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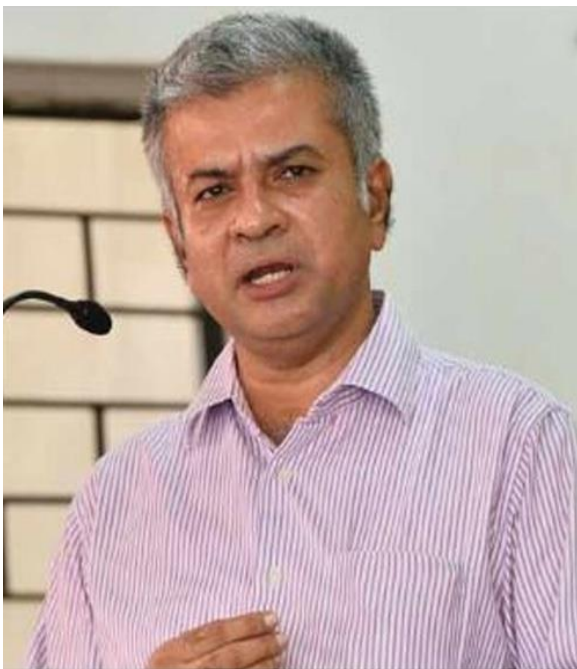
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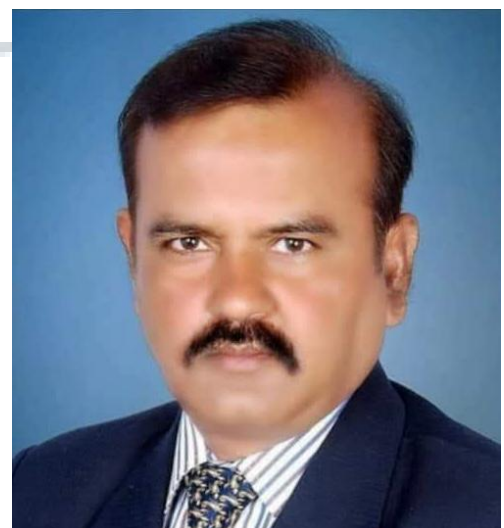
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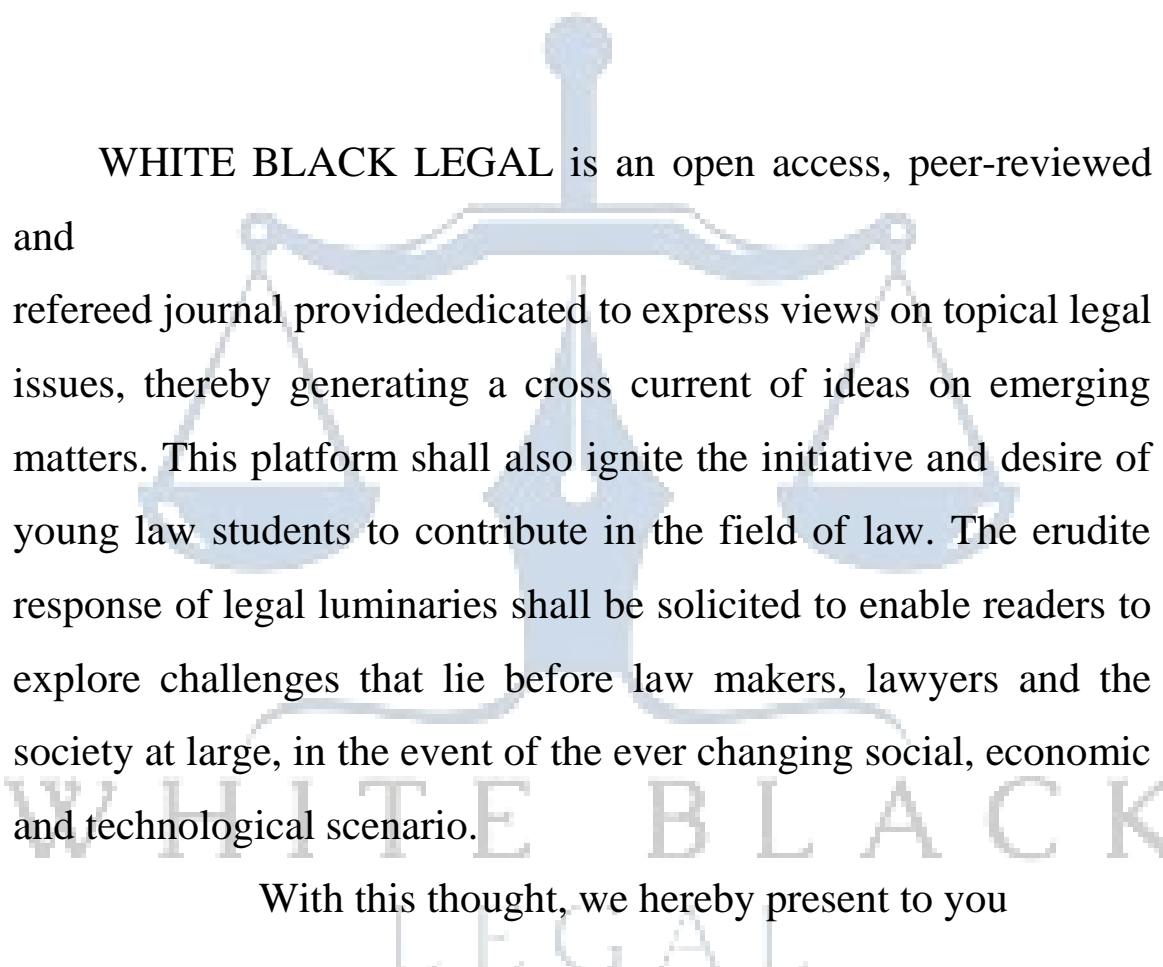


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

HATE CRIMES IN INDIA: A LEGAL PERSPECTIVE **UNDER THE IPC**

AUTHORED BY - SNIGDHA PARVATHY

Abstract

Hate crimes are a global phenomenon that cuts across all boundaries and touches the lives of societies at all levels. India, a country of rich cultural diversity, is no exception. This paper provides a legal perspective on hate crimes in India, analyzing the prevalence and implications of hate crimes within the scope of the Indian Penal Code.

Hate crimes, which are defined by their prejudiced nature based on religion, race, ethnicity, or other protected characteristics, have been on the rise in India. This paper begins with an understanding of hate crimes, pointing out their significance in modern Indian society. It delves into the historical context to shed light on the changing nature of hate crimes, showing how different communities and groups have been affected by these offenses.

This study, at its core, discusses how the Indian Penal Code has effectively been able to take care of hate crimes. This will be analyzed based on some crucial sections of IPC relating to offense against religion, race, and identity to find whether they are appropriate in the cases motivated by hatred. It further tries to investigate pertinent legal precedents and judicial interpretations that give insights into the way such provisions have been practically applied in courtrooms.

However, the study does not end there. It identifies the problems and shortcomings in the existing legal framework and suggests reforms. It underlines the urgent need for comprehensive legislation on hate crimes and calls for better mechanisms for data collection and reporting. These are essential to gain a more accurate understanding of the prevalence and patterns of hate crimes in India.

In addition, the study emphasizes that several stakeholders have a critical role to play in addressing hate crimes. It underscores that law enforcement agencies, the judiciary, and civil

society organizations play critical roles in the fight against hate crimes and in ensuring social cohesion. The study identifies awareness campaigns, stakeholder sensitization, and promoting a culture of inclusivity as fundamental strategies to prevent and address hate crimes effectively. This is very important for legal understanding of hate crimes against the backdrop of IPC and an attempt to inform policymakers, legal professionals, academia, and civil society about the intricacies and issues surrounding hate crimes in India. Finally, it serves as a comprehensive resource for further research and development in policy this area of concern.

Keywords: Hate crimes, Indian Penal Code (IPC), legal framework, discrimination, protected characteristics, social cohesion, inclusivity, law enforcement, judicial interpretation.

Chapter 1- Introduction

1.1.Introduction

Hate crimes, driven by prejudice and discrimination against individuals or groups based on their protected characteristics, have emerged as a disconcerting global issue. These reprehensible acts violate not only the basic principles of equality and justice but also pose a significant threat to social harmony and cohesion. India, a nation renowned for its remarkable cultural and religious diversity, is not immune to this troubling phenomenon.¹ The increasing incidence of hate crimes within India's complex sociocultural fabric necessitates a thorough examination from a legal perspective, with a particular focus on the Indian Penal Code (IPC). In a nation where myriad languages, religions, and traditions coexist, understanding and addressing hate crimes becomes a pressing concern. This study embarks on a comprehensive exploration of hate crimes in India through the lens of the IPC, aiming to shed light on their prevalence, implications, and the effectiveness of existing legal provisions in combating them. Hate crimes, whether based on religion, race, ethnicity, gender, or other protected characteristics, challenge the very foundations of a pluralistic and inclusive society. These offenses are often characterized by violence, intimidation, and bias, and they have the potential to disrupt communal harmony and breed fear among marginalized communities.² Consequently, a holistic examination of hate crimes in India is imperative, not only for the protection of individual rights but also for the preservation of India's diverse social fabric. This study is motivated by a commitment to advancing our understanding of hate crimes within

¹ **Legal Vidhiya**, *Hate Crimes: Their Nature and the Laws Connected with Them*, https://legalvidhiya.com/hate-crimes-their-nature-and-the-laws-connected-with-them/#google_vignette

² **Jus Corpus**, *Hate Crimes in India: An Analysis*, <https://www.juscorpus.com/hate-crimes-in-india-an-analysis/>

the Indian context and seeks to address several key questions. How does the IPC, as the primary legal framework in India, address hate crimes? What are the legal provisions and precedents relevant to hate crimes, and how have they been interpreted and implemented by the judiciary? Moreover, this study will identify the limitations and gaps within the existing legal framework and propose recommendations for reform.

As India grapples with the challenges posed by hate crimes, it becomes increasingly crucial to assess the role of various stakeholders, including law enforcement agencies, the judiciary, and civil society organizations, in both preventing and responding to these offenses. This study will also highlight the significance of awareness-raising campaigns, stakeholder sensitization, and the promotion of a culture of inclusivity as essential components of any comprehensive strategy to combat hate crimes.³

In summation, this research endeavours to provide a comprehensive legal perspective on hate crimes in India, framed within the context of the IPC. By shedding light on the prevalence, legal provisions, and societal implications of these crimes, it seeks to contribute to a more informed discourse and policymaking aimed at countering hate crimes and fostering a more inclusive and harmonious society in India.

1.2. Research Problem

- The research problem addressed in this study, "Hate Crimes in India: A Legal Perspective under the IPC," centres on the inadequacy and effectiveness of the existing legal framework, particularly the Indian Penal Code (IPC), in addressing and preventing hate crimes in the diverse and pluralistic landscape of India. This study seeks to investigate whether the current legal provisions and their application are sufficient to combat the rising incidence of hate crimes and to foster a more inclusive and harmonious society.

1.3. Research Objectives

- To analyse the existing legal framework in India, particularly under the Indian Penal Code (IPC), pertaining to hate crimes and related offenses.
- To assess the effectiveness of the IPC and other relevant laws in addressing and preventing hate crimes in India.

³ Drishti IAS, *Hate Speech and Blasphemy*, <https://www.drishtiiias.com/>

1.4. Research Question

- How effectively does the Indian Penal Code (IPC) address and mitigate hate crimes, and what legal reforms or enhancements are necessary to provide stronger protection and justice for victims of hate crimes in India?

1.5. Hypothesis

The current legal framework under the Indian Penal Code (IPC) in India is inadequate in effectively addressing and mitigating hate crimes, resulting in inadequate protection and justice for victims. It is expected that a comprehensive analysis will reveal deficiencies in the existing legal provisions, enforcement mechanisms, and remedies available to victims, highlighting the need for legal reforms and enhancements to better combat hate crimes and ensure the rights of marginalized communities.

Supporting Arguments:

- **Underreporting and Under recognition:** The hypothesis is supported by the fact that hate crimes in India are often underreported and under recognized due to fear, social stigma, and lack of awareness. A stronger legal framework can encourage victims to come forward and report such crimes.
- **Inadequate Penalties:** Existing penalties for hate crimes under the IPC may not be commensurate with the gravity of the offenses. The hypothesis suggests that revising and increasing penalties can serve as a deterrent, discouraging potential perpetrators.
- **Legal Gaps:** There are legal gaps and ambiguities within the IPC that can make it challenging to prosecute hate crimes effectively. These gaps can be addressed through legal reforms, such as clearer definitions of hate crimes and specific provisions for protection.
- **Lack of Specialized Units:** Many law enforcement agencies lack specialized units or training to handle hate crimes adequately. A strengthened legal framework can mandate the establishment of such units and require specialized training for law enforcement personnel.
- **Protection of Vulnerable Communities:** Hate crimes disproportionately affect marginalized and vulnerable communities. The hypothesis argues that legal reforms can include provisions for enhanced protection, support, and rehabilitation of these communities.

- **Public Awareness and Advocacy:** A stronger legal framework can lead to increased public awareness and advocacy efforts against hate crimes, as people see a more concerted effort to address these issues at the legal level.

Overall, the hypothesis posits that legal reforms and enhancements under the IPC are crucial to combating hate crimes effectively in India, taking into account the various challenges and shortcomings in the current legal framework.

1.6. Methodology

This is a Doctrinal Research. The study is based on Primary and secondary sources. Primary sources referred to in this paper include Statutes, Cases, and Books. Secondary sources include various articles and journals that have been referred to for the purposes of this paper. All the necessary and relevant materials that form a part of the study are collected from various sources, including books, articles, journals, newspapers, reports, and various seminars. The present study is basically a doctrinal one, so a field study was not conducted.

Chapter 2-Existing Legal Framework in India, particularly under the Indian Penal Code (IPC), pertaining to Hate Crimes and related offenses

2.1. Hate Crime

Hate crimes are abhorrent offences perpetrated against people, organisations, or things out of prejudice or hatred based on characteristics including race, religion, ethnicity, sexual orientation, gender identity, or disability. These crimes try to terrorise entire communities as well as particular victims, sowing a climate of dread and uncertainty.⁴

The underlying reason of the perpetrator's bigotry and prejudice towards the victim's perceived features or connections is what distinguishes hate crimes from other criminal acts. Unlike other types of crimes, hate crimes have a greater effect on the community connected to the targeted identity as well as the victim.

A broad strategy is necessary to comprehend and stop hate crimes. Globally, legal systems frequently include particular laws addressing hate crimes that aim to give offenders harsher fines and punishments. A crucial part of avoiding these atrocities is also promoting social

⁴ **Legal Vidhiya**, *Hate Crimes: Their Nature and the Laws Connected with Them*, <https://legalvidhiya.com/hate-crimes-their-nature-and-the-laws-connected-with-them/>

awareness, education, and tolerance. Societies may strive towards removing the foundations of hatred that feed such offences by developing inclusion, acceptance, and understanding among varied populations.⁵

The need of addressing not just the immediate criminal conduct but also the larger cultural attitudes and prejudices that support these instances is brought home by hate crimes. There are attempts being done to create a society where people may live without fear, regardless of their history or identity, via education, law, and community involvement.

2.2. Indian Penal Code

The foundation of India's criminal justice system is the extensive legal framework known as the Indian Penal Code (IPC). The IPC is a law that defines certain criminal offences and specifies penalties for such offences. It was enacted in 1860 under the British colonial administration of India. The first Law Commission of India presided over by Lord Thomas Babington Macaulay, wrote it, and it has subsequently undergone a number of revisions to meet current legal issues.

Crimes against individuals (like murder, assault, and abduction), crimes against property (like theft, robbery, and burglary), and offences against the state (like treason and sedition) are all covered under the IPC. It also contains clauses that deal with morals, decency, and public order. The code is divided into 23 chapters that describe various offences and their corresponding punishments.⁶

The IPC has undergone revisions over time to take into account societal developments and changing legal standards. Although it is supplemented by other statutes and rules that deal with particular offences, the IPC continues to serve as India's principal criminal justice system.⁷

The IPC has been used as a model for legal systems in several other nations that were formerly a part of the British Empire in addition to its national significance.

⁵ *The Wire*, 89 Instances of Hate Crimes, Hate Speech Across Six North Indian States in Four Months, <https://thewire.in/communalism/89-instances-of-hate-crimes-hate-speech-across-six-north-indian-states-in-four-months>

⁶ *The Indian Penal Code*, India Code, <https://www.indiacode.nic.in/handle/123456789/2263?locale=en>

⁷ Wikipedia, *Indian Penal Code*, https://en.wikipedia.org/wiki/Indian_Penal_Code#:~:text=The%20Indian%20Penal%20Code%20%28IPC%29%20is%20the%20official.1833%20under%20the%20chairmanship%20of%20Thomas%20Babington%20Macaulay

2.3. Existing Legal Frameworks

There is no explicit statute against hate crimes in India. However, there are mechanisms within the current legal system that can be utilised to pursue offences relating to hate crimes, most notably under the Indian Penal Code (IPC).⁸ Here are a few pertinent IPC provisions that may be used in situations of hate crimes:

1. Section 153A: This section deals with activities that are detrimental to maintaining peace, such as fostering hostility between various groups based on factors like as religion, race, and place of birth, domicile, language, and so forth.⁹ If someone is found to have violated this clause, they may be sentenced to up to three years in jail, a fine, or both.¹⁰
2. Section 295A: This provision punishes willful and intentional activities meant to offend any class's religious sentiments by disparaging that group's religion or religious beliefs. This crime carries a potential three-year jail sentence, a fine, or a combination of the two.¹¹
3. Section 505: This law addresses remarks that encourage public mischief. Any comment, rumour, or report that is made, published, or spread with the aim to incite, or that is likely to incite, any class or community of people to commit any offence against another class or community is illegal. This offence has a maximum sentence of three years in prison, a fine, or both.¹²

2.4. Other Provisions under Indian Law

Provisions other than the IPC includes acts such as Representation of the People Act 1951. An essential aspect of Indian law that controls how elections are conducted is the Representation of the People Act (RPA) of 1951. It was passed to establish the distribution of seats in the State Legislative Assemblies, the Rajya Sabha, and the Lok Sabha (House of the People). The Act outlines the guidelines and processes for holding elections, including how to prepare and update electoral rolls, determine who is eligible to run for office and who is not, as well as how to

⁸ *iPleaders, Hate Crimes: Their Nature and Ideology Behind Making the Laws Connected with Them*, <https://www.ipleaders.in>

⁹ *iPleaders, Section 153 and 153A of IPC, 1860*, <https://blog.ipleaders.in/section-153-and-153a-ipc-1860/>

¹⁰ *IAS Baba, Section 153A of the Indian Penal Code (IPC)*, <https://iasbaba.com/2023/02/section-153a-of-the-indian-penal-code-ipc/#:~:text=Section%20153A%20of%20the%20Indian%20Penal%20Code%20%28IPC%29,three%20years%2C%20with%20a%20fine%2C%20or%20with%20both>

¹¹ Wikipedia, *Section 295A of the Indian Penal Code*, https://en.wikipedia.org/wiki/Section_295A_of_the_Indian_Penal_Code

¹² Wikipedia, *Hate Speech Laws in India*, https://en.wikipedia.org/wiki/Hate_speech_laws_in_India

conduct the polls and tabulate the results of the election.¹³

The Representation of the People Act of 1951's main clauses and features include the following:

- **Criteria for Eligibility and Disqualification:** The RPA outlines the requirements individuals must meet in order to be eligible to run in elections as well as the circumstances under which they may be disqualified. For instance, having certain criminal convictions, occupying a position of profit, and being mentally ill are all ineligible.
- **Election processes:** The Act specifies the election processes, including the use of electronic voting machines (EVMs), voter identification, and the casting and tallying of ballots.
- **Constituency Delimitation:** The Act outlines the procedure for parliamentary and assembly constituency delimitation, guaranteeing an equitable allocation of seats based on population changes.
- **Electoral Rolls:** Lists of eligible voters for each constituency are called electoral rolls, and this law controls their creation and updating.
- **Election Petitions:** The RPA also covers the submission and decision of election petitions, enabling legal objections to the conduct and outcomes of elections.
- **Voter Registration:** It outlines the steps for registering to vote, the requirements for casting a ballot, and the duties and tasks of the Election Commission of India in keeping correct voter lists.
- **Election costs:** To encourage accountability and openness in campaign finance, the Act restricts election costs for candidates and political parties.
- **Corrupt Practises:** It outlines several corrupt election-related practises and lays out the consequences for violators.
- **Election Commission:** The RPA created the independent constitutional body known as the Election Commission of India, which is in charge of overseeing the country's electoral procedures.

A number of amendments to the Representation of the People Act of 1951 have been made to account for modifications to the electoral system, technical developments, and changing legal

¹³ Wikipedia, *Representation of the People Act, 1951*, https://en.wikipedia.org/wiki/Representation_of_the_People_Act,_1951

and political dynamics. It is essential to maintaining India's voting system's integrity and democratic values.¹⁴

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act: This act provides for the prevention of atrocities against Scheduled Castes and Scheduled Tribes and prescribes punishments for offenses.¹⁵

Information Technology Act: The IT Act, with its amendments, deals with various cybercrimes, including those involving hate speech and harassment online.¹⁶

Recent Developments: As of 2021, there were discussions and proposals to introduce specific legislation to address hate crimes more comprehensively. However, the status and details of such legislation would require updated information beyond my last update.

2.5. Type of Hate Crimes

In India, hate crimes and events can take many different forms and reflect ingrained biases based on societal constructs such as religion, race, caste, gender, and ethnicity. Although there are laws that address hate crimes, it's crucial to remember that reporting and classifying these instances can occasionally be difficult because of social, cultural, and political considerations.¹⁷

However, the following are some prevalent types of hate crimes and events in India:

1) Hatred Speech

- "A speech that carries no meaning other than an expression of hatred for some group, such as a particular race, especially in circumstances where the communication is likely to provoke violence," according to Black's Law Dictionary, is what is meant by the phrase "hate speech."
- Simply explained, hate speech is any communication that is disparaging of a person or group of people. Given the circumstances in India right now, it poses a severe risk of

¹⁴ Representation of the People Act, 1951, India Code, <https://www.indiacode.nic.in/bitstream/123456789/2096/1/A1951-43.pdf>

¹⁵ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ministry of Tribal Affairs, <https://tribal.nic.in/actrules/scstpoaact1989.pdf>

¹⁶ Wikipedia, Information Technology Act, 2000, https://en.wikipedia.org/wiki/Information_Technology_Act,_2000

¹⁷ Legal Vidhiya, Hate Crimes: Their Nature and the Laws Connected with Them, <https://lawtimesjournal.in/hate-crimes-their-nature-and-laws-connected-with-them/>

igniting widespread war.¹⁸

- The most typical bases for hate speech are racial, ethnic, religious, or social class. With its wide variety of languages, castes, races, religions, cultures, and ideologies, India makes an unusual case for the restriction of hate speech.

2) Religious Hate Crimes

- **Communal Violence:** Incidents of violence between religious communities, frequently motivated by religious disputes. Religious Hate Crimes.
- **Religious discrimination:** It is the treatment of someone unfairly or violently because of their religious convictions or practises.
- **Religious riots:** Serious acts of violence directed at certain religious communities that cause casualties and damage to property.

3) Hate crimes motivated by caste:

- **Caste-based Violence:** Violence committed against people or organizations because of their caste identification.
- **Caste discrimination:** It is the treatment of individuals unfairly or violently depending on their caste. It is common in rural communities.

4) Crimes motivated by race:

- **Racial Discrimination:** Discrimination against people or communities because of their race, ethnicity, or outward appearance is known as racial discrimination.
- **Xenophobia:** It is the fear or hatred of foreigners or persons of other races.¹⁹

5) Gender-Based Hate Crimes:

- **Gender-Based Violence:** Crimes against people motivated by their gender, such as domestic abuse, acid assaults, and sexual assault, are referred to as gender-based hate crimes or gender-based violence.

¹⁸ Legal Vidhiya, *Hate Crimes: Their Nature and the Laws Connected with Them*, <https://lawtimesjournal.in/hate-crimes-their-nature-and-laws-connected-with-them/>

¹⁹ Pranjul Dalela, *Hate Crimes: Their Nature and the Laws Connected with Them*, *Indian Legal Solution Journal* (Apr. 15, 2020), <https://journal.indianlegalsolution.com/2020/04/15/hate-crimes-their-nature-and-the-laws-connected-with-them-pranjul-dalela/>

- Hate crimes are committed against LGBTQ+ people who identify as such because of their sexual orientation or gender identity.
- 6) Ethnic hatred crimes
- Ethnic discrimination: It is the treatment of particular ethnic communities or groups unfairly or violently.
 - Ethnic Conflicts: Hostilities between various ethnic groups that result in casualties and displaced people.
- 7) Communal Hate Crimes:
- Discrimination or violence committed by one community against another, frequently because of cultural or religious differences.
 - Forced Displacement: Making people leave their homes and towns because of racial, ethnic, or religious animosities. <https://blog.ipleaders.in/hate-crimes-nature-ideology-behind-making-laws-connected>²⁰
- 8) Lynching and Mob Violence²¹
- The Hon'ble Supreme Court defined Lynching as targeted violence that harms the human body and is against both private and public property in *Tehseen S. Poonawala v. Union of India*.²²
 - In India, there are cases where several individuals murder a person who has committed a crime, generally based on hearsay.
 - The beliefs and practices of one group disturb the emotions of another group, which frequently results in an illegal act of mob violence.
 - According to a survey from 2018, lynchings and mob violence were most common in the states of Uttar Pradesh, Karnataka, Haryana, Gujarat, Delhi, Rajasthan, and Madhya Pradesh.

In addition to taking legal action, combating these types of hatred needs extensive social

²⁰ *iPleaders, Hate Crimes: Nature and Ideology Behind Making the Laws Connected*, <https://blog.ipleaders.in/hate-crimes-nature-ideology-behind-making-laws-connected/>

²¹ *Lawyers Club India, Lynching and Mob Violence: A Threat to Indian Democracy*, <https://www.lawyersclubindia.com/articles/lynching-and-mob-violence-a-threat-to-indian-democracy--14081.asp>

²²Pranjul Dalela, *Hate Crimes: Their Nature and the Laws Connected with Them*, *Indian Legal Solution Journal* (Apr. 15, 2020), <https://journal.indianlegalsolution.com/2020/04/15/hate-crimes-their-nature-and-the-laws-connected-with-them-pranjul-dalela/>

awareness campaigns, education, and initiatives to foster tolerance, acceptance, and understanding among all populations. Law enforcement organisations and the judicial system are also essential in ensuring that hate crimes are adequately investigated and that those responsible are held legally liable.

Chapter 3- The Effectiveness of the IPC and other relevant laws in addressing and preventing hate crimes in India.

These cases provide insights into the legal framework surrounding hate crimes in India and the requirement of prior sanction for prosecution in certain cases. It is important to note that hate crimes are a serious offense and can have severe legal consequences. It is always advisable to consult a legal professional for specific legal advice and guidance in such matters.

The provided case laws have been selected based on their relevance to hate crimes in India. These cases deal with offenses under Section 295A of the Indian Penal Code, which pertains to deliberate and malicious acts intended to outrage religious feelings. They also touch upon related sections such as Section 153A, 505, and 506 of the Indian Penal Code, which deal with promoting enmity between different groups, causing disturbance of public tranquility, and criminal intimidation, respectively. These cases provide a comprehensive understanding of the legal framework surrounding hate crimes and the requirements for prosecution in such cases.

3.1. Case Laws

- 1) ***FATHER IGNACE TOPNO v. STATE OF JHARKHAND AND ANR (2023 SCC ONLINE JHAR 399, Jharkhand High Court, 2023)***²³ This case deals with the publication of a Bible that allegedly insulted the religious feelings of the Sarna community. The court took cognizance of the offense under Section 153A, 295A, 505, and 506 of the Indian Penal Code.
- 2) ***Paresh Nath v. State Of Jharkhand & Anr. (Jharkhand High Court, 2012)***²⁴ In this case, the court quashed the order taking cognizance of the offense under Section 295A/34 of the

²³ Judgment, FATHER IGNACE TOPNO v. STATE OF JHARKHAND AND ANR, <https://www.casemine.com/judgement/in/6437258a5d1eaa2492dcb54e>

²⁴ Judgment, Paresh Nath v. State Of Jharkhand & Anr. , <https://www.casemine.com/judgement/in/56093178e4b0149711206550>

Indian Penal Code due to the lack of prior sanction for prosecution as required under Section 196A of the Criminal Procedure Code.

- 3) **SURESH LAXMANRAO UMAK v. THE STATE OF MAHARASHTRA, THR. PSO PS FREZARPURA, AMRAVATI AND ANOTHER (Bombay High Court, 2021)**²⁵ The court held that Section 295A of the Indian Penal Code punishes the aggravated form of insult to religion when it is perpetrated with deliberate and malicious intention of outraging the religious feelings of a particular class.
- 4) **Paresh Nath And Anr. v. State Of Bihar And Anr. (2007 SCC ONLINE PAT 60, Patna High Court, 2007)**²⁶ This case emphasizes that cognizance under Section 295A of the Indian Penal Code cannot be taken without prior sanction from the Central or State Government, as required under Section 196 of the Criminal Procedure Code.
- 5) **Cardinal Telesphore P. Toppo Telesphore P. Cardinal Toppo Petitioner v. The State Of Jharkhand. (2011 SCC ONLINE JHAR 524, Jharkhand High Court, 2011)**²⁷ The court held that no sanction was obtained under Section 196 of the Code of Criminal Procedure to proceed against the petitioner for the alleged offense under Sections 153A/295A/298/120B of the Indian Penal Code.
- 6) The case of **Pravasi Bhalai Sangathan v. Union Of India And Others (2014 SCC 11 477)**²⁸ provides a definition and understanding of hate speech and its impact on marginalized groups.
- 7) The case of **Amish Devgan v. Union Of India (2020 INSC 682)**²⁹ discusses the balance between freedom of speech and the prevention of hate speech.
- 8) The case of **Fitrat Raza Khan v. State Of Uttar Pradesh And Others (1982 SCC 2 449)**³⁰ emphasizes the importance of considering the antecedent history of a person in determining the necessity of detention for maintaining public order.

²⁵ Judgment, SURESH LAXMANRAO UMAK v. THE STATE OF MAHARASHTRA, THR. PSO PS FREZARPURA, AMRAVATI AND ANOTHER, <https://www.casemine.com/judgement/in/638680eb05dcd76cf559f831>

²⁶ Judgment, Paresh Nath And Anr. v. State Of Bihar And Anr. <https://www.casemine.com/judgement/in/56098b14e4b0149711384e19>

²⁷ Judgment, Cardinal Telesphore P. Toppo Telesphore P. Cardinal Toppo Petitioner v. The State Of Jharkhand. <https://www.casemine.com/judgement/in/5ac5e4c64a93261aa79532a5>

²⁸ Judgment, Pravasi Bhalai Sangathan v. Union Of India And Others <https://www.casemine.com/judgement/in/5609af5be4b014971141626d>

²⁹ Judgment, Amish Devgan v. Union Of India <https://www.casemine.com/judgement/in/5fcea3b763bb0594d60cf606>

³⁰ Judgment, Fitrat Raza Khan v. State Of Uttar Pradesh And Others <https://www.casemine.com/judgement/in/5609abf3e4b014971140dbe7>

- 9) The case of *Tehseen S. Poonawalla v. Union Of India And Others (2018 SCC 9 501)*³¹ discusses the responsibility of the state administration in preventing communal violence and hate speech.
- 10) The case of *KAUSHAL KISHOR v. THE STATE OF UTTAR PRADESH GOVT. OF U.P. HOME SECRETARY (Supreme Court Of India, 2023)*³² provides insights into hate speech and the role of the court in dealing with it.
- 11) The case of *Jitendra Narayan Tyagi v. State Of Uttarakhand (Uttarakhand High Court, 2022)*³³ refers to the Law Commission of India's report on hate speech and its recommendations for amendments in penal laws.

3.2.Challenges in Prosecuting Hate Crime in India

- **Underreporting and Lack of Data:** One of the major obstacles to successfully prosecuting hate crimes in India is a lack of accurate data. Because of fear of reprisals, social shame, or lack of faith in law enforcement, victims—often from marginalised communities—may be reluctant to disclose hate crimes.³⁴ Additionally, it is challenging to determine the full scope of the issue due to the dearth of thorough and reliable statistics on hate crimes.
- **Legal Definition Ambiguity:** The Indian legal system lacks a precise and thorough definition of hate crimes, making it difficult to punish offenders. In contrast to several other nations, Indian law does not have a specific category for hate crimes. Due to the fact that crimes motivated by prejudice against a person's race, religion, caste, sexual orientation, or gender identity are frequently tried under ordinary criminal statutes, it can be challenging to show the hate motive in a case.
- **Inadequate Judiciary and Law Enforcement Sensitization:** Judiciary and law enforcement officials frequently lack the necessary training and education about hate crimes. This knowledge gap may lead to the treatment of cases with insensitivity, failing to identify the bias motive, or misclassifying hate crimes as general offences. To

³¹Judgment, Tehseen S. Poonawalla v. Union Of India And Others <https://www.casemine.com/judgement/in/6525c7380e33307ee3c17415>

³² Judgment, KAUSHAL KISHOR v. THE STATE OF UTTAR PRADESH GOVT. OF U.P. HOME SECRETARY https://www.casemine.com/judgement/in/63b48261614ef9618024d64a#p_499

³³Judgment, Jitendra Narayan Tyagi v. State Of Uttarakhand <https://www.casemine.com/judgement/in/632e2e0666c77f7b4ff1e68d>

³⁴ *Insights on India, Hate Crimes in India*, <https://www.insightsonindia.com/wp-content/uploads/2019/07/Hate-Crimes-in-India.pdf>

guarantee that law enforcement and the court are prepared to handle hate crime cases efficiently, appropriate training programmes and awareness campaigns are crucial.³⁵

- The burden of proof and the need for prejudice might be difficult to meet in many situations involving hate crimes. The burden of proof for proving that a crime was committed out of bias against a particular group is on the prosecution. Convictions are sometimes difficult to obtain because of this criteria, which frequently calls for substantial proof of the offender's intent, particularly in situations when the reason is not made clear.
- Lack of Witness Protection: Victims of hate crimes, particularly those who are members of the targeted group, may be unwilling to testify for fear of retaliation. In India, the lack of a strong witness protection programme deters people from coming forward to testify against those who commit hate crimes. It is extremely challenging to prosecute hate crimes without the assistance of witnesses.
- Delayed Justice and a Burdened judicial System: India's famously sluggish judicial system results in delayed justice. The desire of victims and witnesses to pursue cases might be negatively impacted by protracted judicial processes. Hate crime cases can become mired in the drawn-out judicial procedure, frustrating and discouraging individuals seeking justice since they frequently need detailed study of motives and situations.
- Social and political forces: In certain circumstances, social and political factors can affect how hate crime cases are handled and how they turn out. Influential people or organisations may try to obstruct the inquiry or influence the legal system, resulting in biased or unjust treatment. Such outside forces have the potential to compromise the fairness of the judicial process and obstruct justice.
- Lack of Comprehensive Laws: India does not have any specific or comprehensive laws addressing hate crimes. Even while the Indian Penal Code contains specific sections relating to offences against different communities, the lack of a general statute designed to address hate crimes leaves the judicial system in disarray. For hate crimes to be successfully prosecuted and victims to get justice, a thorough and transparent legal framework is necessary.³⁶

³⁵ Law Column, *Hate Crimes: Their Nature and Ideology Behind Making the Laws Connected with Them*, <https://www.lawcolumn.in>

³⁶ Legal Vidhiya, *Hate Crimes: Their Nature and the Laws Connected with Them*, <https://legalvidhiya.com/hate-crimes-their-nature-and-the-laws-connected-with-them/>

A multifaceted strategy is needed to address these issues, including strong witness protection systems, awareness campaigns, data gathering projects, and legal reforms. To overcome these obstacles and build a more equitable and inclusive society in India, efforts by law enforcement organisations, governments, civil society organisations, and communities are essential.

Finding

This study examined the intricate and varied problem of hate crimes in India via the prism of the Indian Penal Code (IPC). This study's primary findings include the following:

- **Legal Framework Ambiguity:** The IPC lacks a thorough description of hate crimes despite including sections relating to offences against particular populations. Due to this uncertainty, it is difficult to accurately identify, charge, and punish crimes motivated by hatred.
- **Hate crimes in India are severely underreported,** frequently as a result of societal shame and apprehension of reprisals. The development of targeted policies and interventions is hampered by this underreporting and a lack of precise data.
- **The prosecution of hate crimes confronts obstacles** including proving biased intent, a lack of law enforcement sensitivity, and cultural and political influences, which can delay justice and occasionally result in unfair conclusions.
- **Absence of Comprehensive Law:** An uneven and disjointed judicial system is the outcome of India's lack of a specific hate crime statute. There are protection gaps because the IPC's specific provisions do not effectively address the vast range of hate crimes.
- **Influences from society and politics:** Political objectives and social biases frequently have an impact on hate crimes. These factors may impede the administration of justice, impede investigations, and corrupt judicial procedures.

Conclusion

To sum up, this study emphasises how critical it is to implement extensive legislative changes as well as societal reforms to successfully address hate crimes in India. Although the IPC offers a basic framework, it is clear that legislation that is particular and focused on combating hate crimes is necessary. To overcome the difficulties in prosecuting hate crimes, such law should have precise definitions, severe punishments, and strong processes.

Programmes that aim to educate the public, the judiciary, and law enforcement are also crucial. These initiatives ought to focus on raising public awareness of hate crimes, their effects on communities, and the value of fair and effective judicial procedures.

Given the rising intolerance, it is imperative that India foster a culture of tolerance, understanding, and respect for diversity. Legislators, law enforcement, civil society, and communities must collaborate to create an inclusive society where hate crimes are unheard of and justice is provided to all, regardless of their background or political beliefs.



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LEGAL