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HATE CRIMES: AN OVERVIEW

By Aiswarya lakshmi.j.s

INTRODUCTION:

We have come across the term “hate crime” in various jurisdictions, disciplines and even in some context. When we look into the interpretation of the term it is surprising that there is no uniform understanding. For some reasons the scholars, policy makers and even legislators often speak at odds when they are discussing the issue. From some point of view hate crime is a phenomenon which reaches across the spectrum of hostilities that are manifested towards minority communities which are generally ranging from what would be considered as a criminal act, to discrimination or to hate speech or even to microaggression. For the others, the term hate crimes is a narrow construct applicable only in the context of criminal acts. When it comes to scholars, policy makers and analysts it comes as a unique problem. In the academic and across policy sectors, there is usually considerable agreement on what the terms signify when it comes to various manifestations of crime. While there may be differences in legal definitions of what constitutes a rape between jurisdictions, there are agreed-upon definitional boundaries for what that term means across contexts. This enables scholars from various disciplines and jurisdictions to investigate and problematize the concept, as well as policymakers and analysts to comprehend the phenomenon across jurisdictions. This allows for data comparability and learning between jurisdictions about how to best address this social ill. The same cannot be said for hate crime. There is no internationally accepted definition of what constitutes a hate crime from organisations such as the United Nations, the Council of Europe, or the European Union. Not only that, but there is no universally accepted definition of the term across jurisdictions.

There is a sudden rise in the incidence of hate crimes in India in the recent times. Occurrences under this by and large include savagery against an individual or a gathering, of a specific gathering, by hordes, essentially on strict issues, which make strife in the general Social Structure. Inspired by disdain and one-sided mentality disdain violations are regularly pointed toward making an impression on a specific gathering of society to impart in them dread and say

something. The motivation for the act must be considered when determining whether a crime is a hate crime or a bias crime. A hate crime is always motivated by bias or hatred of one person or social group toward another person or social group due to differences in race, religion, ethnicity, customs, practises, and so on. It has far-reaching psychological and emotional consequences that extend far beyond the victim. Attacks motivated by such biases also jeopardise the person's rights as an Indian citizen by birth. In short hate crimes can be defined as an attack on a person's rights which is entrusted o him and also by affecting not only him but also the social structure as a whole which in so many ways makes the hate crime more heinous than any other criminal offences.

WHAT IS HATE CRIME?

Hate crimes, according to the Organization for Security and Cooperation in Europe (OSCE)¹, are criminal acts committed with a bias motive. Also known as "bias-motivated crime" or "bias crime," they are not defined as a legal offence, but rather as a concept that occurs when a perpetrator targets a victim of a specific social group.

Hate crime refers to criminal acts motivated by prejudice against an individual or social group because of differences, most notably in religious practises and customs. In modern usage, it refers to speech that is insulting, derogatory, or incites violence, in addition to lynching, discrimination, and offensive speeches. All of this disrupts the harmony and order in society as a whole. It has a devastating effect on its victims, both mentally and physically, resulting in their mental and physical devastation.

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¹ OSCE Ministerial Council Decision No. 9/09, op.cit., note 1.

Thus, Hate Crimes could be defined as an attack on a person's rights entrusted to him, affecting not only him but the social structure as a whole, making it more heinous than many other Criminal Offenses.

HISTORY OF HATE CRIMES:

The term "hate crime" first appeared in the United States in the late 1970s, but such crimes existed long before that, with Roman persecution of Christians and Nazi slaughter of Jews being two recent examples. In the past, hate crimes were committed against members of oppressed groups and were motivated by prejudices against the other community, making it significantly different and more dangerous than other types of crime.

Lynchings of Afro-Americans in South America and Chinese in the West are recent examples of hate crimes, as are assaults on the LGBTQ community and xenophobic responses to a variety of minority ethnic groups. The concept received formal recognition in 2003, when the term "hate crimes" was first used by the OSCE, the Ministerial Council, where member states acknowledged it and committed to enacting legislation to combat such crimes.

Hate Crime is not a new term. There have been incidents involving such crimes since the formation of nations, which were primarily based on religion. Apart from religious-biased crimes, there was also caste and gender-based violence, and the event that marked the beginning of Hate Crimes in India cannot be pinpointed. According to an NCRB report, India has the highest rate of hate crimes based on caste and religion, followed by gender biases, which are increasing at an alarming rate. Hate crimes such as lynching and hate speeches in India not only affect the victim but also alienate entire communities.

According to Hate Crime Watch's April 2019 report, there were 282 Hate Crimes that resulted in 100 deaths. Muslims were the most common victims of such crimes, accounting for 57% of all incidents, followed by Christians (15%) and Hindus (13%). All of these statistics simply demonstrate the alarming rate at which such crimes occur and how deeply ingrained they are in society.

HATE CRIMES: THEIR NATURE AND CHARACTERISTICS:

Hate crimes are unlike any other type of crime in India, as they have a sense of bias attached to the motive that is not present in any other type of crime. Hate crimes differ from other types of criminal offences due to their specific nature and characteristics, which are as follows:

1. Hate Crimes, regardless of their nature, are always based on a penal offence and thus impose some form of punishment. This criminalises hate crime and makes it an offence under domestic criminal law.
2. Biases are always at the root of a hate crime. Only when there is a bias does a criminal act become a hate crime. The factor to be considered is the selection of a victim based on prejudice based on religion, community, gender, and other factors.
3. Hate crimes are a particularly heinous form of discrimination. It is committed as a result of a significant difference in the community that causes the former to discriminate against the latter and, in extreme cases, commit crimes against them as a result of their biases.
4. Mostly in specific instance of hate crimes, the main focus is always a person or a group of individuals sharing noticeable characteristics, resulting in variations and biases.
5. Hate crimes occur in varying degrees, ranging from vandalism to physical abuse and, in some cases, homicide. The severity of hate crimes is determined by the level of brutality and cruelty involved, as well as the impact on society as a whole.

WHETHER HATE CRIME IS DUE TO BIAS OR HATE?

In reality, the expressions "hate crimes" or "hate motive" can be deceptive. Many crimes motivated by hatred are not classified as hate crimes. Murders, for example, are frequently motivated by hatred, but they are not "hate crimes" unless the victim was selected because of a protected characteristic.

On the other hand, wrongdoing in which the perpetrator does not feel "hate" for the specific unfortunate casualty can still be considered hate wrongdoing. Hate is a very specific and extraordinary passionate state, which may not accurately portray the majority of hate crimes.

Hate crimes are committed for a variety of reasons, which are listed below:

- The perpetrator could be under the influence for a variety of reasons, including hatred, jealousy, or a desire for peer approval.
- The perpetrator may have no feelings or attraction to the individual target of the crime, but may have threatening thoughts or emotions about the group to which the target belongs.
- The perpetrator may feel hostility towards all the people who are outside of or do not belong to the group with which the perpetrator identifies himself or herself; or
- At a more abstract level, the target could simply represent an idea, such as immigration, that the perpetrator opposes.

WHY IT IS NECESSARY TO HAVE HATE CRIME LAWS?

Hate crimes are frequently not managed appropriately if they are treated like other crimes and are not perceived as a special classification. This can manifest itself in a variety of ways, such as specialists doubting the victim or failing to investigate claims of bias motive; investigators limiting the offence when selecting charges; and courts failing to apply their forces to expand sentences to reflect the culprit's motives. Hate crimes do not happen in a vacuum; they are a violent manifestation of prejudice that can be prevalent in the larger community.

Certain patterns can be observed in cases of poor investigation, prosecution, and punishment of hate crimes. When a crime is committed against a member of a stigmatised group (for example, if the gathering is commonly thought to be involved in a crime), this can influence the investigation by painting the victim as being to blame in some way. It only takes a few such incidents for affected communities to become disillusioned with law enforcement officials' response. In contrast, where the prosecution and sentence are based on the bias motive, such open affirmation reassures the victim that their experience was completely perceived. As a result, different members of the network may gain confidence that hate crimes will not go unpunished. Classifying hate crimes as social judgments into law is critical for influenced networks, can help work with confiding in the criminal equity framework, and thus can repair social fissures.

HATE CRIMES IN INDIA AND THE LAWS THAT APPLY TO THEM:

Hate speech:

According to Black's Law Dictionary, a 'hate speech' is "a speech that has 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."² In simplest terms, hate speech is a speech that is disrespectful to a specific person or community. It is a serious concern because, given the current state of affairs in India, it has the potential to spark widespread conflict. The most common reasons for hate speech are race, ethnicity, religion, or social class. With its rich diversity of language, caste, race, religion, culture, and beliefs, India presents a unique case for hate speech regulation. In India, hate speech is expressed in terms of the harm performed to a community as a whole, rather than an individual's right to freedom of speech and expression and the harm caused by hate speech. Hate speech based on religion, ethnicity, culture, or race is illegal in India. Despite the fact that the term is not mentioned in any statute, its various forms are identified throughout the laws. Sections 153A, 153B, 295A, 298, 505(1) and 505(2)25 of the Indian Penal Code declare that any word, spoken or written, that promotes disharmony, hatred, or insults on the basis of religion, ethnicity, culture, language, region, caste, community, race, etc., is punishable by law.

On a slightly related note, the Parliament act, the Information Technology Act, the Unlawful Activities (Prevention) Act, and other similar acts contain provisions addressing hate speech and its prevention. Hate speech incidents have been on the rise in India, and the laws in place have not been particularly effective in this regard. As a result, it is critical to not only regulate hate speech but also to implement practises that can mitigate the harm caused by hate speech.

Lynching and mob violence:

Lynching was defined by the Hon'ble Supreme Court in *Tehseen S. Poonawala v. Union of India*³ as "targeted violence that influences human body which is against property and people." Throughout India, all those are incidents in which a group of people kills someone allegedly for an offence committed that is usually based on a rumour. The beliefs and practises of one community dislodge the emotions of another, which frequently leads to an illegal act of mob violence. According to a 2018 report, states such as Uttar Pradesh, Karnataka, Haryana, Gujarat,

² BLACK'S LAW DICTIONARY (9th ed, 2009).

³ (2018) 6 SC 72.

Delhi, Rajasthan, and Madhya Pradesh had the highest number of cases of lynching and mob violence.

There are currently no laws in India prohibiting lynching; however, provisions in various statutes address lynching and mob violence, such as Section 223(a) of the Criminal Procedure Code, 1973, which allows a person to be charged for an act of group attack on another person. Similarly, IPC provisions such as Section 302, Section 304, Section 307, Section 323, Section 325, and others deal with hate crimes indirectly. Lynching generally refers to attacks that result in murder or attempted murder, harassment, assault, gang-rape, and so on; thus, the aforementioned provisions of the IPC could be applied in cases of Lynching and Mob Violence.

PRACTICAL ARGUMENTS RELATING TO HATE CRIMES:

The practical impact of enacting hate crimes legislation can be significant. Ideally, enactment is passed over a certain level of debate within the government, law enforcement professionals, and society at large. This needs to serve to concentrate concern and brings issues of the nature and extent of the crimes to light. The path to enactment can thus improve interest to and public reaction to hate wrongdoing. Once authorised, the execution of a hate crime enactment necessitates expert preparation that builds the abilities and knowledge of police, investigators, and judges. As a result, criminal equity responses to hate crimes improve.

A more effective criminal justice response increases the surety of impacted networks. This provokes data and involvement from networks that may be wary of the police in some way. This prompts more investigations to be conducted, both in relation to hate crime and other issues where police require network assistance. As a result, enactment broadens awareness and enables better examination, resulting in more viable implementation and operation and managed to improve police-community relations.

THEORETICAL ARGUMENTS RELATED TO HATE CRIMES:

First, the law's representative estimation can and should be utilised to demonstrate society's dismissal of offences based on bias. Hate crime legislation is a ground-breaking expression of society's assessment of specific offences as particularly unforgivable and deserving of more severe punishment.

Second, criminal justice system punishes the harm that has been done. As previously said, hate crimes have a much greater impact on the victim than other types of crimes, and they also have an impact on other people who are part of the unlucky casualty's group. As a result, the extra harm caused to both the individual and the community is the reason for enhanced punishments.

Third, hate crime rules punish the perpetrator's higher guilt. The purpose of the perpetrator makes the crime seem more genuine than if it had been conducted without it. The criminal law frequently enhances consequences for crimes performed in concert with respect to their outcome, rather than the perpetrator's goal. As a result, this argument assumes that the perpetrator intends to create lopsided harm or is unconcerned about the danger of further harm.

IMPORTANT CONSIDERATION FOR LEGISLATORS:

- Hate crime legislation should take into account the fact that victims can be people or property.
- Hate crime law should have been applied in a balanced manner.
- They should be regarded as evidence of intention by the courts.
- Courts should be forced to express reasons for imposing or not implementing a penalty enhancement on the record so that the motivation can be determined.
- States should consider a combination of substantial offences and penalty increases.
- Hate crime legislation should include characteristics that are constant or fundamental to a person's personality.
- Hate crime laws should indeed be acknowledged in the same way that historical and social patterns of prejudice should be.
- Hate crime legislation should include features that are evident or readily apparent to the culprit.
- Hate crime legislation should avoid using unclear or indistinct language.
- To provide broad coverage, hate crime statutes should utilise a combination of terminology such as "race," "ethnicity," "national origin," and "nationality."
- Why Hate crime legislation should be limited to a single emotional state, such as "hate" or "hostility."
- Why Victims who are related or affiliated with people or groups who have protected characteristics should be protected by hate crime laws.

- Hate crime legislation should include offences in which the offender was confused about the victim's personality.
- Hate crime legislation should take into account the fact that criminals may have various motives for their actions.

CONCLUSION:

The primary problem is that even when criminal proceedings are filed, the hate motivation should be recognised and refused explicitly. When cases of hate crime are reported, the motivation for selecting the victim (for example, the wounded person's "race," nationality, or ethnic background) is never mentioned. If this happens, the opportunity and possibility for the perpetrator's discipline to have a deterrent effect on others is lost. The danger would be that the communication to the victim and the perpetrator is that now the state does not fully see the hate intent that led to the act.

Hate crimes are at an all-time high in India, given the current societal upheaval. There are countless cases reported on a daily basis, which is cause for concern. Bigotry and discrimination, which underpin such violence, are not beneficial to our diverse culture because they make cohabitation nearly impossible. In light of this, distinct legislation and strong implementation processes are urgently needed to combat biased-hate crimes. Hate crime regulations, such as the "Manav Suraksha Kanoon," must be enforced, and those who break them should face harsh penalties. It is important to stress that these offenses are fundamentally distinct from other sorts of criminal activity, and hence must be seen from a different perspective. Only by taking these steps will we be able to eradicate the disease of hate crimes from our society.