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# Legal Regulation of Hate Crimes in India: A Look at the Current Regime and its Shortcomings

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## ABSTRACT

*There is no legally consensual definition for hate crime, however the most popular definition widely accepted is that 'A hate crime, also known as a bias crime, is a criminal offense committed against a person, property, or society which is motivated, in whole or in part, by the offender's bias against a race, religion, disability, sexual orientation, or ethnicity/national origin.' It is mostly violent in nature while other discreet manners also exist. In this form of crime the individual is seen as a representative of the community he is perceived to be or is a part of and is targeted for this affiliation. This is prevalent in many of the countries round the globe in one form or the other. India too is no exception. In India it is more observable in its religious and caste based form although other forms also very much form a part of the hate crimes committed. Currently there are no legislation directly tackling hate crimes wholly but there is certain legislation to deal with them like IPC Sec.153, 153-A, 295-A, 298 which deal with promoting enmity between two groups and hate speech respectively and does not have a separate legislation with respect to mob lynching.*

**Keywords:** Hate Crimes, Violence against Women, Lynching.

## I. INTRODUCTION

Hate crimes have been a plague not just in India but all over the world. It exists in many forms, many identified and many still not designated as a hate crime. From racist crimes in many parts of the world to misogynistic crimes all over the world, it is widely prevalent and affects many people identifying themselves to a particular sect. A person is a victim of a hate crime because he belongs to a particular group of people or is related to such a person. What qualifies as a hate crime does not depend on the crime per se but depends on the motive with which it was carried out. It is due to this precise nature of hate crime it is difficult to identify it in the first place and is also why there is no universally accepted definition of a hate crime. It is difficult

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to ascertain whether a crime is a hate crime not only due to technical limitations but also due to practical difficulty in accurately judging the motive of the accused. A person can commit the crime of murder out of a personal motive or a political one, but it is also possible that it was committed out of a racial or religious motive. In cases of hate crimes, it is important that there is sufficient proof to show that hatred towards a particular group of people is what motivated the accused. Hate crimes are mostly violent in nature while other discreet manners also exist. In India, it is more observable in its religious and caste-based form although other forms based on a person's sexual orientation, personal choices and beliefs also very much form a part of the hate crimes committed. The basic tenet is that the people against whom these crimes are committed are seen as a representative of a particular group of people and are targeted for their association with such groups or ideologies. This kind of targeted attacks can result in three outcomes:

- A feeling of insecurity for the members of the targeted community.
- An individual feels his self-identities and values are attacked.
- A negative perception is developed by the targeted community on the perpetrator's community.<sup>2</sup>

The legislation in India does not recognise hate crime as a separate class of crimes but deal with them through already provisions mentioned under the Indian Penal Code, 1860. But it is obvious that despite the existence of such provisions Indian judiciary and law enforcement system has not been successful in tackling the issue of hate crime in any form. Although no official data from NCRB has been released pertaining to this, it is beyond doubt that hate crimes in its various forms have been on the rise in the recent past at an alarming rate. In a report put out by Amnesty International there have been around 902 such incidents most of them directed against Dalits by a caste fuelled motive from 2015 to 2019, rising from 51 incidents to 181 incidents in 2019.<sup>3</sup>

Currently, there are a few sections in IPC that can be directly linked to some form of hate crimes. Sections 153A, 295, 295A and 298 deal with some aspects of the overall problem but they are nowhere near in being sufficient for the current scenario.

#### **(A) Research Questions**

- Do the current laws recognise every form of hate crime committed in India?"

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<sup>2</sup> Deepali Ann Fernandes, *Protection of Religious Communities by Blasphemy and Religious Hatred Laws: A Comparison of English and Indian Laws*, 45 *Journal of Church and State* 669, 671 (2003).

<sup>3</sup> HALT THE HATE, <http://haltthehate.amnesty.org.in/> (Accessed on Oct. 19<sup>th</sup>, 2020)

- Are the current laws enacted in India successful in tackling the issue of hate crime efficiently?
- What changes are required to make the law more efficient with respect to hate crimes?

### **(B) Research Objectives**

- To research on whether the current law recognises all the groups subjected to hate crime and the forms in which they are committed.
- To analyse the current legislations to identify the gaps in enacting better laws for regulation of hate crimes.

### **(C) Hypothesis**

The current laws require a revision in recognising the forms of hate crimes committed and needs to look for changes that can make it much better in holding the person or people causing it to be accountable.

### **(D) Methodology**

For this project, secondary methodology will be employed which involves collecting information from the writings related to this topic of various other distinguished authors. This methodology allows us to collect, analyse and compare the available existing literature. Primary data such as legislations and case-laws are employed along with secondary data such as scholarly articles and reports are considered in completion of this project.

### **(E) Literature Review**

1. Gender 'Hostility', Rape, and the Hate Crime Paradigm by Mark Austin Walters and Jessica Tumat: This article explores whether, under the existing context of hate crime regulations in England and Wales, crimes motivated by or exhibiting gender 'hostility' should be included. To discuss the similarities (both conceptual and evidential) between gender-motivated violence and other 'archetypal' types of hate crime, the article uses the example of rape.
2. Hate Speech Laws in India by Chinmayi Arun, Arpita Biswas and Parul Sharma: This report is an effort to map hate speech laws in India, and attempts to offer a clear overview to anyone interested in the regulation of hate speech in India. It discusses the spectrum of laws, including the specific legal standards developed by the courts, applicable to hate speech in India. It also analyses the relationship between these laws and the constitutional right to freedom of speech and expression.

3. **GENDER-BIAS HATE CRIMES: A Review** by BEVERLY A. McPHAIL: Currently, hate crimes and hate crime policy are receiving increased public and scholarly attention. Much of the attention has been focused on crimes committed out of bias toward a victim's membership in a group based on race, religion, sexual orientation, or ethnicity/national origin. However, more recently, gender has been included as a status category, often causing heated debate. This article looks at the history of the initial exclusion, then inclusion, of gender in the hate crime domain. The reasons for the uneasy fit of gender as a status category are recounted, as well as arguments both for and against the inclusion of gender within the hate crime model.
4. **HATE CRIME AND PUNISHMENT: WHY TYPICAL PUNISHMENT DOES NOT FIT THE CRIME** by LAURA MELI: This article explores the arguments for and against hate crime laws, ultimately determining that changes are necessary to balance the harm to victims and the burden on offenders caused by enhanced penalties. Hate crime laws provide for enhanced penalties when the perpetrator is motivated by hatred of the victim's race, gender, sexual orientation, etc.
5. **Hate Speech & Mob Lynching: A Study Of Its Relations, Impacts & Regulating Laws** by Radhey Shyam Jha, Vipin Jain and Chanchal Chawla: Words are honestly said to be more dangerous than direct damage. In a democratic country like India, where individuals can not only criticise government policy in the name of freedom of speech & expression, but can also make personal attacks on individuals regardless of their constitutional positions. It's becoming more risky. While there are laws to limit this, there is zero enforcement in fact. A significant number of people come together to condemn it, even though it is attempted.
6. **LEGISLATIVE MECHANISM AND JUDICIAL RESPONSE TO MOB LYNCHING IN INDIA: DIAGNOSIS AND PROGNOSIS** by Siddharth Jasrotia: This article asserts that there is a lack of a central legislation specific to mob lynching in India. Politicization of this hate is disrupting the secular and democratic structure of India. Supreme Court has issued notice on 26 July, 2019 to Central Government, State Governments and National Human Rights Commission.
7. **HATE CRIME: POLITICO-LEGAL DIMENSION OF HATE SPEECH** by Girjesh Shukla: This article starts off with stating how hate speech comes under the ambit of hate crimes and defines what comes under hate speech. It also confronts the conflict between freedom of speech and mechanisms to stop hate speech. The various provisions

under IPC and other legislations are also mentioned here. The aim of the author is to provide an overview of the current legislative trends in regulating hate speech.

## II. FORMS OF HATE CRIMES IN INDIA AND ITS LEGAL REGULATION

Defining hate crimes has been tricky for a while now. There is not a single definition that is accepted by all but a few of them are generally considered. Hate crimes include offences which are motivated, or partly motivated, by prejudice, bigotry, or animus based on the victim's group-based identity traits.<sup>4</sup> In the USA most commonly used definition is that of the one the FBI uses, "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 identity."<sup>5</sup> From these definitions, it is obvious that the perpetrator of a hate crime is motivated out of a hatred which arises out of certain prejudices and personal biases. Here the victim is seen not as an individual of his own but as a representative of a particular group of people with a certain shared identity. This is precisely one of the reasons that render hate crimes not easily identifiable as it is not hatred directed at the victim but directed at an identity of the victim. A pertinent question arising here is whether all illegal acts committed out of hatred are hate crimes. If the definition of prejudice is wide enough we can classify every crime where the victim and the perpetrator belong to different groups as everyone will have some prejudiced opinion.<sup>6</sup> Not all forms of crime can be classified as a hate crime. Only those acts having hatred as their prime component and in which the hatred takes a dynamic racial, political, ideological, and cultural dimension.<sup>7</sup>

Another pertinent question that needs to be answered is the difference between other crimes and hate crimes. Just like in traditional crimes such as murder, theft, assault and such, hate crimes also require both the mental and physical element to be present for it to be a crime. Intent, synonymous with *mens rea*, is the mental state required to commit the crime and the physical act, *Actus reus*, is the act through which the crime was committed such as firing a bullet. Motive does not play a big part when it comes to criminal proceedings. It augments the guilt or innocence of an accused.<sup>8</sup> But when it comes to the matter of hate crimes, in many

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<sup>4</sup> M. Walters, *A General Theories of Hate Crime: Strain, Doing Difference and Self Control*, 19 *Critical Criminology* 313, (2011).

<sup>5</sup> Hate Crimes, WHAT WE INVESTIGATE, <https://www.fbi.gov/investigate/civil-rights/hate-crimes> (Accessed on Oct. 25<sup>th</sup>, 2020).

<sup>6</sup> James B. Jacobs & Kimberly A. Potter, *Hate Crimes: A Critical Perspective*, Crime and Justice, 1997, at 1, 4.

<sup>7</sup> Laura Meli, *HATE CRIME AND PUNISHMENT: WHY TYPICAL PUNISHMENT DOES NOT FIT THE CRIME*, 3 *UNIVERSITY OF ILLINOIS LAW REVIEW* 921, 941 (2014).

<sup>8</sup> CARISSA BYRNE HESSICK, *MOTIVE'S ROLE IN CRIMINAL PUNISHMENT*, 80 *SOUTHERN CALIFORNIA LAW REVIEW* 89, 90 (2006).

countries like the United States, the prosecutor is expected to prove that the accused was motivated by hatred to commit a hate crime.<sup>9</sup> The matter of causality is also obscured as there is no clear rule to follow as to whether the crime must be wholly motivated by a prejudiced hatred or motivated in parts.<sup>10</sup> So a hate crime can also be a traditional crime but committed with a motive fuelled by certain hatred. The reason this is important to consider is because of the sentencing for the crime. A hate crime may attract a heavier punishment than the parallel traditional crime because of the presence of a prejudiced hatred. The presence of motive, therefore, is an imperative need for prosecuting but its impact on sentencing varies.

In a country like India, which is a melting pot of various ideologies and conviction, hate crimes pose a very difficult challenge to the harmony and well-being of every individual. Although from a historical standpoint hate crimes are not a relatively new concept in India there are new forms of it emerging that was previously not common. In the medieval period violence between Hindu and Muslims were almost non-existent when compared to the clashes that occurred between the castes or sub-groups present in them.<sup>11</sup> But religious clashes have become more intense and frequent since the mid-twentieth century. From the infamous riots of Bengal due to Direct Action Day in 1946 which rendered thousands of both Hindus and Muslims dead to the 1984 anti-Sikh riots caused due to the assassination of Indira Gandhi and the 2002 Godhra riots in Gujarat, the tension between various religious groups have been increased, especially that of between Hindu and Muslims. But the fact remains that hate crimes motivated by religion fall short of that committed by caste bias. Since there are no official statistics available from the National Crime Record Bureau (NCRB) regarding hate crime occurrences in India the closest number that we can consider comes from the 'Halt the Hate' website, a setup of Amnesty International India.<sup>12</sup> Other secondary data such as from newspaper reports and articles can also be used for arriving at an estimated figure for the number of hate crimes occurring in India. However, there are certain limitations posed by considering the numbers provided by such sources as they are not verified. Hate the Halt website claims that it tracks alleged cases of hate crimes, so these numbers are subjected to change.

According to the report of Amnesty International, there have been:

- 902 total incidents of alleged hate crimes documented between September 2015 and June 2019.

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<sup>9</sup> James Morsch, The Problem of Motive in Hate Crimes: The Argument against Presumptions of Racial Motivation, 82 J. Crim. L. & Criminology 659 (1991-1992).

<sup>10</sup> Jacobs, *supra* note 6.

<sup>11</sup> Debajit Kumar Sarmah, Hate Crimes in India, 33 Delhi Law Review, 147 (2014).

<sup>12</sup> *Supra* note 3.

- 619 alleged hate crimes committed against Dalits.
- 621 alleged hate crimes fuelled by caste.

Since September 2015 to June 2019, the website has recorded 619 alleged hate crimes against Dalits, 196 against Muslims, 31 against Adivasis, 18 against Christians, 30 against persons with vulnerable sexual orientation and gender identity (SOGI).<sup>13</sup>

There is a marked increase in these numbers on a yearly basis from 2015 onwards when it began its recording. The group of people most vulnerable are the Dalits or the people who are considered to be from a lower caste, followed by Muslims and various sexual orientation and gender identity. The main three categories of hate crime that emerge are caste biased, religion biased and SOGI biased. The crimes have also been different based on the motives by which they were carried out such as assault, sexual harassment, rape and murder.

Although in India there is no separate legislation in place for dealing with the menace of hate crimes certain provisions in Indian Penal Code, 1860 and The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Sec. 153A, 295, 295A and 298 of the IPC deal with a small portion in the entire hate crime spectrum and The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 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.<sup>14</sup>

Sec. 153A, 153B, 295, 295A, 298, and 505 deal with the problem of hate speech and the entire Chapter XV is dedicated to offences relating to religion but in this chapter Sec. 295 and 298 can be considered as legislations which can be used to regulate hate crimes. Currently, there are no provisions in IPC to deal with the problem of mob lynching but these are provisionally dealt under Sec. 299, Sec. 300, Sec. 304, Sec. 307, Sec. 308 Sec. 323, and Sec. 325. All these provisions come under the title of 'OFFENCES AFFECTING THE HUMAN BODY' under Chapter XVI. As for crimes committed against women, IPC deals with them in Sec. 354, 354A, 354B, 354C, 354D along with Sec. 375 and Sec. 376 both of which deal with rape of a woman.

This chapter gives an overview as to what a hate crime and how it differs from traditional crimes in terms of the motive of the perpetrator. It also gives an overview as to the major forms of hate crimes prevalent in India and the numbers associated with them even though they are not from NCRB. Although it is naïve to think that hate crimes are committed only along the lines of caste, religion and gender in India, the numbers suggest that these three forms are most

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<sup>13</sup> *Id.*

<sup>14</sup> The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

common and hence needs to be urgently dealt with even though vulnerable groups such as SOGI and Adivasis are under oppression and violence. The legal regulations present in IPC are also listed here. Although other provisions are present in other statutes like the Criminal Procedure Code, 1973 and certain sections of Representations of People Act, 1951, regulations of IPC is the main concern.

### **III. ANALYSIS OF THE CURRENT LAWS RELATED TO HATE CRIMES**

The regulation of hate speech has always been a tricky one. Under Article 19(1)(a) of the Constitution of India (COI) right to freedom of speech and expression is guaranteed. The right to propagate one's ideas is a part of the right to freedom of expression, and every citizen has the right to publish, disseminate and circulate their ideas.<sup>15</sup> However, this right is not absolute and is subjected to restriction under Article 19(2) of COI. However, the restrictions cannot be arbitrary or excessive, it must be reasonable.<sup>16</sup> In the case of *State of Madras v. V.G. Row*, it was held that the test of reasonableness should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases.<sup>17</sup> But it was in the famous case of *S. Rangarajan*<sup>18</sup> it was held that "freedom of speech is subject to reasonable restriction in the larger interest of the community and the country set out in Article 19 (2). These restrictions are intended to strike a proper balance between the liberty guaranteed and the social interests specified in Article 19(2)." Thus through this case, it was possible to restrict freedom of speech of an individual for the collective interest of the community. The case of *Ramji Lal Modi v. State of UP*<sup>19</sup> is of particular importance in hate speech laws as it is time and time again used to uphold other provisions such as Sec. 153A and 295A of IPC. The court held that the 'public order' exception protects laws that regulate any activity that has a tendency to cause public disorder, irrespective of whether there is any actual breach of public order.<sup>20</sup> It also upheld Section 295A by holding that only 'aggravated forms' of insult to religion have a tendency to disrupt public order. Also in the case of *Shreya Singhal v. Union of India*, the court held that freedom of expression can be restricted only under the grounds listed under Article 19(2).

Prosecution under Sec. 153A of the IPC is attracted when a person promotes enmity among different groups of people identifying to a particular race, religion, caste or any other grounds.<sup>21</sup>

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<sup>15</sup> *Brij Bhushan v. State of Delhi*, (1950) 1 SCR 605

<sup>16</sup> *Shreya Singhal v. Union of India*, AIR 2015 SC 1523

<sup>17</sup> 1952 SCR 597

<sup>18</sup> *S. Rangarajan v P. Jagjivan Ram* (1989) 2 SCC 574

<sup>19</sup> AIR 1957 SC 620

<sup>20</sup> Arun, C., Biswas, A. and Sharma, P., 2018. *Hate Speech Laws In India*. National Law University, Delhi, p.15.

<sup>21</sup> The Indian Penal Code, 1860, § 153A

It covers spoken or written words or a visible expression of any other kind which are intended to create public disorder or disturbance of law and order. The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under Sec. 153-A and prosecution have to prove the existence of mens rea in order to succeed.<sup>22</sup> Punishment is either three years of jail or fine or both. However, when the said act is committed in a place of worship it is extended to five years of jail and fine. Sec. 153B is more concerned with the imputations or assertions that are detrimental to national integrity.<sup>23</sup> It is aimed against such groups or forces which aim to instil a sense of fear or insecurity amongst members of a targeted group.<sup>24</sup> Sec. 505, especially Sec. 505(1)(c), is somewhat close to Sec. 153A and Sec. 153B as both the section requires the promotion of feelings of enmity or hatred between different groups of people and it should occur between at least two such groups and not just one.<sup>25</sup> The difference arises in the context of publication, wherein it is not required in the case of Sec. 153A and Sec. 153B while it is an important ingredient under Sec. 505.<sup>26</sup>

Sec. 295 of IPC punishes any act of destruction or defilement of a place of worship or a sacred object with the intent or knowledge that such an act will constitute as an insult to a group of people, with imprisonment of two years or a fine or both.<sup>27</sup> In the context of hate speech, two cases can be considered important, Bharat Bhushan Sharma v. Kundan Kumar<sup>28</sup> and Ushaben Navinchandra Trivedi v. Bhagyalakshmi Chitra Mandi.<sup>29</sup> In both of these cases, it was evaluated by the respective courts whether certain depictions and publications can be considered as an act of defilement of a sacred object. Sec. 295A of the IPC penalises the deliberate and malicious outraging of religious feelings of any religious groups by insulting its religion or religious beliefs. It covers all audio/visual media since it envisages that the offence may occur through words, signs, visible representations or otherwise.<sup>30</sup> It is important to note the fact that for this section to be applicable, the presence of both a deliberate act and a malicious intent is required. Sec. 298 is not as far-reaching as Sec.295A as it is more concerned with spoken words or a sound that may be offensive to a particular religious group. Under this section, it is punishable if anyone, with the intent of wounding the religious sentiments, makes

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<sup>22</sup> Girjesh Shukla, *HATE CRIME: POLITICO-LEGAL DIMENSION OF HATE SPEECH IN INDIA*, JOURNAL OF PARLIAMENTARY AND CONSTITUTIONAL STUDIES, 6 (2011).

<sup>23</sup> The Indian Penal Code, 1860, § 153B

<sup>24</sup> Arun, C, *supra* note 19, 42.

<sup>25</sup> Shukla, *supra* note 21, 8.

<sup>26</sup> Shukla, *supra* note 21, 7-8.

<sup>27</sup> The Indian Penal Code, 1860, § 295

<sup>28</sup> 2013 SCC Online(Punjab and Haryana) 4421.

<sup>29</sup> AIR 1978 Guj 13.

<sup>30</sup> Arun, C, *supra* note 19, 49.

any sound or speaks any word that is audible to a person who can be hurt by such an act.<sup>31</sup>

The aspect of hate speech legislation in India is clearer when compared to mob lynching and crimes involving violence against women. These are regulated through their traditional counterparts mentioned in the IPC such as murder and rape. There are various terminologies used to refer to gendered violence such as violence against women (VAW), domestic violence and intimate partner violence. There are various problems in including rape and other forms of VAW and gendered crimes as a hate crime. Although women and also the perpetrators of domestic violence and same-sex violence, in a majority of the cases they are the victims.<sup>32</sup> Psychologists even suggest that rape is committed by men as a way of reinforcing male authority and in cases where the women are subjected to degrading sexual acts, rape is said to be a form of subordinating the female sexuality.<sup>33</sup> Men, due to social processes, can see women as an inferior being and harbour a gender prejudice.<sup>34</sup> Considering these factors many advocates of radical feminism suggest adding VAW and domestic violence as a hate crime. They argue that these crimes fit the bill of hate crimes as their victims are chosen not at random but because their women and although not all are victims of rape and other forms of VAW nor is it necessarily only women, they have a fear of being sexually assaulted or raped.<sup>35</sup> However, there are difficulties in including VAW as a hate crime. The reason is that many do not consider these set of crimes to be motivated by hate in the same sense of racial or communal hate as it is one of the most prevalent forms of crime and the fact that since women constitute half of the population they are not considered a minority as in the case of other groups attacked.<sup>36</sup> The answer in curbing these crimes lies not in designating all the forms of VAW as a hate crime but certain offences done with a misogynistic prejudice. What this might accomplish is dispel the myths that surround rapes and rape complainants in society.<sup>37</sup> Another impact is the confrontation of the underlying problem of social attitudes and places this problem as a public and social problem rather than a private or individual issue.<sup>38</sup>

The issue of mob lynching is a burning issue in the current scenario of India. Not only is it one of the worst expressions of hatred against a community but through its action, it is a flagrant

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<sup>31</sup> The Indian Penal Code, 1860, § 298

<sup>32</sup> Jyoti Srivastava, *Domestic Violence against Men*, International Journal of Science and Research 1193, 1193 (2013).

<sup>33</sup> Mark Austin Walters & Jessica Tumath, *Gender 'Hostility', Rape, and the Hate Crime Paradigm*, 4 The Modern Law Review 563, 571-572 (2014).

<sup>34</sup> *Id.*

<sup>35</sup> Beverly A. McPhail, *GENDER-BIAS HATE CRIMES: A Review*, 3 Trauma, Violence & Abuse 125, 135 (2002).

<sup>36</sup> *Id.* at 132.

<sup>37</sup> Tumath, *supra* note 32, 583.

<sup>38</sup> McPhail, *supra* note 34, 137.

disregard of law of the land and complete disregard of a human life. While it has been around in other countries for a while now with lynching rising to an all-time high in the United States around the time period of segregation, it is somewhat a newer issue in India. With the rise of cow-vigilantism and love-jihad incidents, there have been around 120 such cases in the last four years motivated by these two ideas.<sup>39</sup> In India, there are several legislations in place to tackle the violence of such kind under the IPC under unlawful assembly, murder, attempt to murder, causing hurt, rioting, amongst others. Sections 141-145, 149-151, 157 and 158 relate to unlawful assembly. Necessary ingredients include an assembly of five or more people and a common object. In the case of *Gangadhar Behera v. State of Orissa*<sup>40</sup> it was held that all the accused must be aware of the objective and concurred to it to establish a common objective. The common objects for which an assembly can be termed unlawful are given under Section 141.<sup>41</sup> These are usually coupled to Sec. 300, Sec. 302, Sec.304, Sec. 307, Sec. 308 Sec. 323, and Sec. 325 of the IPC for punishing lynching. These sections deal with murder, culpable homicide, grievous hurt and other forms of violence aimed at a human body and against his life.

There are various problems in the current system in dealing with the issue of mob lynching chief of which is that absence of the element of hate. It is an act of hatred in which people take extrajudicial measures in pursuance of a motive driven by hate.<sup>42</sup> Another problem is that of the absence of data regarding this issue. The lack of data is a major concern since it prevents the people from knowing how serious an issue it is and what its extents are. The inextricably linked nature of hate speech and mob lynching is also an issue that needs to be dealt with.<sup>43</sup> Most of the mob lynching incidents have occurred due to the spread of false information spread through social media.<sup>44</sup>

This chapter deals with the current provisions in Indian legislation which are used to tackle hate crimes and its shortcomings. Three major hate crimes are dealt here namely hate speech, VAW and mob lynching as again these three are the major crimes committed. Although there is a dearth of legislation directly addressing hate crime, it is observed that regulation of hate speech is stricter and has evolved with a lot of clarity due to several judicial developments but

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<sup>39</sup> *Supra* note 3.

<sup>40</sup> (2002) 8 SCC 381.

<sup>41</sup> The Indian Penal Code, 1860, § 141

<sup>42</sup> Siddharth Jasrotia, *LEGISLATIVE MECHANISM AND JUDICIAL RESPONSE TO MOB LYNCHING IN INDIA: DIAGNOSIS AND PROGNOSIS*, 9 *Nirma University Law Journal*, 8-9 (2019).

<sup>43</sup> Radhey Shyam Jha, Vipin Jain & Chanchal Chawla, *Hate Speech & Mob Lynching: A Study Of Its Relations, Impacts & Regulating Laws*, 22 *THINK INDIA (Quarterly Journal)* 1401, 1405 (2019).

<sup>44</sup> *Id.*

regulations related to other form of hate crimes are lacking significantly. Not designating certain VAW crimes as a hate crime in itself is denying that this problem exists. As far as mob lynching is concerned lack of conviction and strict regulation incidents such as cow-vigilantism, love-jihad and honour killings are on the rise.

#### IV. SUGGESTIONS TO IMPROVE THE CURRENT LEGISLATIONS

The current problem posed by hate crimes in India as well as on the global stage needs to be addressed urgently. If left unchecked this has the potential for spreading intolerance and fear among the community targeted. The need to include hate crimes to the current legislation stems from the fact that these cause greater harm for the victim and the community at large.<sup>45</sup> Hate crimes tend to be more systematic and are four times more likely to involve assault than other crimes.<sup>46</sup> Due to the possibility of hate crimes causing serious tension between communities and a feeling of insecurity among targeted groups, these require legislations tailor-made to combat them as current laws can regulate only traditional or parallel crimes. Laws that specifically criminalise hate-motivated crimes are an attempt to protect those groups which have historically experienced disproportionate levels of targeted abuse.<sup>47</sup>

In the case of India, hate speech regulating laws are much better when compared to that of the United States. The American approach may in fact allow some types of hate speech under the protection of freedom of speech, which is a constitutionally guaranteed right to the citizens of America.<sup>48</sup> The regulation of other forms of hate crimes though is lacking behind other countries such as the UK and the USA.

As stated earlier, the inclusion of certain kinds of VAW as a hate crime could be the first step in recognising the social problems that can be one of the causes of VAW. Even if not a complete deterrence is possible through legislation, the law has a power to influence the opinions of the public regarding certain issues, especially where the public itself has supported the social system in which such acts are prevalent.<sup>49</sup>

The issue of mob lynching is gaining some traction with the policymakers with many bills such as the bills passed by Rajasthan<sup>50</sup> and Manipur<sup>51</sup> to combat mob lynching in the respective states and the Uttar Pradesh Combating of Mob Lynching Bill, 2019<sup>52</sup> being considered by the

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<sup>45</sup> Meli, *supra* note 7, 951.

<sup>46</sup> *Id.*

<sup>47</sup> Tumath, *supra* note 32, 578.

<sup>48</sup> Shukla, *supra* note 21, 16.

<sup>49</sup> Tumath, *supra* note 32, 579.

<sup>50</sup> The Rajasthan Protection from Lynching Bill, 2019 (Bill No. 22 of 2019).

<sup>51</sup> Manipur Protection from Mob Violence Ordinance, 2018 (Ordinance No. 3 of 2018).

Uttar Pradesh government. Other than these, Manav Suraksha Kanoon (MASUKA) was drafted by The National Campaign Against Mob Lynching. The problem that needs to be addressed first and foremost is the issue of data. This lack of acknowledgement by policymakers that mob lynching is indeed a bigger problem than previously thought can be countered by an official report which takes into account its various aspects. Also, the Judiciary can take an active step. There are some signs of it in the case of Tehseen S. Poonawalla<sup>53</sup>. In this case, the court held that “lynching and mob violence are creeping threats that may gradually take the shape of a Typhon-like monster ... instigated by intolerance and misinformed by circulation of fake news and false stories.”

The biggest impact can be had through not legislation but through diversity education. Diversity education may take two forms: proactive education and rehabilitative education. Proactive education will serve to expose both potential offenders and non-offenders to the values, beliefs, and cultures of various communities, with the goal that this exposure will prevent would-be offenders from committing hate crimes. Rehabilitative education has the goal of preventing past offenders from reoffending.<sup>54</sup> In a world where people are lynched due to the spread of fake news and misinformation, this education will get both sides closer to the other by understanding each other's beliefs and ideals.

This chapter explores just some of the ways in which hate incidents can be reduced. The need for a separate legislation to deal with such crimes lies in its difference from parallel crimes. While the murder of a person can be due to a private affair the lynching of a person is always communal and extrajudicial. Its impact is also larger and threatens communal harmony within a nation and even at a global level. It is asserted that although legislative measures are paramount the only way to uproot the systemic patriarchy and misogyny and casteism and religious fervour is by educating the people, which will expose the perpetrator to the victim's ideals and life and hence build a certain level of tolerance.

## V. CONCLUSION

Hate crimes are not a recent phenomenon nor is it a regional problem. All over the world innocent people are victimised for nothing but adhering to certain ideologies or identities. People have limited to no control over their identities such as being a Muslim, woman or a black, they are born into these. There has been some traction over the years there have been various steps to counter hate crimes all over the world like the Matthew Shepard and James

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<sup>53</sup> Tehseen S. Poonawalla vs. Union of India and Others, (2018) 9 SCC 501.

<sup>54</sup> Meli, *supra* note 7, 962.

Byrd Jr. Hate Crimes Prevention Act in the US and Crime and Disorder Act 1998 in the UK but they have not been satisfactory in controlling hate crimes.

In a country like India where there are a plethora of religions and an even larger number of castes, tolerance and harmony between the different sects of people is imperative for national integrity and holistic development. The current rise in the number of hate crimes in the past few years is alarming and even more alarming is the fact that the Indian legal system is incapable of handling this issue efficiently. The current laws may curb the action of an individual offender but not at removing the underlying problem of intolerance or other social attitudes which allow such acts to thrive.

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