

PRESENT LANDSCAPE OF FREEDOM OF SPEECH AND EXPRESSION AND RELATING LAWS IN INDIA

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The paper deals with one of the most debatable topic of the country that is right to freedom of speech and expression and number of rising cases of hate speech in politics and role of media in it. The Indian Constitution makes the “right to freedom of speech and expression” a fundamental under Article 19(1)(a). The Constitution guarantees every citizen the right of freedom of speech and expression but not the right to offend anyone’s sentiments. With various examples of recent instances, it is proven in the paper that there is a rise in hate speech during elections. Many political leaders are accused of giving hate speeches during elections just to gain the sympathy of their vote bank. But they forget that it may end up in apathy in the society. In many cases, people get involved just to get the limelight. Instances where hate speeches do not get noticed and punished are a greater threat to the social and religious harmony of the country than that which is covered by mainstream media. The Research in a nutshell discuss about the various laws in different acts.

Key words: Hate speech, Constitution, Political leaders, Media

Introduction

We have freedom of speech, but you got to watch what you say.

-Tracy Morgan

Freedom of speech and expression is a fundamental right guaranteed by Indian Constitution to all of its citizens. “Right to freedom of speech and expression” is not an absolute right. It is subject to imposition of reasonable restriction as there is a correlative duty not to interfere with the liberty of other citizens. Indian Constitution is the ultimate source of law and from it all the rights emanate. Its place is higher than legislation because the validity of the latter is determined with reference to the former. Constitution is the product of national consensus and it is the fundamental law of the country.¹ Each is entitled to dignity of person and of reputation. Nobody has a right to disintegrate others right to person or reputation. The legislature in its wisdom has not thought it appropriate to abolish criminality of defamation in obtaining social peace.

The freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution can be limited by way of reasonable restrictions under 19(2) in the “interest 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

¹ Sumeet Malik, V.D.Kulshrestha’s Landmarks in Indian legal and Constitutional History, 480.

incitement to an offence.” The sovereignty and integrity of India constitutes laws imposing restriction on statements or expressions which challenge the sovereignty and integrity of India which is likely to cause violence. The security of state means legislature can enact laws which would impose restrictions on expressions which endanger the security of the State and is intended to overthrow the government or waging a war against the government. Public order means public peace, safety and tranquility of the people at large. The absence of public order is an aggravated form of disturbance of public peace, which affects the general life of the public. Any speech which intends to disturb public order can be restricted by enacting laws. The decency and morality includes the state can put restriction on forms of expression if they are considered to be indecent, immoral or obscene. The contempt of court concerned with the laws enacted by the legislature which restrict the exercise of one’s right of freedom of speech and expression if it interferes with due course of justice or lowers the authority or stature of justice or lowers the authority or stature of the court. Although criticism of the judicial system or judges is not restricted, it must not impair or hamper the administration of justice. Defamation is an intentional false statement either published or publicly spoken that injures another person’s reputation or good name. Incitement to an offence include the grounds which permits the legislations to punish or to prevent incitement to commit an offence including serious offences like attempt to murder, murder etc which lead to breach of public order.

Freedom of Speech is a Right but with every Right comes a Corresponding Duty.

The Constitution of India does not provide an explicit definition of Hate Speech. Speech that carries no meaning other than the expression of hatred of some group, such as a particular race, especially in which circumstances in which the expression is likely to provoke violence, is one way of putting it.²

The Constitution of India and its hate speech laws continuously aim to prevent strife among its many ethnic and religious communities. The given laws allow a citizen to seek the punishment of anyone who shows the citizen disrespect "on grounds of religion, race, sex, place of birth, residence, language, caste or community or any other ground whatsoever". The laws specifically forbid anyone from outraging someone's "religious feelings" in any condition. The Indian Penal Code has put some restriction on the fundamental right of freedom of speech and expression. **Section 153A of the IPC** states that promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony shall be punishable with imprisonment which may extend to three years, or with fine ,or with both.³ **Section 153B** states that any person who is liable for imputations, assertions prejudicial to national integration shall be punished with imprisonment which may extend to three years, or with fine, or with both.⁴

² Hate Speech, Black’s Law Dictionary, 9th edition, 2009.

³ Section 153 A, Indian Penal Code,1860.

⁴ Section 153 B, Indian Penal Code,1860.

Section 295(A) of the Indian Penal Code (IPC) enacted in 1927 states : Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of (citizens of India),⁶ (by words, either spoken or written, or by signs or by any visible representations or otherwise), insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to (three years), or with fine, or with both.⁷

Similarly, Section 505(2) states, statements creating or promoting enmity, hatred or ill-will between classes shall be punished with imprisonment which may extend to three years, or with fine , or with both.⁸ **Section 7(1)(c) of The protection of Civil Rights Act,1955**, prohibits the incitement or encouragement (by words, either spoken or written, or by signs or by visible representations or otherwise) of any person or class of persons or the public generally to practice 'untouchability' in any form whatsoever. Similarly, if someone intentionally humiliate any member of Schedule Castes and the Scheduled Castes and the Scheduled Tribes, he shall be penalized under Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989.⁹ **The Information Technology Act 2000 (as amended by the Information Technology (Amendment) Act 2008)** authorizes the government of India to censor all those material that intends to endanger public order or national security. **The Cinematograph Act 1952** has rules there under the certification and censorship of films to be released, the CBFC (Central Board for film Certification) has been constituted to serve this. Freedom of speech and expression is one of the most important fundamental right. However, this right is being routinely misused by some public speakers under the pretence of morality and public order. Even a trifle statement of a public leader or anyone many a time causes political parties and their supporters to involve in damage of public property. Many times any literary work whether books, articles, paintings or movies which deals with any problem in religion or any issue related with it is banned in the name of public order. It is extremely unfortunate for a democratic country like India that the executive , which has the responsibility of upholding people's right to speech and expression by preventing unscrupulous element from hurting the author, is more interested in suppressing the voice by banning their works.¹⁰

Where to draw the line.

It is not so easy technically, just like one cannot tell what exact moment the line is between day and night. This is pretty much personal call. But if one was to define a generic understanding of where is the line, he would say that any free speech becomes hate speech

⁵ Substituted by A.O.1950, for "His Majesty's subjects".

⁶ Substituted by Act 41 of 1961, S.3, for "by words, either spoken or written, or by visible representations"(w.e.f 27-9-1961).

⁷ Section 295 A, Indian Penal Code,1860.

⁸ Sec 505(2), Indian Penal Code,1860.

⁹ http://www.academia.edu/3218121/Oxford_Pro_Bono_Publico_Comparative_Hate_Speech_Law. Retrieved on November 23,2016.

¹⁰ <http://hanumant.com/SpeechAndExpression.html> Retrieved on 16 November 2016.

the moment anyone's expressions and supporting actions during so called free speech threaten and or antagonize the existence of party being made fun of.

“An offence in one person's mind might not be an offence in another person's mind”

Freedom of speech and expression is a must for a democracy and is rightfully claimed as the fundamental right by the citizens but for want of education, limitations and responsibilities, it may be abused by the ignorant or the vested interests to embrace or harass anyone, disturb the social and communal harmony or air security threats to the country. Rights cannot be enjoyed by anyone without having a sense of duty and responsibility. If someone considers not to care about other's sentiments and feelings, then it is rather a dangerously awful level of freedom of expression. However, an express freedom is oxymoron. On the whole it is not easy to define or truly represent freedom of speech, as it is very difficult to differentiate it from sarcasm, irony; wittiness or even truth and it can always play into the hands of some shrewd people to their own comfort and benefit

Every Public Speaker has a duty to motivate people, enlighten them with the different facets of any argument. It is expected from them to use his ability to speak to lift people up, rather than to put people down and hinder the social balancing of peace. A lot worse happen is to propel others to violence. Those speakers who propel others to violence are in contravention of the law, and should be dealt with sternly.

Politics has always been an open field for expression of free speech. Now a day's many politicians are in news for giving hate speeches and hence charged for outraging the societal peace. They got involve in these types of issues just to get more support from any specific community. Some **recent cases of hate speech** are mentioned below for reference.

Recently the young leader of BJP Varun Gandhi was issued a notice to appear in court in connection with a 2009 hate speech case. In another case, police in Telangana had filed charge sheet against MIM leader Akbaruddin Owaisi in the alleged hate speech case which also keeps him in lime-light few days. Another eminent leader of SNDP Vellapally Natesan had also faced music of the court in connection with the case registered against him for making an alleged communal hate speech at Aluva.¹¹ Another BJP leader Giriraj Singh was also in lime-light due to a case of same alleged hate speech which was lodged in Patna few months ago. Mainly these kind of cases is seen during the election campaigns.

Next case which shook India is the heated debate of nationalism versus freedom of expression at Jawaharlal Nehru University where hundreds of students rent the air with slogans denouncing the hanging of Afzal Guru and demanding “Azadi” for Kashmir. All this scene is created after the student union president Kanahiya Kumar was charged with

¹¹http://zeenews.india.com/news/india/major-trouble-aimim-mla-akbaruddin-owaisi-to-be-prosecuted-for-hate-speech-against-bjp-pm-narendra-modi_1878478.html, 22 April 2016, Retrieved on 20 November 2016

sedition for his role in an event. He subsequently got arrested by the police. Similar case was of former Delhi University lecturer SAR Geelani in connection with another event.¹²

It is important to note that here the words "reasonable restrictions" is always there in constitution. Reasonable restriction means intelligent care and discussion that the restriction made is not beyond what is required for public interest. Public interest is not violated. It should not be arbitrary and excessive. Further, the restriction can only be imposed by law and not by executive or departmental decision. Few law like the Representation of the People Act, 1951, is an attempt to combat corrupt practices by politicians .A true attempt to promote or the actual promotion of enmity or hatred between different classes of citizens on the grounds of religion, race, caste, community, or language by an election candidate or his agent to further his or her election prospects is a "corrupt practice."¹³

The problem which the country now facing have one solution that is either to put strict restriction and put wide vigilance on these matters. if one is found guilty, he must be punished as it is a matter of state security.

Hate Speech and Freedom of Expression: Balancing Social Good and Individual Liberty. In the law of communications, the relationship between speech and action is quite complex. Speech plays an important role in the communication of ideas, beliefs, doctrines, and schemes of action as a whole.

Free speech is essential for maintaining democracy because it facilitates the exchange of diverse opinions and beliefs in any diverse environment. India is a living example of this. In a representative democracy, opinion and belief in form of dialogue, facilitates the testing of competing claims and helps in obtaining of diverse input into political decision making.¹⁴ Free speech is also essential to the enjoyment of personal liberty in a democratic nation.¹⁵

Hate speech that has now become a fashion and a short cut to get publicity, poses vexing and complex problems for contemporary constitutional rights to freedom of expression.¹⁶

Notion of hate speech: Hate speech is speech perceived to disparage a person or group of people based on their social or ethnic group such as race, gender, age, ethnicity, nationality, religion, sexual orientation,¹⁷ gender identity, disability, language ability, ideology, social class, occupation, appearance (height, weight, skin colour, etc.), mental capacity, and any

¹² <http://indianexpress.com> Retrieved on 18 November 2016.

¹³ Representation of the People Act, 1951, No. 43, Acts of Parliament, 1951 (India), § 123(3A).

¹⁴ DANIEL J. SOLOVE, THE FUTURE OF REPUTATION: GOSSIP, RUMOR, AND PRIVACY ON THE INTERNET 129-32 (2007) Retrieved on 21 November, 2016 from <http://lawcommons.luc.edu/cgi/viewcontent.cgi?article=1040&context=facpubs>

¹⁵ http://www.supremecourtcases.com/index2.php?option=com_content&itemid=5&do_pdf=1&id=22819. Retrieved on 22 November, 2016.

¹⁶ Ibid

¹⁷ [Definitions for "hate speech"](#), Dictionary.com. Retrieved on 20 November 2016.

other distinction that might be considered by some as a liability.¹⁸ The term covers written as well as oral communication and some forms of behavior in a public setting.

Hate speech extols injustices, devalues human worth, glamorizes crimes, and seeks out recruits for anti-democratic organizations.

Hate speech Issues: Hate speech raises very complex questions that test the limits of free speech. Hate speech is against the mandate of a fundamental right which is freedom of expression. Freedom of expression has five broad special purposes to serve:¹⁹

- It helps an individual to attain self-fulfillment.
- It assists in discovering of truth.
- It strengthens the capacity of an individual in participating in decision making.
- It provides a mechanism by which it would be possible to establish reasonable balance between stability and social change.
- All members of the society would be able to form their own beliefs and communicate them freely to others.

Hate speech hinders these purposes. Not all contemporary instances of hate speech are alike. Any evaluation of whether, how, or how much, hate speech ought to be prohibited. It must therefore account for certain key variables, namely, who and what are involved and where, when and under what circumstances these cases arise. They also make a difference in terms of whether or not it should be prohibited. As it, anywhere may make a difference depending on the country, society or culture involved, which may justify flatly prohibiting all Nazi propaganda in Germany but not in the United States may also matter within the same country or society. Thus, hate speech in an intracommunal setting may in some cases be less dangerous than if uttered in an intercommoned setting.²⁰ Without minimizing the dangers of hate speech, it seems plausible to argue that circumstances also make a difference. **One very answers to all the questions related to hate speeches is ignorance. One can simply ignore the existence of controversial topics. It ends all the controversies.**

There can never be one true judge of what is to be censored and what is not to be. Our society has always encouraged the progression of knowledge with societal peace. Ethical stances on such material should not be formed by the mere existence of its controversy, but rather through individual study and personal conclusion as a person himself is a true judge.

¹⁸ Nockleby, John T. (2000), "Hate Speech," in *Encyclopedia of the American Constitution*, ed. Leonard W. Levy and Kenneth L. Karst, vol. 3. (2nd ed.), Detroit: Macmillan Reference US, pp. 1277–79. Cited in "Library 2.0 and the Problem of Hate Speech," by Margaret Brown-Sica and Jeffrey Beall, *Electronic Journal of Academic and Special Librarianship*, vol. 9 no. 2. Retrieved on 20 November 2016.

¹⁹ The Practical Lawyer <http://www.supremecourtcases.com> Eastern Book Company. Retrieved on 20 November 2016.

²⁰ https://www.pravo.unizg.hr/download/repository/Rosenfeld_Hate_Speech%5B1%5D.pdf. Retrieved on 20 November,2016.

Ensuring prompt and effective investigation and prosecution of hate crimes and ensuring that bias motives are taken into consideration and throughout criminal proceedings. It is advisable in this type of situation that a person should use his own intellect and take his own decision whatever he finds right. Individual decisions are important because a society is made only by a group of these individual. If they are right then there is no chance of chaos in society due to these hate speeches and ultimate aim of the state which is to have peace in the society is fulfilled at the end also.