

Obstacles to Inclusive Disability Hate Crime Policy Process: Targeting the Cognitively Impaired Elderly Victim Group

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Abstract

In England and Wales, Section 146 of the Criminal Justice Act 2003 made disability hate crimes legal. This advocated for increased sentencing for perpetrators whose crimes were motivated by or demonstrated hate against a person with a handicap or a perceived disability. Currently, this additional sentencing provision is the only legal option for prosecuting disability hate crime perpetrators.

This thesis explores the experience and aftermath of hate crimes committed against England's cognitively challenged senior victim group. The cognitively challenged elderly victim group is far more likely to face bias and violence; they have a greater likelihood of re-victimisation and suffer significant suffering as a result of hate crimes. To date, the voices of cognitively deficient elderly victims and survivors have been mostly absent from scholarly research and hate crime policies. As a result, the purpose of this article is to look into present policy barriers and how the cognitively challenged senior victim group might best receive support, justice, and interventions following discriminatory hate crimes.

There has been little examination and discussion of intersectionality in disability studies and hate crime research. Common ideas fail to adequately reflect the multifaceted, overlapping, and complex experiences of danger and victimisation. This paper builds on studies on hate crimes against the cognitively deficient elderly victim group. It noted the challenge of categorising individual encounters as one type of hate crime. Victims and their relatives recognised that they were targeted for a variety of reasons, including their inability to care for themselves and their age. The study contends that the present strand-based approach to hate crime conceals a multitude of cross-identity characteristics that, when combined, might raise the danger of victimisation while decreasing a victim's chance of reporting their experiences.

To address vulnerability, safety, and hate crime against disabled people in England and Wales' criminal justice, health, social care, and refuge systems, barriers to including the cognitively impaired senior victim group in the policy process are presented, allowing for targeted suggestions and changes on relevant issues.

Keywords: hate crime, elderly victim group, cognitive impairment, policy obstacles

1. Introduction

Since the 1998 Crime and Disorder Act brought discrimination on the basis of race into the scope of criminal offences, the legislation and policy against disability hate crime has been continuously improved and developed. Whereafter, according to the Equality Act 2010, a physical or mental disorder that has a significant and long-term adverse impact on the ability of daily activities is to be deemed a disability. Emerson and Roulstone (2014) claimed that the danger of victimisation was much higher for disabled persons who also had mental health issues or cognitive impairment. Review of the published research also reveals a connection between ageing and cognitive decline. For instance, Barberger-Gateau and Fabrigoule (1997) believe that cognitive impairment is a common feature associated with aging. Based on the aforementioned research findings, this essay will explore obstacles to inclusive crime and justice policy processes, focusing on the exclusion of elderly victims with cognitive impairment from the stakeholders of disability hate crime policies and the challenge of their limited voice. It will discuss the following questions: Why do groups of elderly victims with cognitive impairment be excluded from the hate crime policy process? How does the vulnerability of groups of older persons with cognitive impairment make their voices inaccessible to policy makers? This essay emphasizes that the underestimation of consequences in the agenda setting phase, inappropriate implementation that does not fit the target group, and hard initiative reporting cannot enrich the policy evaluation stage. Resulting in a lack of experience and cognitive capacity in the criminal justice system to document disability hate crimes associated with older victims with cognitive impairment.

2. Background

The Criminal Justice Act of 2003 went into effect in 2005, and its section 146 states that "Increased sentences for aggravation related to disability, sexual orientation, or transgender identity" (Criminal Justice Act 2003). This expands the category of victims covered by hate crime legislation to include all five protected characteristics—race, religion, sexual orientation, transgender identity, and disability—on the basis that the Crime and Disorder Act 1998 only covers racial and religious enmity. This will support an extensive inquiry into hate crimes.

(Crime and Disorder Act 1998; Heard, 2014) Defining a hate crime as "any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic" was done in 2007 by the criminal justice system. (Home Office, 2022) Regarding disability hate crimes as a specific type of hate crime was defined by the Crown Prosecution Service's (CPS) as "any incident / crime which is perceived by the victim or any other person, to be motivated by a hostility or prejudice based on a person's disability or perceived disability" (Crown Prosecution Service, 2022). The number of police-reported disability hate crimes in England and Wales from 2010 to 2021 was calculated by Statista (2022). The figures demonstrated a 714.76% total rise in the number of hate crimes against people with disabilities that the police reported. This illustrates the criminal justice system's growing awareness of disability hate crimes. It is evident that laws and policies pertaining to hate crimes are being strengthened and added to prevent victims of disability hate crimes from being mistreated because of their impairment. However, it is unavoidable that the voices of some disadvantaged groups because of their vulnerability are silenced in the creation of laws that are meant to safeguard them. This might be due to the fact that the only specialised criminal law provision for handling hate crimes motivated by a person's disability still calls for harsher punishments rather than convictions for aggravated offences (Heard, 2014). Therefore, victims of disability hate crimes are frequently not required to offer personal statements as proof of prosecution and sentencing, especially those who have lost a certain level of mental capability. On the other hand, this practice restricts stakeholders' ability to voice their opinions.

However, recent high-profile incidents raise concerns about the exclusion of disabled victims of hate crimes from the criminal court system as witnesses. According to BBC News (2018), Mrs. Davison, a 78-year-old dementia patient with mobility disabilities, was ridiculed, threatened, and abused by a carer in her home. The carer degraded her while providing care by calling her a "dirty and disgusting person" and using the word "humiliation" among other derogatory terms. Nonetheless, the carer was not found guilty of committing a hate crime despite

accusations of cruel treatment and wilful neglect. Although the prosecutor and the court's bench chairman emphasised during sentencing that the carer had harmed the elderly crippled woman with threats, insults, and other abuse. It must be noted that Mrs. Davison, a victim of a disability hate crime, was not allowed to share her story throughout the processing of the case as to not intrude on or infer the murderers' animosity.

This does not imply that all instances of abuse of older individuals with cognitive impairment are hate crimes. Nevertheless, such experiences highlight the vulnerability of victims with cognitive impairment and aid in examining if their voice may be limited by the protection policy. Therefore, this essay concentrates on the issue that the hate crime policy excludes the voice of elderly persons with cognitive impairment.

3. Exclusion from the Agenda Setting Stage Leads to Underestimation

Although the goal of this article is to examine disability hate crime as a distinct criminal behaviour, this section will highlight the fact that victims of disability hate crime are more likely to be targeted due to their intersectionality of cognitive impairment disability and elderly identities. It would lead the criminal justice system to undervalue the harm victims have endured, which leads to its exclusion from the dimension of inclusive public policy. One of the causes of this obstacle is the intersectionality of the disabled and aged, which prevents them from being defined as victims and limits this group from the channels acknowledged by policy makers. As Brown and Gordon (2019) observed, cases involving senior populations are frequently handled as security concerns rather than criminal ones. In reality, if medical professionals, social workers, or police officers come into contact with elderly people who are suffering from cognitive impairment, they will report any psychological or mental disorders and treat them as social service events rather than believing that they need to turn to criminal justice and then provide necessary support (Clement et al., 2011). For instance, sending abused seniors to welfare centres is one way to help them receive protection. While such protective measures might be able to take victims out of the oppressive environment at the moment to prevent persecution, this should not be the best nor only course of action for handling such cases. The exclusion of older

victims from the criminal justice system indirectly reduces the willingness and ability of victims to use their legal authority to combat hate crimes against people with disabilities. Therefore, the elderly's vulnerability is emphasised so that the concern of elderly victims with cognitive impairment not being able to completely recognise the crime against them is more salient. It should be emphasised that disability hate crimes tend to occur at random (Chakraborti & Garland, 2012). It is challenging to gather evidence, track down identified suspects, and ultimately determine the severity of sanctions unless the suspect is prepared to enter a guilty plea. Random victims, random locations, and random criminal event selection make it difficult to gather evidence (College of Policing, 2013). As a result, prejudice towards senior citizens who have cognitive impairments is sometimes viewed as "daily prejudice". However, numerous people's stereotypes conceal this prejudice (Iganski, 2008). Because they are less deserving of attention than other more typical victim groups, victims of disability hate crimes who are elderly suffering from cognitive impairment are not including in consideration when analysing such incidents.

4. Inappropriate Implementation that Does Not Fit the Target Group

Dependence, demand, infirmity, and fragility are frequent terms used in reference to the stereotype of the elderly (Gibbons, 2016). Yoshizaki-Gibbons (n.d.) mentions that "this strong societal association of old age and disability". From this, it can be observed that ageing and disability are not two distinct fields, but rather two groups that interact. This is vital in recognising that there is a common link between elderly persons and patients with cognitive impairment. Ageing and cognitive impairment are significant factors in recognising prevalent signs of hidden disability hate crimes and formulating a suitable response for the criminal justice system. In the policy guidelines on prosecuting crimes against older people, CPS (2020) noted that prejudices towards older people can have an impact on how the needs of older people are misestimated during the prosecution process. For example, the elderly's cognitive ability may gradually decline, thinking speed or motor ability may suffer as a result of aging or from diseases that are frequently found in elderly groups, such as Alzheimer's disease. Therefore, the criminal justice system and

relevant agencies will assume that such elderly people need additional help and tend to take care of and protect them, rather than giving them full access to the criminal justice system. (Mason-Bish, 2018). In addition, elderly people with cognitive impairment have lower resilience and higher vulnerability (Bows, 2020). In other words, after enduring targeted disability hate crimes, it is challenging for them to recover from the impact of said crime after such a short period of time. Prosecutors will thus challenge their capacity to produce evidence and the veracity of that evidence when they are up against them (Crown Prosecution Service, 2020). For example, NBC San Diego (2019) quoted the advice of a lawyer as saying "Generally speaking, elderly people don't make the best witnesses." The premise of this view is that elderly victims may have a certain degree of dementia or memory impairment. Due to this issue, the testimony of elderly victims suffering from cognitive impairment has a tendency to be more subjective. The following finding is that it is challenging for elderly people who have cognitive impairment to offer witness testimony that satisfies the fundamental standards of the criminal justice system. Therefore, prosecutors are unable to bring charges when they have not gathered any solid proof that the victim has experienced the offender's animosity. In terms of practical behaviour, because of their groups' high vulnerability and poor resilience, the effectiveness of their participation in the criminal justice system is easily questioned after experiencing a disability hate crime. Therefore, due to the inability of their views to be heard by decision-makers, their identity may result in their exclusion from the agenda-setting process.

5. Hard Initiative Reporting Cannot Enrich the Policy Evaluation Stage

Equal opportunities may seem to be provided by treating all victims of hate crimes against disabled people in the same way, but this is not always the case due to some victims requiring specialised support services to help them overcome obstacles and vulnerabilities associated with taking part in the criminal court system. According to Woods' (2008) proposed unfair advantage theory, the court should impose an additional penalty on the criminal if the victim's status as a member of a vulnerable group is taken advantage of by the offender. The unfair advantage theory reveals the obstacles when recognising some victim groups that are

concealed under commonplace circumstances. In other words, the victim's visible distinctive traits, such as age and cognitive impairment, might have inspired hostility from the perpetrator when selecting the victim (Chakraborti & Garland, 2012). The dependence of older people with cognitive impairment on caregivers makes it particularly difficult for them to actively report crimes, pursue cases, and testify in court. Therefore, it is impossible to ensure that they do not experience hostility in the process of collecting evidence. It will ultimately be impossible to prosecute and impose additional punishment on the offender further for the alleged disability hate crime. Additionally, the living conditions of older people with cognitive impairment are rather isolated (Kharicha et al., 2007). Empirical investigations of Brown and Gordon (2019) also have shown that, if elderly victims are the focus of individuals they know, even after the case has ended, they will still have to live with others who are opposed to them, and thus, secondary injury to the victim could easily result from this. Another point is that it is still tricky for the elderly with cognitive impairment to actively engage in the criminal justice system to be able to reflect their status, even if they are transferred by public and welfare agencies. As a result of ongoing austerity measures, public and welfare services are currently on the decline (Roulstone et al., 2011; Chakraborti & Garland, 2012). It is particularly concerning that their elimination or closure may affect the vulnerable victims' group. Therefore, although the access of older adults with cognitive impairment to the criminal justice system is decreasing, the potential threats they confront have not decreased. As a consequence, once there are no corresponding support measures to help them with initiative reports, adequate revisions will not be provided in the policy evaluation stage, and the elderly with cognitive impairment will be excluded from the stakeholders of disability hate crime as a marginal group.

6. Conclusion

This essay explores the constraints and obstacles that the policy against disability hate crime faces when incorporating the voices of the concomitant group of disabled victims of cognitive and psychiatric illnesses and elderly identification. According to the aforementioned evidence, elderly victims with cognitive impairment who have been subjected to the

hostility of criminals may have a significantly lowered ability to access criminal justice due to the criminal justice system's lack of necessary experience and knowledge. Even though elderly victims with cognitive impairment fall under the umbrella of disabled people and should, as a result, be protected by an inclusive disability hate crime policy, this vulnerable group is marginalised due to the vulnerability traits shared by the two groups, protective measures that are biased towards social security, and special living conditions. It is significant to note that no specific category for cognitive impairment exists in the pertinent data. Hate crimes committed against senior victims with cognitive impairment can only be counted as homogeneous groups of disabled people if they are labelled as "disability hate crimes." This neglect and exclusion results in obstacles to developing the inclusive disability hate crime policy and proposing an evidence-oriented targeted architecture. The feedback, which is based on their independent legal rights, is hampered by the existing policy evaluation process. Older adults with cognitive impairment are unable to protest or provide feedback to the criminal court system because of the uniqueness of their living situation. Only through this feedback can meaningful legislation be developed, and progress be made to address their voices being suppressed in the criminal justice system.

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