

## Preventing Hate Crimes And Profiling The Hate Crime Offenders : Halt The Hate

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### INTRODUCTION

Crimes are classified in a few different ways. There are the types of crimes which we often see like theft, robbery, assault, and murder. Then there are hate crimes, which are appended to other charges and carry greater penalties. Such criminal acts motivated by prejudice, also known as hate crimes or bias crimes are illegal act against a person, any institution, or property that is motivated, in whole or in part, by the offender's bias against the victim's group or his membership of a particular group to his prejudice. It is typically one commenced by prejudice by race, religion, sexual orientation, or other grounds. They are the violent manifestations of intolerance against a community.

What qualifies a criminal act to be a hate crime specifically swivels upon the factor of motivation: whether the crime motivated by a bias is against the victim's race, religion, sexual orientation, or other protected aspects of their identity. Hate crime laws are usually designed in connotation with the actual offense the person is charged with, such as an assault or a murder, putting greater severity on the crime due to its hateful motivations. For example, it is not illegal to randomly spew racial epithets but if a person intentionally goes far as to punch someone because of his racial biasness, the crime becomes much more serious in the eyes of the law.

Furthermore, because hate crimes are dependent upon the perpetrator's intention, the victim doesn't actually have to be a member of the protected class the perpetrator thought he or she was attacking to be covered under hate crime laws. An attack under a dilemma with respect to a race is still a hate crime. In other words: Being wrong about who to target is not a legal excuse for bigotry.

Although the primary obligation to combat hate crimes lies with national and local authorities, yet there shall be an ombudsman whose action can be decisive in convincing governments to address hate crimes and in guiding their response. Working with governments to improve legislation; monitoring and reporting incidents and acting as a voice for victims of hate crimes and providing them practical assistance such as legal advice, counselling; raising awareness about the hate crimes and the existence of discrimination, intolerance; and Campaigning for action to meet the challenge of hate crimes.

### UNDERSTANDING THE ENOMENON-

#### *Hate crime.*

Hate crimes are criminal acts motivated by bias or prejudice towards particular groups of people. A hate crime therefore consists of two distinct elements:

- An act that constitutes an offence under criminal law; and
- While committing the criminal act, the perpetrator actions are diverted on the basis of prejudice or bias.

Thus, the perpetrator of a hate crime selects the victim based upon his membership or perceived membership to a particular group. Where the crime involves damage to property, the property is chosen because of its association with a victim's group and can include such other targets as places of worship and work, community centers, family or place of living.

Hate crimes occur even in countries without hate crime laws: The term describes a phenomenon, not a legal concept and, for that reason, laws that deal with this issue vary widely across the world. Many governments believe that there are no hate crimes being committed in their

countries, so there is no need to take action to combat them. But the present scenario strongly portray that hate crimes do occur, to a greater or lesser extent, in all countries. The prejudices or biases at the base of hate crimes vary. People may be targeted for hate crimes because of their “race”, religion, sexual orientation or other factors. People with mental or physical disabilities or migrants are frequently the targets of hate crimes. Additionally, it is important to bear in mind that the motives for a hate crime can be mixed with other factors, so a crime may have aspects both of racism and economic gain, for example. A hate crime does not have to involve “hate”; any crime committed with a bias motive is considered a hate crime. Hate crimes can be committed by people with no record of bias-motivated activities or other criminal behavior. Despite popular perceptions, hate crimes are not always committed by members of far-right groups or ideological movements. For these reasons, hate crimes are very complex phenomena that can be hard to recognize and respond to.<sup>2</sup>

### **(1) THE BIAS ELEMENT :**

*Prejudice or bias* can be broadly defined as preconceived negative opinions, intolerance or hatred directed at a particular group that must share a common characteristic that is immutable or fundamental, such as “race”, ethnicity, language, religion, nationality, sexual orientation, or other characteristic. The International Encyclopedia of the Human Sciences offers this guidance: “Prejudice is not a unitary phenomenon. It will take varying forms in different individuals.”<sup>3</sup> If what constitutes prejudice seems vague, the scope of prejudice is virtually limitless. Some commentators argue that racism, sexism, homophobia, etc. are structural and pervasive influences in a man’s cultural life.<sup>4</sup> If they are correct, then it may be impossible to point to any interactions between members of different groups unaffected by prejudice, at least to some extent. An ordinary crime becomes a hate crime

when “motivated by the offender’s bias against a race, religion,-ethnic/national origin, group, or sexual orientation group.”<sup>5</sup> The FBI defines ethnic prejudice as “a preformed negative opinion or attitude toward a group of persons of the same race or national origin who share common or similar traits, languages, customs, and traditions (e.g., Arabs, Hispanics, etc.)” Under this definition, practically any crime committed by a member of one group against a member of another could qualify as a he crime.

### **(2) MOTIVATION :**

There are serious problems in determining when a crime is motivated in whole, or in part, by bias. Determining motivation is a complex, frequently impossible endeavor. The majority of the hate crime offenders are not apprehended but their motivation must be inferred<sup>6</sup>. Even if apprehended, offenders will not provide insight to their motivations. In this situation, and in the situation where offenders are not caught, the coding of hate crimes depends upon information provided by the victim or inferred from the crime scene. Yet, the victim may be mistaken, hold personal bias that affect his or her judgment, be over sensitive, has misperceived the incident, or simply be unreliable. While there will undoubtedly be some clear cases, many cases will be explicable in terms of a number of different motivations. Consider a fight that occurs over a parking space, during the course of which a racial epithet is used. While obtaining a parking spot “motivates” the fight, under some statutory constructions the fight could be classified as a bias incident, subjecting the epithet utterer to a harsher criminal sanction.<sup>7</sup>

### **(3) DETERMINATION OF PREJUDICE- that transforms an act into a hate crime**

Subjectivity also permeates the determination of which prejudices transform an ordinary crime into a hate crime. For example, whether to include sexual orientation in hate crime bills has stirred

controversy in Congress and in some states. Given the sordid history of anti-gay violence, the exclusion of violence against gays and lesbians from any hate crime bill illustrates the point that the definition of hate crime is necessarily a political determination.”<sup>8</sup> Labelling and paying special attention to crimes motivated by certain biases belittles crimes motivated by other biases that do not receive the same recognition. Are legislators de-legitimizing the victimization of workers who are targets of assaults because of pro- or anti-union biases or of Planned Parenthood employees who are threatened and attacked by violent anti-abortionists?”<sup>9</sup> Which predicate crimes count as hate crimes (when motivated by bias) is a legislative determination that also shapes the perceived size and scope of the hate crime epidemic. The political act of classifying whether or not a crime will be counted as hate crime determines the size of the problem. If hate graffiti counts, then the hate crime rate will be formidable indeed. If only violent crimes motivated by bias are counted, then the hate crime rate will be considerably lower.

#### **SCOPE: *Hate-Motivated Events***

An act that involves prejudice and bias of any sort described above but does not amount to a crime is described as a “hate-motivated incident/event”. The term describes acts motivated by prejudice ranging from those that are merely offensive to those constituting criminal acts in which the crime has not been proven. Thus, they share the second but not the first element of a hate crime. Although hate-motivated incidents do not always involve crimes, such incidents often precede, accompany or provide the context of hate crimes. These incidents can be precursors to more serious crimes. Records of hate-motivated incidents can be useful to demonstrate not only a context of harassment, but also provide evidence of escalating patterns and the degree of violence and therefore are important indicators of the state of public security.

#### ***Hate Crime and Hate Speech***

Forms of expression that are motivated by, demonstrate or encourage hostility towards a group or a person because of their membership of that group are commonly referred to as “hate speech”. Since hate speech may encourage or accompany hate crimes as hate-motivated violence frequently occurs in the context of hateful speech the two concepts are interlinked. There is no consensus as to the limits on the freedom of expression with regard to statements motivated by hatred and prejudice. Some states criminalize only those forms of expression that represent a real and immediate threat of violence towards a particular individual. In many other countries, laws criminalize oral, written or symbolic communications that advocate for or incite hatred founded on discrimination. Thereby response to hate speech will depend on the legal provisions of each state. The States differ considerably as to which forms of expression constitute crimes by determining the direct and immediate threats of violence, as well as incitement to violence which can be prosecuted even without a bias motive.

#### **IMPACT**

The impact of hate crimes can be far greater than that of crimes without a bias motive, particularly in their impact on individual victims, those immediately associated with them and wider society. This greater impact is one of the key reasons why hate crimes should be treated differently than the same crimes committed without a bias motivation.

*Impact on the Individual:* Victims of hate crimes have been shown to experience more negative emotions than suffered by victims of other crimes. Hate crimes and hate-motivated incidents frequently leave victims in fear of future attacks and increased violence. This fear comes from the rejection of the victims’ identity that is implicit in hate crimes. Additionally, hate

crimes send the message that victims are not the accepted part of the society in which they live which as a consequence leads to a situation of extreme isolation.

An unhelpful or denigrating response to victims of hate crimes can cause further harm to already traumatized people. This secondary victimization can occur, in particular, when representatives from broader society (police, social-service professionals, doctors or judges) deny or minimize the seriousness of reported hate crimes and for many targets, it leads to even greater humiliation, degradation and isolation.

*Community Impact:* Hate crimes have a similarly destructive impact on the family and friends of the victim and on others who share the characteristics that were the object of the prejudice and hatred behind the attack. Other members of the target group can feel not only at risk from future attacks, but may be as psychologically affected as if they were themselves the victims. The damage done to victims and to communities through hate crimes cannot be qualified adequately if one only considers physical injury. The damage to the very fabric of a community where a hate crime has occurred must also be taken into account. Hate crimes in effect, create a kind of public injury because they rapidly erode public confidence in being kept free and safe from these crimes. To that extent, crimes of this nature can traumatize entire communities.<sup>10</sup>

*The Broader Threat to Society:* When hate crimes are not thoroughly investigated and prosecuted, it censure that the perpetrators are free to continue their activities, which may encourage others to commit similar crimes. Impunity for the perpetrators of hate crimes contributes to rising levels of violence. In the absence of protection from violence, minority communities lose confidence in law enforcement and government structures, leaving them further marginalized. In the worst cases, hate crimes can cause retaliatory attacks by the victim groups,

creating a spiral of violence. Patterns of violent hate crime can be an important indicator of fissures in society, and provide early warning where societies are lurching into social or ethnic conflict.

### LEGAL PERSPECTIVE

Legislation dealing with hate crimes can take many different forms, but broadly there are three approaches. The **first** is to define acts that are already crimes as distinct, more serious offences (“substantive offences”) if the victim was selected on the grounds of his or her membership of a protected group.

The **second** approach is sentence enhancement, where the charge before the court is same as if there were no hate motivation, but the court can or must impose a higher penalty because of the motivation, which is considered an aggravating factor.

The **third** form involves the creation of laws by state that mandates the collection of data on hate crimes without creating criminal offences related to them, or in addition to criminal laws. Different states’ hate crime laws would differ widely with respect to the characteristics of the groups covered.

**NEED FOR LEGISLATION-**A number of justifications for enacting hate crime legislation in combating hate motivated offences are helpful to form an evidence based hate crime intervention.

- It is a symbolic acknowledgement to potential victims, perpetrators and the wider society that hate crime is taken seriously and the legislative process is intended to encourage public awareness of hate crime;
- Enhanced punishments attached to hate crime offences recognize the increased likelihood of enhanced level of harm caused to victims and minority communities.
- Legislation supports the effective operationalization of hate crime policies by

law enforcement agencies, probation and prison services.

- Criminalization provides specific censure as a clear message to the public that prejudice-motivated conduct will not be tolerated.
- Laws support longer-term educative deterrence by publically denouncing such conduct.
- The law provides a symbolic message of support to marginalized groups in society, showing that targeted groups will be protected by the State.

### **RECOGNIZING THE HATE CRIMES**

The most common flaw in the investigation of hate crimes is the refusal or failure of law enforcement bodies to identify a criminal act as a hate crime. Therefore, for police officers who receive complaints or interview victims, it is essential to have some criteria to form an objective and consistent factual basis upon which police or other governmental agencies advocate the incidents as respective hate crimes.

Hate crime indicators are objective facts that signifies whether that case involves a bias motivated act to constitute a hate crime. If such standards exist, the incident should be recorded as a hate crime and should trigger further investigation about the motive for the crime. But the existence of such indicators does not prove that the incident was a hate crime, the proof of hate motivation will come only after a thorough and completed investigation, with a confirmation by the court.

**STANDARDS**-There can be few indicators that lay down the standards for a particular crime to be treated as a hate crime:

***Victim and Witness Perception***- The perception of the victim is a primary indicator of bias motivation. These perceptions are based on the victim's own experience with prejudice, the circumstances of the attack, their identification of the attackers and many other factors.

Sometimes, witnesses' perceptions can also provide strong indicators of the apparent motive of the perpetrator.

***The Conduct of the Offender***-Perpetrators of hate crimes frequently make their prejudices clear through their conduct. The crucial evidence in crimes committed consists of the words or symbols used by the perpetrators themselves, the motive behind their conduct is a message to their victims and to others and these messages, from shouted epithets to graffiti, are powerful evidence of motivation.

***The Characteristics of the Victim and the Perpetrator***-Although in general hate crimes are those commonly understood as involving attacks on members of minorities, but this is not always the case. Depending on local circumstances, some hate crimes involve minority attacking the minority, and sometimes on majority but this usually happens in places where members of a minority in a larger territory are the majority locally. Some circumstances that may be indicative of a hate crime include:

- The "race", religion, ethnicity/national origin, disability status, gender, or sexual orientation of the victim differs from that of the offender;
- The victim is a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred;
- The victim is a member of a community that is concentrated within particular areas and was attacked upon leaving that area;
- The incident occurred during an incursion by members of a majority group into an area that is predominately populated by members of minorities;
- The victim is a member of a minority who is attacked by a group from members of a different population group; and there is a historical animosity between the group of which the victim is a member and that of the

offender.

*Characteristics of a victim that may be indicators of hate crime include:*

- ❑ The victim is identifiable as one “different” from the attackers and, often, from the majority community, by factors as appearance, dress, language or religion;
- ❑ The victim is a prominent figure, such as a religious leader, rights activist or public spokesperson, in a community that has faced ongoing discrimination and group.
- ❑ The characteristics, behavior and background of alleged offenders can also yield several potential indicators of hate motivation. For example: Statements, gestures or other behavior before, during or subsequent to the incident or any gesture displaying prejudice or bias against the group or community to which the victim belongs;
- ❑ Clothing, tattoos or insignia representative of particular extremist movements, e.g., the use of swastikas or other Nazi insignia or paramilitary style uniforms;
- ❑ The offender’s behaviour (such as making Nazi salutes or attending rallies or protests organized by hate groups) suggests possible membership in a hate organization; and
- ❑ The offender has a history of previous crimes with a similar *modus operandi* and involving other victims from the same minority group or other minority groups.

### ***Bias motivated property***

The significance of a particular structure or location to communities that face discrimination can be an initial indicator that bias motivation may be involved. Other indicators that an attack on property suggests bias motivations involves whether property targeted has religious or other symbolic importance for a particular community or the property targeted is a center of community life such as a school, social club or shop for a

particular group. When property targeted is different from surrounding property as it is owned or occupied by members of a particular community it also gives rise to crimes instituted upon bias and hate.

### ***Persisting alleged violence***

A perpetrator’s association with an organized hate group founded on ideologies of prejudice and with a history of violence is an important indicator requiring further investigation into motivation. An organized group making previous statements threatening a group which is proved by a subsequent conduct or when the objects or items belonging to that group is seized from the place of incident, coincidence of event with a particular significance of hate or event planned by such groups can be certain instances whether the perpetrator is influenced by a group. Previous similar incidents have occurred in the same area in which members of the same group were targeted; the victim had received previous harassing or threatening mail or telephone calls based on membership in their group; and a previous incident or crime was reported that may have sparked a retaliatory hate crime against members of the group presumed responsible.

### ***Time and location of the incident***

The timing and location of an incident may also suggest that it was a hate crime. Indicators of this could include: The incident was at or near a place commonly associated with members of a particular minority group (e.g., housing for refugees and asylum seekers, a center for people with disabilities, or a club or bar with a predominately gay clientele); the incident was at or near a house of worship, religious cemetery, or home or establishment of a group considered a minority or “outsider” in a given neighbourhood; the incident occurred on public transport and appeared to be an attack by strangers on a member of a visible minority who stood out from others; the incident occurred on a date of

special significance to the community targeted (e.g., religious holidays or days commemorating significant historical events); or the incident occurred only a short time after a change in a minority's presence in a particular area (e.g., the first minority family moved into the area, or the opening of a refugee center).

### *Mixed Motives*

In investigating hate-motivated incidents and crimes, it is important to take into account all possible motives. For example, an incident in which a person is singled out for attack because of his or her identity may still be a hate crime even if the person is also robbed in the course of the incident. A question will arise as to whether the crime was motivated in whole or in part by prejudice and hatred but an important consideration is whether the particular individual was selected as a target because he or she was identified as a member of a particular ethnic, religious or other group.

### *The Nature of the Violence*

Whether the crime takes the form of a physical assault or damage to property, when the perpetrators commit a hate crime they often intend to leave a message. Indicators of this include: The incident involved extreme or unusual violence, or expressly degrading and humiliating treatment, including sexual abuse of victims in homophobic crimes; The violence was carried out in a public place or in a form intended to make a public impact, such as through video recording by perpetrators; or The violence involved mutilation in which racist symbols were cut or burned onto victim's bodies, or the damage to property included an express "message", through the use of symbols or objects that defile or desecrate, such as animal blood or excrement.

### **ROLE OF POLICE**

The state is primarily responsible for fighting the hate crimes through their justice delivery

system yet, the police officers are frequently the first professionals to arrive at the place of incident and under various circumstances the only authority capable of conducting thorough investigations. Their actions in the first several minutes at a crime scene can affect the recovery by victims, the public's perception of governmental commitment to addressing hate crimes, and the outcome of the investigation. Officers who recognize a probable hate crime, interact with the victims with empathy, and take action to initiate a hate crime investigation send a strong message that hate crimes are a serious issue.

*Obstacles*-These agencies face significant obstacles while monitoring and recording hate crimes because of the absence of policies and procedures within the police department for recording hate crimes and the requisite details of evidence regarding bias motivations; the lack of formal procedures for reporting information on hate crimes to regional or national offices. This also includes the failure on the part of some political officials and associated police authorities to believe that the hate crimes are an imperative issue in their country, leading them to decide not to record hate crimes or to report them to the public or higher authorities. Negligence in lack of training for police officers in identifying and investigating hate crimes, resulting in insufficient skills to identify and collect evidence concerning bias motivations and/or fulfill reporting requirements. Due to repercussions to discourage reporting because of the adverse consequences to the community and prejudices to the perpetrator on the account of some police personnel, a de facto norm may exist that deter them from responding adequately to members of minority groups who report crimes, denying them respect and equal protection. This kind of environment renders police officers to not question the victims and perpetrators appropriately thereby making them reluctant to

report that the crime involved hate motivation.

*Recommendations*- Effective law enforcement and police response to hate crimes can significantly be improved by communication, building trust between targeted communities and officers, advancement through training and creation of a range of special structures (such as liaison officers or committees) particularly where police may require greater awareness of cultural factors unique to these communities (issues of gender, perceptions of authority). Being aware of the practices and perceptions of different groups allows those dealing with hate crimes to avoid many of the pitfalls and frustrations common to cross-cultural communication. An understanding by police of a community's cultural differences is important if they are to conduct effective interviews with hate crime victims and suspects, collect accurate hate crime information, and provide appropriate support services to hate crime victims. This can be achieved by development and implementation of training sessions for police on dealing with the threat of hate crimes, both at the local and the national level. Training can cover such issues as hate crime indicators as how to distinguish a hate crime, cultural and gender factors in interviewing, and tolerance issues. Effective measure to monitor the progress of responses to particular hate crimes in order to determine if there are specific or systemic shortcomings in a given locality or on a national scale should be sketched. This type of monitoring can focus on any or all aspects of a particular hate crime case, including police investigation, prosecution, delivery of services to victims and press coverage.

*Helping victims to report hate crimes*- Whether a formal complaint is made to authorities, whether the name of the victim is released to the media, or whether details of an incident are used in advocacy calling attention to hate crimes, officials should always take into account the best interest of the victims in collaboration with

broader actions to combat hate crimes. They can also provide direct support to victims by establishing centers for support and counseling and providing information they need to lodge formal complaints against the perpetrators of hate crimes and to receive compensation and government benefits, and also provide practical help with medical care and other needs.

### CONCLUSION

The uncritical acceptance of a hate crime epidemic is unfortunate. It distorts discourse about the allocation of scarce resources both within and without the criminal justice system. Further, this pessimistic and alarmist portrayal of a divided conflict-ridden community may create a self-fulfilling prophesy and exacerbate societal divisions. The electronic and print media also have reasons to support the existence of a rampant hate crime epidemic which demands attention, remedial actions, resources, and reparations. Crime sells so does racism, sexism, and homophobia. Garden variety crime has become mundane. The law and order drama has to be revitalized if it is to command attention. Violence motivated by racism, xenophobia, anti-Semitism and other biases is not new. Perhaps what is new is greater intolerance of prejudice. The conclusion that hate crime has reached epidemic proportions today simply evinces the fact that bias crime is now much less acceptable and that victimized groups have a special social and political status. While it is possible to understand how and why the picture of a "hate crime epidemic" has come to dominate the Indian imagination, it is doubtful that this picture depicts reality. Hate crimes are motivated more by how a person is perceived than any of that person's words or actions, making such crimes particularly terrifying for both the victim and the community at large. The fact that the victims of such crimes are selected based on characteristics such as their race or religion can cause all those in the community who share that characteristic



to experience similar feelings of vulnerability and secondary victimization. In its impact on the community, the fear of becoming a victim of violence can be nearly as debilitating as suffering through an actual crime. The message of intolerance that is communicated through a hate crime can have broadly disruptive social effects as well, and can lead to greater distrust of law enforcement or friction between racial or religious communities.

### (Endnotes)

- 1.. Student;Indore Institute of Law
- 2.. <https://www.google.co.in/search?q=survey+upon+hate+crimes+in+india&ooq=survey+upon+hate+crimes+in+india&aqs=chrome.69i57j9776j0j8&sourceid=chrome&ie=UTF-8>
- 3.. OTTO KLINEBERG, 12 PREJUDICE: THE CONCEPT, INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 444 (David L. Sills ed., 1968); <http://home.sogang.ac.kr/sites/kylee/Courses/Lists/b6/Attachments/12/International%20Encyclopedia%20of%20Social%20sciences.pdf>
- 4.. “To the extent this [common American] cultural belief system has influenced all of us, we are all racists.” Charles R. Lawrence III, *The Id, the Ego and Equal Protection: Reckoning with Unconscious Racism* 39 *STA. L. Revd.* 317, 322 (1987); <https://www.scribd.com/document/198555332/The-Id-the-Ego-and-Equal-Protection-Reckoning-With-Unconscious-Racism-Charles-R-Lawrence>
5. FED. BUREAU OF INVESTIGATION, *UNIFORM CRIME REP., HATE CRIME DATA COLLECTION GUIDELINES* 4 (1990).
6. According to the FBI, 42% of all hate crime offenders are never arrested. *HATE CRIME-1993*
7. Alternatively, should an attack that is aimed at a person who is incorrectly perceived to be a member of a certain group be considered a hate crime? For example, in Laguna Beach, CA, a heterosexual man was brutally attacked by two men who incorrectly perceived him to be gay. The two attackers pled guilty to all charges, including the commission of a hate crime. While the motivation for the attack was hatred for gays, the attack was factually perpetrated against a non-gay man.
8. <https://www.hrw.org/report/2009/06/11/together-apart/organizing-around-sexual-orientation-and-gender-identity-worldwide>
9. <https://www.nytimes.com/1994/12/31/us/anti-abortion-killings-overview-gunman-kills-2-abortion-clinics-boston-suburb.html>
10. [http://www.partnersagainsthate.org/hate\\_response\\_network/how-do-hate-crimes-affect-local-communities.html](http://www.partnersagainsthate.org/hate_response_network/how-do-hate-crimes-affect-local-communities.html)