

## Hate Speech Crimes in Cyberspace: A Critical Overview

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### **Abstract:**

*In last few years, the number of websites and social networking platforms spreading hate speech on internet has increased exponentially. Due to its potential of inexpensive worldwide reach, internet has become a soft hub for hate speech spreaders. This Research paper is an endeavour to provide a brief overview of hate speech crimes on internet and challenges it has posed. Author has given few suggestion to curb the menace of hate speech crimes like denying access to welfare benefits, community service post completing sentence, uniform international/multilateral law etc. Author has employed qualitative research method in analysing the current scenario of hate speech and proposed few suggestions for preventing the same.*

**Keywords:** *Hate, Speech, Crime, Internet*

### **Introduction**

*“From ancient grudge break to new mutiny, where civil blood makes civil hands unclean.”*

*-Romeo and Juliet (Prologue 3-4)*

Hate crimes can be defined as any felony or crime of violence that manifests prejudice based on “race, colour, religion, or national origin”. It is a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.” (Federal Bureau of Investigation, n.d.)<sup>1</sup> These crimes cannot be simply termed as biases, they are in fact dangerous actions motivated by such biases resulting in a criminal act. (e.g., cross burnings, physical assault).

Hate speech is also defined as, “the public incitement to violence or hatred on the basis of certain characteristics, including race, colour, religion, descent and national or ethnic origin.” (EUR-Lex, 2008)<sup>2</sup>

“The most crucial difference between a hate crime and a similar non-hate crime is the underlying motivation. While a conventional crime might be motivated by a desire to expropriate resources from the victim for the personal gain of the offender, in the case of hate crimes, there is a deliberate intention to victimize an individual because of his membership or belonging in a certain social group, their beliefs or their value system.” (Sharma, 2012)<sup>3</sup>

Europe has been plagued by pogroms as much as by witch-hunting and other forms of prejudices; the United States have not escaped either this violence with its share of lynching of African Americans; Indian society still suffers from strong bias of Atrocities committed against Scheduled Caste and Scheduled Tribes, heinous crime Honour killing and the litany could go on . (Guinchar, 2009)<sup>4</sup>

Though with the advent of internet, the world has been revolutionised in the way people do their business and live their lives, yet it has come with a price, the possibility of using this medium for unlawful activities has grown as well. The internet has become a new medium of spreading hate. Hate,

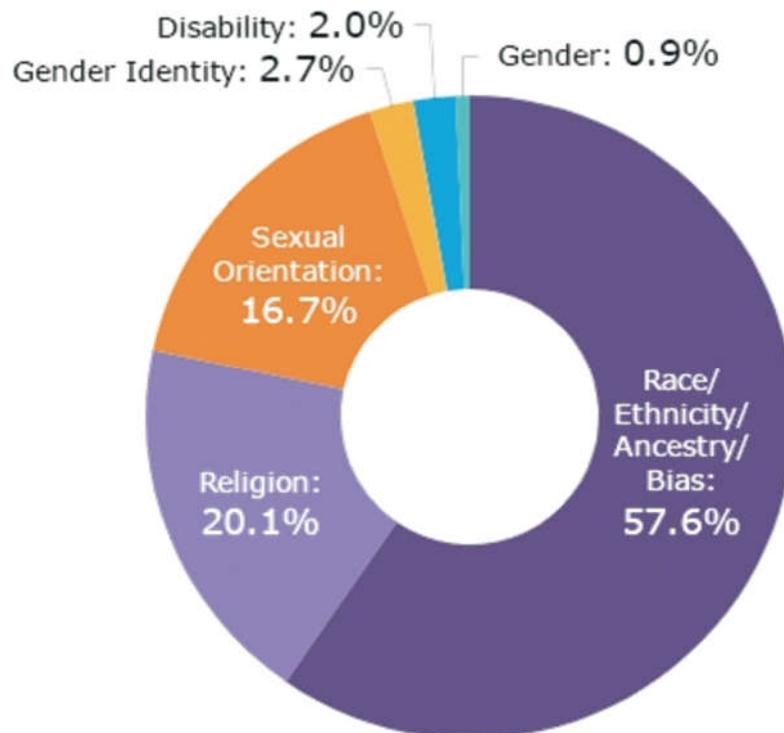
<sup>1</sup> *Federal Bureau of Investigation. (n.d.). Civil Rights. Retrieved from FBI: <https://www.fbi.gov/investigate/civil-rights/hate-crimes>*

<sup>2</sup> *EUR-Lex. (2008, November 28). Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. Retrieved from EUR-Lex, Access to European Law: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:133178>*

<sup>3</sup> *Sharma, S. (2012). Hate Crimes in India: An Economic Analysis of Violence and Atrocities against Scheduled Castes and Scheduled Tribes. Journal of Economic Literature, 209.*

<sup>4</sup> *Guinchar, D. A. (2009). Hate crime in cyberspace: the challenges of substantive criminal law. Information and Communications Technology Law, 1.*

which has been able to survive and trickle down from generation to generation has now taken a magnanimous form.



**Figure 1: Victims of Single-bias Incidents in 2019 in USA** (Department of Justice, United States, n.d.)<sup>5</sup>

Aforementioned chart clearly gives idea of magnitude of hate crimes in USA. Similar is the situation worldwide. Often, innocent people in the society are the ones who fall victims of such crimes. The nature of hate crimes on internet is such that entire community is put in a fear or state of anxiety. With internet, such hate literature has the worldwide social outreach. Technology plays intimate part in life of today's youth. The fondness of taking selfies and posting videos on social networking platforms has become a day to day affair. The speed offered by technology does not help us think twice about the consequences of our actions.

“While violent crime victimization carries risk for psychological distress, victims of violent hate crimes may suffer from more psychological distress (e.g., depression, stress, anxiety, anger) than victims of other comparable violent crimes. Survivors of violent crimes, including hate crimes, are also at risk for developing a variety of mental health problems including depression, anxiety and posttraumatic stress disorder (PTSD). PTSD emerges in response to an event that involves death, injury, or a threat of harm to a person.” (Garcia L., 2000)<sup>6</sup>

Hate crimes are different from other crimes in that the offender—whether purposefully or not—is sending a message to members of a given group that they are unwelcome and unsafe. Thus, the crime simultaneously victimizes a specific individual and members of the group at large. Hate crimes are often intended to threaten entire communities and do so and it decreases the feeling of safety and security (Boeckmann1 & Turpin-Petrosino, 2002).<sup>7</sup> “Being a member of a victimized group may also lead to

<sup>5</sup> Department of Justice, United States. (n.d.). *Hate Crime Statistics*. Retrieved from Department of Justice, United States: <https://www.justice.gov/hatecrimes/hate-crime-statistics#piechart-description>

<sup>6</sup> Garcia L., M. J. (2000). *Consequences for Victims: A Comparison of Bias- and Non-Bias-Motivated Assaults*. Sage Publication.

<sup>7</sup> Boeckmann1, R. J., & Turpin-Petrosino, C. (2002). *Understanding the Harm of Hate Crimes*. *Journal of Social Issues*, 207-225.

mental health problems. Research suggests that witnessing discrimination against one's group can lead to depressed emotion and lower self-esteem." (McCoy & Major, 2003)<sup>8</sup>

"Conception of the Internet as a regulation-free medium is appealing in principle." The Internet retains a number of unique characteristics: "it offers a [whole] range of communicative options: person-to-person, some-to-some, one-to-many, or many-to-many;" it provides "globalism, anonymity and speed for any on-line activity;" and it does not have such inherent restrictions as scarcity of resources or limited accessibility. (TIMOFEEV, 1999)<sup>9</sup>

The increase in the rate of hate crimes committed has increased substantially and the laws related to such crimes are substantially new and not well equipped to deal with the new developments.

International law under article 20(2) of the International Covenant on Civil and Political Right and 1966, articles 4 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966 has provided for prohibition of "dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin." However, considering the potential of internet and lack of uniformity in national laws of different states help the cyber criminals involved in hate speech/crime in escaping from law enforcement machineries.

Currently, there lack of effective mechanism for investigating and regulating spread of racist ideas, hate or abusive speech under the sham of freedom. Though some social media platforms have started taking initiative in form of banning the social media account, considering the nature of societal impact of cyber hate speech, criminal deterrence and its effective implementation is need of the hour. The laws of individual countries do regulate internet content and have laws regulating and prohibiting hate speech but their effectiveness is questionable. Hence, there is an urgent need to demarcate what constitutes a valid opinion under law and what constitutes statements of hate and to have a balance between an effective legislation imposing reasonable restrictions on the right to speech and expression at the social network front without unduly curbing it.

## Suggestions

1. The thin line between government criticism and hate speech another challenge before modern society. Often the true and fair criticism has been treated as hate speech and innocent social activists are punished. The famous case of reporter 'Siddique Kappan' from India is the best example of such misapplication of law under the garb of action against hate speech and nationalism. "Kappan was imprisoned on October 5 last year in Mathura—for the mere fact of trying to go to Hathras to report on the infamous caste atrocity in the western UP town that had made headlines all over. Remarkably, he was charged under The Unlawful Activities (Prevention) Act, 1967 (UAPA- Anti Terror law) and the sedition law, besides other the Indian Penal Code, 1860 (IPC) sections." (Bhavani, 2021)<sup>10</sup> Mr. Kappan has been languishing in jail for more than six months. The role of active and impartial judicial interference in such cases is very pertinent. The protection of freedom of speech on one hand and punishing hate speech culprits on the other hand is a mammoth task that can be achieved only if judicial body is quick, active and impartial. Unfortunately the Courts in countries like India are suffering from huge pendency of cases (more than 3 crore pending cases in Indian Courts) results into slow and delayed response. Hence, there is a need for a separated fast track court mechanism to determine whether a particular instance amounts to hate speech or not. Strong criminal deterrence, independent investigation, cooperation/coordination between investigating agencies and social

<sup>8</sup> McCoy, S. K., & Major, B. (2003). *Group identification moderates emotional responses to perceived prejudice. Personality and Social Psychology Bulletin*, 1005-1017.

<sup>9</sup> TIMOFEEV, Y. A. (1999). *Hate speech online: Restricted or protected? Comparision between United States of America and Germany . J.TRANSNATIONAL LAW & POLICY*, 253.

<sup>10</sup> Bhavani, M. (2021, May 21). *Some Oxygen For Siddique Kappan, Please? Retrieved from Outlook: <https://www.outlookindia.com/website/story/opinion-some-oxygen-for-siddique-kappan-please/382579>*

media platform operators and quick judicial decision making is the only solution for curbing the menace of hate speech on internet.

2. Considering trans-border nature of hate speech cybercrimes, having uniform international legal and regulatory mechanism is pertinent. However, given the different approaches of nations towards hate speech crimes, this may not be an easy task. The European Code of Conduct on Illegal online hate speech may prove to be a guiding path uniform international law. However United Nations must take efforts to discuss the necessity of uniform international law. Bilateral or multilateral treaties may also play a vital role in trans-border transfer of hate speech culprits.
3. In order to effectively deter hate speech crimes, in addition to traditional punishments of penalty and imprisonment following additional punishments may also prove to be effective.
4. Denying any welfare benefit to culprits post-conviction.
5. In case of commercial entities funding, promoting such hate speech, such entities may be banned across the globe. All assets of such entities may be seized and utilised for promotion of awareness about hate speech crime.
6. Mandatory community service for certain duration post completing sentence.
7. National, International law must also be supplemented by recourse to advanced technological regulations. Terms of Service (ToS) Agreements with Internet Service Providers (ISP) must provide for stringent action against hate speech culprits. ISPs must be enabled to remove offensive content and it must provide for severe penalties upon ISPs in case of failure to take action against spread of hate speech.

### **Conclusion**

As observed hereinabove, Law alone may not prove too effective against spread of hate speech. International cooperation in developing uniform mechanism, both legal and administrative, intra country coordination between investigation agencies and active timely action by judicial bodies may effectuate the curb against such crimes. Technological advancements such as firewalls, software packages, their wide scale access and use (and awareness about same) will definitely save the internet users from becoming a party to the crime or the victim of it. Hence, careful integration of law, technology and awareness seems to be the effective panacea against hate speech.