

## **HATE SPEECH: CONTEMPORARY SOCIO-LEGAL ISSUES**

*By*

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### **ABSTRACT**

The article encompasses certain aspects of Hate Speech which is an emerging concern especially for democratic countries like India. Some socio-legal issues relating to the matter of hate speech are analyzed here. The very first concern over the matter is the ever-existing conflict between free speech and hate speech as per constitutional provisions. In democratic countries, most of the citizens are not aware of the fine line between these two and thereby we fail to determine the real offenses at times. Hence, at first the nature of this conflict must be analyzed and further the probable criteria to demarcate these two commonly confusing ideas should be determined. Further, in the age of digitization, social media and other platforms are getting huge popularity and hence, the Digital hate culture has come into existence which is far more dangerous than offline speeches. Due to its ungovernable nature it is impossible to control at times. Mob lynching is one of the heinous instances taking place as a result of online hatred. Common citizens often get indulged into communal violence as a result of some posts or online information. Despite having policies, social media platforms often fail to control hate culture. Hence, at this juncture, it is a duty of every responsible citizen to understand the gravity of this issue and thereby judge each and every information properly before circulating them. Universal legal provisions should be created to control the culture of hate speech without affecting the right to free speech.

## INTRODUCTION

There is a fine line between free speech and hate speech. Free speech encourages debate whereas hate speech incites violence.

- Newton Lee

The term Hate Speech basically refers to statements that are intended to demean and humiliate a particular person or community by way of using abusive, cruel and derogatory language and defamatory comments. The hate speech generally is targeted towards the race, caste, religion, gender or specific disability of people. Hate speech has immense effect upon society and individuals as well. Probable consequences of hate speech include social exclusion, extreme polarization among people from different community, certain prejudice created in human mind. These minor effects can even lead to social crimes e.g. genocide. The subject of Hate Speech has acquired significance in recent years with the increase in intolerance caused due to communal hate campaign. The media, through newspapers, television and especially internet has an important role to play in the context of hate speech.

With the rising rate of internet usage and advancements of technology, the culture of spreading hate speech is now not only confined into public ceremonies or campaigns but also is extended to digital hate culture. There are certain advantages for which people prefers digital platform to offline one. First of all, it is easy to communicate the message to huge mass within a very short time through social media and online platforms. Secondly, it is not easy for the administration to control the digital hate speeches and identify the person doing so. There must be well equipped techniques to find that instantly which can't always be availed by developing countries like India. These merits are something that make internet hate speech even more dangerous. Because a lot of people get affected within a very short time due to such speeches which can cause grave violence in the country.

Thereby, hate speech is a relevant and thought-provoking subject in current aspect. This study will cover certain problems and conflicts regarding the issue and will attempt to provide best possible solutions to those issues.

**CONFLICT BETWEEN GOVT. CENSORSHIP AND FREEDOM OF SPEECH AND EXPRESSION IN INDIA: IDEALISM V. PRAGMATISM:**

Idealism without pragmatism is important. Pragmatism without idealism is meaningless. The key to effective leadership is pragmatic idealism.

– Richard M. Nixon

Idealism is following ideas that are often unrealistic but morally correct and on the contrary Pragmatism is acting realistically with the current circumstance. As per Idealistic approach, in a democratic country like India, free speech is needed. This conflict is constant in democratic nations. In the landmark case of *Shreya Singhal v Union of India*<sup>1</sup> two girls were arrested by Mumbai police for protesting against a bandh brought in the wake of shiv Sena leader Bal Thackery's demise. The girls posted their comments on Facebook leading to the arrest. It was argued that their content was "objectionable" and against public opinion of the country. The arrest resulted in severe intolerance and protest throughout the country. The police made the arrests under Section 66A of the Information Technology Act 2000 which punishes any person sending through digital communication devices any offensive information or comment that can cause into danger, insult, hatred, inconvenience to anybody. In the judgment of this case, the court held Section 66A unconstitutional and violative of Article 19(1) freedom of expression. Hence, Ideal approach was followed in this judgment and freedom of speech was prevailed.

But pragmatically, if the surrounding environment is considered, there should be some censorship on contents published on social media platforms. Otherwise, it often leads to serious violence. Even the constitution states that freedom of speech and expression can be subject to public morality, health and certain other aspects.<sup>2</sup> As the social networking sites are providing us with an unfiltered platform to share thoughts and messages, it often leads to dangerous consequences as cited by the authors. The issue of mob lynching is further illustrated elaborately.

Thereby, practically the censorship should be exercised up to a certain extent to main peace and harmony in the country. However, this should also not scrap the freedom of speech and

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<sup>1</sup>*Shreya Singhal v. Union of India*, (2013) 12 S.C.C. 73.

<sup>2</sup>INDIA CONST. art. 19, cl. 2

expression completely and the govt should not turn autocrat in a democratic country. Hence as mentioned, idealist pragmatism must be followed as for example the establishment of Social Media Communication Hub. Further, while taking such measures, the right to privacy available to the citizens should also be dealt with consideration and thereby sensible and midway decisions should be taken. Hence, it can be concluded that a delicate blend of Idealistic and Pragmatic approach is the key to peaceful solution to the conflict.

### **PROBABLE CRITERIA TO DETERMINE A HATE SPEECH AND THE EXTENT OF LIABILITY OF A PERSON:**

As explained in the introductory notes, hate speech refers to any kind of statements humiliating or hurting an individual or collective sentiment. Now there has been a lot of past case laws and incidents where there has been a question on the proper clarification on the intensity of such statements that can level them as hate speech and thereby held the person liable. Hence through this study, an attempt is made to clarify prescribed degree and magnitude of such comments to become hate speech.

To have a proper understanding about the very first concerned issue, a relevant case law<sup>3</sup> can be taken into consideration. In this case, there was a Public Interest Litigation (PIL) by the petitioner i.e. an organization working for the welfare of inter-state migrants. Through this PIL they prayed for a series of declarations and directions prohibiting hate speech. They basically sought declarations regarding hate speeches made by representatives of several political parties during election campaigns and other activities regarding religion, caste and ethnic beliefs and practices. In the judgment the court developed a justification for the regulation of hate speech supporting the views of the petitioner that these kinds of statements can discriminate and marginalize people based upon certain identities. In addition to this, the court also conducted a review of existing civil and criminal laws on hate speech and directed the law commission to inspect whether the Election Commission should be conferred the power to derecognize a political party on the ground of making hate speech. Though this judgment was undoubtedly a constructive one but it triggered the question of intensity needed to take such steps against the speaker. There should be a fine line between freedom of speech and the restrictions upon it as evident from the previous issue. Besides that, the ground on

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<sup>3</sup>Pravasi Bhalai Sangathan v. Union of India and Ors, A.I.R. 2014 SC 1591.

which a speech can be constituted as “hate speech” should also be determined by the court with clarity.

In this context an article by eminent jurist Soli J. Sorabjee<sup>4</sup> needs a special mention. Here the author at the very beginning questions the paradox of freedom of expression being a yearning of humanity throughout the history and censorship also being nearly a universal phenomenon. As suggested by the author, freedom of speech and expression has always the intention to provide everybody with equal rights in the eyes of law and attain peace and order in the society. thereby the freedom can never be absolute at all. It must be regulated and restricted to a certain extent. To determine such extent the author stated, “where human dignity and other human rights are respected, it cannot be absolute”.

However, the mere fact that a speech injured the feelings of some other individual is not enough and legitimate to constitute it as a criminal offense of hate speech. Besides this, if somebody promotes objectionable ideas but lacks incitement of violence then also at times it can't be regarded as hate speech. Thereby, a person can only be liable of hate speech if the statements surely demean and disparage a group on the basis of their religion, beliefs etc. and clearly has the potential to create an unlawful situation and violence. As different countries vary in their exercise of liberty and free speech as per the respective constitutions, a fixed standard should be maintained while determining a content as hate speech and punish the offender.

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### **DIGITAL HATE CULTURE: MORE DANGEROUS THAN OFFLINE HATE SPEECH:**

With the rapid growth of Information Technology and social media, online hate or bullying has become a common scenario all over the world. Despite of the existence of numerous rules and regulations, it may not be possible to deal internet hate speech with the equal efficiency and promptness as that of offline ones. Thereby the study will encompass comparison of such dealings with some practical examples and relevant case laws and will include some possible ways to control online hate speech with utmost efficiency.

With regard to the second concern, some very basic examples can be cited. Whenever somebody criticizes a policy or even a system in front of others, it becomes a sensitive one

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<sup>4</sup>Soli J. Sorabjee, *'Hate Speech' Dilemma*, 318 FORTNIGHT PUBLICATIONS LTD., Jun. 1993, at 27,27.

for all the listeners and in most of the cases even if it does not amount to hatred, it results in some tension or disharmony. But in case of internet, people often pass random comments and even hate speeches which remains uncensored and unidentified despite creating impact upon mass. Certain examples of memes and jokes about celebrities or leaders from different fields are often insulting and humiliating and in nature but they being posted on social media do not get much attention from the administration. Had they been made in some public occasion or campaigns; they would definitely trigger some disharmonies instantly thereby leading to the arrest of the person. But there are acts and provisions available to control online hate speech as well.

As mentioned previously, in the landmark case of *Shreya Singhal v Union of India*<sup>5</sup> two girls were arrested by Mumbai police for protesting against a bandh brought in the wake of Shiv Sena leader Bal Thackeray's demise as mentioned previously. The girls posted their comments on Facebook leading to the arrest. It was argued that their content was "objectionable" and against public opinion of the country. The arrest resulted in severe intolerance and protest throughout the country. The arrest was executed by the police under Section 66A of the Information Technology Act 2000 as discussed above. In the judgment of this case, the court held Section 66A unconstitutional and violative of Article 19(1) freedom of expression. In this specific scenario, the decision to remove the charges from the girls was valid as illustrated by the court through all the arguments. However, in the long run it had some adverse effect on the online hate culture. This section provided an opportunity for the genuine sufferers also to get justice and to protest against harassment and insults through internet and social media. Practically a country like India where free speech is anyhow gets misused and online hatred has become a common platform to show anger and violence, there should be some strict measures to be taken to curb internet hate speech culture as suggested above as well.

To combat the digital hate culture with utmost efficiency, one must understand its characteristics at the very beginning. Digital hate culture is basically ungovernable but can definitely be controlled with proper tools and adequate knowledge to manage them. The very first disadvantage of online hate speeches over offline is its swarm structure which results in the fast outbreak and spread of such news throughout different culture and communities. Thereby some immediate steps should be taken by the administrations so that whenever any extreme content that can cause disharmony and violence is posted on social media or any

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<sup>5</sup>*Shreya Singhal v. Union of India*, (2013) 12 S.C.C. 73.

other digital platform, it is not approachable towards the ordinary citizens.<sup>6</sup> This can be done through artificial intelligence system. As the world is progressing fast, we should be hopeful that in near future, such measures will be used efficiently to control online hate speech.

### **HATE SPEECH IN INDIA AND MOB LYNCHING:**

In recent scenario, there has been a lot of examples of communal disharmony and mob lynching happening as a result of some posts on social media or certain unparliamentary comments made by individuals. Hence, through this study, the link between such online speeches and mob lynching are explained. Analysis of this question has the very potential to make the general people understand the gravity of online hate speech and thereby create a mass awareness.

In the context of the final issue, first the concept of Mob Lynching must be explained clearly. The term Lynching refers to the slaughter of a person in an unlawful manner. When informal public execution by a mob is carried on to punish an alleged offender, it is called Mob Lynching. Now apparently Mob Lynching is all about a practical incident based upon sudden tensions and violence. But it is very much linked with online hate speech. There has been a lot of massacres where people were killed for commenting something on social media or posting something that was disgraceful to any particular cult. As this social networking sites are providing us with an unfiltered platform to share thoughts and messages, it often leads to dangerous consequences as cited by the authors. More than a dozen people were killed in May 2018 due to a violence created through a fake WhatsApp message.<sup>7</sup>

Thereby, digital platforms are playing a significant role in spreading malicious rumors among the commoners. The scale of the problem is really extensive because the range of victim can vary from software professionals to migrant workers. The preferred device to spread such fake news is cellphone which is very much available in both rural and urban areas spreading the horizon of the effect over citizens. In this article, probable cautions that is going to be adopted by the Government are also illustrated. The administration is planning to develop a Social Media Communication Hub, that can allow them to track all such sites thereby

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<sup>6</sup>Bharath Ganesh, *The Ungovernability of Digital Hate Culture*, 71J. OF INT. AFFAIRS EDITORIAL BOARD- 30-49 (2018).

<sup>7</sup>Seema Uikey & Nidhi Dubey, *Mob Lynching in India: WhatsApp as social media to 'anti' social media* 4 INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCE RESEARCH 35-40 (2018).

controlling the outbreak of such fake information.<sup>8</sup> Only through enough surveillance and tracking, this issue can be solved. While taking such measures, the right to privacy available to the citizens should also be dealt with consideration and thereby sensible and midway decisions should be taken.

## CONCLUSION

The study encompassed three contemporary issues regarding Hate speech. As understandable from the study, the hate speech culture is not very well defined anywhere. It is very much subjective in nature. Something that is sensible and humiliating to one person may be an ordinary statement for other. What may be perfectly lawful and permissible for one may be an insulting content for other. As for example, the movie “Innocence of Muslims” was banned in certain countries but not everywhere<sup>9</sup>. Constitutional provisions also vary from country to country. Thereby a fixed standard should be maintained while determining a content as hate speech and punish the offender. Otherwise it would result in undesirable discriminations. Again, if we consider the fact that offline hate speeches have the ability to create more violence and disharmony, the same can be happened by internet speech also with the increasing rate of use of social media platforms and the range of people using such mechanisms to share their viewpoints. In one hand it is undoubtedly a wide platform to raise our voice against corruption or wrongs happening around us, but the negative aspects should also be dealt in proper manner. Thereby as mentioned earlier, proper surveillance system should be developed by the administration to control online hate speeches. Finally, the relationship between mob lynching and digital hate culture is also something that demand serious attention. This is something that helped the readers understand the gravity of online hate speeches and the power it holds that can even cause mass death. Religious sentiments or political disharmonies are the kind of issues that are most dangerous in nature as it involves collective concern, hence these online platforms anyhow should be controlled to a certain extent to prevent such massacre or violence.

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<sup>8</sup>Ronojoy Sen, *The Dark Side of Social Media: Mob Lynchings In India*, 592 ISAS BRIEF (2018).

<sup>9</sup>Madhavi Divan, *Facts of Media Law*.





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