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Akash Sharma.

B.A.IIb (second semester)

Law College Dehradun, faculty Of law Uttranchal University

Legitimate Scrutiny on Loathing Speech

“If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”

- *J.S.Mill*

Abstract

In this article the author has categorically or explicitly stated his view point in accordance with the law, about rising threat of the hate speech suppressing the fundamental right guaranteed by the constitution of India, this article is divided into 6 major heads where the author discussed plentiful aspects of hate speech and freedom of speech and expression.

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Fist being the introduction or influx which can also be taken as the upshot of the article, where the author discussed how the Indian media and politicians used hate speech and their biases views on some critical issues which resulted in public bloodshed, assault or violence and communistic dissension Then in the next head that being the definition, as the head is self explanatory that in it, the author defined the two discussed terms and answers the question, **what is hate speech, what is freedom of speech and expression? And how are they relatable to each other?** Backed and bolstered by the landmark cases and laws which deal with the aforementioned law. The third head is about the historical background, where the author critically scrutinizes the history of both the terms and explains it in the easiest possible way. History authenticates that hate speech is an ingredient that cannot be eliminated from a society; the author compared the history with present scenario in another head. Ended the article with a conclusion and few can be adopted suggestions.

Introduction:

In today's world, the society has observed a prick in cases of hate speech, forwarded either by the media or by the politicians that has resulted in societal violence. Breathtaking and electrifying reporting and monologues on delicate issues just for the sake of viewership and infamy has resulted in the smear of an individual or community's image. The status of freedom in India of the normal individual and the upsurge in instances of hate speech in current times. This article also answers how the Indian government is restraining the individual's right to express and how the Indian politicians and media are liable for hate speeches by presenting tendentious views and eliciting news. There are number of instances where the hate speech is used by the politicians or biased coverage by the media which resulted in public disorder, violence, and communal disharmony. The social networking sites are also misused, working as a medium in current times to propagate inciting views among the public as they are widely used to adverse publicity by political parties. The fact says that there were numerous demands to restrain the said law, since when the freedom of speech and expression was tabled in the Constituent Assembly, which resulted as the constitution's **First** and the **Sixteenth Amendment Act, 1951 and 1963** respectively resulting Article 19(2), various criteria of imposing restrictions over the expressions and speech freedom. It will not be wrong to quote that antagonism or hatred exists to an extent that it becomes obligatory to accommodate with the Article 19(1) of the Indian Constitution. The view communicated via written or in oral medium, is subjected to the aforementioned restriction.

The major issue arising in current scenario is because the **Hate Speech** is not defined anywhere in the laws, the prohibition for using specific structure of statements and expressions is mentioned in 267th India's law commission report which states hate speech as “**an incitement to hatred primarily against a group of person defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like**”, It can also be expressed in simple words as “any word written or spoken, signs, visible representation within the hearing or sight of a person with the intention to cause fear alarm or incitement to violence”

Through this article the author is trying to spread some light on the present day society, where a human is considered as a performer of reasonable acts but when we consider his/her thoughts and expressions, it is meant to be audited, modulated, supervised and balanced with the same of another human who indoctrinate the same kind of inclination or fancy. The principles of liberty and democracy consecrated in the constitution makes it mandate that a responsible speech should be delivered from the inhabitants of various estate, folk, estate, faith and belied. The real challenge is not to exercise the principle of self-government or liberty and the principle of free speech that are adverse to any portion of society. The hate statement becomes an exception to Article 19(1) but at the same point free speech is required to bolster the diversity of viewpoint or outlook. If the statement delivered is abrasive, emphatic or vehement and caustic in nature and is obnoxiously sharp it is protected from state intercession. It acts as stockade or a barrier in opposition to the state's capability or potential to administer oration, the value assigned to the expression is at higher proportion in the catalogue of the entitled rights that turns out to be the hesitancy point to the law makers and the judiciary in the course of constructing oddity or misfit to the said law that might drop off the *esprit de corps* of this provided freedom.

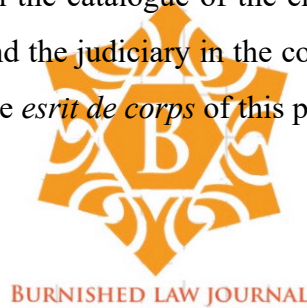
Definition

Hate Speech

Hate speech is not defined anywhere in the laws.

According to the Black's Law Dictionary , Hate speech is the speech that carries no meaning other than expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence.

Hatespeeches are generally contemplations which involves communication of antagonism of an individual or a group regarding group aforementioned characteristics. In some countries laws hate speech is considered as statement, gesture, displayed or written and is capable enough to encourage disharmony or actions before judiciary in opposition to a group or an individual on the basis of their membership into certain groups, law may identify it by these characteristics and it's a matter of fact that in a number of sovereign states "**hate speech**" is an illegal term, where as in a few sovereign states (like U.S.A) "hate speech" is considered as constitutionally protected, in other countries its victims seeks redress under civil, criminal or both the laws.



Laws for hatespeech in India

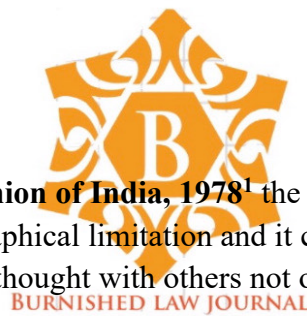
Freedom of speech and expression is safeguarded in India under Article 19(1) of the Indian Constitution which is not absolute, “reasonable restrictions” provided under Article 19(2) keeps a check on it which can be imposed on this said law considering the interest of “the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence”.

Freedom of Speech

It is a postulate which upright an individual’s or a community’s freedom to accommodate their opinions, ideas, views without getting interfered with the fear of retaliation, legal sanction or censorship. The term “Freedom of Expression” is sometimes synonymously used but at the same time includes any act of receiving, imparting information or ideas, seeking regardless of the used medium.

Laws to deal with hate speech case:

In the Case of **Menka Gandhi v. Union of India, 1978**¹ the apex court held that “the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also.”



Romesh Thapar v. State of Madras, 1950²

The court held that “Freedom of speech and press lay at the foundation of all democratic organizations for without free political discussion no public education, essential for proper functioning of the process of popular government, is possible.”¹

Restrictions under Article 19(2)

The freedom of speech and expression do not confer an absolute right under the Indian Laws , one’s right to express his/her thoughts and ideas freely is confirmed under Article 19 (1)(a) of the constitution and restricted under Article 19(2) of the constitution .

¹ 1978 AIR 597, 1978 SCR (2)621.

²1950 AIR 124, 1950 SCR 594.

Article 19(2) of the constitution of India enables the legislature to impose reasonable restrictions on several grounds:

- security of the State,
- friendly relations with foreign States,
- public order,
- decency and morality,
- contempt of court,
- defamation,
- incitement to an offence, and
- Sovereignty and integrity of India (added grounds by constitution's 16th amendment Act).

Reasonable restriction can only be imposed by a duly sanctioned law and cannot be imposed by any executive action.

Historical background.

a) Hate speech:

The history of hate speech is quite simple and very less in words all that can be said is that, the hate speech originated as a boon with the society as any given section of population when starts to think and express their views on any rule or law implemented by the government and if the same view is not soothing to the law makers or the sovereign that view or thought either written or spoken will be classified as a hate speech, as ultimately the decision of calling a speech a hate speech is in the hands of the judiciary, the guardians of the law which brings the judiciary into the question, whether the judiciary is independent or not ? the answer to this question is yes it is but the records says that no matter the speech or view expressed is inciting hatred, violence or not but the trial of the person who made it buries the speech their only, it's sad but true. The laws in current scenario in India may find its root in **Section 295(A) of Indian Penal Code**, which was enacted by the British Administration in India.

b) Freedom of speech:



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The freedom of speech and expression has a certainly long history that anticipates contemporary International Human Rights. The concept of freedom of speech is witnessed in the documents of early Human Rights. England's Bill of Rights, 1689 legally implanted the said law in parliament as a constitutional right and is still in effect. The Declaration of the Rights of Man and of the Citizen, accepted during The French revolution 1789 which most certainly declared the freedom of speech as a nonnegotiable right. The United States of America adopted the feature of freedom of speech in its First Amendment to the United States Constitution in 1791. The Article 11, of the French Declaration is concentrated towards the freedom of expression, stating that, **"The free communication of ideas and opinions is one of the most precious right of a man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law"**. The Universal Declaration of Human Rights, in 1948 through its Article 19 adopted the same ideologies of said law stating that: **"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"**

Freedom of speech is accepted as a meandering or multifaceted right that not only involves the right to express freely or spread knowledge and ideologies, but also includes three further distinct aspects as mentioned by John Milton.

- i) seeking information and ideas right;
- ii) receiving information and ideas right;
- iii) Imparting information and ideas right.

Comparison with present scenario.

Today, freedom of speech, or the freedom of expression, is widely identified in International and Regional Human Rights Law. The said right is apotheosized under the Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights and Article 9 of the African Charter on Human and Peoples' Rights.

National, International and Regional Standards also accepted the freedom of speech and expression and stated that it can be expressed in any form written, oral, printed, and

widely circulated on internet, or through any art forms. This clarifies it that protection of freedom of speech as a legal right includes both the content and its medium (the means of expression). The author with the help of this article would like to state that, despite the presence of plentiful laws to deal with the freedom of speech and expression the numbers of hate speech cases are continuously increasing. This gets on ones nerve when realized that all of the registered cases are not subjected to false allegation, the undeniable fact is, hate speech has led to abhorrent hate crimes which are recently witnessed in India, such as communal riots, series of violent clashes between various lamaseries which aroused as a result of inflammatory propagated speech from divisive groups. Widely reported matters of mob-lynching, horrible killing wherein “Hate” for another community was given utmost importance.

Landmark judgments.

Through this article the author would also like to proliferate some light over the concept of hate speech through plethora of cases and land mark judgments.

i) **S. Rangarajan Etc v. P. Jagjivan Ram, 1989³**

The court held that *“freedom of expression cannot be suppressed unless the situation so created are dangerous to the community/ public interest where in this danger should not be remote, conjectural or far-fetched. There should be a proximate and direct nexus with the expression so used.”*

ii) **Arup Bhuyan v. State of Assam, 2011⁴**

The court stated that *“a mere act cannot be punished unless individual resorted to violence or inciting any other person to violence.”*

iii) **Subramaniam swamy v. Union of India, 2014⁵**

In the said case, the reasonable restriction imposed by sections 499 and 500 of IPC on free speech were in question. The court held *“the restriction should be narrowly tailored and should not be excessive, arbitrary or disproportionate in any manner. The petitioner i.e. Subramanian Swamy argued that a lot of sections of Indian Penal Code, 1860 should be struck down as they are in clear violation of Article 19(1)(a).”*

iv) **Pravasi Bhalai Sangathan v. Union of India, 2014⁶**

The existing law was questioned by the petitioners claiming it to be inadequate in nature and pleaded to the court that states should take their responsibilities in enactment of the strict by-laws and take brusque action against the lads prompting loathe speeches. Responding to which the Supreme Court stated that the correct and strict execution of laws which are already existing would solve the issue of hate speech to its greatest extent. And said the responsibility of hate speech matter deserved deeper consideration by the Law Commission of India, the commission is directed to take into view the laws and other pronouncement on hate speech and the commission submitted its Report No. 267 before the Government of India by March 2017 for consideration.

v) **Shreya singhal v. Union of India, 2015⁷**

Section 66A of Information and Technology Act, 2000 was in question as it was claimed that the said Act is in violation of the fundamental right of free speech and expression which is guaranteed under Article 19(1)(a) of the constitution, the court held that *“the prohibition against the dissemination of information by means of a computer resource or a communication device which intends to cause annoyance, inconvenience or insult did not fall within the scope of any reasonable exceptions to the practice of the right to express”*.²

Social media’s role:

Social media is acting as one of the greatest medium of sharing daily activity in our day today life, but as good it seems to share oneself to other it can be thousand times hazardous if misused, reports suggests that Facebook one of the leading social media platform released its Transparency Report which disclosed that there were around **3 million** hateful posts which were later struck down from its platform by the Facebook itself. YouTube on another hand being a

³ 989 SCR (2) 204, 1989 SCC (2)574.

⁴ (2011)3 SCC 277.

⁵ WP(criminal)no.69/2015

⁶ WP(civil) no.157/2013(2014) 11 SCC 477, ILDC 2827 (IN 2014).

⁷(2013) 12 SCC 73.

social media platform where one is allowed to share video content on its site reported that around **25,000** videos were questionable and were removed in a single month, the team YouTube also said that its happening after restricting the content with numerous of restrictions.

In the year 2017 #notinmyname or **NOT IN MY NAME** campaign launched on social media which was supported by few of the prominent public figures where several incidents of mob-lynching were posted on different social media platform, an urge of raising communal violence, religious disharmony was clearly visible. Supreme Court demanded a response from the Uttar Pradesh Government about the hate speech cases registered against Yogi Adityanath in 2007, for the speech he gave as a BJP parliamentarian from Gorakhpur which became the reason behind riots. In the year 2018 JNU student leader Umar Khalid was attacked the Jammu and Kashmir former Chief Minister Omar Abdullah, performed the hate speech campaign attack through social media and mainstream media.

In the same year a folk singer from Tamil Nadu was arrested for reciting a song at a protest meeting that was alleged to criticize Prime Minister Narendra Modi.

In the year 2019, the Election Commission of India (ECI) was given exactly 24 hours for explaining its lawyers submission that how come the poll body became largely powerless to act against religious and hate speeches made by the candidates during the Lok Sabha election campaigning.

Conclusion:

All citizens of India are entitled to have the right to freedom of speech and expression, provided under Article 19(1)(a) of the constitution but nothing in sub clause (a) of clause (1) shall affect the already existing law operation, or avert the state from making of any law, in such a way that may or may not impose or foist reasonable restrictions on practice of the said right argued by the said sub-clause in the interest of any of the reasonable restriction mentioned under Article 19(2). castigate promotion of acrimony on the bases of religion, race, place of birth. Residence, language, etc., between two groups, where acts shall be done prejudicial or counterproductive for the maintenance of harmony. Castigate incriminations, assertions prejudicial to national-integration, incitement and hatred shall be prohibited as the practice of any is an offence which may lead the offender for a term which may extend to two years, or with Fine of rupees 5000, or

with both. The deliberate and malicious acts which are intended to outrage religious feelings of any class by insulting them should be penalized. The uttering of any word etc which was deliberately made with an intention to harm the sentiments should be penalized. Any publication, circulation or report causing enmity, hatred or ill-will in the society shall be punished. If the person contesting the election was found indulge in any act amounting to invalid or unauthorized use of freedom of speech and expression shall be disqualified immediately. It also prohibits the religious institutions and its management to allow the use of any of its recourses for the promotion or attempt to promote religious disharmony, feeling of enmity, hatred or ill-will between any individual or a group on the bases of religion, racial, cast, creed, communities.

The government is empowered to forfeit publications that are punishable under section 124A, 153A, 153B, 292,293 or 295A of Indian Penal Code 1860. The Executive magistrates are empowered to prevent a person from disturbing the public tranquility and peace. District Magistrates are empowered to issue an order in the urgent cases of public nuisance or seize danger.

Suggestion:

“Communication is a foundational human right- we use it to advocate for other human rights”



-Dixie Hawtin.

- Education is the most efficient way to dilute hater. Educational programs can be conducted to make more people educated and literate to enhance the decision making quality and lucidity of the citizens.
- Government as well as the private individuals shall take initiatives in promoting awareness programs subjected to maintenance of cordial relationship.
- Strict penalizing is required against the act of hate speech, as religious sentiments and beliefs are precious gems for an individual.
- Every responsible government, regional bodies as well as the international and regional actors including United Nation shall stand together in this fight against hate speech.
- Alternative Dispute Resolutions can be used as an option to negotiate, mediate, arbitrate or council the matter as taking any matter to the court takes a lot of time and money.

- A committee can be established by the state which will keep a check on whether the matter discussed to be of hate speech is really a hate speech or not, or it is just another case of taking away the freedom of speech and expression.

Keywords

Freedom of speech and expression, Hatespeechs, Loathing speech, Misused media, foist and reasonable restrictions.

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