll-violence-101626349447741.html>. (Last visited on SEPTEMBER 8, 2021).

<sup>56</sup> Mukesh Rawat, "How West Bengal has been fertile land for violence during elections", *India Today*, MAY 16, 2019 available at <https://www.indiatoday.in/elections/lok-sabha-2019/story/west-bengal-election-political-violence-history-trinamool-congress-bjp-left-mamata-banerjee-amit-shah-1526598-2019-05-16>. (Last visited on SEPTEMBER 8, 2021).

<sup>57</sup> Sanjay Pandey, "Post-poll violence in Uttar Pradesh claims six lives, including women", *Deccan Herald*, MAY 07, 2021 <https://www.deccanherald.com/national/north-and-central/post-poll-violence-in-uttar-pradesh-claims-six-lives-including-women-983458.html>. (Last visited on SEPTEMBER 8, 2021).

<sup>58</sup> Ramesh Babu and Divya Chandrababu, "Polling in Tamil Nadu proceeds smoothly, sporadic violence in Kerala", *Hindustan Times*, APRIL 06, 2021 available at <https://www.hindustantimes.com/elections/tamil-nadu-assembly-election/polling-in-tamil-nadu-proceeds-smoothly-sporadic-violence-in-kerala-101617709099492.html>. (Last visited on SEPTEMBER 8, 2021).

begun to legislate on hate crimes<sup>59</sup>. In United Kingdom, Crime and Disorder Act, 1998 says that for the common assault, maximum assault maximum sentence is 6 months but when it is proven that if hate-motivated then it increases the maximum sentence to 2 years. In USA, at the federal level, the Hate Crimes Sentencing Enhancement Act of 1994-increased sentencing by about one-third when, a crime is proven to have been hate motivated and occurred on federal property<sup>60</sup>. India should also take steps to create specific provisions for hate crimes.

Judiciary plays an important role in making and interpreting laws. Supreme Court has never taken a step back in upholding rights of people and making it in tune with liberal ideologies. We have seen it in the Maneka Gandhi Case<sup>61</sup>, Vishakha case<sup>62</sup> and R.D. Upadhyay case<sup>63</sup> where Supreme Court filled the legislative gap for the sake of humanity and dignity of individuals. The same rigor is required to address the hate crimes and to eliminate it from Indian society.

These kinds of crime in 21<sup>st</sup> century is evident of the fact that economically India is leading the developing countries of the world however still India is struggling in breaking the chain of such stigma in the form of hate crimes. It reflects that people are not liberal enough to accept and respect the individuality. This kind of crimes are not easy to eliminate without the collective and conscious effort of all stakeholders, which together make India. The rate of occurrence of hate crime is becoming alarming with the passage of time. It is important to implement the law in this area to deal with the hate crimes before it turns into something inoperable.

*“Darkness cannot drive darkness; Light can do that. Hate cannot drive out hate; Love can do that”*<sup>64</sup>

**-Martin Luther King, Jr.**

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<sup>59</sup> Kim Harrisberg, “Fear breeds bravery as LGBT+ South Africans resist 'war on queerness'”, *Thomson Reuters Foundation News*, MAY 13, 2021 available at <https://news.trust.org/item/20210513035229-ox0bj/>. (Last visited on SEPTEMBER 12, 2021)

<sup>60</sup> E.M. Beck, *International Encyclopedia of the social and behavioural sciences*, 6479-6482 (Pergamon Press 2001).

<sup>61</sup> *Maneka Gandhi vs. Union of India*, AIR 1978 SC 597.

<sup>62</sup> *Vishaka vs. State of Rajasthan*, (1997) 6 SCC 241.

<sup>63</sup> *R.D. Upadhyay vs State of Andhra Pradesh*, (2010) 3 SCC (Cri) 704.

<sup>64</sup> Martin Luther King, Jr., *Strength to love* (Harper & Row, United states of America, 1963).