**RESEARCH PAPER ON**

**HATE SPEECH LAWS IN INDIA**

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***ABSTRACT***

*Hate corrodes the beauty of individual. It destroys a person’s sense of values. The ideology of hate often gets converted in a “social common sense” which maligns the conviction of society and presents itself as hate speech. Hate speech is a by -product of free speech. In a free democratic society, it is inevitable to attain a society with zero hate speech instances. The urgent need to control hate speech is irrefutable and hence this research paper deals with the laws which are in command to regulate hate speeches in India. This paper primarily focuses on the various laws that are enacted to check the origin and spread of hate speech in India. The author has also dealt with the causes, impact, examples and the solution of this giant evil of the society in order to provide a holistic understanding of this issue. Laws and judgments, in this regard are open to vivid interpretation and it is really important to get to the core of the legislation or judgment, so as to effectively implement them and proceed towards a hate free society.*

**KEYWORDS:** Hate speech, social common sense, democracy, free speech, law, judgments.

**INTRODUCTION:**

The gravity of the subject hate speech can be understood by the fact that year 2018 was termed as “year of online hate”. Increasing instances of online hate along with the conventional hate speeches, baised press and ever increasing polarisation of voters in the elections justify all potential reasons to have stringent laws with effective execution against all forms of hate speech prevalent in the modern society.

This research paper intends to acknowledge all such laws which are operating with a view to check the origin, spread, growth and impact of hate speeches. This paper aims to aware the readers about hate speech and its different types and the laws which are made or the judicial pronouncements which are made with the concept of eradicating hate speech and neutralising its effects to the bare minimum.

In a diverse and heterogeneous society of India it is not only about imposing laws but it is more important to ensure effective application of laws with a neutral mindset to serve the purpose of that enactment of law. Therefore, the author intends to elaborately discuss and explain the legal position of hate speech with the support of examples of significant case laws. This paper is structured in a way that seeks to devlop an independent point of view of the readers regarding the concept, causes, effects, types, solutions and most importantly the laws and statutes that have been contributing in the elimination of hate speech.

**DEFINITON OF HATE SPEECH:**

United Nations Organisation has defined expounded the term hate speech as [[1]](#footnote-2)“*any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor”*

Hate speech involves all such kind of communication (it also includes social media communications) which incites or intends to incite hatred or disgust in any manner, towards a person or a group of persons.

United Nations Organisation has adopted a two fold strategy to tackle the issue of hate speech. They are:

1. To attack the perpetrators of hate speech and to check the root cause of it.
2. Efficient negation of the impact of hate speech on the society.

Hate speech intends to increase intolerance and create an unwanted division of the society. It is an extremely derogatory form of communication which can lead to discrimination, violence and hostility in the society. The ill effects of hate speeches can also range upto the initiation of terror activities.

**CAUSAL FACTORS OF HATE SPEECH:**

There are four main major types of perpetrators of hate speech that are responsible behind the occurrence of hate speeches. They can be broadly classified as:

1. Thrill seekers: Those who use hate speeches to deliberately have fun and excitement out of the troublesome circumstances created by virtue of their hate speech.
2. Defensive: To defend and protect their own interests.
3. Retaliators: Those who react in response of certain action.
4. Mission: Drive by the desire to attain some vested motive by the use of hate speech.

**HATE SPEECH: INDIAN PERSPECTIVE**

In India, it is very difficult to trace the origin of hate speech. But the tremendous rise in the use of internet has certainly fueled it up. The use of social media channels in an unchecked manner has certainly increased the instances of hate speeches.

Hate messages can also be gender based, for example: it can incite a community to commit crime against women. It can also be community based, for example: it can incite violence or the social boycott of a particular community. It also has a role in mob lynchings, for example: [[2]](#footnote-3)in 2018, multiple mob attacks were planned and carried out against the people of Bihar and Jharkhand in the state of Andhra Pradesh, over a circulation of false hate messages.

**HATE SPEECH LAWS: CONSTITUTIONAL ASPECT OF HATE SPEECH**

**FREEDOM OF SPEECH VS HATE SPEECH:**

Article 19 of the Indian Constitution guarantees, freedom of speech and expression to all its citizens, that comes with certain reasonable restrictions.

Article 19 (1) (a) states that [[3]](#footnote-4)“all citizens shall have the right to speech and expression.” This particular right has some limitations as well. Article 19 (2) of the Constitution of India imposes those restrictions. It states that [[4]](#footnote-5)“the State has the power to impose certain reasonable restrictions on grounds of 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”.

The Supreme Court in *RamjiLalModi[[5]](#footnote-6)* the Court held that the State has the right to regulate any activity which is likely to disturb the public order and harmonious structure of the society. The court upheld the validity of Section 295A of the Indian Penal Code. The judgement was used till recently in 2016 to dismiss a petition challenging the constitutional validity of the above section.

In *Virendravs The State of Punjab[[6]](#footnote-7)* the Court said that circumstancial evidences must be taken into consideration to determine the “interest” of the act. The Court held that, in determining whether the act or speech falls under the ambit of reasonable restriction or not, only the state action can be challenged and not the statute from where the state is deriving the power to do so. This case has further established the validity of Article 19(2) and it has been applied in various instances dealing with the issue of hate speeches.

Though hate speech has not been defined in the Constitution of India, it comes under the ambit of reasonable restrictions.

**LAWS AND RULES FOR THE PROHIBITION OF HATE SPEECH:**

There are a number of autonomous, self regulatory and governmental provisions, all ofthose aiming to curb the spread and practice of hate speeches. The Indian Penal Code of 1860, much earlier than the independence, has also focused on the issue of hate speeches. Further, a number of legislations, acts and regulations are notified with a purpose to minimise and penalise the use of hate speeches.

**IS HATE SPEECH A CRIMINAL OFFENCE?**

1. **ANALYSING THE INDIAN PENAL CODE**

* As per Section 153A of the Indian Penal Code, 1860(hereafter referred as IPC) criminalises the use of statements and speeches which have a potential to disturb public order and tranquility, by promoting enmity among different sections of the society and fear in the minds of common public on the basis of caste, religion, place of birth and language.[[7]](#footnote-8) It has been the continuous effort of the Supreme Court to keep the ‘intension’ of the act in the center while deciding the cases relating to Section 153A. The term ‘intension’ has been deleted from the Act in 1961, but the judiciary continues to interpret the cases based on the circumstances, if the intension is applicable or not. There are several judgements of the Apex Court which establishes the importance of intension while deciding the cases of Section 153A. The notable examples are: *Bilal Ahmed[[8]](#footnote-9),ManzarSayeed Khan[[9]](#footnote-10)* and *Balwant Singh* in which intension and mensrea played a significant role. It was also ruled by the Supreme Court that truth is not necessarily a defence under Section 153A.
* Section 153B of the IPC deals with the issues related to imputations with a prejudice to threten national security.
* Section 505 of the IPC criminalises all such activities, either spoken or written in any manner, which persuades the members of the defence forces and police to refuse the performance of their authorized duty.[[10]](#footnote-11)

It is necessary for the applicability of the Sections 153A and Section 505 and 505(2) that there should be the arousal of hatred or violent incitement against certain groups or communities.

* Section 295A of the IPC, declares the use of derogatory language to insult or demean the religion and to hurt the sentiments of the followers of that religious community, as a criminal offence. In the case of *Bharat Bhushan Sharma vsKundan Kumar,* the Punjab and Haryana High Court had to check whether Section 295A applies to religious texts of Guru GranthSahebJi. The basic structure of Section 295A is to apply and check that if there is a delibrate use of such act which can outrage religious sentiments.

The most recent caseof *ShreyaSinghal[[11]](#footnote-12)* in the Supreme Court has declared the Section 66A of Information Technology Act, 2000 as null and void. It dealt with the context on online speech. The Supreme Court stated that in deciding any ‘public order’ violation, it must ask itself the question: ‘does a particular act lead to disturbance of the current life of the community or does it merely affect an individual leaving the tranquility of society undisturbed?

* Section 298 of the IPC deals with the criminalisation of speech delivered with the intention to wound religious sentiments.

1. **HATE SPEECH LAWS IN THE CODE OF CRIMINAL PROCEDURE:**

* Section 95 and Section 96 are the specific provisions mentioned in the Code of Criminal Procedure (hereafter referred to as CrPC) which deal with the allies of hate speech.

Sections 95, 96 and 99 of the CrPC authorise the state government to forfeit any ‘book, newspaper or document’, the publication of which is punishable under Section 124A, Section 153A, Section 153B, Section 292, Section 293, and Section 295A of the IPC.[[12]](#footnote-13)

Some of the notable and significant case laws with regard to the Sections of the CrPC are:

1. *The State of Uttar Pradesh vs.Lalai Singh Yadav[[13]](#footnote-14):*It was held that the State is relieved from the duty to state grounds of forfeiture, is to permit raptorial opportunity for the use of power over guaranteed liberty of people. The case involved the forfeiture of a book named Ramayana: A true reading.
2. *SangharajDamodar vs. NitinGadre:* In this case, a book titled *Shivaji: A Hindu King in Islamic India* was seized by the authorities. The Bombay High Court while deciding on the case said that it is essential for the government to tell that, who were the groups affected by this book. It was claimed by the government that one group is the follower of Shivaji whereas the other is not (of a research institute). The High Court quashed the government order by ruling that some bunch of employees of an institute does not qualify as a group and the publication cannot be said to have disrupted the public order.

Section 144: It is one of the widely invoked Section of CrPC which serves multiple purposes. It is used to prohibit the gathering of four or more people, in danger or apprehended danger. It has been widely used to temporarily suspend the activities to curb the aftereffects of online hate speeches and hate speeches during electoral politics campaigning.

It is one of the most controversial Sections of the CrPC and a number of Court judgements have been given to interpret the contents of the Section. It cannot be invoked for unlimited period of time and the place at which it is invoked must beer direct relation to the threat.

* In *RamlilaMaidan[[14]](#footnote-15)*the Supreme Court said that this act interferes with the fundamental rights and hence it must be used only in cases of urgency and the order must be in written.
* There have been many instances where the constitutionality of Section 144 has been challenged on various grounds. One of the famous example is that of *Ram ManoharLohiavs The State of U.P[[15]](#footnote-16).*

**OTHER LAWS WHICH GOVERN HATE SPEECHES**

1. **THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT,1989**

This act was passed by the parliament to ensure that any disrespectful or derogatory form of language is not used against people of marginalised communities such as Scheduled Castes and Scheduled Tribes. It intends to criminalise any form of verbal abuse, hate speech or any other form of atrocities committed against the people of SC and ST community. It is a cognizable and non bailable offence.

There are a number of case laws which elaborately interpreted the explicit and implicit motive of the Act. In *Subal Chandra Ghosh v. State of West Bengal[[16]](#footnote-17)* the Calcutta High Court defined the meaning of insult with respect to the Act. In *n Asmathunnisa v. Andhra Pradesh[[17]](#footnote-18)* the Supreme Court quoted the judgment of the Kerala High Court in *Krishnan Nayanar v. Kuttappan[[18]](#footnote-19)* 9 (this case was related to untouchablity)that the insult must be seen with a public view ingredient in it i.e the public must view the person as being insulted.

Public view in relation to hate speeches was significantly dealt in the case of *Gayatrivs State[[19]](#footnote-20)* in which the Delhi High Court studied the domain of public view with respect to a casteist remark made on a facebook post. The court held that posting any thing on social media channels like facebook, will attract the concept of public view, irrespective of the managing of audience for the post. This case is an important example of hate speech on a socoal media platform.

1. **PROTECTION OF CIVIL RIGHTS ACT, 1955**

Basically, the PCR Act, is about the prohibition of insult of any scheduled caste by way of practice of untouchability. In the popular case of *LaxmanJayaram[[20]](#footnote-21),* the Bombay High Court ruled that it is unreasonable to classify any insult or casteist remark as an offence under the PCR Act, it must be checked whether the statement intended to propagate hate, untouchability and discrimination against the group of scheduled castes or not. The Court also held that the speech would be covered as hate speech and the liability would be attracted under the PCR Act only when the speech encourages the public to practice untouchability against the marginalised sections.

1. **CUSTOMS ACT, 1962**

A sub part of this Act is used to pre censor international publications and prohibit their import in apprehension of, hate speech or hate contents in that publication. It should be noted that here “speech” refers to any kind of publication.

There are a number of sub categories under which the import of goods is prohibited in this regard. They are publications which portray and demonstrate:

* Commission of offences.
* Cruelty
* Horrible and repulsive nature
* Incite any type of violent activity
* Promote enmity between sections of the society
* Disturb the chain of supply of essential commodities in a certain locality with a sense of hatred
* Provoke any member of the defence forces to act against the nature of his duty.[[21]](#footnote-22)

1. **INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986**

This particular act is used to prohibit denigratory, derogatory and depraved depiction of women in advertisements, pamphlets, books paintings and other media. It is also one of the legislations which is used to tackle the issue of hate speech, this notion is explained in the law by the definition of indecent representation, which makes it clear that indecent representation can also be categorised as a component of hate speech.

The definition of ‘indecent representation of women’ includes depictions which are ‘likely to deprave, corrupt or injure the public morality or morals’.[[22]](#footnote-23)

1. **THE RELIGIOUS INSTITUTIONS (PREVENTION OF MISUSE) ACT, 1988**

This Act was enacted with a motive to prevent the misuse of religious denominations for political benefit or to spur enmity between different groups of the society by virtue of communal hate speeches. This Act is invoked in situations where religious institutes are misused for the purpose of propagation of hate speeches.

This legislation was passed during Operation Blue Star, after which the Army took over the control of The Golden Temple, a religious place of the Sikhs, which was being used for the storage of ammunition.

1. **THE NATIONAL SECURITY ACT, 1980**

This legislation allows the government to carry and sustain preventive detention, in case the government apprehends any disturbance in public order. It is basically an Act having very wide limits but there have been instances where this act was invoked to curb hate speeches.

The examples have been dealt in subsequent sections of this paper.

In *Sujeet Kumar Singh vsUnion Of India[[23]](#footnote-24)* the Supreme Court held that “law and order” and “public order” needs to differentiated and even when an act is not contrary to law and order it may disturb public order and attract relevant legislations.

**ELECTIONS AND HATE SPEECH:**

A large number of examples of hate speeches are can be cited during elections, which are given by politicians for their political gain. For the purpose to achieve and arrive at a more fair election process, the Representation of People’s Act, 1951 was enacted which listed “electoral hate speech” in the category of corrupt practices.

In *ZiyauddinBukhari v. BrijmohanMehra[[24]](#footnote-25)* the Supreme Court described the meaning of hate speech and elaborated the contents of the Act. In this case, the speaker at a public gathering gave a hate speech and tried to polarise the public on religious grounds,stating that his opponent was not a true follower of Islam.

However there are numerous instances where the Courts have relied on reasonability that have resulted in acquittal of charges of hate speech. The examples are: *RameshYeshwantPrabhoo[[25]](#footnote-26), PravasiBhalaiSangathan v. Union of India[[26]](#footnote-27), Das RaoDeshmukh[[27]](#footnote-28), Manohar Joshi v. NitinBhauraoPatil[[28]](#footnote-29)*etc. In all these cases, the Court interpreted the circumstances in a flexible manner and finally it was observed by the Court that if the likely effect of the speech is to promote and encourage feelings of hatred or enmity between different classes of citizens, it would be classified as a hate speech.

**MEDIA LAWS REGULATING HATE SPEECH:**

There are certain laws in the domain of media and journalism which check the standard of the news which is either published or broadcasted. It is very essential to regulate the broadcasting of news because it plays a very important part in the daily life and a slight carelessness can lead to anarchy in the society. There are legislations which intend to prohibit the circulation of any malicious or hate message in the public domain. They have been discussed below.

1. **THE CINEMETOGRAPH ACT, 1952**

It regulates the contents of the films. Relevant to the part of hate speeches, we can say that this Act empowers the competent body to censor the contents which are alleged and proved to be a kind of hateful speech. This power rests with the Central Board of Film Certification (CBFC). The other assisting laws in this domain are Cinematograph (Certification) Rules, 1983 and Cinematograph Act (Certification Guidelines).

Various judgments of the Courts regarding the dispute of censorship have laid the standard test that “work must be seen as a whole”.

Notable verdicts related to censorship are:*Directorate General of Doordarshan v. AnandPatwardhan[[29]](#footnote-30)*, in this case the Court quashed the censorship and held that the alleged work must not be seen isolation but as a whole.

In *Bobby Art International v. Om Pal Singh Hoon 21[[30]](#footnote-31),* the Court again repeated that the work must be evaluated as a ‘whole’, for censorship.

1. **CABLE TELEVISION NETWOKS (REGULATION) ACT, 1995**

Hate speech on cable television is regulated through the Cable Television Act apart from the Programme Code and Advertisement Code given in the Cable Television Network Rules, 1994 (Cable Television Rules).

1. **PRESS COUNCIL OF INDIA ACT, 1978**

Press Council of India was set up in 1966 and was statutory backing in 1978. This autonomous body has the jurisdiction on the newspapers and other periodicals.

**ONLINE HATE SPEECH**

* **CRIMINALISING HATE SPEECHES UNDER IT ACT, 2000:**

Online propagation of hate speech had been penalised by Section 66A of the Information Technology Act, 2000, which was stuck down by the Supreme Court in 2015 in the case of *ShreyaSinghalvs Union of India[[31]](#footnote-32).* After the quashing of this Section the Parliamentary Standing Committee has recommended amendments in the Act to incorporate online hate speeches in a more efficient and reasonable manner.

* **BLOCKING ONLINE CONTENT:**

Section 69A of the same IT Act empowers the government to block any online resource from any site or source, if it threatens public order, sovereignity, integrity and promotes hate speech.

* **INTERNET SHUTDOWNS TO CURB HATE SPEECH:**

Regulatory Provisions: Section 144 of CrPC, Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.

**RECENT INSTANCES OF HATE SPEECH**

* Sudarshan TV show “UPSC Jihad” is the most recent case of hate speech. It tried to create communal tensions by maligning the reputation of the Union Public Service Commission and it also tried to create hatred against a particular religious group.
* JNU’s Research Scholar, Umar Khalid is accused of giving hate speech and instigating riots at the Jawaharlal University during the course of the protests against Citizenship Amendment Act, 2019.
* Member of Parliament Varun Gandhi was charged with the violation of Model Code of Conduct and giving hate speech during election campaign in the LokSabha elections.
* Dr.Kafeel Khan of Uttar Pradesh was detained for giving hate speech during the course of protests against the Citizenship Amendment Act, 2019 at the Aligarh Muslim University. However, he has been acquitted from all such charges by the Allahabad High Court.
* Movies such as Messenger of God acted by Baba Ram Rahim was taken off and censored as it was motivated by religious prejudices.
* Youtube account of popular youtuberVikashPathak also known as Hindustani Bhau was suspended for not following the community guidelines.
* Member of Telangana Assembly, AkbarauddinOwaisi was charged with hate speech in a public gathering during an election campaign where he tried to disturb the harmony between Hindus and Muslims and used derogatory language for the idols of Hinduism.

**CONCLUSION AND THE WAY FORWARD:**

Controlling hate speech in a diverse country like India is indeed a challenging task. It requires more than mere enactment of laws to curb the problem. The real concern is to find out the root cause of origination of hate speech and destroy that cause, not only with strict laws but by enlightenment of harmonious and pluralism measures. It requires effective healing of communication gaps in the society, so that chances of hate and offensive speeches in society becomes minimum. When it comes to laws and legislations regarding the regulation of hate speech, it is very crucial to identify the motive behind such laws and their effective execution is a must. It is the need of the hour to strike a balance between free speech and hate speech, in order to keep a tight rein on the latter. Quality Education and efficient debate in a healthy democracy is a pre requisite to tackle the fundamental cause of hate speeches. It not seeks to prevent hatred but also awares about the ill effects of hate speech.

The whole discussion can be summed up in the words of A.G. Noorani, “*Indian law empowers the state fully to deal with such speech and bring the offenders to book. It is not any inadequacy in the law but lack of the political will and administrative resolve which explains why the law has remained a dead-letter.*”[[32]](#footnote-33)

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