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Hate Speech: A Threat to the Unity and Peace in India

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ABSTRACT

The Indian constitution has given freedom of speech and expression as a fundamental right. But this right cannot be given in an absolute manner as speech which would disturb the peace in the society and create enmity or chaos in the society is not permissible. There are a huge number of instances of hate speeches in India which most often lead to communal clashes in the nation and therefore disturbing the peace in the society. It is important to note that though there are laws which prohibit hate speeches or make it a punishable offence under the Indian penal code, the inefficient implementation and lesser punishment for such crimes makes it an offence which is not taken that seriously. The recent spike in the incidents of hate speeches in India have resulted in huge disturbance in the society and such incidents doesn't seem to be halted but in turn are increasing every day. It is important to make laws and amendments to make sure such incidents are reduced and thereby securing peace in the society. This paper tries to analyze the present laws which are present for the offence of hate speech. Firstly, the paper tries to differentiate between hate speech and the freedom of speech and expression, to look whether the offence of hate speech can be defended under the right to freedom of speech and expression. Secondly, the paper looks into the sections of IPC which deal with the offence of IPC, also covering the other laws which deal with it and tries to analyze if those laws are sufficient by considering the spike in the cases of hate speech. Lastly, it tries to give suggestions on changes in law to deal with such offences effectively and measures that can be taken to prevent it.

Keywords: Hate speech, Justice, Freedom of Speech and Expression, Peace.

I. INTRODUCTION

Rights are an important aspect of an individual's life which have influence on both, the individual's own self and the society. They have been provided in democratic societies to safeguard individuals from undue state involvement. Freedom of speech one such right. Article 19 of the Universal Declaration of Human Rights as well as the Article 19 of Indian Constitution guarantees freedom of expression. It is regarded as one of the most important rights since it enables a person to achieve self-actualization and strengthens their potential to completely

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appreciate freedom.

Freedom of speech and expression is something that is questioned wherever there is curtailment of some of speech. In such cases, it is necessary to understand why and what kind of speech should be curtailed. Individuals delivering hate speeches take the defence of right to freedom of speech most often. And sometimes, there is curtailment of this right even though it is well under the ambit of not being a hate speech. Hence it is very necessary to draw a clear line between the freedom of speech and hate speech.

In the recent years, a rapid increase in hate speeches is being seen in India. Around 878 cases of hate speech have been recorded in a span of past 8 years.² The hate speeches delivered are in-fact one of the biggest reasons for protests and riots that disturb the peace of the society. The poor and improper implementation of laws is one of the reasons for the spike in the cases of hate speech. If laws properly implemented and strict action was taken against the offenders, the such cases would have been very less than what ween are noticing today. The detailed analysis of the hate speech laws and the situation in the country is discussed in the coming sections.

The paper is mainly divided into four sections. The first section discusses debate on free speech and hate speech. The second section looks in to the sections of IPC and other laws revolving around hate speech in the nation and tries to figure out the main loophole. The third section talks about the important role of judiciary in solving this issue. The last section provides a few suggestions from four different aspects for effective implementation of laws and to ensure peace.

II. THE DEBATE ON HATE SPEECH AND FREE SPEECH

Freedom of expression has been humanity's yearning in times ancient to modern. Yet censorship has also been an ancient and universal phenomenon.³ The difference between protection of free speech and criminalization of hate speech is merely the intention and the implications of the speech delivered. A hate speech has a criminal intention or hatred towards a person, a community or religion, but these factors are absent in free speech.

The recent Amish Devgan Judgement draws a clear distinction between a free speech and a hate speech. The supreme court in this judgement said that "Free speech includes right to criticize the government policies whereas the hate speech includes creating or spreading hatred against

² Jayant Pankaj and Deshdeep Dhankar, *From Speech to Crime to Genocide, It's Clear to See How Hate Travels*, The Wire, (22nd April 2022), <https://thewire.in/communalism/from-speech-to-crime-to-genocide-its-clear-to-see-how-hate-travels>

³ Soli J. Sorabjee, *'Hate Speech' Dilemma*, Fortnight pg. 27, 27 (1993)

a targeted community or a group.”⁴ The hate speech has the high probability of resulting in to a communal riot which has been in-fact happened in India most of the times. In a number of cases there are hate speeches which have become the reason for the communal tensional or riot in the society disturbing the peace in the entire nation. This is because such riots always start from some tiny insignificant incident but later spread to the whole community;⁵ and as result to many parts of the nation.

Every right has reasonable restrictions since not all rights can be absolute in nature. Criminalization of hate speech cannot be considered as curtailment or a violation of right of but it is in-fact a reasonable restriction which is necessary for a civilized society to maintain peace because anything beyond a certain limit is harmful. Not every right can be absolute in nature and so does right to freedom of expression. There needs to be some sort of limit or restriction beyond which a person has stop. Freedom of expression is a means to attain a society where law and order prevail, and where dignity and other human rights are respected but it cannot be absolute in nature.⁶

The right to freedom of speech and expression has been restricted both under the international law and under the Indian constitution.

Article 19(3) and 20(1) of ICCPR subjects right to freedom of expression to restrictions necessary to protect rights and reputation of others and prohibit among other, advocacy of religious hatred.⁷

Article 19(2) of the Indian constitution imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests 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.⁸

III. INDIAN PENAL CODE ON HATE SPEECH

Around 6 sections in the Indian penal code, 1860 revolve around hate speech. Section 124A, section 153A, section 153B, section 295A, section 298, section 501(1) and section 501(2) of the Indian penal code which penalizes any hateful speech or action that would create tension in the society or harm the peaceful environment of the society.

In addition to the above sections of IPC there are other legislations which penalizes/criminalizes

⁴ Amish Devgan Vs Union of India, 2020 SCC OnLine SC 994

⁵ A. G. Noorani, *Hate Speech and Free Speech*, Vol. 27 Economic and Political Weekly pg.2456, 2456 (1992)

⁶ Soli, *supra* note 2

⁷ *Id.*

⁸ Constitution of India. art. 19, cl. 2 (1950)

hate speech such as,

- Section 8 and Section 123(3A) of Representation of the People Act, 1951.
- Section 7 of Protection of Civil Rights Act, 1955.
- Section 3(g) of the Religious Institutions (Prevention of Misuse) Act, 1988.
- Sections 5 and 6 of the Cable Television Network Regulation Act, 1995.
- Section 95, 107 and 144 of the Criminal Procedure Code, 1973.
- Sections 4, 5B and 7 of the Cinematograph Act, 1952.

These are all the legislations in India that make any hateful speech or action a punishable offence. By considering the number of laws that are available in the nation, it becomes really important to understand the main cause of the spike in the cases of hate speech. The present laws which are available to deal with the offence are actually very sufficient to prevent such offences and to establish peace in this society.

After looking into these laws which seem to be sufficient to deal with such crimes, the most essential thing that needs to be done is to identify the area where the administration or the police is lacking in preventing the cases of hate speeches even though there are these many laws available to deal with the offence?

The answer to the above question is implementation and the political support and political influence which has made the administrative system, a weak and ineffective organ of the government. The implementation of these laws which are available for the protection of peace has been an immensely poor and improper implementation of the laws which has resulted in the increase in the offence of hate speeches. Rather, it would not be wrong to say that there is misuse of these laws by the police department under the influence of the politicians. In-fact, a large number of politicians, are themselves the offenders who deliver hate speech especially during the elections for the purpose of gaining votes of a particular community which have later resulted in riots. One such best example is 2019 Delhi riots, which were actually a result of a hate speech given by a politician targeting a particular community. In contemporary India, hate speech also indicates the low level of politics, especially communal politics, going on.⁹

IV. ROLE OF JUDICIARY

By considering the poor enforcement of laws by the administration and the police department

⁹ Vineet Bhalla, *Hate speech and hate crimes: Law and politics*, The Leaflet, (17th May 2022), <https://theleaflet.in/hate-speech-and-hate-crimes-law-and-politics/>

and the political influence that has constantly been a cause of increase in such offences, the role of judiciary becomes the most important and a vital one. It is important for the judiciary to uphold the constitutional and moral values of the nation which are about respecting each other and all religions and communities. The diversity is actually one of the essential and a special feature of the country which needs to be protected. The recent observations like “If something is said with a smile, then there is no criminality”¹⁰ seems to be the least observations that would make sense. Such observations especially by the court make people lose their faith in the constitution and the judiciary which may also lead to tensions in the society. Hence it is important for the judiciary to be efficient to the maximum level in dealing with these types of cases as these would turn out to be landmark judgements which act as a guiding path even in the absence of strict laws to deal with such offences and would protect the peaceful environment of the society to a large extent.

V. SUGGESTIONS

To prevent hate speech and to ensure that the peace is maintained in the society, the issue has to be addressed from four different aspects, that are, The executive, The Judiciary, The Media, and The Legislative Reforms.

(A) The Efficient Executive:

Law enforcement officers play a key role in responding to hate crimes. Their actions in protecting and assisting the victim at the scene of the hate crime, conducting the initial investigation, and reporting the matter to superiors as a possible hate crime are critical factors in determining the response of both law enforcement and the community to the incident.¹¹ The changes in the executive organ of the government are very necessary for the importance of the society as well as the nation. The executive has completely been a poor implementor or rather been a violator of laws by itself, which is one of the biggest reasons for such an increased rate of crime in the society. The police have to be very effective and efficient in implementation of laws in cases of hate speech, The election commission has to be very strict with respect to the guidelines issued to the candidates contesting elections, and it must take strict and immediate action in case of violation of those guidelines. The politicians are one who can change the course of the country, it is very important for the politicians to have a progressive mindset over

¹⁰ ‘If Something Is Said With a Smile, Then There Is No Criminality’: *Delhi HC on Hate Speech*, *The Wire*, (26th Mar 2022), <https://thewire.in/law/if-something-is-said-with-a-smile-then-there-is-no-criminality-delhi-hc-on-hate-speech>

¹¹ Stephen Wessler, [Addressing hate crimes six initiatives that are enhancing the efforts of criminal justice practitioners](#) 5 (2002)

communal one, they should be promoting unity among the people, not hatred and they should be directing the people of the nation towards the actual issues of the country rather than playing vote bank politics.

(B) Efficient and Active Judicial Intervention:

Justice Kolse Patil, a former judge of the Supreme Court of India says, “If the judiciary had been firm and strong, then the country would not have been in such a deplorable state.”¹² The delay in the judiciary holding the executive responsible and also the delay in punishing the offenders is one of the biggest reasons for the increasing instances of hate speeches being delivered. The need of active judicial intervention with regard to such incidents of hate crimes or hate speeches is extremely necessary to ensure peace in the society. Since the executive has been seen not working efficiently, it is the duty of the judiciary to look into the crimes and at the same time it is also important hold the administration accountable for its negligent and corrupt practices and make sure that justice is served without much delay because justice delayed is justice denied.

(C) The Unbiased and Fearless Media:

Media is considered as the fourth pillar of a democracy. Unfortunately, the mass media in the nation has also been one of the reasons and also one of the sources of hate speech. The media instead of questioning the inefficient police and the politicians, it is seen as corrupted one among those. It has been a constant reason for disturbing peace in the society by organizing controversial TV debates where self-proclaimed religious scholars and political leaders are seen shouting and abusing each other on the live debate which creates hatred among the people of different communities. Indian media channels often indulge in ‘first-past-the-post’ races based on half-cooked, often premature and out-of-context ‘stories.’¹³ These half-cooked stories create false and wrong opinions of the people. This trend of the media end and it should be avoided to create a peaceful environment in the society. The media should work for the welfare and betterment of the society and the development of the nation, which is their actual job instead of being biased and running behind making money and TRP. Media should actively indulge in questioning the failures of the government, instead of trying to cover it by spreading communal

¹² Ajaz Ashraf, *Justice Chandrachud's statement on Gyanvapi is in contempt of his Ayodhya judgement: Justice Kolse Patil*, NewsClick, (7th June 2022), <https://www.newsclick.in/justice-chandrachud-statement-gyanvapi-contempt-his-ayodhya-judgement-Justice-kolse-p>The%20former%20judge%20says%20judicial%20proceedings%20in%20the%20Gyanvapi%20mosque%20case%20have%20%E2%80%98transferred%E2%80%99%20the%20dispute%20to%20the%20court%20of%20public%20opinion%20C%20away%20from%20law%20courts.atil

¹³ Rupin Sharma, *From Gyanvapi to Aryan Khan, Can Police & Media Be Held Accountable?*, The Quint, (6th June 2022, 5:42 Pm), <https://www.thequint.com/voices/opinion/gyanvapi-mosque-row-aryan-khan-police-media#read-more>

news and it should look towards promoting peace and unity in the society.

(D) The Legislative Reforms:

The legislations in the country in my opinion are sufficient for preventing or controlling the crimes in the society provided that if they are properly implemented by the administration. But there are a few changes which would ensure the implementation and speed up the justice procedure and thereby protecting peace in the nation. The few measures or suggestions to make the legislative aspect more efficient can be as follows:

- In my view, drafting a new legislation on this matter would be a very effective step. This because sometimes the hate speech consists of calls for rapes, murders and genocide which is a larger offence than just saying something that would hurt other's feelings. Kaleeswaram Raj, a supreme court lawyer rightly points out that "Once there is an incitement to violence when you reduce it to the level of hate speech, you are actually losing the gravity of what has been done. A call for genocide, for example, cannot be reduced to a mere instance of hate speech. This distinction is very important, and only when we understand this distinction, we will be able to look at which are the statutory provisions or judicial precedents dealing with hate speech."¹⁴ Therefore, a new legislation on the offence of hate-speech with proper distinction based upon the nature and gravity of the hate speech would be a right step towards ensuring the protection and maintenance of peace in the society.
- Amendments to be made in the current legislation prescribing a particular and limited time period of investigation to the police department which would ensure speedy follow up and investigation by the police and thereby making it easier for the judiciary to provide swift justice.
- The laws should be amended to prescribe stricter punishment to serial offenders.
- Amendments should be made in the laws to initiate strict and immediate action against the corrupt officials and politicians who indulge in the hate crimes.
- Any politician indulging in any sort of hate crime or delivering hate speech should be suspended or terminated with immediate effect by the Election Commission of India.
- The licenses of any media houses should be suspended if seen promoting any kind of communal hatred between the communities.

¹⁴ Vineet, *supra* note 8

- The judiciary in case of inefficient executive actions, should take of suo-moto cases whenever there are chances of any tension being created in the society or the peace of the society being disturbed from the hateful incidents.
- The Election Commission of India has to be very strict while dealing with the instances of candidates delivering hate speeches. Their nomination should be immediately cancelled and there must be suspension by considering the gravity of the hate speech.
- Laws with respect to hate posts and hate speeches on social media should also be considered for changes.

VI. CONCLUSION

The offence of hate speech does not only hurt's individual sentiments but also becomes one of the biggest reasons for communal disharmony in the society, which has been a problem for India since independence. The efforts should be made to solve this issue rather than fueling it up by delivering hateful speeches and spreading hatred among communities. Primarily it is important for the citizens to realize what the main issues are that needs to be addressed. The people should together attempt to solve the issues which are important for the development of the nation. There's no sense in fighting over religion when there more important issues to deal with, such as, inflation, unemployment, poverty, climate change etc. The citizens should always choose their priorities wisely. We should be wise in choosing our leaders and also our choices of mass media. We must also be fearless to question the failures and acts of the government which do not seem to be in the right direction instead of supporting it. There must be an attempt to avoid the indulging in communal acts or paying attention communal news as much as possible. Overall, it is all upon us the kind of nation and future we build for ourselves. We should also make sure the existence of the feature that our country is best known for i.e., 'Unity in Diversity.'

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