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# Hate Speech & Media Laws in India: A Critique

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## ABSTRACT

*Hate speech has emerged as a pressing concern in India as it possesses a significant challenge of maintaining public order in a society. It is not just limited to the broadcast media but has also parallelly accessed the digital space. In this Article, the Researcher aims to address the issue of hate speech in Indian context by firstly trying to define the concept of hate speech and then discussing upon the challenge of balancing the right to freedom of speech and expression versus hate speech and explaining the importance of distinguishing between hate speech and right of dissent which is fundamental to any democracy. This article also makes an analysis of the present laws on the subject and discusses the role played by the judiciary and the self-regulating bodies in tackling the issue of hate speech.*

**Keywords:** *Freedom of Speech & Expression, Hate Speech, Self-regulating bodies, News Broadcasters Association.*

## I. INTRODUCTION

Contemporary media of late has been under the spotlight for the broadcast of controversial content intending to stereotype or vilify a particular community, such broadcast often leads to incitement to discrimination, hostility and violence among communities. Such content often referred to as ‘Hate Speech’ has become an endemic in India as there has been a great spike in such cases in the recent past. According to the Report of National Crime Records Bureau (NCRB) there were only 323 cases registered against hate speech which has now increased to 1804 cases in 2020 meaning thereby a 500% rise in such cases.<sup>2</sup>

Hate speech often discriminates against certain groups in a community of people or country and tries to marginalize them.<sup>3</sup> Media often for the sake of gaining more viewership and in turn earning more TRP<sup>4</sup>, engages in the broadcast of content seasoning it with the element of hate against a particular community which has often created riot like situation and violence among

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<sup>2</sup> Crime in India 2020, NCRB Report, 2020, (Jul. 6, 2023, 5:00PM) <https://ncrb.gov.in/sites/default/files/CII%2020%20Volume%201.pdf>.

<sup>3</sup> Abhishek Mukherjee, *Broadcasting Hate: Media Law & Hate Speech in India*, JCLJ, May 1, 2021.

<sup>4</sup> TRP is a tool that tells which channel or programme are being viewed most or it indicates the popularity of a Tv channel or programme.

the communities. The menace of hate speech has amplified even more with the growth of digital media, as online hate speech can be shared conveniently at low cost and anonymously.

There have been several instances of hate speech that needs a mention in this article, the communalizing of the Tablighi Jamat by the media where it villainized the Muslim community and blamed them for spreading the virus. Where the reporters of several news channels went to the extent of calling covid-19 virus as ‘Tablighi Virus’. Likewise, the airing of a show ‘Bindas Bol’ by the Sudarshan Tv where it tried to vilify the Muslim community by stating that they are trying to infiltrate into the civil service and referred the same as UPSC Jihad. The most recent one being the Haridwar Hate speech case where the speakers allegedly called for ‘genocide of members’ of a community openly.<sup>5</sup>

## II. DEFINING HATE SPEECH

At the very outset, it is crucial to establish a conceptual understanding of Hate speech which entails comprehending the nature and characteristics of hate speech. Defining Hate speech is a complex task as it appears to be an endeavor to define an emotion. It can be challenging since it is closely intertwined with the impact of the speech itself. There are situations where the explicit meaning and language may not appear overtly hateful, yet the resulting consequences can be profoundly detrimental. Hence, understanding the context in which the speech has been delivered is of utmost importance. What may arguably be called as hate speech has been covered in different ways by various Indian Statutes but the Indian law nowhere defines the phrase ‘hate speech’ as such.

Hate speech in common parlance may be defined as an offensive discourse targeting a group or individual based on inherent characteristics (such as race, religion or gender) and that may threaten social peace.<sup>6</sup>

UN Strategy and Plan of Action on Hate Speech defines hate speech as “*any kind of communication in speech, writing or behavior, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are in other words based on their religion, ethnicity, nationality, race, color, descent, gender and other identity factor*”.<sup>7</sup>

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<sup>5</sup> Express News Service, *Haridwar Hate Speech Case: Supreme Court issues notice on plea seeking investigation*, The Indian Express, (Jan 13, 2022), <https://indianexpress.com/article/india/haridwar-hate-speech-supreme-court-7719067/>.

<sup>6</sup> Understanding Hate Speech, United Nations, (Jul.3, 2023, 6:30PM), <https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>.

<sup>7</sup> *Ibid.*

It is important to note that hate speech is not merely an expression of personal dislike or disagreement; it actually involves speech that goes beyond the boundaries of reasonable discourse and aims to demean, dehumanize or marginalize individuals or communities. The subjective nature of hate speech makes it challenging to formulate an all-encompassing definition which may capture its various contexts and manifestations.

Fundamentally, it is not about an individual per se but an individual as a member of the group. For instance, Muslims are often claimed to be terrorists or Dalits or Adivasis are derogatorily characterized to be of low merit or usage of humiliating term such as ‘*chinki*’ for the people from the north eastern part of the country or ‘*chamar*’ for the Dalit community, ‘*chakka*’ for transgenders and so on.

### III. FREEDOM OF SPEECH & EXPRESSION VIS-A-VIS HATE SPEECH

Freedom of speech & expression is a fundamental right guaranteed to every citizen under the Indian Constitution.<sup>8</sup> The significance of freedom of speech in a democracy cannot be overstated as a democracy thrives on the existence of diverse opinions and disagreements. In fact, critical and dissenting voices play a vital role in fostering a vibrant democracy as long as they remain within the boundaries of civil discourse. While the right to freedom of speech is protected, it is subject to reasonable restrictions as mentioned under article 19(2). Accordingly, the hate speech laws in India could be framed despite having right to freedom of speech & expression is because such act falls within the purview of one of the reasonable restrictions mentioned under article 19 (2), i.e ‘Public Order’<sup>9</sup> which has ably guarded the criminalization or censoring of hate speech.

It is therefore, essential to strike a balance and prevent public discourse from being exploited as a means to propagate speech that undermines public order.<sup>10</sup> Hate speech falls outside the scope of the constitutionally protected speech due to its potential ability to incite violence and harm to the social fabric. Such kind of speech is an assault to the dignity of individuals and are against the ideas of equality and non-discrimination which has been enshrines under the Constitution of India.<sup>11</sup> Therefore, it has of late become a challenging issue of balancing the right to freedom of speech with the need to prevention of hate speech.

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<sup>8</sup> Article 19 (1) of the Indian Constitution.

<sup>9</sup> Exception of Public Order was added by The Constitution (First Amendment) Act, 1951.

<sup>10</sup> S SHIVKUMAR, PRESS LAW AND JOURNALISTS, Universal Law Publishing Company, (Vol.II 2015).

<sup>11</sup> Article 14, 15, 16 & 17 of the Indian Constitution.

#### **IV. LEGAL FRAMEWORK FOR HATE SPEECH IN INDIA**

In India, while the term 'hate speech' itself may not be explicitly found in any statute or law but there are a bulk of provisions under varied laws which criminalizes speech that can be considered to fall within the scope of hate speech. The laws on Hate speech is primarily dealt under IPC, CrPC and certain other enactments which are mentioned hereunder: -

**Indian Penal Code (IPC):** Section 153A, Sec. 295, Sec. 295A, Sec. 298, Sec. 505 of IPC deals with hate speech related offences. Section 153A criminalizes the promotion of enmity between different groups on the basis of faith, race, place of birth, residence, language etc. and acts that are prejudicial to the preservation of harmony and provides for punishment of imprisonment which may extend to three years or with fine or with both.

Further, Section 153B of the code punishes for the imputations, assertions prejudicial to the national integration.

Section 295A prohibits deliberate and malicious acts intended to outrage intended to outrage religious belief of a community. Such act is liable to be punished with imprisonment for a term of three years or with fine or with both.

Section 298 of the code prohibits uttering words or showing gesture with deliberate intent to wound the religious feelings of any person.

Section 505 criminalizes the publication and circulation of certain statements, rumors or reports with an intent to create mischief and upset the public tranquility.

**Code of Criminal Procedure (Cr.PC):** The procedural law contained in Cr.PC had been playing a significant role especially section 95 of the code empowers authorities to prohibit the circulation of written material (books, newspapers) that contains matter which is punishable by various sections of IPC.

There are a few statutes that criminalize hate speech directed to a specific group. For example, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 deals with speech directed at people of specific caste group.

While there are several provisions in media law against hate speech which can be found in Cinematograph Act, 1952 under the said act, section 5B regulates and the Central Board of Film Censorship is empowered with the power to censor films which has 'visuals or words are contemptuous of racial, religious or other group.' Separately, The Cable Television Network Regulation Act, 1994 and rules framed thereunder prohibits the airing of contents which 'attack on religion or communities or visuals or words contemptuous of religious groups or which

promote communal attitude'<sup>12</sup> and 'is likely to encourage or incite violence or contain anything against maintenance of law and order or which promote anti-national attitude'.<sup>13</sup>

Further, as most of the news channels are self-regulated in India therefore they have formed a body called News Broadcasters Association (NBA)<sup>14</sup> which has recently issued "guidelines for prevention of hate speech"<sup>15</sup> which directs the editors, editorial personals, anchors, journalists, and presenters who are a part of the member organization to refrain from divisive, derogatory, hurtful language and rhetoric in news programmes which has the ability to target and vilify individuals and communities based on their religion, gender, race, national or ethnic origin and/or sexual orientation.

The various laws and regulations discussed above have distinct origin and objectives, encompassing goals such as preserving public order and preventing discrimination. Therefore, it becomes challenging to create a comprehensive taxonomy that may adequately encompass the several ways in which Indian law regulates hate speech.

## V. ROLE OF JUDICIARY IN CURBING HATE SPEECH

The Supreme Court has been guarding against the acts of hate speech in India by its notable judgements and observations. In the case of *Arup Bhuyan vs State of Assam*<sup>16</sup>, the supreme court ruled that hate speech should be distinguished from offensive speech should be distinguished from offensive speech. It emphasized that offensiveness does not constitute hate speech unless it incites violence or possess a threat to the public order.

Hon'ble Supreme Court in the case of *Pravasi Bhalai Sanghatahn vs. Union of India & Others*<sup>17</sup>, observed the impact of hate speech on marginalized and vulnerable communities/individuals which can lay down the "groundwork for later broad attacks on vulnerable that can range from discrimination to ostracism, segregation, deportation, violence and in the most extreme cases to genocide" The petitioner in this case sought for stricter regulation on hate speech as the present laws were found to be inadequate to which the supreme court referred the issue to the Law Commission of India.

The Law Commission of India finally submitted its 267<sup>th</sup> Report titled 'Hate Speech' on March

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<sup>12</sup> Rule 6, The Cable Television Network Regulation (Rules) 1994.

<sup>13</sup> *Ibid.*

<sup>14</sup> Recently renamed as News Broadcasters Digital Association on august, 2021 upon the inclusion of digital media news broadcasters.

<sup>15</sup> Advisory regarding Hate speech, NBDSA, 11 nov, 2022, [https://www.nbdanewdelhi.com/assets/uploads/pdf/80\\_Advisory\\_regarding\\_%E2%80%9CHate\\_Speech%E2%80%9D\\_11\\_11\\_22.pdf](https://www.nbdanewdelhi.com/assets/uploads/pdf/80_Advisory_regarding_%E2%80%9CHate_Speech%E2%80%9D_11_11_22.pdf).

<sup>16</sup> 3 SCC 377 (2011).

<sup>17</sup> (2014) 11 SCC 477.

2017 wherein it had recommended insertion of several sections in IPC & CrPC viz sec. 153C for prohibiting incitement to hatred making it cognizable and non – bailable offence under CrPC, insertion of a new section 505A to deal with acts causing fear, alarm or provocation of violence in certain cases which is to be made a non- cognizable and bailable offence under CrPC. But these recommendations of the law commission have not be adopted yet.

Again, in the Case of *Firoz Iqbal Khan vs. Union of India*<sup>18</sup> while dealing with the matter where the Sudarshan Tv telecasted a programme named ‘Bindas Bol’ which tried to vilify the Muslim community and using remark like UPSC Jihad, the court held that the edifice of the Indian Democratic Society is dedicated to the adherence of role of law along with the constitutional rights values and duties associated with it good stuff the Supreme Court as the custodian of fundamental rights and constitutional values must throat any attempts to vilify a community within the Socialist, Secular, Democratic, Republic of India.

## VI. CONCLUSION

Hate speech in India has become a serious issue as the provisions dealing with hate speech are scattered across multiple acts which are found to be insufficient and there is a need to harmonize the existing laws. The Law Commission in its 267<sup>th</sup> Report has also emphasized for the inclusion of several provisions to tackle the new found problem. Further, it is not limited to the insufficiency of law but the various self-regulating agencies such as NBSA should effectively implement their own guidelines. It has also been a problem to address the issue of the erring channel that when these channels are found guilty of hate speech or other acts of misconduct and if admonished by the self-regulating body, then they often back out of that body as such association is voluntary in nature which had happened in the case of Republic Tv which on being admonished by the NBDSA unsubscribed to the NBA and established its own body named NBF. Moreover, several other news channels have refrained from being under any self-regulating body. Therefore, there lies a gap which is ought to be address by the media law to ensure that at least at a normative level, every media house comes within the framework of regulation. It must be ensured that the reportage is done in the most objective manner limited to stating of facts and not making untenable claims. Addressing the issue of hate speech requires a comprehensive approach involving legal reforms, awareness campaigns, media regulations and fostering a culture of tolerance and inclusivity. The effective response to hate speech necessitates a delicate balance between protecting freedom of speech & expression while preventing the harmful consequences of hate speech on society.

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<sup>18</sup> Writ Petition (Civil) No.956 of 2020.