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Hate Speeches: It's Time to Draw a Line

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ABSTRACT

Freedom of speech and expression are natural rights and are the very first condition of liberty. Freedom of speech and expression are the most essential feature of a truly democratic country. The freedom of speech and expression form the basis of criticism as well as intermingling of ideas and beliefs. Therefore, in the modern times freedom of speech and expression is the very basis of free society and must be safeguarded at all times. But the freedom of speech and expression must be used with vigour so that it does not hurt the emotions of any other citizen and each and every citizen should be sensitive towards the emotions of other citizens in a democratic society.

It is at this juncture of time that we need to strike a line between freedom of speech and expression and the hate speeches delivered by politicians and the media houses. Even at a time when a pandemic has hit the whole world politicians are busy making hate speeches, a hate speech is any way of communication in writing, speech or behaviour that attacks or uses discriminatory language against a person or a group of people on the basis of who they are, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor. Thus, there is an urgent need to strengthen hate speech laws so that there is a restriction on hate speeches and also there is a need for providing awareness among the people so that they don't fall prey to these speeches.

Keywords: *Freedom of Speech and Expression, Hate Speeches, laws.*

I. INTRODUCTION

Our Speech and expressions are a gift of god to the human race. Speech and expression are the sole medium for conveying our thoughts, resentment, acceptance and feelings towards others. Thereby, freedom of speech and expression are natural rights and are the very first condition of liberty. Free speech is one of the most essential feature of democracy as it leads to the exchange of varied opinions. Freedom of speech and expression includes the expression of one's ideas through any communicable medium or visible representation, such as, gesture or sighs.³ In the modern times freedom of speech and expression is the very basis of free society

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³ Lowell v. Griffin, (1939) 303 US 444.

and must be safeguarded at all times.⁴ Hence, it can be said that freedom of speech and expression is the mother of all other liberties.⁵

Right to freedom of speech and expression must be used with vigour so that it does not hurt the emotions of any other citizen and each and every citizen should be sensitive towards the emotions of other citizens in a democratic society. However, a hate speech is just for some personal interest and it is made to ignite a feeling of revenge in the minds of the people. A hate speech is a speech which is intended to demean a person or a group of people based on their mental capacity, race, age, gender, nationality, sexual orientation, ethnicity, religion, gender identity, language, disability, ideology, social class, occupation and any other distinction that may be considered as a liability⁶. United Nations has defined hate speech as any way of communication in writing, speech or behaviour that attacks or uses discriminatory language against a person or a group of people on the basis of who they are, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor⁷. Hate speeches thereby corrupt the very concept of free speech that is based on true representation of thoughts so as to maintain a balance in the society, where every citizen has the right to put forth his views without hurting the beliefs of any other citizen. Hence it can be concluded that the act of delivering hate speeches is a universal crime.

In India's context Article 19⁸ guarantees the Right to freedom of speech and expression, however the right is not an absolute rights and imposes certain restrictions to as to prevent its misuse. Internationally, the ICERD (International convention on the Elimination of all forms of Racial Discrimination) under the convention for elimination of all forms of racial discrimination⁹ bans the expression of all sorts of speeches that relates to defining any race as superior or inferior. Also, Article 20 and 19 of the ICCPR¹⁰ (International Covenant on Civil and Political Rights) also keeps a check on hate speeches.

In the Indian Context the exact meaning of hate speeches has not been defined. In a country like India where every region has its own cultural history hate speeches primarily aim at promoting hatred and violence in the country. Article 19 1(a)¹¹ of the Constitution of India

⁴Dheerendra Patanjali, Freedom of speech and expression: India v. America – A study, 3 ILJ, (2010).

⁵ Ibid.

⁶ Baba Umar, Getting away with hate speeches in India, Aljazeera, April 24, 2014.

⁷ United Nations strategy and plan of action on hate speech, United Nations, (Mar 15, 2020, 11.25AM), <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

⁸ Indian Constitution- Part 3, Article 19.

⁹ Convention on the Elimination of All Forms of Racial Discrimination- Article 4.

¹⁰ International Covenant on Civil and Political Rights- Article 20 and Article 19.

¹¹ INDIA CONST. art. 19.

given every citizen the right to freedom of speech and expression but it is not an absolute rights and has some reasonable restrictions. Article 28¹² prevents any religious instruction in any school or college which is funded by the state.

II. LEGAL PROVISIONS RELATED TO THE REGULATION OF HATE SPEECHES.

There are various provisions under the Indian Penal Code as well as in the Code of Criminal Procedure and other laws to put certain limitation on the freedom of speech and expression.

Indian Penal Code:

Section 124(A)¹³: Sedition, this section penalises any person who brings or attempts to bring hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law.

Section 153(A)¹⁴: this section penalises any person for promoting enmity between different groups of people on the grounds of the religion, race, place of birth, residence, language and doing that disrupt the harmony of the region.

Section 153(B)¹⁵: This section penalises any person who by words either spoken or written or by signs or by visible representation makes or publishes any imputation, assertion prejudicial to the national integration.

Section 292:¹⁶ This section penalises the sale, hire, distribution, public exhibition or circulation of any obscene book.

Section 293:¹⁷ This section prescribes a higher punishment to any person who circulated any obscene book as mentioned under section 292 to a person below the age of 21.

Section 295:¹⁸ This section penalises any deliberate and malicious act which is intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

Section 505:¹⁹ This section punishes any person who publishes or spreads a rumour with the intent to cause any soldier or officer to mutiny or fail in his duty, or causing fear in public tranquillity, or inciting one community against another can be punished under this section.

¹² INDIA CONST. art. 28.

¹³ Indian Penal Code, sec. 124(A).

¹⁴ Indian Penal Code, sec. 153(A).

¹⁵ Indian Penal Code, sec. 153(B).

¹⁶ Indian Penal Code, sec. 292.

¹⁷ Indian Penal Code, sec. 293.

¹⁸ Indian Penal Code, sec. 295.

¹⁹ Indian Penal Code, sec. 505.

2. Code of Criminal Procedure:

Section 95²⁰ of the Code of Criminal Procedure, 1973 gives power to the government to forfeiture or issue a search warrant against any publications be it a newspaper or any document if it is punishable under section 124A, 153A, 153B, 292, 293 or 295A of the Indian Penal Code²¹.

III. CASE LAWS RELATED TO HATE SPEECHES

In the case of *Pravasi Bhalai Sangathan v. U.O.I. & Ors*,²² the Supreme Court held that the main purpose of hate speeches is to marginalize a community with expressions that create hatred in the minds of the people. Hate speeches don't just cause distress to the individual group members rather have an impact on society. Hate speeches can lead to discrimination of a community, violence against a community and may even end up in genocide.

In the case of *S. Veerabdran Chettiar v. E V Ramaswami Naicker & Others*²³, Periyar E. V. Ramasamy who is considered as the father of the Dravidian Movement, broke an idol of Lord Ganesh in a public meeting. A police complaint was filled and upon investigation it was conformed that the event took place but the local magistrate dismissed the complaint stating that breaking of a mud idol of Lord Ganesh is not an offence and the same was upheld by the sessions and high court. The high court went on record to say that the case is not fit to be addressed in front of the supreme court as under Article 134(1)(c). However, S. Veerabdran Chettiar filed a special leave petition in the Supreme Court stating that before the idol was intentionally broken, a hate speech was given whereby it was stated that the person wanted to insult the religious sentiments of Hindu's by breaking the idol. The apex court criticized the lower courts but concluded that the case is stale as the event took place 5 years ago and thereby the appeal was dismissed.

In the case of *Shri Anand Patwardhan v. The Central Board of films*²⁴, a case was filed against the censor board by the director of a film in which the censor board suggested some scenes were objectionable and came under section 295 of the IPC²⁵. Section 295 of IPC penalises any deliberate and malicious act which is intended to outrage religious feelings of any class by insulting its religion or religious beliefs. The two scenes that were said to be objectionable were

²⁰ The Code of Criminal Procedure, 1973, Section 95.

²¹ Indian Penal Code.

²² *Pravasi Bhalai Sangathan v. U.O.I. & Ors*, AIR 2014 SC 1591.

²³ *S. Veerabdran Chettiar v. E V Ramaswami Naicker & Others*, 1958 AIR 1032, 1959 SCR 1211.

²⁴ *Shri Anand Patwardhan v. The Central Board of films*, 2003 (5) Bom CR 58.

²⁵ Indian Penal Code, sec. 295.

the scenes of a demonstration staged by a group and a speech by a dalit leader. The court held that the cuts suggested were not reasonable and violated the right to freedom of speech and expression.

In the case of Delhi Administration v. Rajpal Singh Shastri²⁶, the editor of a journal was accused of insulting Muslims and Sikhs in a particular article. While dealing with the offence under Section 295 of IPC²⁷, the trial court held that the article when read on the whole does not insult the Muslim religion rather it attacks the leaders who exploit and use the Muslim masses for their selfish needs and thereby the provisions of section 295 are not attracted in the present case.

In the case of Sony Pictures v. State of Tamil Nadu²⁸ often referred to as the Da Vinci Movie case, the release of the movie was stopped as the movie show cased anti-Christian beliefs and Christianity is a bad light. It was true that the movie showed the religious in a bad light but it was not contented as a work of history and thereby the movie was released.

IV. HATE SPEECH LAWS IN DIFFERENT COUNTRIES.

1. United Kingdom:

Hate speech laws in UK are found in various statues. The expression of hatred on account of colour, race disability, nationality, religion, gender or sexual orientation is forbidden.^{29,30} Under section 18 of the Public Health Act³¹, if a person uses threatening, abusive or insulting words or behaviour or displays any written material for the same then that person is guilty of an offence if:

- a. His intention is to ignite racial hatred, or
- b. Looking at the situation it is possible that racial hatred may be stirred up.

Thereby, in even in UK where there is no written constitution there are strong laws against hate speeches.

2. Council of Europe:

European laws have not been uniformly applied across EU on this issue. There is no clear and accepted definition of “hate speech” under the European Court on Human Rights instead

²⁶ Delhi Administration v. Rajpal Singh Shastri, 2005 (81) DRJ 209.

²⁷ Indian Penal Code, sec. 295.

²⁸ Sony Pictures v. State of Tamil Nadu , 2006 (4) CTC 193.

²⁹ Racial and Religious Hatred Act, 2006.

³⁰ Public Order Act, 1986.

³¹ Ibid.

parameters have been laid down according to which the prosecutors can decide if a “hate speech” is protected under the ambit of freedom of speech and expression.³² Article 10 of the European Convention on Human Rights³³ does not prohibit criminal laws against revisionism such as denial or minimization of genocides or crimes against humanity, the European Court of Human Rights (ECHR) made recommendations to combat hate speeches under its recommendations R(97)20.³⁴

3. Canada:

It is one of the few countries to have adopted the International covenants and standards related to hate speech in its domestic laws. The Canadian Supreme Court has recognised the freedom of expression as mentioned in Canadian Charter of Rights and Freedoms and other three values as: (i) Seeking truth, (ii) Participating and keeping opinion in social and political decision making and (iii) achieving self-fulfilment and human flourishing in a pluralistic society.³⁵

Thereby, in Canada publicly inciting hatred against any identifiable group is an offence. Thus, the Canadian protection of freedom of expression relies on the free democracy and the pursuit of truth.

4. United States of America:

The US does not have any hate speech laws as the US courts have ruled all such laws as violative of freedom of speech which is contained in the very first amendment to the US constitution³⁶. However, there are several categories of speeches such as speeches that call for imminent violence and are not protected under the First Amendment. Thus, the U.S. Supreme Court has ruled that hate speech that does not fall into one of these categories is constitutionally protected.³⁷

V. CONCLUSION AND SUGGESTIONS.

The foremost condition of liberty is the freedom of speech and expression.³⁸ It acts as the safeguard to the democratic government. Freedom of speech and expression acts is the essential

³² Alina Dain Sharon, A Web of Hate: European, U.S. Laws Clash on Defining and Policing Online Anti-Semitism, *The Algemeiner*, February 28, 2013.

³³ European Convention on Human Rights, 1953.

³⁴ Recommendation R (97) 20 of the Committee of Ministers to Member States on "Hate Speech", Council of Europe, Committee of Ministers, (Mar 16, 2020, 12.30 PM), <https://rm.coe.int/1680505d5b>.

³⁵ Canada Charter of Rights and Freedoms, Constitution Act, 1982.

³⁶ Eugene Volokh, No, there's no "hate speech" exception to the First Amendment, *The Washington Post*, (Mar 17, 2020, 9.45 PM), https://www.washingtonpost.com/steps-for-disabling-adblocker/2016/09/14/a8c3d4d2-7aac-11e6-bd86-b7bbd53d2b5d_story.html.

³⁷ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

³⁸ Franklyn S. Haiman, *Speech and Law in a Free Society*, University of Chicago Press, (1981 edn.).

machinery in the proper functioning of the democratic government. Freedom of speech and expression plays a pivotal role in the formation of general public opinion on social, political and economic matters. The apex court in the case of *Mahesh Bhatt v. Union of India and Anr.*,³⁹ held that the freedom of speech and expression is one of the pillars of the constitution of India and it needed so that the democratic structure is sustained. The highest judiciary of the country has broadly interpreted the meaning of Freedom of speech and expression as a 'basic human right', 'natural right' and the like. Every member of the society should be able to form their own belief and communicate them freely.⁴⁰ It propagates or publishes not only personal views but also the view of other people, otherwise the freedom would not include freedom of press. This freedom enables to speak and express the thoughts and opinions without censorship. The right to freedom of speech and expression is guaranteed by the concerned national Constitutions. This right includes right to seek, receive and impart information and ideas of all kinds, without any frontiers, either in oral, written or printed form, or in the form of art, or through any other media.⁴¹ The famous Indian jurist Nani Pakhiwala has observed: "Freedom is to the Press what oxygen is to the human being; it is the essential condition of its survival. To talk of a democracy without a free press is a contradiction in terms. A free press is not an optional extra in a democracy."⁴² Meaning of the phrase 'freedom of press' is, freedom from any sort of interference from authorities which would affect the content and circulation of newspapers.⁴³ The assumption that a speech falls in a desired standard rests on the relationship between the media and properly accounted for public sphere, and the appeal of the state to rule out undesirable forms of speech abandons the site of politics and changes it into a kind off regulation which would further the crisis rather than resolving it.

Freedom of speech and expression is the double edged sword which can benefit as well as disintegrate the nation. Freedom of speech and expression can lead to disintegration of the nation when it crosses the line of decency and becomes a hate speech aimed at a particular segment of the society as against a particular race, religion or an ethnic group. This later edge depends upon the social and educational upbringing of the person as well as their intelligence. The need for hate speech detection system becomes more apparent as hate speech continues to be a societal problem. This can be done through reasonable accuracy and by adding the benefit

³⁹ *Mahesh Bhatt v. Union of India and Anr.*, 2008 (147) DLT 561.

⁴⁰ M. P. Jain, *Indian Constitutional Law*, Lexis Nexis Butterworths Wadhwa, 1078 (6th edn., 2012).

⁴¹ Toby Mendel, *Restricting Freedom of Expression: Standards and Principles Background Paper for Meetings Hosted by UN Special Rapporteur on Freedom of Opinion and Expression*, (Mar 18, 2020, 10.10 PM) <http://www.lawdemocracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf>.

⁴² Nani. A. Phalkhivala, *We The Nation- The Lost Decade*, 291 (1994 edn.)

⁴³ *Publisher, Sportstar Magazine Chennai v. Girish Sharma*, 2001 Cri. L. J. 1863.

of improved interpretability. Efforts has been made to minimize the scope of hate speech and allow people to exercise their right of freedom of speech and expression. The Apex court said that it could not curb the fundamental right of the people to express themselves.⁴⁴ Hate speech should be countered through reason rather than regulation. Indian democracy is becoming more robust with increase in speeches which can lead to controversy, contestation and conflict, it is the duty of every citizen that these speeches must not cross the nation's decency and propriety and if the citizens fails in abiding their duty then the state should intervene. The integrity of the constitution should be maintained along with harmony in the society and it is the predetermined duty of the government and the society to protect equality and freedom of expression top such an extent that it may not remain speechless against hate speech.

⁴⁴ Sajid Sheikh, Supreme Court Erred Again: Mistaken on Hate Speech as Free Speech, Lawlex (Mar 19, 2020, 2:09 p.m.), <http://lawlex.org/lex-bulletin/supreme-court-erred-again-mistaken-on-hate-speech-as-free-speech/9420>.