

Chapter 13

Culture, Ethnicity, and Hate Crimes: A Comparative Analysis of Preventive Laws Between India and the USA

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ABSTRACT

Traditionally, India is a multilingual, multi-religious, and multicultural country. Ingression of different races in India has brought in different personal laws. Similar to India, the US also has a multiracial, religious, linguistic, and cultural society. The country also has similar experiences of hate crimes, especially from the perspectives of racial violence. This chapter aims to research the hate crime preventive laws in the US and India to find the best solutions from both jurisdictions.

INTRODUCTION

India, the largest democracy in the world is a country with multilingual, multi religious and multicultural population. Different races have co-existed in India since time immemorial. The rich anthropological history of India would show that Aryans and Dravidians had developed their own distinct socio-legal cultures since ancient times (Naqvi, Ibrar, & Bangash, 2011; Bhawuk, 2012). The Vedas, ancient scripts, the great epics of Ramayana and Mahabharata may show the existence of class-based distinction and discrimination. (Witzel, 1999). Simultaneously these ancient scripts may also show the existence of law and order and policing system which would control social and moral crimes. The system gave way to customary laws related to inheritance, marriages and further social divisions based on caste and sub caste (Halder, & Jaishankar, 2008). The criminal justice system got moulded according to the demands of the new ruling dynasties and the class and caste based social system. This reflected in the

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mediaeval period as well. The invasion of non-Hindu rulers, especially the Muslims, further introduced new systems of policing, courts and restitution of justice (Thilagaraj, 2013). This period saw shifting of leniency towards non-Hindu victims and stricter sentences for non-Muslim accused (Blake, 1979). However, several Muslim rulers from different dynasties including the Mughals tried to bring in uniform criminal procedural laws for their subjects irrespective of their religion, caste, and creed. But this was made possible only during the British colonial rule when the entire Indian peninsula was brought under single ruler, i.e., the British Empire. The British rulers created several laws including the Indian Penal Code, Criminal Procedural laws etc., which introduced and recognised several existing and new offences including offences against the property, against human body, against the State etc. Punishment policies were changed according to the British colonial understanding. As such, whereas certain general criminal offences like murder, culpable homicide etc., or burglary etc received the traditional penological understanding, more power was given to the agents of the government, i.e., the police to act in an arbitrary manner especially to non- Europeans and non-Christians (Lal, 1999). This gradual shifting of protective *legal veil* to the ruling community since ancient times had given rise to ethnic group clashes and further division among people depending upon the religious and cultural practices. In 1947 India got independence from the colonial rulers and the independent Indian government created a unique constitution which upheld certain rights including right to equality and right to practice one's religious and cultural practices etc as prime fundamental rights (Lal, 1999).

The Indian Penal Code was reformed to shred the colonial nature and was made uniform to all, irrespective of class, caste, religion, language ethnic background etc. But socio-political reasons along with the socio-cultural diversity continued to create hate crimes in India and for curbing the same, the Indian parliament had to create specific legislations. Some of these extended the scope to curb ethnic clashes, some had been created to address crimes generating from socio-economic diversities and some had been enacted to curb hate crimes targeting gender. These were done keeping in consideration the existence of right to equality and freedom of speech which have been considered as prime fundamental rights under the Indian constitution. There had been several amendments to the constitution of India for suiting the needs of specific rights of people including the selection of judges to the higher judiciary which would maintain proper balance and impartiality in hearing cases affecting the rights of people from different socio-economic-lingual-religious groups. However, in certain cases the execution of these laws could not successfully restrict escalation of hate crimes. But considering the socio-religious-cultural diversity, it may be seen that the laws could in general control the aggressive mind-sets of separatists which could have easily influenced minds of people especially those who belong to religious-socio-economically politically and culturally minority groups.

Unlike India, USA has grown into country with a multi-cultural-lingual-socio-religious society since 18th century onwards. The country may not have a history of ancient legal scripts which laid the base for personal laws but has a deep colonial past like India. (Kramer, 2002). US is neither free from hate crimes. Colonial past, slave trade, economic recessions, and huge flow of immigrants in the USA post-world war for job opportunities and better living conditions created conditions for escalation of hate crimes. (Coester, 2008). The US constitution upholds right to equality, fair trial, and freedom of speech and right to practice own religious and cultural practices. The US constitution was created in the 18th century and there had been a gradual improvement in the understanding of rights including civil rights from a holistic perspective (Gressman, 1952). However, irrespective of the existence of constitutional guarantees and laws to curb hate crimes including racial crimes, crimes against gender etc, these crimes have existed and are growing (Considine, 2017). After the 9/11 attack, Islamophobia had reached new

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