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BROADCASTING HATE: ANALYSIS OF HATE SPEECH IN INDIA**ABSTRACT**

This paper focuses on Hate Speech and its analysis, particularly the laws regulating it and why it is wrong despite the freedom of speech and expression which is a fundamental right granted under the Constitution of India to all the citizens. The intention behind this research paper is to define and analyse hate speech and hate crime for the purposes of applying criminal sanctions. Analysing hate speech is important to understand the message conveyed, the context, type of language used, reason for hate and the way message is interpreted. The significance of interdisciplinary research with respect to the hate speech is discussed and comparison between different countries is also drawn to assess the measures to counteract their effects.

KEYWORDS

Hate speech, crime, racism, religion inequality, minority, majority, gender, free speech, social media, mass media and politics

INTRODUCTION

First of all, what is Hate Speech and why is it a topic of concern? Hate Speech is an abusive or threatening speech that targets a particular group or community by expressing prejudice against them, especially on the basis of race, religion, caste, gender and sexual orientation. It is an issue of grave concern as hate speech is meant to discriminate or humiliate a specific group of persons which is wrong and should be condemned. In India, there have been many

cases of hate speech recently which provoked violence and harm towards people of a particular religion. The Constitution of India grants its citizens with a fundamental right of freedom of speech and expression, the motive behind this is to allow each and every citizen to speak against a wrong done since it's a democracy. However, there are restrictions to it and many laws that restrict free speech are punishing sedition, hate speech or defamation as per Article 19(2) of the Indian Constitution. Hence, hate speech is an illegal activity and the offenders can be punished for the same, punishment might vary according to the scale or range of the hate speech and the degree of harm or outrage it has caused.

“Sections of the broadcast and print media in India have been in the spotlight for controversial content vilifying minority communities that have been the subject of both criminal proceedings and complaints under existing institutional mechanisms and medium-specific laws. The concern of civil society groups and minority communities, who have been the subject of stereotyping and vilification, is that such negative stereotyping contributes to an overall climate that will lead to greater insecurity among minorities and an incitement to discrimination, hostility and violence against them.”¹

ANALYSIS OF HATE SPEECH IN INDIA

“Hate speech is often posited against ‘free speech’, as if they were complementary ideas. In truth, the concept of ‘free speech’ stems from the idea of equality: from the democratic impulse; whereas the tendency towards hate mongering is mired in the oldest, most archaic ‘bullying for power’. In that sense, ‘hate speech’ is almost a misnomer, for it isn't a speech problem: it is a problem of systemic bullying with an eye towards exclusivist, political power. The incitement is not *always* meant to lead to physical violence; it is in itself violent in its persistent stigmatising and calls towards exclusion.

‘Hate speech’ does not refer to offensive or foul-mouthed speech directed at a people, or even to vitriolic complaints directed at the government. It is speech that can cause *actual material harm* through the social, economic and political marginalisation of a community.”²

LEGAL PROVISIONS ON HATE SPEECH IN INDIA

¹ Siddharth Narrain, *BROADCASTING HATE: MEDIA, LAW, AND HATE SPEECH IN INDIA*, RAJIV GANDHI NATIONAL UNIVERSITY OF LAW (Feb. 14, 2022), <http://rsrr.in/2021/04/08/broadcasting-hate-media-law-and-hate-speech/>

² Shahrukh Alam, *Hate Speech: What It Is and Why It Matters*, THE WIRE (FEB. 14, 2022), <https://thewire.in/law/hate-speech-what-it-is-and-why-it-matters>

“Responsible speech is the essence of the liberty granted under Article 21 of the Constitution. One of the greatest challenges before the principle of autonomy and free speech principle is to ensure that this liberty is not exercised to the detriment of any individual or the disadvantaged section of the society. In a country like India, with diverse castes, creed, religions and languages, this issue poses a greater challenge. Article 19(2) of the Constitution guarantees freedom of speech and expression to all citizens of India. This article is subjected to certain restrictions, namely, 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. Hate speech has not been defined in any law in India. However, legal provisions in certain legislations prohibit select forms of speech as an exception to freedom of speech.”³

THE INTERNATIONAL LAW GOVERNING HATE SPEECH

“The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly in 1948.

1. It is not binding, but it does offer a framework for other human rights instruments that constitute binding international law.
2. It also serves as a guiding framework for states to frame their policies regarding the protection of human rights in constitutions and treaties.
3. Article 7 of the UDHR articulates the right to be protected against any form of discrimination, and against incitement to discrimination. It reads, ‘All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.’⁴

CONSTITUTIONAL LAW AND HATE SPEECH

“Article 19(1) (a) of the Constitution of India guarantees the right to freedom of speech and expression to all Indian citizens. The right to propagate one’s ideas is a part of the right to freedom of expression, and every citizen has the right to publish, disseminate and circulate

³ *Hate Speech*, LAW COMMISSION OF INDIA (Feb. 14, 2022), <https://lawcommissionofindia.nic.in/reports/Report267.pdf>

⁴ *Hate Speech Laws in India*, NLU DELHI AND LATEST LAWS (Feb. 14, 2022), <https://www.latestlaws.com/wp-content/uploads/2018/05/NLUD-Report-on-Hate-Speech-Laws-in-India.pdf>

their ideas. The Constitution does not permit any arbitrary restrictions on speech. Restrictions or limitations are permitted only if the speech falls within one of the eight grounds mentioned in Article 19(2). Laws criminalising hate speech, such as Sections 153A3 and 295A4 of the Indian Penal Code, 1860 (IPC) and Section 955 of the Code of Criminal Procedure, 1973 (CrPC), have been challenged for unreasonably restricting free speech. However, the Supreme Court of India has found these laws to be consistent with the Constitution.

Article 19(1)(a) reads as follows:

Protection of certain rights regarding freedom of speech etc.-

1. All citizens shall have the right (a) to freedom of speech and expression. Any limitation on this right must be a 'reasonable restriction' falling within the contours of Article 19(2). Article 19(2) reads as follows:

Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law 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.”⁵

CRIMINAL LAWS AND HATE SPEECH

“Section 153A of the Indian Penal Code criminalises the promotion of enmity between groups of people on grounds such as religion and race. Section 153B of the IPC criminalises imputations and assertions prejudicial to national integration. Section 295 of the IPC criminalises the destruction of places of worship or sacred objects. Section 295A of the IPC criminalises deliberate and malicious acts that outrage the religious feelings of any class of people by insulting their religion or religious beliefs. Section 298 of the IPC criminalises speech that would hurt the religious sentiments of a person. Section 505 of the IPC criminalises the publication or circulation of certain statements, rumours or reports.

Sections 95 and 96 of The Code of Criminal Procedure govern the power of the state government to declare certain publications to be forfeited. Section 196 acts as a procedural

⁵ *Hate Speech Laws in India*, NLU DELHI AND LATEST LAWS (Feb. 14, 2022), <https://www.latestlaws.com/wp-content/uploads/2018/05/NLUD-Report-on-Hate-Speech-Laws-in-India.pdf>

safeguard when a case is sought to be registered under hate speech offences set out in the IPC. Ancillary CrPC sections such as Section 178, Section 144, Section 107 and Section 151 have a direct or indirect impact on speech.”⁶

“The hate speech laws in India aim to prevent discord among its many ethnic and religious communities. The laws allow a citizen to seek the punishment of anyone who shows the citizen disrespect on grounds of religion, race, place of birth, residence, language, caste or any other ground whatsoever.”⁷

US LAW AGAINST HATE SPEECH

“In the United States, hate speech is protected by the First Amendment. Courts extend this protection on the grounds that the First Amendment requires the government to strictly protect robust debate on matters of public concern even when such debate devolves into distasteful, offensive, or hateful speech that causes others to feel grief, anger, or fear. (The Supreme Court's decision in *Snyder v. Phelps* provides an example of this legal reasoning.) Under current First Amendment jurisprudence, hate speech can only be criminalized when it directly incites imminent criminal activity or consists of specific threats of violence targeted against a person or group.”⁸

JUDICIAL INTERPRETATIONS

1. “In the proceedings before the Supreme Court in the Sudarshan TV case, the question centred around the content of a program on the channel that alleged a “UPSC jihad” and used blatantly discriminatory language referring to Muslims being part of the civil services. In this case, the Ministry of Information and Broadcasting has cautioned the channel to be careful and has warned of strict penal action in case of violation of the existing Programme Code under the Cable Television Networks (Regulation) Act, 1995. The Campaign against Hate Speech’s complaint, related to the coverage of the coronavirus in the Vijaya Karnataka newspaper filed before the Press Commission in

⁶ *Hate Speech Laws in India*, NLU DELHI AND LATEST LAWS (Feb. 14, 2022), <https://www.latestlaws.com/wp-content/uploads/2018/05/NLUD-Report-on-Hate-Speech-Laws-in-India.pdf>

⁷ *Hate Speech Laws in India*, NLU DELHI AND LATEST LAWS (Feb. 14, 2022), <https://www.latestlaws.com/wp-content/uploads/2018/05/NLUD-Report-on-Hate-Speech-Laws-in-India.pdf>

⁸ *Hate Speech and Hate Crime*, AMERICAN LIBRARY ASSOCIATION (Feb. 14, 2022), <http://www.ala.org/advocacy/intfreedom/hate>

May 2020, has resulted in a bail able warrant for the non-appearance of the editor of the newspaper.”⁹

2. N.V.S.J. Rama Rao v. Broadcasting Corporation of India and Ors., 2013: “The party-in-person, a practising Advocate, seeks a declaration that the action of the State in not taking steps to stop the broadcasting of the news item “Akbaruddin Owaisi - Hate Speech at Adilabad and Nizamabad” is illegal, arbitrary, unjust and violative of Articles 21 and 25 of the Constitution of India. The petitioner states that fiery speeches were addressed by Sri Akbaruddin Owaisi, MLA, at Nirmal in Adilabad on 24.12.2012 and thereafter, at Nizamabad, which are being broadcast repeatedly and being debated/discussed, thereby hurting the sentiments of both the communities and were likely to lead to a flare up. He apprehends that it would be difficult to control law and order. He refers to the fact that criminal proceedings have already been launched against Sri Akbaruddin Owaisi, MLA, at Nizamabad, Hyderabad and various other places, and states that his grievance is only with regard to the action of the media in repeatedly disseminating the contents of the alleged speeches of the MLA without realizing that it may lead to a law and order problem and incite the religious sentiments of both communities. He states that there is a threat to peace and likelihood of communal violence, which may ultimately affect the right to life.”¹⁰ Here, the Supreme Court found the apprehensions by party-in-person to be exaggerated and the sagacity and equilibrium shown by the general public in the issue is concerned belie his fears.
3. Amish Devgan v. Union of India and Ors., 2020: “The petitioner had used the word “terrorist” in relation to the Sufi saint Hazrat Moinuddin Chisti during a television programme. This led to a spate of FIRs being filed against him on charges of violating sections 153A (promoting enmity between groups) and 295A (outraging religious feelings) of the Indian Penal Code, 1860 (“IPC”), inter alia. The Supreme Court applied the “spark in a powder keg” test and held that it was not possible to establish causality between the speech concerned and the resultant public order. The court, while referring to its jurisprudence on incitement, has ruled that the content in question did not amount to incitement to a public order disturbance. The Court has

⁹ Siddharth Narrain, *BROADCASTING HATE: MEDIA, LAW, AND HATE SPEECH IN INDIA*, RAJIV GANDHI NATIONAL UNIVERSITY OF LAW (Feb. 14, 2022), <http://rsrr.in/2021/04/08/broadcasting-hate-media-law-and-hate-speech/>

¹⁰ N.V.S.J. Rama Rao v. Broadcasting Corporation of India, 2013 SCC OnLine AP 12

relied on its decision in the Tamas case where the decision to screen the award-winning series on Doordarshan was challenged and the court held that the content was educative and that it did not amount to incitement.”¹¹

CONCLUSION

Hate Speech in India is a serious issue and as per the Indian Law, it is illegal. Targeting a minority group or a specific community and expressing hatred against them through speech is misuse of freedom of speech and expression. Hate Speech and defamation are exceptions to which fundamental right of freedom of speech does not apply. Print and mass media that broadcast the hate speech repeatedly and flare up the issue by debating and discussing about it are also responsible and punishable for inciting hatred. According to Waldron, the harm caused by such speech is broader than just the threat of incitement to violence against them and goes to the root of these values that define relations between different religions and groups in the society.

“In the Australian state of Victoria, a state Parliamentary Committee has recently recommended that the existing criminal laws relating to anti-vilification based on a set of protected characteristics be amended to protect these groups and individuals against intentional or reckless conduct that is likely to incite hatred, serious contempt, revulsion or severe ridicule. These recommendations followed depositions by many minority groups, many of who worked with indigenous, Muslim, Jewish, immigrant, and LGBTQ communities, stating that these groups faced increasing and organised vilification in the state of Victoria.”¹²

These legal debates are not unique or restricted to India and are issues of concern worldwide but given the democratic country we live in, it's essential to understand and respect the fact that all citizens are equal in the eyes of law irrespective of race, religion, gender, etc. and no one has the freedom to speak against a particular community or spread hatred or provoke violence against them. Also, unregulated hateful content on broadcast media can have deadly

¹¹ Siddharth Narrain, *BROADCASTING HATE: MEDIA, LAW, AND HATE SPEECH IN INDIA*, RAJIV GANDHI NATIONAL UNIVERSITY OF LAW (Feb. 14, 2022), <http://rsrr.in/2021/04/08/broadcasting-hate-media-law-and-hate-speech/>

¹² Siddharth Narrain, *BROADCASTING HATE: MEDIA, LAW, AND HATE SPEECH IN INDIA*, RAJIV GANDHI NATIONAL UNIVERSITY OF LAW (Feb. 14, 2022), <http://rsrr.in/2021/04/08/broadcasting-hate-media-law-and-hate-speech/>

repercussions, so the bottom line is that it is significant for all the citizens to be wise and maintain the sanctity of democracy by not spreading unnecessary hate towards each other.

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