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A Comparative Study on the Hate Crimes Prevention Act of 2009 (USA) and the Parallel Indian Contribution in the Arena

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ABSTRACT

This research paper provides a comparative analysis of the Hate Crimes Prevention Act of 2009 (USA) and specific Indian legislation addressing hate crimes, focusing on the legal frameworks, effectiveness, and socio-political implications of both countries' approaches. The Hate Crimes Prevention Act (HCPA) was enacted to extend the federal government's ability to prosecute hate crimes, particularly those involving race, religion, gender, and sexual orientation. It empowers federal authorities to intervene in state and local cases where hate crimes involve serious bodily harm or death, and also covers crimes committed on the basis of sexual orientation, gender identity, or disability. In contrast, India's legal framework on hate crimes is less formalized, relying largely on the criminal provisions and special laws like the Prevention of Atrocities Act, 1989, which addresses caste-based discrimination and violence. Although both nations recognize the need to combat violence driven by prejudice, the U.S. has a more structured federal approach with dedicated provisions for marginalized groups, while India's legal provisions are more reactive, typically focusing on specific communities. This paper evaluates the strengths and weaknesses of both legal systems, considering their societal contexts, enforcement challenges, and impact on the targeted communities. It concludes with recommendations for enhancing the effectiveness of hate crime legislation in both countries.

KEYWORDS

Hate Crimes, Hate Crimes Prevention Act 2009, Indian Legislation, Legal Framework, Comparative Analysis, Discrimination, Law Enforcement, Social Justice.

INTRODUCTION

The society that we as humans co-exist in is certainly characterized with stratification. The very term implies the segregation of people on a horizontal line based on certain factors. The factors range from religion, race, caste, sex, ethno-linguistic basis and so on. But what we need to understand is not the factors of segregation but the very reason as to why we as humans are divided and governed in categories.

The very division revolves around the concept of 'chauvinism',

*"For some of us, "chauvinism" is simply a shortening of "male chauvinism." For others, it is a reminder of the dangers of devotion to the superiority of any group, gender, race, religion, or nation, or even to the truths of any era."*¹

-Mary Catherine Bateson

Chauvinism could be understood as the mere feeling of superiority that is observed within a specific group or sect because they are characterized with few attributes that the other sects miss. This feeling of chauvinism leads to the practice of subordination and suppression. History has shown us that great wars range from the tensions of paradoxical ideologies which rather comes off as a threat instead of eureka.

The physical manifestation of such tension is called as discrimination. The combination of discrimination alongside with aggression leads to committing hate crimes. A very simple definition of hate crime would be the manifestation of crime based on prejudice. At the federal level, a crime motivated by bias against race, color, religion, national origin, sexual orientation, gender, gender identity, or disability.²

To combat such situations the political forums and law-making arenas have formulated legislations to make sure that such manifestation of crimes are identified and dealt with immediately.

UNDERSTANDING THE VERY CONCEPT OF HATE CRIMES

¹ Mary Catherine Bateson.

² Learn About Hate Crimes, United States Department of Justice (Sept. 5, 2019), <https://www.justice.gov/hatecrimes/learn-about-hate-crimes>.

AND DRAWING PARALLEL'S TO THE LEGISLATION

One of the major characteristics that makes this very concept of hate crimes stand out is the type of victims that are dealt here. In a normal commission of crime there usually is a possession of a tangible object which must have caused the motivation to exhibit such aggressive behavior. The crimes revolve around the question 'WHAT', but on the contrary victims of hate crimes are rather categorized with the question of 'WHO', implying who they are and what social status they hold or where they are placed on the social strata.

So therefore, we can term the victims of hate crimes as 'victims of bias', since the entire commission of the crime revolved around prejudice and chauvinism.

There are various reasons that contribute to the such prejudice, it could be on the basis of religion, race, caste, sex, ethnicity, language and so on. The crime statistics around hate crime has been on a constant rise and there definitely was an innate need to make sure that there were legislations to protect the society.

The United States of America has proposed the 'Hate Crimes Prevention Act, 2009' to make sure that there exists a specific legislation, modus operandi and punishments for the crime. India being the primary example of stratification on various such basis ranging from religion, caste and so on, certainly does not have a specific legislation to deal with the manifestation of hate crimes. India being a common law country highly relies on the judgments that has been decided by the courts.

ANALYSING THE HATE CRIMES PREVENTION ACT OF 2009, THE CRIME-SPECIFIC LEGISLATION (USA)

The Hate Crimes Prevention Act also called as the Matthew Shepard and James Byrd was primarily introduced in the fiscal year of 2010, to establish specific procedures when dealing with crimes related to prejudice and hate.

It is also simultaneously important to understand the reason and history behind naming the act as such. In the first case Matthew Shepard was a gay student who was beaten to death in Wyoming in the year 1998. It was one of the most gruesome anti-gay hate crime to be committed in the American history. Two assailants namely Aaron McKinney and Russell Henderson brutally assaulted Matthew and left him tied in the cold fence to die.

This particular commission of crime instigated huge protests and backlash against the common notion of being 'hyper-macho'

leading to 'homophobia'.

Many positive developments for the gay community have resulted from Matthew's passing. The Laramie Project, a play that tells Matthew's narrative and promotes anti-bigotry initiatives, has toured the US and numerous other nations. Celebrities and politicians promised money and help to fight hate crimes against LGBT people. The Shepards have turned become homosexual rights activists. The Matthew Shepard Foundation, led by Judy and Dennis Shepard, provides funding for educational initiatives and an online forum for teenagers to talk about gender issues and sexual orientation. The story has been the subject of countless dramas, documentaries, books, and events.

In the second case, James Byrd Jr was an African-American who was murdered brutally by white supremacists in Texas in the year 1998. The case revolves around Byrd who spent the day drinking and hanging out with friend Jasper and family on June 7, 1998. Berry, Brewer, and King offered him a lift that Saturday as he was on his way home, and he accepted. For a large portion of the evening, the three men had been searching for young women while drinking beer and driving around Jasper in Berry's pickup truck. Between 2:30 and 2:45 in the morning, witnesses said they saw Byrd riding in the bed of a gray pickup with two or three males in the cab. Berry then stated in his testimony that he had pulled over and offered Byrd a ride. He claimed that although he didn't know Byrd, he had seen him around Jasper a lot. Berry, Brewer, and King drove east out of Jasper and pulled off at a small clearing in the woods rather than take Byrd home. Because the overturned grass, disturbed dirt, and broken beer bottle were all consistent with signs of a struggle, investigators suspect there was a fight in the area. The investigators also discovered a number of objects in the clearing that might have been left behind during a struggle or that might have fallen out of a truck while someone was being dragged out.

Byrd was beaten by the three men in the clearing, and Brewer painted Byrd's face black. Byrd was shackled to the rear of Berry's pickup truck by the ankles following the assault. After following the dirt trail, the truck pulled onto Huff Creek Road's pavement. It took about three miles (five kilometers) to haul Byrd.

DIVING DEEP INTO THE BACKGROUND AND DRAWING PARALLELS WITH THE CONCEPT OF PREJUDICE, HATE AND DISCRIMINATION

Drawing parallels with the very history of the law, we can see that the cause for exhibiting such aggressive, brutal behavior was solely because of the innate cultivation of hate through prejudice.

In the both the cases, the behavior of aggression is solely because of prejudice i.e., biased thinking. Anything that does not conform to the constructed mandate of the society is eliminated.

Hatred, prejudice, and discrimination are all connected ideas that frequently combine to have detrimental effects on society. It is rather important to understand these interconnected entities. The term prejudice describes preconceived notions or attitudes against people or groups because of their perceived traits (e.g., race, gender, religion, etc.). These beliefs, which can be either good or negative, are frequently illogical or untrue. In essence, prejudice is an internal attitude or conviction. Discrimination is the visible manifestation of bias. It entails acting on preconceived notions by treating someone unfairly or unequally due to their affiliation with a particular group. Discrimination can take both overt and covert forms and happen in a variety of contexts, such as the workplace, educational institution, or social contacts. A more intense feeling that usually results from ingrained prejudice is hate. It entails a strong hate, fear, or hostility toward people or groups because of their identity or traits. Hatred frequently feeds aggressive behavior, provokes disputes, and feeds prejudice and discriminatory cycles. When prejudice is severe or firmly embedded, it might result in hatred. Prejudice also establishes the cognitive foundation for discrimination. Hatred may then exacerbate prejudiced actions and viewpoints, further dividing society. These three ideas are so related to one another, with each supporting and enhancing the others.

UNDERSTANDING THE SCOPE OF THE HATE CRIMES PREVENTION ACT, 2009

The Act broadened the definition of a hate crime to encompass offenses driven by the victim's gender identity, sexual orientation, or handicap. By guaranteeing that law enforcement can look into and prosecute offenses against members of these groups, it protects those who are targeted for these reasons. Even when hate crimes are perpetrated at the municipal or state level, the Act gives federal authorities the power to step in and bring charges.

Due to issues like underreporting and bias in the legal system, many hate crimes were not being successfully prosecuted at the local level, making this particularly crucial. When someone is found guilty of violent acts like murder, assault, or vandalism that are motivated by prejudice or hatred toward a protected group, the Act stiffens the penalty. In addition to acts of physical violence, these crimes also involve property destruction and vandalism when they are carried out with hatred in mind. Funding is made available by the Act to strengthen law enforcement's capacity to look into and prosecute hate crimes.

This includes funding for police officer training so they are equipped to recognize hate crimes and comprehend the complex social and legal issues surrounding them. It promotes the gathering and dissemination of hate crime data in order to efficiently track patterns and reactions.

UNDERSTANDING THE INDIAN CONTEXT OF HATE CRIMES AND OBSERVING IF THERE ARE SPECIFIC LEGISLATIONS DEALING WITH THIS CONCEPT

Social stratification is certainly not an alien concept to the Indian society which is completely characterized with division on the lines of religion, caste, gender and so on. But what is more astonishing is the fact that the Indian Constitution having provided various constitutional provisions has no specific legislation dealing with hate crimes.

Hate crimes in India could be observed throughout history from honour killings, assault and aggression towards minorities and so on. Our society is accustomed to the idea of social stratification. One example of such a tiered system is the Indian caste system. Members of the lowest rank are always the targets of discriminatory behaviour since the caste system is a strict institution. This type of social economic stratification inevitably follows from stratification. Because each caste group is associated with a specific occupation, their disparities in income also affect their capacity to organize resources. Subordination is one way to witness acts of discrimination; hate crimes are an example of an extreme form of violence and discrimination. To put it simply, hate crimes are crimes perpetrated against people because of their caste, religion, race, gender identity, or other characteristics.

Even the legal system has been unable to assist these marginalized people because of years of discrimination because of the strong prejudice that is held against them. The tendency in Indian society to ultimately blame the victim for their predicament has always existed. We call this "victim-shaming." The main cause of these circumstances is that these violent crimes are intentionally committed against weaker or less socially cohesive populations. Socially and numerically, these marginalized communities are a minority. These vulnerable communities are the targets of these hate attacks. Every culture has a dominating group and, of course, a vulnerable segment as well.

The Indian Legal framework has defined a victim under Section. 2(y) of the Bharatiya Nagarik Suraksha Sanhita, 2023 as 'a person who has suffered any loss or injury caused by reason of the act or omission of the accused person and includes the guardian or legal heir of such victim'. From the standpoint of hate crimes, victims

experience discrimination in addition to abuse because of their assumed identities. Because of the innate stratification system, the higher authority is always held by the groups that are economically, socially, and numerically powerful—also referred to as the dominant groups—keep the weaker ones in the dark. The only way to protect victims of hate crimes is for the fair legal system to step in and defend their rights. However, the main point that needs to be addressed is whether or not such laws are provided by the Indian legal system to safeguard those populations that are at risk.

Unfortunately, the response is still 'NO', to safeguard the rights of these marginalized people, no specific laws have been passed. However, these protections are provided through the process of 'constitutional philosophy'.

Even though we do not have a very specified legislation with the ultimate purpose to combat this, we do have other such institutions which was introduced to make sure that the criminal system is more victim oriented.

UNDERSTANDING THE INDIAN VOID OF HATE CRIME SPECIFIC LEGISLATION

While there isn't any separate law in India that defines and addresses 'hate crimes', there are statutes that handle crimes motivated by hatred or hostility toward particular groups. These laws seek to promote societal harmony and peace while defending individuals' fundamental rights. India's judicial system mainly targets acts involving caste-based, religious, or communal violence in order to combat hate crimes. Protecting oppressed groups like Dalits and Adivasis is a primary goal of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Various types of violence and discrimination against members of these communities are made illegal by this law, including hate crimes such as physical assault, financial exploitation, and social humiliation. Given the vulnerability of these communities, the law also makes particular measures for a fast trial in these circumstances. The Communal Violence Bill sought to address hate crimes associated with communal violence, but it was never passed. It aimed to establish fast-track courts for such cases, give measures to prevent communal disturbances, and establish a system of compensation for victims. In order to better address violence based on religion, caste, or race, the bill highlighted the necessity of a legal framework. Nevertheless, it encountered strong resistance and was never approved. The idea that the freedom of speech and expression, as protected by Article 19(1)(a) of the Constitution, is not unqualified has been continuously maintained by the Indian judiciary. Reasonable limitations on this

freedom are permitted by Article 19(2), especially in cases where speech incites violence, fosters hatred, or disrupts public order. In a number of cases, the courts have interpreted this clause, highlighting the fact that hate speech that incites public discontent or communal violence is not protected.

ANALYSING THE CHALLENGES IN BRINGING FORTH A SPECIFIC UNIFIED LEGISLATION IN INDIA

With an increase in violent occurrences driven by caste, religion, and ethnicity, hate crimes have grown to be a serious problem in India in recent years. Numerous proposed laws have attempted to implement certain legal frameworks to prosecute hate crimes and give vulnerable communities more protection in order to address this expanding issue. The establishment of a specific Hate Crimes Bill in India, however, faces several obstacles despite the importance of such measures. These difficulties arise from institutional, legal, social, and political elements that make the development and application of such laws more difficult.

Polarization and Political Opposition: Political opposition and the extremely polarized political climate in India are two of the biggest obstacles to the introduction of a hate crimes bill. The concept of "hate crimes" can be controversial, and religious, caste, and community-related concerns sometimes have political repercussions in India. Such a bill can be seen as politically motivated by opposing parties, who fear it could be abused against their supporters or favour one group over another. This political divisiveness prevents productive discussion of the bill and may cause it to be postponed or rejected in Parliament. Acceptance of the law is made more difficult by concerns that it would be used to advance political grudges or to undermine the interests of the majority community.

Uncertainty in the Definition of Hate Crimes: Finding a precise and widely recognized definition of what qualifies as a "hate crime" is a major challenge when creating a hate crimes bill. Particularly when the crime involves complicated themes like religious views, caste identities, or ethnic tensions, hate crimes are frequently subjective and can be understood differently depending on the viewpoint of the individual. The difficulty is in crafting a legislation that is comprehensive enough to address all types of hate-motivated violence, including hate speech expressed online, without going too far or leaving room for interpretation. In the absence of a clear definition, the law runs the risk of being abused to restrict free expression or failing to address certain hate crimes.

Lack of Advocacy and Public Awareness: Even though hate crimes are a serious problem, there is still a lack of public awareness and

advocacy in India. Because prejudice and bigotry are normalized in society, many hate-based violent occurrences go unreported or are not considered hate crimes. Because of a lack of trust in the judicial system, societal stigma, or fear of reprisals, communities impacted by hate crimes may be unwilling to speak out or report events. The support required to campaign for the passage of a hate crimes bill may be hampered by this lack of activism and awareness.

Obstacles in the Legal and Law Enforcement Systems: There are serious doubts about how well a hate crimes bill would be enforced, even if it were to pass. The court system and law enforcement organizations in India frequently deal with problems like slow trial times, poor investigation techniques, and underreporting of hate crimes. To properly detect and respond to hate crimes, police personnel and judges would need to undergo extensive training as part of the law's implementation. Additionally, there are worries about the selective application of the law, which means that even in cases when legal protections are in place, underprivileged groups may still experience injustice and discrimination.

Protecting against hate speech while maintaining freedom of speech: Finding a balance between defending the basic right to free expression protected by Article 19(1)(a) of the Indian Constitution and shielding citizens from hate-based violence is one of the main concerns when designing a hate crimes bill. Laws pertaining to hate speech must precisely identify what speech is damaging without restricting the freedom of expression. Legislators find it extremely difficult to create a fair and balanced bill because of the danger of overreach, wherein acceptable forms of criticism or dissent are labelled hate speech.

Unwillingness to deal with pervasive social problems: Deeply ingrained social problems including caste prejudice, religious intolerance, and intercommunal strife are the primary cause of many hate crimes. More than just legislation is needed to address these problems; a cultural shift toward social peace and inclusivity is also necessary. If the proposed bill doesn't address the cultural biases that underlie hate-based violence, it might be viewed as insufficient. This unwillingness to address systemic injustices may reduce the ability of the law to bring about long-lasting reform.

CONCLUSION

Although the establishment of a Hate Crimes Bill in India is essential to tackling the escalating issues of hate-motivated violence, there are significant obstacles in the way of its creation

and execution. The process is complicated by political resistance, challenges in classifying hate crimes, low public awareness, ineffective law enforcement, striking a balance between the right to free expression and protection from damage, and an unwillingness to confront ingrained social problems. The government, civil society, and the general public must all make a determined effort to acknowledge hate crimes as a significant problem and cooperate in creating a strong, just, and efficient legal framework if such a measure is to be successful.