

**UNDERSTANDING HATE CRIMES: A LEGAL ANALYSIS OF  
VIOLENCE AGAINST GENDER AND CASTE MINORITIES**- Sudhiksha Maneeswaran<sup>1</sup>**I. ABSTRACT**

Annihilation, insensitivity and discrimination do not strike a chord at the very base of India's multicultural society. Despite being under the spotlight and public scrutiny, hate or prejudicial crimes continue to proliferate and infiltrate the minds of many. It is distressing to see that the said crimes have increased manifold in the past four decades in India.

The term "hate crime" refers to any offence targeted towards a specific individual or group because they belong to a specific gender, social or economic community or sexual orientation. This severe hostility stems from an inability to waiver from pre-existing supremacy over other societal groups or unresolved perceptions of the LGBTQ community. Sociological scholars describe hate crimes as an expression of superiority in the form of delinquency against minority communities. For decades, social hierarchy ensured that minor cultural, ethnic and gender groups remained subdued. However, with increased waves of feminism and other modern movements, various cracks started ripping apart the social construct.

To express their rage against such a development, few individuals continue to harm, sexually violate, murder, lynch or subject members of threatened groups to persistent torture and abuse. The ultimate goal, as expressed by the criminals, was to vanquish the social identity of minorities. In line with other disciplines such as history, psychology and sociology, criminology gives readers an insight into the deep-rooted notion and provides an evolutionary trajectory.

---

<sup>1</sup> Student at Christ (Deemed to be University)

Criminology is important to understand the concept of hate crimes as it assigns legislative measures and methodological narratives.<sup>2</sup>

In addition, the author of this paper shall appraise the laws that protect individuals from unjust cruelty and refer to the precedents to examine where our laws are lacking.

Furthermore, with the help of day-to-day instances, the author shall exemplify the motive behind hate crimes and address the faults existing in India's retribution due to which bigotry crimes persist.

**KEYWORDS:**

Atrocity, Criminology, Discrimination, Motive, Prejudicial Crime

**II. UNDERSTANDING CRIMES AGAINST CASTE MINORITIES:**

In India, the ethnic and cultural social strata consist of caste and religion-based classification. The caste system has existed for centuries in our nation. It remains functional with little or no appropriate legislation that protects individuals who face the blatant violence that stems from the same. From rape and police brutality to forced manual labour, caste minorities repeatedly face atrocities. Casteists and other upper-caste individuals, in their effort to protect and maintain the existing turf, commit extreme criminal activities. For example, in the case of *Bant Singh .v. State of Punjab*, a minor girl was raped brutally since she was deemed untouchable. Furthermore, her father, in his attempt to seek justice, was attacked, which led to the loss of his arms and legs; other than rape, upper-caste individuals, along with society as a whole, is unable to banish the existing social construct due to an improper justice system that fails to be non-discriminatory. Police brutality and filing false cases against caste minorities are examples of how the justice system is oblivious to the legal needs of the marginalised<sup>3</sup>

---

<sup>2</sup>Brudholm, Thomas *Hate Crimes and Human Rights Violations* Journal of Applied Philosophy 32, no. 1 (2015): 82–97. <https://www.jstor.org/stable/26813447>

<sup>3</sup>Samuel L. Myers.Jr and Vanishree Radhakrishnan, *Hate crimes and crimes of atrocity and affirmative action in India and U.S.A*,1-8 ,2017

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

In the case of Ramasamy, Anthonysamy and Ors v. State Represented by Deputy;<sup>4</sup> a scheduled tribe individual was arrested on false grounds and brutally beaten to death. The police were first discharged of their liability because they exercised their duties and powers for the state's welfare. Indian Penal Code does not penalise police brutality in general. Indian legislation has only one statute, named the Prevention of Atrocities against Minorities Act 1989, which deals with discrimination and remedies against discrimination. The atrocities mentioned in the act are very specific, non-exhaustive and must be revisited.<sup>5</sup> Furthermore, the criminal justice system considers that caste minorities are often subject to such as humiliation in public and intimidation, which do not fall under the scope of crime; hence, the individuals are not protected from the same. The Criminal Tribes Act of 1871 is an example of immoral and biased legislation that criminalised certain tribes and prohibited their access to basic resources such as education and health facilities. Such legislation further shuns down the development of marginalized groups, and the individuals who are part of the community are often falsely charged under the Habitual Offenders Act 1952. These individuals are further denied from accessing human rights such as the right to a free and fair trial. Post-denotification, society still views the members of the tribes as criminal offenders.

### III. ANALYSIS OF VIOLENCE AGAINST GENDER MINORITIES:

The concept of sexuality and gender orientation has been prevalent in India since ancient times. There has been mention of transgender and persons belonging to the LGBT+ community in ancient manuscripts. These readings always showed transgender people and persons of different sexualities, similar to the heterosexual community. However, the British rule brought about new rules and regulations which interfered with the equality granted to these individuals and made the society feel that there was a dissimilitude in belonging to the community of transgender persons or being part of the LGBT+ community. The highly celebrated reading down of Section 377 of the Indian Penal Code, 1860, was also introduced by the British during their time in India. Although British rule in India is over, society still

---

[https://www.academia.edu/38323521/Samuel\\_Myers\\_Vanishree\\_Radhakrishnan\\_HATE\\_CRIMES\\_CRIMES\\_OF\\_ATROCITY\\_AUGUST\\_20\\_2018\\_pdf](https://www.academia.edu/38323521/Samuel_Myers_Vanishree_Radhakrishnan_HATE_CRIMES_CRIMES_OF_ATROCITY_AUGUST_20_2018_pdf)

<sup>4</sup>Ramasamy v. State, 2006 SCC OnLine Mad 1091

<sup>5</sup>Hannan Zafar, *Violence Against Marginalised Castes Increases in India*, Fair Planet <https://www.fairplanet.org/editors-pick/violence-against-marginalised-castes-increases-in-india/>

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

holds the mindset of inequality towards the transgender and LGBT+ community. The situation is such that we now refer to these communities as 'gender minorities'.<sup>6</sup>

Gender minorities always tried their best to attain the same rights as their counterparts. Their condition was so bad that until 1973, non-traditional sexual practices were considered a mental illness. This meant that those of gender minorities were treated as mentally ill and incapable of legally doing many things. Conversion therapy which means counselling given to individuals who are addicts or fall under the umbrella of LGBTQ continues to progress in India despite the decriminalization of homosexuality as per Article 377. Conversion therapy is unlawful and discriminatory, as established in *Laxman Balkrishna Joshi. v. TrimbakBapu Godbole*.<sup>7</sup> However, this case did not deal with the aspect that persons who usually go through conversion therapy commit or attempt to commit suicide. Indian legislation must recognize the interconnection between this therapy and suicide and classify the latter as an abetment of suicide. In India, through the touchstone judgment in *National Legal Services Authority v. Union of India & Ors*,<sup>8</sup> the Supreme Court of India declared transgender people known as 'hijras' the status of the third gender. Until this judgement, these individuals legally had to identify as male or female. This judgement was immensely celebrated by both the legal fraternity and the transgender community. However, the judgement's attempt to define who a transgender person was, was too narrow and lacked inclusiveness. Although the Supreme Court mentions in this judgement that all gender identities are equal in the eyes of the law, it only provided male-to-female transgender people with specific rights and entitlement. This has caused a split of the community of gender minorities. While all of it is accepted by the law, only a particular section has been provided with the right to right the wrong they faced in India. Transgender persons and their rights have drastically shifted from aversion to acceptance over the past few decades. For years, in the name of religion, culture and tradition, the community has lived in constant fear and deprivation. The draft of the Transgender Peoples (Protection) Act 2019 is the only comprehensive legislation for safeguarding the community's rights. However, this statute was subject to criticisms that

---

<sup>6</sup>Priyanka Garodia, Gender-Based Violence in India: A Human Rights, September 2021, Approach, <https://peaceforasia.org/gender-based-violence-in-india-a-human-rights-approach/>

<sup>7</sup> *Laxman Balkrishna Joshi (Dr.) v. Dr. TrimbakBapu Godbole*, (1969) 1 SCR 206

<sup>8</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

mainly addressed its stereotypical and prejudicial crime aspect. For example, the draft was severely lacking in sensitivity and empathy. The act disregarded the dignity and privacy rights of transgender persons. In addition to providing proof of their identity, the community members were asked to

undergo a mandatory medical examination to show that they do not have AIDs or other STDs to obtain and access amenities. Transgender community are often the victims of intimate partner or domestic violence. Due to shame, non-inclusive rhetoric and the inability to accept the unique identity, family members and partners subject transgender persons to harassment and intimidation frequently. Indian legislation, unlike other developed nations, lacks legal reports and surveys that analyse the rate of violence against the transgender community. By keeping track of the same, the Domestic Violence Act and other legislations can make special provisions and amendments that cater to the well-being and protection of transgender rights.

#### **IV. ANALYSIS OF CRIMES AGAINST WOMEN:**

The following legislations are available for women to protect and preserve their right to live with dignity and personal liberty against violence. Rape, defined as penetration of genitals without an individual's consent, is a cognizable, non-bailable offence punishable under the eyes of the law as per section 375 of the Indian Penal Code. The term consent has also been defined in light of the same under Section 90 of the IPC. However, the abovementioned provisions are ambiguous and usually subject to the court's discretion. Many cases dealing with rape and sexual harassment, in general, have been dismissed due to the complexities surrounding consent.

Furthermore, the law does not protect the victim in cases wherein there is no resistance, and passive giving is present on their part. Rape is a delicate yet widely committed crime expressing power and authority over women. The criminal justice system in India does not recognize rape as a result of hatred or prejudices. The purview of mens rea under rape law is limited to the outcome of libido or sexual inclination only. And non-presence of the above motives results in the dismissal of the case. It has also been noted that the fear around the burden of proof and medical examination under section 53A of CrPc further complicates providing justice to rape victims. The recent two-finger test, part of the victim's medical

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

examination, is immoral and illogical and hinders victims and their families from approaching the court. The perpetrators escape jeopardy.<sup>9</sup>

#### V. CONCLUSION AND WAY FORWARD:

One of the most atrocious crimes plaguing our society and hindering women from progressing is rape and sexual abuse. Victims of rape have to endure social ostracism due to the numerous faults in the criminal justice system. They are further subjected to little or unsatisfactory remedy under the eyes of the law. These fallacies motivate perpetrators to take the law for granted and commit habitual crimes against women. Stringent legislation based on women's legal requirements in line with consent, corroboration, and social consciousness is required to preserve the dignity and respect of the women's community.

The gender minority community has faced atrocities in India since British rule declared sodomy against the law. The ancient texts of Indian culture which celebrated the gender minority were overthrown by the British, who denied civil rights and deemed them to be criminals under the Criminal Tribes Act of 1871. The situation since then has changed, but gender minorities still face trouble living freely. Recent developments, decriminalizing same-sex activities under Section 377, are a celebratory victory for the community. However, it still does not subside the hate crimes committed against them. The people of this community still run away from their homes and family in fear of intimidation. This is more prevalent in the rural part of the country. Domestic violence against gender minorities has been rising, and the Supreme Court's various judgments have not helped address this issue. There is a crucial need to introduce legislation which deals with the crimes committed against gender minorities. The Indian legislative bodies have already recognized the need to protect minorities based on caste, it is not time for it to recognize the same concerning gender minorities. New legislation should be introduced by the legislative bodies to criminalize hate towards gender minorities. It is high time that the Protection of Women from Domestic Violence Act, 2005, be amended or replaced with new legislation which incorporates in its

---

<sup>9</sup>G. Kalyani *The Two Finger Test: Legal and Ethical Issue*, IJSRST, Volume 2 Issue 2, ISSN: 2395-602X, March 2016, [https://www.academia.edu/25504018/The\\_Two\\_Finger\\_Test\\_Legal\\_and\\_Ethical\\_Issue](https://www.academia.edu/25504018/The_Two_Finger_Test_Legal_and_Ethical_Issue)

spirit the need to protect gender minorities. There is a need to introduce a criminal amendment to protect gender minorities and penalize the perpetrators who go scot-free. The recognition of caste minorities by the Indian legal system has improved the conditions of these minorities, who used to live in fear and a constant state of shame and deprivation. It would be wrong to say that caste minorities are not living in perfect equality and harmony. With the various laws across the nations, such as the Criminal Tribes Act of 1871, which was repealed in 1949 and denotified tribes, the image of the communities in the eyes of the society is still that of a downtrodden. The various legislations to prevent hate crimes against case minorities are not operating to reduce the instances. Hence as evident as it is, there is a dire need to revisit these laws and reform them.



For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>