

Laws To Prevent hates crimes in india especially related to casteism

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Abstract - An extreme example of prejudice and discrimination in India may be found in the form of violent crimes committed by members of higher castes against members of historically oppressed groups known as Scheduled Castes and Scheduled Tribes (SC/ST). In this study, we evaluate whether or not there is a correlation between changes in the relative material standards of living between the SC/ST and upper castes, as assessed by consumer expenditures, and changes in the incidence of crimes committed against SC/ST. We establish a positive correlation between crimes and expenditures of SC/ST vis the higher castes by using official district level crime data for the period 2001-10. This suggests that a widening of the gap between groups is connected with a drop in caste-based crimes. In addition, it appears that the upper castes are the ones driving this impact, as they are the ones reacting to changes in the status quo. The findings are not sensitive to modifications made to the modelling assumptions or the specifications.

Keywords - Caste-based, Hate Crimes, freedom of religion, religious crimes, India

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1. INTRODUCTION

In India, formerly untouchable castes and various tribal communities continue to struggle with discrimination, economic and social marginalisation, and the stigmatization of their identities. Additionally, similar to crimes motivated by bigotry that have been committed in other regions of the world, the higher castes have been responsible for the atrocities and crimes that have been committed against these people. Rape of women, abuse by police officers, harassment of lower caste village council members, unlawful land encroachments, forced evictions, and other forms of human rights violations are common forms of atrocities committed against lower castes (Human Rights Watch, 1999). The Indian constitution, which outlawed the practise of untouchability and promotes the principle that all citizens should be treated equally, has been flagrantly disobeyed in each of these instances. Since then, more measures have been added to the law, such as those found in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which particularly target hate crimes of this nature. In 2006, in recognition of the seriousness of the issue, Indian Prime Minister Manmohan Singh compared the system of untouchability to the apartheid system. [1]

In this work, we examine upper-caste crimes against historically marginalized Scheduled Castes and Scheduled Tribes (ex-untouchables and marginalized tribes, SC and ST, respectively) in order to better understand the factors that drive group-based crimes to occur again and time again. Considering that the caste system has traditionally meant a hierarchy in

which the upper castes have been economically better off than the lower castes, this study aims to examine whether regional variations in violent incidents are systematically linked to differences in relative group economic outcomes between the upper and lower castes and tribes. The goal is to see if the crimes perpetrated against the lower castes by the upper castes are an attempt to demonstrate their superiority or an expression of their discontent with the current state of affairs. [2]

1.1 The Indian Caste System

"Caste system" refers to a system in which the Hindu people is divided into thousands of distinct groupings known as "jati" (castes). In the ancient vana system (also known as the "caste system"), society was split into four or five hereditary, endogamous, mutually exclusive, and occupation-specific groups, each with its own distinct identity. The 'Brahmins' (priests and instructors), the 'Kshatriyas' (warriors and royalty), the 'Vaisya' (traders, merchants, and moneylenders), and lastly the 'Shudras' were at the pinnacle of the vana hierarchy (engaged in menial labour and low-end jobs). Over time, the Shudras became divided into two groups: the 'Ate-Shudras,' who worked in the dirtiest and most menial professions. When it came to the Ate-Shudras, contact with them was regarded to be contaminating. Because they were seen a threat to the upper castes, they had to live in segregated homes, were barred from attending public schools and religious institutions reserved for them, and were expected to keep a safe distance from those castes. As a result of their isolated

location, rudimentary farming methods and different lifestyles and customs, the indigenous tribes (or Adivasis) endure large-scale exclusion from mainstream Indian civilization.

Untouchable jati and Adivasis were designated as 'Scheduled Castes' and 'Scheduled Tribes' in the Indian Constitution in 1950 because of their significant social, educational and economic inequalities. Reservations or quotas in national and state legislatures, local village councils, higher education institutions, and government positions were all forms of affirmative action that were made available to these people throughout the 1960s. [3]

1.2 Hate Crimes

The phrase "hate crime" refers to "unlawful, aggressive, damaging, or threatening behaviour in which the offender is motivated by prejudice toward the victim's alleged social group." What sets a hate crime apart from a similar non-hate crime is the underlying purpose for the crime. Hate crimes, on the other hand, are not motivated by a desire to profit from the victim's wealth, but rather by a purposeful desire to harm an individual because of his or her social status. Studying literature from the United States and Europe shows that, among other factors, a person's standing in society is a significant factor in determining whether or not a person commits an act of hate crimes. Beck and Tonya (1990) found that throughout the period 1882-1930, mob violence against blacks in the southern states of the United States rose when economic competitiveness grew. At lower cotton prices, there was more rivalry for the few remaining jobs between blacks and whites, which in turn led to more economic competitiveness. [4]

2. HATE CRIME LAWS

Hate crime prosecutions can nevertheless be prosecuted even in the lack of explicit legislation, which help to entrench society's rejection of such acts and make it easier to gather data on them. It is universally accepted that offences that inflict more harm or offend the public's moral sensibilities should be punished more harshly. Bias-motivated crimes meet both of these conditions. They are more harmful both because of their impact on the general population and because they violate the idea of equal rights and equal protection of the law.

Prejudice crimes are criminal acts that are already punished by the law, but criminal justice systems should guarantee that the additional harm caused by a bias motivation is represented in the verdict and sentence. As a result, proof of bias motivation should be given to the court so that this injury can be taken into consideration for conviction and sentence.[5]

2.1 Types of laws to address hate crimes

Every state that takes part in the OSCE has some kind of law on the books that may be used to prosecute

hate crimes. In most jurisdictions, the term "hate crime" refers to two distinct categories of legislation: substantive offences and penalty increases. However, general sentencing rules can be employed to detect bias motive and to seek a suitable penalty in situations where specialised hate crime law does not exist or where there are major gaps in the legislation.

i. Substantive hate crime laws: A distinct provision within the law that contains the bias motivation as an inherent element of the legal definition of the offence constitutes a substantive hate crime legislation. Such a law is known as a "hate crime law." In most cases, the punishment for this distinct crime will be more severe than the punishment for the identical act committed without the biased motivation. For instance, in the United Kingdom, the crime of assault without a prejudice motivation is considered a separate offence from the crime of assault that is racially or religiously motivated, which is a special offence in its own right.

In accordance with this kind of legislation, the accusation or indictment must include an explanation of the defendant's motivation, and each component of the crime must be demonstrated for there to be sufficient evidence to sustain a conviction.

ii. Penalty enhancement laws: Provisions for "aggravating circumstances" are other names for this type of penalty augmentation. In plain words, this means raising the penalty for a base offence when it is done with a prejudiced motivation. General or specialised penalties might be added to the fines. All offences included by the criminal law have a general escalation in punishment. For example, in Finland, a crime might be punished harsher if "the offence has been motivated by race, colour, national or ethnic origin, religion or belief, sexual orientation or handicap or by other equivalent reasons." It is common to find provisions for enhancing punishments in the general section of the code applicable to all offences

The vast bulk of anti-hate crime legislation in the OSCE area focuses on stiffening the penalties for those who commit hate crimes. To be eligible for a punishment increase, there must be proof of a bias motivation during fact-finding phase of the case.

iii. General sentencing provisions: General sentencing standards can be used to hate crimes in states that don't have specific laws addressing the prejudiced motivation of those who commit them. There are a number of ways to prosecute hate crimes in countries that lack specialised hate crime legislation:

- Motivations of the perpetrator are a factor in some sentencing guidelines, including those in the German Penal Code, which expressly allow for "motives of the perpetrator" to be considered.
- Criminal justice systems may seek an increase in punishments for crimes

motivated by hatred under the rules of some governments' prosecution services. According to the Netherlands' Guidelines of Criminal Procedure, prosecutors are required to seek a 50 percent increase in the sentence for certain crimes, including physical assault, threats and vandalism and damage to property motivated by bias against the protected grounds listed in the anti-discrimination provision.

- A court may consider other considerations in sentencing hate crimes, such as the seriousness of the harm done, how particularly cruel an act was or how vulnerable a victim was, when determining a sentence for a hate crime. As a result, the criminal penalty for bias-motivated offences can be enhanced to account for the additional harm they create.

An higher sentence based on one of the aforementioned factors will not stand unless evidence of prejudice is given to the court early enough in fact-finding. [6]

2.2 Hate Crimes in India

i. Hate Speech

The Black's Law Dictionary defines 'hate speech' as "a discourse that conveys no meaning other than a display of hatred for some group, such as a specific race, especially under circumstances when the communication is likely to cause violence."

The term "hate speech" refers to any communication that disparages a specific individual or group of individuals. As things are in India right now, this is a major reason for concern because it might spark a large-scale violence. It is not uncommon for hate speech to be motivated by race, nationality, religion, or social status. In India, there is a lot of variation in language, caste, ethnicity, religion, culture and beliefs that make it difficult to regulate hate speech. Rather than an individual's right to freedom of speech and expression and the harm done as a result of hate speech, hate speech in India is defined in terms of a community's overall harm. Using religion, ethnicity, culture, or race as a basis for a hate crime is illegal in India. There is no specific reference of this phrase in any statute, but its various meanings may be found across the body of legislation that does. Sections 153A, 153B, 295A, 298, 505(1) and 505(2) of the Indian Penal Code (IPC) stipulate that any word, said or written, that encourages discord, animosity, or insults based on religion, ethnicity, culture, language, region, caste, community, or race is illegal under law.

In a similar vein, laws such as the Representation of the People Act, the Information Technology Act, the Unlawful Activities (Prevention) Act, 1967, and others address hate speech and how it should be handled. There have been an increasing number of incidences of hate speech in India, and the laws themselves have not been very successful in this regard. Consequently,

it is imperative to not only restrict hate speech, but also implement actions that can reverse the harm it does.

ii. Mob Lynching and Violence

"Lynching" is defined by the Supreme Court of India in the case of Tansen S. Poonawala v. Union of India as "targeted violence" against the human body and against private and public property." When a group of people murder someone over an alleged offence in India, it's typically because of some kind of gossip or falsehood. A community's beliefs and practises can lead to a community's emotions being displaced, which can lead to an illegal act of mob violence. More than half of all occurrences of mob lynching and mob violence occurred in states like as Uttar Pradesh and Karnataka, Haryana, Gujarat and Delhi. There are no laws prohibiting lynching in India at the moment, although there are sections in different statutes that deal with mob lynching and violence, such as Section 223(a) of the Criminal Procedure Code, 1973, which allows a person to be prosecuted with an act of collective assault on another person. Similar restrictions may be found in the IPC under sections 302, 304, 307, 323, and 325, to name just a few. Assaults that result in murder or attempted murder are among the most common forms of lynching, hence the above-mentioned IPC provisions can be used in situations of mob lynching and violence.

Additional legislation has been adopted by the Indian Parliament to prevent atrocities against scheduled castes and scheduled tribes, including the Scheduled Castes and Tribes (Prevention of Atrocities Act, 1989). [7]

3. BACKGROUND OF RELIGIOUS HATE CRIMES IN INDIA

Hate crimes have been a persistent feature of the global landscape for most of human history. As a potent instrument, it is an efficient weapon in the armory of the powerful to degrade and debilitate the religious minorities. From the persecution of Christians by the Romans between 64 and 313 AD to the Holocaust's terrible treatment of Jews, hate crimes based on religion are widespread. Religious extremism has ensnared many people in India as well. During British dominion in India, the Indian people were subjected to a terrible oppression through execrable legislation. As a result of the British colonial rule, the whole Indian populace was subdued by the British's insulting techniques. There have been several instances of hate crimes, which are acts of violence motivated by prejudice, since India's independence from colonial authority. Many of these remain a dark stain on the country's supposedly secular social fabric.

Violence perpetrated for religious reasons has been brought to light by a horrifying incident on September

20, 1969 when a young Muslim expressed his wish to get retribution for the destruction of his property. When the throng tried to compel him into yelling "Jai Jagannath," he was grabbed and attacked by them. Someone in the crowd thought he should be executed since they had failed. Thus, wood from damaged stores was collected, a fire was built in the middle of a road, and fuel was sprayed over both it and the young man, who was then set on fire with no protest from any Hindus in the area. First significant outbreak of sectarian violence in Gujarat included slaughter, burning, and robbery. More than 1,100 people were killed and a large amount of property was damaged as a result of the violence. [8]

4. CASTE AND CRIMES OF ATROCITIES IN INDIA

He claims that "Untouchables" in India are the descendants of "Broken Men" (Dalit, in Marathi) who were the original indigenous tribes that were captured and compelled to live as peripheral communities, tasked with protecting the villages of those who had been conquered. It was evident that the conquering people had little regard for the native population. "Untouchability" was outlawed in 1950 under Article 17 of the Constitution. The Constitution no longer defines it.

Act No. 29 of 1989 on Preventing Atrocities against Scheduled Castes and Scheduled Tribes (SC/ST/ST) covers only two groups: SC/ST/SC. To full fill Article 17 of the Constitution, this Act was enacted in the form of this legislation.

- Prevent atrocities against the SC/ST from being committed.
- Special Courts should be established to handle criminal cases.
- Help those who have been harmed.

Its reach was increased by an amendment made to the law in 2015. Depending on the seriousness of the offence, penalties ranged from fines to life in jail and even death. [9]

Social identity and awareness in India are deeply impacted by the widespread existence of "untouchability" and caste-based crimes in today's society. Discrimination on the basis of caste is a pervasive and ingrained prejudice in Indian institutions, notwithstanding the Constitutional mandate. 3 Discrimination based on one's birth status is the foundation of caste systems all across the world. Hatred and intolerance against the Dalits exhibit themselves in atrocities like as violence against them, which are frequently intended against eliminating whole Dalit families. When it comes to modern India, there are many glaring contradictions, including instances of grave human rights breaches perpetrated by the state as well as a lack of civil society concern for these incidents. [10]

5. CRIMINAL JUSTICE SYSTEM RESPONSE TO HATE CRIMES

The criminal justice system is the primary method through which governments respond to hate crimes. The courts and law enforcement institutions are essential components of this reaction.. Only when police, prosecutors, and courts cooperate together can hate crimes be dealt with effectively. In most circumstances, demonstrating a criminal's motive is not required. Police, prosecutors, and judges have to take a different approach to hate crime investigations since motive is a difficult topic and there are limits to the sort of evidence that can be used to show it. [11]

Police: Police must be able to detect hate crimes in order to successfully investigate and gather data; bias indicators are a crucial tool. There should be a focus on motive while questioning offenders, since many of them are willing to discuss their motivations because they believe their actions are supported and endorsed by the rest of the community. Law enforcement relies heavily on the collection of statistics on hate crimes.

Prosecutors: When at all feasible, prosecutors should use sections in criminal laws dealing with hate crimes to bring charges against suspects. Prosecutors should characterised every case as aggravated if the motive is there, regardless of its severity. If no aggravated version of the offence is included in the code, this should result in the collection and presentation of evidence to the court of the motive. If an admission is unavailable, a prosecution has the option of using other evidence, such as:

- At the scene of hate crimes, it is not uncommon to find insulting graffiti or other forms of hate speech (crucial evidence of motive).
- Evidence of the perpetrator's overall opinions can be found through his or her musical and literary works, websites and web postings, or tattoos.
- There may have been previous similar conduct by the perpetrator; against this victim or others.

6. CONCLUSIONS

This article presents one of the first analyses of crimes committed against Scheduled Castes and Tribes in India. The purpose of the study is to gain an understanding of the relationship between a change in the disparity in the standard of living between upper and lower castes and the victimisation of the SCST community. We find that shifts in relative economic position between lower castes and upper castes are positively correlated with shifts in the incidence of crime. Specifically, we find that a widening of the gap in expenditures between lower and upper castes is associated with a decrease in crimes committed by the upper castes against the SCSTs. This is because a wider gap in expenditures between lower and upper castes is associated with a wider gap in expenditures between the lower and upper castes. In addition, as

compared to SLL crimes, it is the more violent IPC crimes that are the ones that are responsive to changes in economic inequalities. In addition, this is the result of an improvement in the economic well-being of the upper castes rather than a deterioration in the economic position of the lower castes, which is driving the trend. We understand this to be a response on the part of the higher castes to variations in the perceived level of danger brought about by shifts in the relative positions of the two groups. This hypothesis is supported by the fact that the non-body crimes, which are defined as offences that aim to rob the victim of property that is emblematic of his or her material progress, are the types of violent crimes that are most likely to be influenced by shifts in the relative standard of living.

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