

# Role of Judiciary on Hate Speech in India<sup>1</sup>

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## Abstract

Freedom of speech and expression most important right of all fundamental rights. It is paly vital role in democratic country and every individual use this right without government interface. But this right has some limitation impose through Article 19(2) of the Indian Constitution. At presently the person use hate speech for defame other persons or for their personal benefits. Mostly at the time of election the contestants use this speech. It is very thin line between free speech and hate speech. The Indian legislation has no any specific provisions for the control and regulation of hate speech. The Indian Penal Code and The Code of Criminal Procedure has not provided any provisions to curtail hate speech. It is adversely affect our country. Due to which there is a fear of spreading anarchy or rioting in the country. Presently the incidence of hate speech increased day by day. Here in this article the researcher has considered the 267<sup>th</sup> Law Commission Report on Hate Speech. The researcher has analyzed the various legislations and role of judiciary for controlling the hate speech in India.

**Key Words:** *Hate Speech, Judiciary, Indian Constitution, Freedom of Speech.*

## Introduction

Our country is democratic country. In our Indian Constitution Art. 19(1) (a) provides freedom of speech and expression is indispensable in a democracy. In *Romesh Thapper v. State of Madras*<sup>2</sup>, Patanjali Sastri, J. rightly observed that – “Freedom of Speech and of the Press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular Government, is possible”. This right is available to all but this right is subject to limitation imposed under Article 19 (2) which state has to impose reasonable restrictions namely security of the state, friendly relations with foreign state, public order, decency and morality, contempt of court, defamations, incitement to offence and integrity and sovereignty of India.

Freedom of speech and expression means the right to express one’s own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of ones’ ideas through any communicable medium or visible representation, such as, gesture, signs and the like.<sup>3</sup>

The expression connotes also publication and thus the freedom of the press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press. The

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<sup>2</sup> AIR 1950 SC 124

<sup>3</sup> *Lowell v. Griffin*, (1938) 303 US 444.

freedom of propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value.<sup>4</sup>

The freedom of speech and expression includes liberty to propagate not one's views only. It includes the right to propagate or publish the views of other people.<sup>5</sup>

But this freedom is not absolute. As we have accepted concept of welfare but absolute individual rights cannot be guaranteed. Therefore the reasonable restrictions have been imposed. For the sake of freedom of speech many times persons for their personal benefits misuse the rights and it harms not only the individuals but also the nation. People give hate speech in the name of religion or for the purpose of defaming others in public for their own personal gain or for political purposes. Due to which there is a fear of spreading anarchy or rioting in the country. Presently the incidence of hate speech increased day by day. Generally, in the law there is no any definition of hate speech and it is not considered as serious crime but some types of prohibitions have been used for certain forms of speeches. First time in 267<sup>th</sup> Report of Law Commission of India has stated the definition of hate speech, stated that, "an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like."<sup>6</sup>

Hate speech means any words written or spoken or showing any visual video or picture which spread excitation in the public and spread violence in the public. The Black 's Law dictionary defines hate speech in a particular community, especially in a group, as a speech which has no other meaning than an expression of hatred.

The free speech is different form the hate speech. At presently many persons misuse this right. Generally, at the time of election candidate delivered vitriolic speeches and harmful for public at large. As our country is democratic country and various religious persons are living together. The hate speech adversely affects fraternity, dignity of human being, integrity of the state and religion. The hate speech instigates or provoke public at large and due to this they commit crime or genocides in the society. So society living in risk atmosphere and it is not good for growth of the society.

## Object

- To overview of the meaning of the hate speech
- To analyzing the judiciary role for regulating hate speech in India

## Hypothesis

- The definition of hate speech not available in Indian legislation.
- The judiciary had paly wide role in regulating the hate speech in India.

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<sup>4</sup> Op.Cit., Thapper

<sup>5</sup> Srinivas v. State of Madras, AIR 1931 Mad. 70.

<sup>6</sup> Report N. 267 Law Commission of India. New Delhi.

## Methodology

The research has followed the doctrinal method for the research. For the research the data has been collected from various books, magazines, newspaper, law commission report, journals and websites.

## Statutory Provisions on Regulating and Controlling Hate Speech

In India we have no any specific legislation or specific penal provisions through which the Government can regulate and control hate speech but below mentioned the list of the legislations which have provisions relating to hate speech.

- 1) The Indian Penal Code, 1860 (hereinafter IPC)
  - Section 124A IPC<sup>7</sup> penalizes Sedition
  - Section 153A IPC<sup>8</sup> penalizes: promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony’
  - Section 153B IPC<sup>9</sup> penalizes: imputations, assertions prejudicial to national integration’.
  - Section 295A IPC<sup>10</sup> penalizes: deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs ‘.
  - Section 298 IPC<sup>11</sup> penalizes: uttering, words, etc., with deliberate intent to wound the religious feelings of any person ‘.
  - Section 505(1) and (2) IPC<sup>12</sup> penalizes: publication or circulation of any statement, rumor or report causing public mischief and enmity, hatred or illwill between classes.
- 2) The Representation of the People Act, 1951
  - Section 8 disqualifies a person from contesting election if he is convicted for indulging in acts amounting to illegitimate use of freedom of speech and expression.<sup>13</sup>
  - Section 123(3A) and section 125 prohibits promotion of enmity on grounds of religion, race, caste, community or language in connection with election as a corrupt electoral practice and prohibits it.<sup>14</sup>
- 3) The Protection of Civil Rights Act, 1955
  - Section 7 penalizes incitement to, and encouragement of untouchability through words, either spoken or written, or by signs or by visible representations or otherwise.<sup>15</sup>
- 4) The Religious Institutions (Prevention of Misuse) Act, 1988

<sup>7</sup> Section 124A of the Indian Penal Code, 1860.

<sup>8</sup> Section 153A of the Indian Penal Code, 1860.

<sup>9</sup> Section 153B of the Indian Penal Code, 1860.

<sup>10</sup> Section 295A of the Indian Penal Code, 1860.

<sup>11</sup> Section 298 of the Indian Penal Code, 1860.

<sup>12</sup> Section 505 (1) and (2) of the Indian Penal Code, 1860.

<sup>13</sup> Section 8 of the Representation of the People Act, 1951.

<sup>14</sup> Section 123(3A) and Section 125 of the Representation of the People Act, 1951.

<sup>15</sup> Section 7 of the Protection of Civil Rights Act, 1955.

- Section 3(g) prohibits religious institution or its manager to allow the use of any premises belonging to, or under the control of, the institution for promoting or attempting to promote disharmony, feelings of enmity, hatred, ill-will between different religious, racial, language or regional groups or castes or communities.<sup>16</sup>
- 5) The Cable Television Network Regulation Act, 1995
  - A section 5 and 6 of the Act prohibits transmission or retransmission of a programme through cable network in contravention to the prescribed programme code or advertisement code. These codes have been defined in rule 6 and 7 respectively of the Cable Television Network Rules, 1994.<sup>17</sup>
- 6) The Cinematograph Act, 1952
  - Sections 4, 5B and 7 empower the Board of Film Certification to prohibit and regulate the screening of a film.<sup>18</sup>
- 7) The Code of Criminal Procedure, 1973
  - Section 95 empowers the State Government, to forfeit publications that are punishable under sections 124A, 153A, 153B, 292, 293 or 295A IPC.<sup>19</sup>
  - Section 107 empowers the Executive Magistrate to prevent a person from committing a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably cause breach of the peace or disturb the public tranquility.<sup>20</sup>
  - Section 144 empowers the District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf to issue order in urgent cases of nuisance or apprehended danger. The above offences are cognizable. Thus, have serious repercussions on liberties of citizens and empower a police officer to arrest without orders from a magistrate and without a warrant as in section 155 Cr.P. C.<sup>21</sup>

## Role of Judiciary on Hate Speech in India

### Pravsi Bhali Sangathan v. Union of India<sup>22</sup>

In this case petitioner prayed to take penalize action against hate speech. But the Supreme Court refused to take penalize action because does not existing legislation in India on hate speech. The Supreme Court did not go out of his power and it is considered as judicial overreach. The Court observed that if recent laws amended so can solve the problems of hate speech. So the Supreme Court made request to Law Commission to examine the hate speech and define it and make strengthen law.

<sup>16</sup> Section 3(g) of the Religious Institutions (Prevention of Misuse) Act, 1988.

<sup>17</sup> Sections 5 and 6 of the Cable Television Network Regulation Act, 1995.

<sup>18</sup> Section 4, 5B and 7 of the Cinematograph Act, 1952.

<sup>19</sup> Section 95 of the Code of Criminal Procedure, 1973.

<sup>20</sup> Section 107 of the Code of Criminal Procedure, 1973.

<sup>21</sup> Section 144 of the Code of Criminal Procedure, 1973.

<sup>22</sup> AIR 2014 SC 1951

**Jafar Imam Naqvi v. Election Commission of India**<sup>23</sup>

In this case petitioner filed writ of mandamus to the Election Commission for taking appropriate steps against the vitriolic speeches made by the candidate in the election. The Court dismissed the petition and held that at the time of election campaign delivered speech does not amount considerer under PIL and court cannot say anything where legislature is absent.

**Subramanian Swamy v. Union of India**<sup>24</sup>

This is one of most leading case in which criminal defamation Sections 499 and 500 of IPC constitutional validity challenged. But the Supreme Court of India later on dismissed the petitions and provided that the restriction in Sections 499 and 500 of IPC were imposed restrictions on the Right of Freedom of Expression. The Supreme Court held that the term ‘defamation’ used in Article 19(2) cannot be given restricted meaning. Doctrine of ‘*noscitur a sociis*’ cannot be applied to the expression “incitement of offence” as it would be unnecessarily make it a restricted one which the founding fathers of the Constitution did not intend. The principled of ‘*noscitur a sociis*’ cannot be applied to give restricted meaning to the term ‘defamation’ to include criminal action of it gives rise to incitement to constitute an offence. It is difficult to accede to the submission that defamation an only get criminality if it incites to make an offence. Law of defamation protects the reputation of each individual in the perceptions of public at large. It matters to an individual in the eyes of the society. Protection of an individual right is imperative for social stability. The harm caused to an individual affects the society as a whole. The contention that the criminal offence meant to sub-serve the right of inter se private individual but not any public or collective interests in totality is sans substance. Reputation is an inextricable aspect of right to life and a basic element of Article 21 of the Constitution and the legislature in its wisdom has kept the penal provisions under Section 499 of IPC alive which does not have a chilling effect on the freedom of speech and expression. It is difficult to come to conclusion that the existence of criminal defamation is absolutely obnoxious to freedom of speech and expression. It neither invites frown of any of the articles of the Constitution not its very existence can be regarded as unreasonable restrictions.<sup>25</sup>

Under Article 19(2) hate speech can be curtailed on grounds of public order, incitement to offence and state protection. In **Brij Bhushan v. State of Delhi**<sup>26</sup>, the Supreme Court ruled that public order was associated with public security and considered as the equivalent of state security. When First Constitutional amendment was inserted after that this interpretation was validated under Article 19(2)<sup>27</sup>.

In **Ram Manohar Lohiya v. State of Bihar**<sup>28</sup>, however, the Supreme Court has made difference between law and order, public order and state security: “One has to imagine three concentric circles. Law and order represents

<sup>23</sup> AIR 2014 SC 2537

<sup>24</sup> W. P. (Crl) 184 of 2014

<sup>25</sup> AIR 2016 SC 2728 at pp. 2774, 2775, 2776, 2793, 2794, 2797, 2798, 2800, 2805, 2806.

<sup>26</sup> AIR 1950 SC 129

<sup>27</sup> The Constitution (First Amendment) Act, 1951.

<sup>28</sup> 1965 Latest Caselaw 176 SC,



the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.

The norm used to limit Article 19(1)(a) is the highest when implemented for the sake of State protection. In addition, a fair restriction in accordance with Article 19(2) implies the close and direct relationship between restriction and public order in comparison to a distant or fantastic connection.<sup>29</sup>

**Ramji Lal Modi v. State of U.P.**<sup>30</sup> the Supreme Court upheld the constitutional validity of this section 295A IPC and ruled that this section does not penalize every act of insult to or attempt to ‘insult the religion or the religious beliefs of a class of citizens but it penalizes only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.’<sup>31</sup> The words ‘in the public interest of public order’ include not only such utterances as are directly intended to lead to disorder but also those that have the tendency to lead to disorder. Thus a law publishing utterances made with deliberate intention to hurt the religious feelings of any class of persons is valid because it imposes a restriction on the right to free speech in the interest of public order since such speech or writing has the tendency to create public disorder even if in some cases those activities may not automatically may not actually lead to breach of peace.<sup>32</sup> With this in the interest of the public the constitution put reasonable restrictions freedom of speech and expression.

The fundamental right of Art. 19(1) (a) freedom of speech and expression includes “carrying out public demonstration but demonstrations whether political, religious or social other demonstrations which create public disturbance or operate as nuisances or manifestly threaten some tangible public or private mischief are not covered.”<sup>33</sup>

On the basis of the judiciary facing the challenges on hate speech and not able to take any decision due to lack of legislation. The Dr. Justice B. S. Chauhan forwarded letter to the Union Minister of Law and Justice with the intention to amend the various legislation on hate speech. It is essential to control and regulation of Art. 19(1)(a) and stop misuse of this right.

In addition to this, **Pravasi Bhalai Sangathan v. Union of India & Ors**,<sup>34</sup> the Supreme Court observed that it time to seriously consider the issue of hate speech by the Law Commission of India. It stated that, “we request the Law Commission is also examine the issued raised herein thoroughly and also to consider, if it deems proper, defining the expression “hate speech” and make recommendations to the parliament to strengthen the Election

<sup>29</sup> O. K. Ghosh v. E. X. Joseph, AIR 1963 SC 812

<sup>30</sup> AIR 1957 SC 622

<sup>31</sup> Supra Note at 6

<sup>32</sup> Supra Note at 6

<sup>33</sup> Bimal Gaurang v. Union of India, AIR 2018 SC 1459 pp. 1470, 1472.

<sup>34</sup> AIR 2014 SC 1591

Commission to curb the menace of “hate speeches” irrespective of whenever made”.<sup>35</sup> So on basis of this under the guidance of Dr. Justice B. S. Chauhan considered the hate speech and submitted the 267<sup>th</sup> Law Commission Report on March, 2017. The commission had considered the present laws on hate speech and judicial pronouncements of India as well as other countries namely European Union and United Kingdom, United States, Canada, South Africa. The Commission suggested that to curb the hate speech the parliament required to amend the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 and insert new provisions as ‘Section 153B Prohibiting incitement to hatred’ Section 505 IPC ‘Causing fear, alarm, or provocation of violence in certain cases’. With this also amend the First Schedule of the CrPc.<sup>36</sup>

## Conclusion

Freedom of speech and expression in the most important right of the every individual. But with the right also attach the responsibility. From several years it saw that the politicians as well as some other people continuously use the hate speech. Due to this they provoke the public against the persons or religion. The parliament is required to stop them. As per all above discussion we have no any direct statues for the control and regulating hate speech. Even any definition and meaning of hate speech is not clear. Due to this they take benefit of it. The 267<sup>th</sup> Law Commission had analyzed the hate speech with judicial pronouncements.

## Suggestion

After above all statues and judicial pronouncement suggest that the parliament as early as possible amend the present legislation. With this it is required our country to control and regulate the hate speech. In addition to this enact some rules or regulation for Election Commission that at the time of election contestants must follow at the time their election speech. We are living in secular and democratic country. It is required to maintain the balance between free speech and hate speech. Only specific legislation the government control hate speech so as the suggestion of the 267<sup>th</sup> Law Commission the parliament as early as amend the laws.

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<sup>35</sup> Supra note 6

<sup>36</sup> Supra note 6

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