



HATE CRIMES IN INDIA: AND NEED FOR A SEPARATE LEGISLATION TO COMBAT HATE CRIMES

By Amina Ali
From CNLU, Patna

Introduction

Looking at the present social unrest in India, instances of hate crimes are on a list high. There has been reporting of an alarming increase in the incidents of violent crimes driven by extreme grounded religious or ideological prejudice against the members of particular communities.

The Federal Bureau of Investigation, a federal law enforcement agency of United States has defined Hate crime as a “criminal offence 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.”¹

‘Motive’ is the determinative element which distinguishes hate crimes from other Criminal offences mentioned under Indian Penal Code of 1860. A hate crime is always motivated, by bias or hatred of an individual or social group against another individual or social group. Unlike victims of other criminal acts, hate crime victims are selected based on their membership of a particular group, on the grounds of what they represent rather than who they are. The message that is conveyed

is intended to reach not just the immediate victim but also the larger community of which that victim is a member.

The notion of prejudice-motivated violence is not unique to India and perhaps that was the reason the lawmakers expressly addressed the customary practice of Untouchability as not only constitutionally illegitimate but also a punishable offence. The Court in its verdict on 1984 anti-Sikh pogrom,² recognized a familiar link of religious violence, referring to some gruesome incidents of mass violence such as the 1993 riots in Mumbai, Kandhamal violence in 2008, Muzaffarnagar riots in 2013 and the Gujarat riots of 2002 and expressed its concerns over targeting of minorities and its discontentment over the inadequacy of national legal framework in India dealing with Hate Crime and Genocide.

Present Database & Incidents reported of Hate Violence

According to a report by Amnesty International India’s website ‘Halt the Hate’,³ total **902** incidents of alleged hate crimes were reported between September 2015 and June 2019. The victims suffered harm on account of their Dalit identity followed by Muslims, Adivasi, Christian and persons belonging to the LGBTQ community. The website was launched in September 2015 after the incident of lynching of Mohammad Akhlaq, a 52-year

¹ Hate Crimes, Federal Bureau of Investigation Federal Bureau of Investigation (Jun 11, 2020,10:10 AM), <https://www.fbi.gov/investigate/civil-rights/hate-crimes>

² *State Through CBI Vs Sajjan Kumar & Ors*, CRL.A. 1099/2013.

³ Halt the Hate, Amnesty International India (Jun 11, 2020,1:45 PM), <https://amnesty.org.in/wp-content/uploads/2019/10/Halt-The-Hate-KeyFindings-Amnesty-International-India-1.pdf>.



old Muslim resident of Dadri, Uttar Pradesh who was murdered on the suspicion of eating beef.⁴ Similarly, in September 2019 in the aftermath of the Pulwama Attack, at least 14 episodes of mob attacks on Kashmiri Muslims were reported.⁵

Crimes regarding lynching are unremarkably known in India by many different names – mob violence, mob lynching, cow vigilantism and others. It is imperative now that new amendments to be made in the Criminal provisions to determine these incidents as what they are: Hate crimes. Many incidents of hate crimes are not reported to the police, and even when they are, many do not make it to mainstream media. In some cases, criminal investigations are also initiated, but several perpetrators of such offences go unpunished because of the loopholes in our judicial system.

In May 2019, The Indian Express reported an incident where a mob of 200-300 individuals belonging to the dominant castes of Hindus, attacked the home of a Dalit couple in Vadodara, on an alleged social media post updated by the husband stating that Govt. does not allow the village temple to be used by the Dalits.⁶

In late 2017, a National platform “Documentation of the oppressed (DOTO)” was released for the collection of verified data on Hate Violence. The incidents

recorded on the database are post the year 2014. Currently, the database has **1118** incidents in which **22605** victims are reported. More than **80%** of these victims are Muslims and other victims include Christians, Dalits etc. The database records different categories of violence, the majority of which includes:

- **Murder/Lynching -89**
- **Physical Assault -165**
- **Attack Against Religious Infrastructure -131**
- **Communal Violence -186.**

Out of these 89 incidents of murder/lynching, 40 are related to cow propaganda, 22 because of religious identity and others are related to work/ideology of the person/Inter-religious marriage. The database also tries to record the identity and organizational affiliations of the perpetrators. The political orientation of the majority of perpetrators is related to right-wing Hindutva ideology.⁷

Amid the controversial law, passed by Government of India in December 2019, marking a serious shift away from the country's secular and religious tolerant system. The Citizenship Amendment Act (CAA) advanced both pro and anti-CAA protests nationwide. The atmosphere in Delhi, that sustained protests for weeks, became exceptionally separated on religious grounds. As a result, India witnessed its worst spasm of religious violence in years, leaving at least 51 dead, majority of them being

⁴ Ibid

⁵ Shephali Bhatt, Being Kashmiri in the time of Pulwama, The Economic Times (Jun 11, 2020, 2:02 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/being-kashmiri-in-the-time-of-pulwama/articleshow/68130534.cms?from=mdr>

⁶ Aishwarya Mohanty, Tension in Vadodara village, The Indian Express (Jun 12, 2020,3:09 PM) <https://indianexpress.com/article/cities/ahmedabad/tension-in-vadodara-village-upper-caste-men-attack-dalit-couple-over-facebook-post-5747591/>

⁷ DOTO - Documentation of The Oppressed Dotodatabase.com (Jun 12, 2020,2:45 PM), <https://dotodatabase.com/>.



Muslim. During the violence, Muslims were burned alive in their homes or dragged out into the streets and lynched by Hindu mobs. In streets where people from both the communities had lived peacefully side by side, dead bodies were laid down alongside discarded and burned-out cars, bikes, shattered glass and smouldering shopfronts. Many Mosques and Shrines were set ablaze across Delhi by Hindu vigilantes. The police have been accused of enabling, encouraging or even joining in with the mobs.

The photo of Md Zubair, a Muslim man being beaten ruthlessly by the Hindu mob, shouting slogans “kill the bastards Muslims” and “Jai Sri Ram” became the defining image of the religious riot of Delhi.⁸ Though the victims were both Hindus as well as Muslims, it was the Muslim community of Delhi who was overwhelmingly targeted by Hindu mobs in their tens of thousands.

As of now, there is no separate law against hate crimes in India, however, provisions in various statutes handle matters related to lynching and mob violence, where a person can be charged for an act of group attack on some other person.⁹ A perpetrator of hate crime can also be booked under the provisions of Indian Penal code for Murder,¹⁰ Culpable homicide not amounting to murder,¹¹ attempt to murder,¹² voluntarily causing hurt or grievous hurt,¹³ acts done by several persons in furtherance of common

intention,¹⁴ Criminal Conspiracy,¹⁵ or for the offence of ‘rioting’.¹⁶

The existing provisions have failed to efficiently address and punish individuals or groups associated with such crimes. Though these provisions deal with offences motivated by hate but are still not fit to be classified as hate crimes unless the victim was chosen based on his actual or perceived social identity/ protected characteristic. It is necessary for the Penal statute providing punishment for hate crimes to explicitly enumerate the characteristics in respect of which such crimes are perpetrated.

Why India needs a separate law on Hate Crime?

To understand the necessity for a separate law to deal with incidents of hate violence, the history of The United States in the enactment of separate legislation for Hate Crimes is an eye-opener. Till the 1970s, there was no concept of hate crimes in the U.S, though such crimes were a part of the world at large. Some of the eminent examples of which is the Persecution of Christians under the Roman Empire and the genocide of the Jews by Nazis. Violence against minorities both in the U.S. and India is fueled by the same factors of hate and biasness. Lynching in India in several cases has received the sanction of the State in the same way as the U.S. Senate remained silent for decades when

⁸ Debalin Roy, No-one who saw the photo thought I would survive, BBC News (Jun 12, 2020,3:30 PM), <https://www.bbc.com/news/av/world-asia-india-51837787/delhi-riots-no-one-who-saw-the-photo-thought-i-would-survive>

⁹ Criminal Procedure Code 1973 § 223(a).

¹⁰ Indian Penal Code 1860 § 307.

¹¹ Indian Penal Code 1860 § 304.

¹² Indian Penal Code 1860 § 307.

¹³ Indian Penal Code 1860 § 323, § 325.

¹⁴ Indian Penal Code 1860 § 34.

¹⁵ Indian Penal Code 1860 § 120B.

¹⁶ Indian Penal Code 1860 § 147.



black African Americans were being lynched.

After the enactment of the Civil Rights Act of 1968, the department of justice started prosecuting cases of Federal Hate crime. The Civil rights act covered certain crimes committed on the basis of race, colour, religion, national origin, sexual orientation, gender, gender identity, or disability. But, in the year 2009 congress widened this law by passing the “Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act” named in the memory of two victims of Hate Crime, Matthew Shepard, a gay college student who was tortured and murdered in Laramie, Wyoming, and James Byrd, Jr., an African-American man who was dragged to death in Jasper, Texas.¹⁷

Considering the actual political character of the criminal justice system in India, and negligence of the State in minority affairs, despite the guidelines laid down by the Supreme Court of India in the case of *Tehseen S. Poonawalla V. Union of India and Ors.*, there is an urgent need of a law that explicitly delineates the insidious nature of mob lynching and hateful sentiments.

“The Hon’ble Supreme in its judgement emphasized on the prevention of these crimes at the initial stage. The court suggested for the formation of a special task force to procure intelligence reports on subjects likely to commit or incite such offence. The Director-General of Police and Secretary of Home Department of the States were directed to take regular meetings at least once a quarter with all nodal officers and State

Police Intelligence heads. The Court also recommended the Parliament to create a specialized offence for mob lynching and allocate Strict penalization to offenders for the same. Despite the Court’s inclination for a special law, the Centre which is responsible for legislation in Parliament did not implement the Court’s recommendation”.¹⁸

Despite the recommendation made by the apex court, there are only three states in India: Manipur, West Bengal and Rajasthan which enacted laws against mob violence and lynching. Even, National Crime Records Bureau (NCRB) of India, that collects data on a wide range of crime committed across the country does not count hate crimes—mainly because there are no specific laws to deal with such crimes.

Conclusion

Even in the midst of a pandemic, hatred and intolerance continued to manifest themselves unabated. Once the news of the convention held by the Tablighi Jamaat, a Muslim religious group broke out, rumours concerning the spread of the coronavirus took a communal hue. Several videos on different social media platforms got viral, showing Muslims spitting on food, licking plates and sneezing in unison to spread the virus. All these videos were later debunked as fake news. All the individual belonging to the Muslim communities were blamed for the spread of coronavirus and were termed as ‘anti- nationals’ by certain news channel and organizations.

¹⁷ Laws and Policies, The United States Department of Justice (Jun 12, 2020, 10:45 PM), <https://www.justice.gov/hatecrimes/laws-and-policies>.

¹⁸ *Tehseen S. Poonawalla v. Union of India and Ors.*, (2018) 9 SCC 501.



In several places, this got translated into violence. Many Muslims including those who did not attend the Tablighi congregation were also attacked. Muslim vendors were abused and stopped from selling their goods because of their religious identity. A village named Kailancha in Karnataka banned the entry of Muslims in their village area. Muslim migrant worker faced discrimination and hunger in several parts of India and even had to beg for food. Three Kashmiri labourers were attacked in Barot village in the Mandi district of Himachal Pradesh by a group of unidentified locals and were threatened to return to their homes. A hospital in Ahmedabad where coronavirus patients were being treated, beds that had been set aside for COVID-19 got segregated into wards depending on their faith. A pregnant woman in Rajasthan in urgent need for medical help was denied access to the hospital, following which she lost her baby.¹⁹

The enactment of a separate hate crimes legislation has been long overdue but its necessity has particularly increased owing to the current circumstances. There is no doubt that these acts of discrimination based on the religious identity of a community are violative of Article 14 and Article 15 of the Constitution of India. India is a democratic and secular country and its citizens have certain fundamental rights that the State is bound to protect and ensure. The effects of hate crime are deeper than those of other crime such as Murder and assault, as they not

only impact the victim but also the community with which the victim identifies.

India acceded to International Covenant on Civil and Political Rights (ICCPR) on 10 April 1979.²⁰ According to ICCPR “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.²¹ “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”.²²

The same view is also reflected under Article 21 of the constitution which states that “no person shall be arbitrarily deprived of his life and personal liberty except according to a procedure established by law.”²³ When a person or group of persons are attacked on grounds of language, religion, race, ethnicity, nationality, or any other similar common factor, it is a clear violation of their right to life and personal liberty. Enacting effective special laws on hate Crimes would demonstrate to the whole world in no uncertain terms, that India is serious about its international law obligations and is committed to securing human rights.

Acknowledging the ongoing incidences of hate crimes, I would like to conclude my Article stating that hate crimes are fundamentally different from other types of violent crime, and it is expected that Parliament wakes up to the current reality

¹⁹ DOTO - Documentation of The Oppressed Dotodatabase.com (Jun 13, 2020,8:45 AM), <https://dotodatabase.com/>.

²⁰ International Covenant on Civil and Political Rights, United Nation Human Rights (Jun 13, 2020,2:30 PM),

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

²¹ ICCPR. art.6(1).

²² ICCPR. art.9(1).

²³ INDIAN CONST. art 21.



sooner rather than later. In line with my suggestion, instead of addressing the incidents of hate crime within the existing sections, this national offence should be dealt with by introducing new amendments in the justice system. At the individual level, the administration may take steps to confirm speedy justice, registering First Information Report(FIR) without delay, provide relief and fair compensation to the victims or their family for the loss suffered by them and the victims may be provided with free legal aid to secure justice. The Parliament should immediately without any further delay draft a separate hate crime legislation which will be applicable across the country, offering maximum sentence to the lynchers along with the officials who directly or indirectly take part in such violence.

