

ISSN: 2582-2942



LEXFORTI

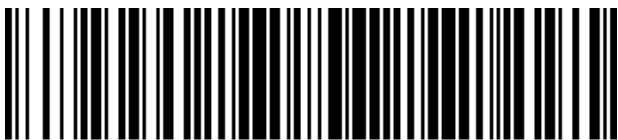
Legal Journal

Vol-II Issue- I

October, 2020

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



EDITORIAL BOARD

Editor in Chief

Rohit Pradhan
Advocate Prime Dispute
rohit@lexforti.com

Editor in Chief

Sridhruti Chitrapu
Member | CiArb
sridhruti@lexforti.com

Editor

Nageshwar Rao
Professor (Banking Law)
47+ years of scholarly experience

Editor

Dr Rajanikanth M
Assistant Professor | Management
Symbiosis International University

Editor

Foram Thakar
Assistant Professor | LJ School of Law



EDITORIAL BOARD

Editor

Nandita Reddy
Advocate Prime Dispute

Editor

Romi Kumari
Student Editor

Editor

Shubhangi Nangunoori
Student Editor



ABOUT US

LexForti Legal News and Journal offer access to a wide array of legal knowledge through the Daily Legal News segment of our Website. It provides the readers with latest case laws in layman terms. Our Legal Journal contains a vast assortment of resources that helps in understanding contemporary legal issues. LexForti Legal News and Journal also offers Certificate courses. Whoever register for the course is provided the access to the state of the art E-portal. On completion of all the module and Test, candidate will be given Certificate of Accomplishment of Course. Be sure to make the most of it. LexForti Legal News and Journal is also proud to announce that we have made India's first Legal News android application which contains Daily Legal News, Legal Journal and Certificate Courses, everything in 4 MB.



Hate Speech and its Criminal Liability

Gagandeep Singh

ABSTRACT

Speech is what plays an important role in the communication of ideas, belief, doctrines and schemes of action and what we use to express everything. Nations democracy can be said to be standing on one of the perfect that is free speech because that's what helps us to exchange of diverse opinion and ideas. Free speech is something that is protected under numerous declarations of human rights and even in every constitution of states. Speech hereby is also essential to the enjoyment of personal autonomy. Today looking to the evolution modern democratic societies disagree to the text, content, theory and practice to this liberty. Hate speech that has now a fashion and a short cut to get publicity, poses vexing and complex problems for contemporary constitutional rights to freedom of expressions. It covers numerous forms of symptoms which broadcast, motivate, encourage or justify hatred, violence and discriminations against a person or groups of persons for a variety of reasons.

The present study tries to comprehend the concept of criminal liability of hate speech understanding the phenomenon of the same. It will look to certain factors in order to provide the reader a better understanding to the concept related to the term hate speech, Provisions regarding the hate speech, national and international statues in handling the plagues of hate speech and also the convictions to hate speech as per laws of different countries.

KEYWORDS:

Hate Speech, Rights, Expression, Criminal Liability.

INTRODUCTION

Freedom of speech is the right to communicate with any person, or persons, without the fear of warranted restrictions.¹ The ability to freely speak your mind is something seen as natural right, looking it to the simple meaning a government or any other institution can't grant you this right but can limit it. However, protection for this right is stated down in number of legal documents that may be the constitution of countries or the declarations of assemblies. Taking the same in the view:

1. ARTICLE 19 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers².

2. ARTICLE 19 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR):

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 3 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
4. For respect of the right or reputations of others;
5. For the protection of national security or of public order, or of public health or morals³.

Rights are the foundations of the individualism on which an individual function or engages freely in the states⁴. Freedom of speech is considered to be the most substantial right as it permits an individual to accomplish self-realization and make strong the capacity to fully enjoy natural freedom⁵. **Article 19**

¹ http://rationalwiki.nom.pw/wiki/Freedom_of_speech

² Universal declaration of Human Rights, Article 19

³ International Covenant on Civil and Political Rights, Article 19

⁴ J.S. Mill, On Liberty and Utilitarianism 4 (Bantam Classic, New York, 2008)

⁵ Steffen Schmidt and II Mack C. Shelley, Barbara Bardes et. al., American Government and Politics Today (Cengage Learning, USA, 2014)

(1) (a)⁶ guaranteed to all citizens of India “*Right to freedom of speech and expression*” and is also accompanied by a rising loud demands to define and penalize “*hate speech*”

Speech as explained is the kind of most important right that is guaranteed to all citizens of the Countries but is sometime misused by individual/s to spread hate between each other. Thus, such act of speech which is used to spread hate can be termed as hate speech for a layman understanding. Although till now there is no mutually agreed definition of hate speech yet.

According to Helen Darbishire:

“The classic definition of the hate speech is expression or expressions that incite(s) hatred, particularly racial, national or religious in nature”.

From the above definition it can be collected that hate speech is something that is intended to offend a person/s on the basis of attributes such as race, nationality, gender, religion and also on taking the base of different ideologies. The characteristic of hate speech is that sometime a single person is attacked by a group or community rather than an individual⁷.

According to Black’s Law Dictionary:

*“It identifies hate speech as the speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances in which the communication’s main motive is to provoke violence”.*⁸

According to Law commission of India:

It defines hate speech as “incitement to hatred primarily against a group of persons defined in terms of race, gender, sex orientation, religious belief and the like. The report further clarifies that hate speech is “any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence.”⁹

To protect the person’s liberty, his freedom and dignity there we find an essential need to penalize the speech which targets an individual liberty based on race, sex, religion, etc. The society has come across the cases where the victim of the hate speech feel fear and this creates a nervousness amongst them to enter public places and it discourages them to participate in public events where the individual liberty of a person is being harmed by hate speech.

⁶ The Constitution of India, 1950

⁷ Helen Darbishire, Hate Speech: New European Perspectives, Roma Rights, No. 4, (1999)

⁸ Black's Law Dictionary, 9 th edition, 2009.

⁹ Law Commission of India (267th report)

WHY PENALIZE HATE SPEECH?

The bases on which the hate speech is being triggered in the world are race, religion, ethnicity or class. Countries like India where we find a rich diversity of language, caste, race, religion, culture and beliefs are more likely to be affected by hate speech. Speech can be termed as- the words spoken or written or containing any kind of visual representation or any sign,

And if such speech offends the persons dignity to live, offends the religion of an individual or is capable to spread hate then such speech can be termed as hate speech.

Hate speech contains such words or speeches which are incendiary and have a capacity to not only cause harm but also may disrupt public order. Such seditious words are capable of leading to violent consequences such as hate crime and showing violent results. The Law Commission of India in its report published in 2017 recommends introducing new provisions within the Indian Penal Code.¹⁰

Thus, hate speech becomes an important question and matters of urgent concern to not only regulate the hate speech but to adopt such patterns that are able to undo the damages causing hate speech.

LIMITATIONS ON HATE SPEECH

The definition of hate speech is not provided in International Human Right Law, but is being divided into three categories distinguished on the response from states:

1. **Hate speech** that is considered as lawful should therefore be protected from restriction under *Article 19(3)*¹¹, but which nevertheless raises concerns in terms of intolerance and discrimination, meriting a critical response by the State,
2. **Severe forms of** hate speech that global law requires States to forbid, including through criminal, civil, and administrative actions, under both worldwide criminal law under *Article 20(2)*¹²
3. Other Practices of hate speech that states may disallow to guard the right of others under *Article 19(3)*¹³, such as discriminatory or bias-motivated pressures or harassment.

¹⁰ Law Commission of India (267th report)

¹¹ International Covenant on Civil and Political Rights

¹² International Covenant on Civil and Political Rights

¹³ International Covenant on Civil and Political Rights

HATE SPEECH IN CRIMINAL LAW AND CIVIL LAW: ENGLISH LAW

Provisions under the criminal law are directly controlling the serious forms of hate speech and the same are provided in the criminals laws of altogether six Countries in criminal or penal codes of such nations. The offences of the English criminal law do not have a single leading instrument such as penal code, but have numerous bits of legislations e.g. The Public Order Act, Offences against the Person Act, Crime and Disorder Act or Protection of Harassment Act.

In the number of nations promoting to prohibit the hate speech, there we can find number of civil causes of act that may be applied in cases that involve hate speech.

For example below are some civil protections that can be looked:

1. In **England**, actions against hate speech are under several laws. This includes harassment under the Protection from Harassment Act and protection against discrimination that can be protected under the Equality Act which basically emphasizes on discriminatory speech.
2. In **Germany**, if a wrongdoer has been found guilty of defamation under the criminal law then the civil liability can be established. The Civil law provision of the state can depend on the victim of hate speech whether they bring the action under civil law and ask remedies for the damages.
3. In **Poland** the sufferer of the act under hate speech can file a case under the provisions of civil action under “personal interests of a human being” and can ask for number of remedies including compensation for the damages caused.

INDIAN LEGAL FRAMEWORK

India contributes its laws to a boarder approach and bars hate speech particularly on the basis of religion, culture, race and ethnicity. Although the definition of hate speech is nowhere particularly mentioned but its similar forms are identified across the legislations that address this kind of speech.

1. The **Indian Penal Code**¹⁴ u/s
 - a. **Section 153A** [Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony],

¹⁴ Indian Penal Code, 1960

- b. **Section 153B** Imputations, assertions prejudicial to national-integration
- c. **Section 295A** Injuring or defiling place of worship with intent to insult the religion of any class
- d. **Section 298** Uttering, words, etc., with deliberate intent to wound the religious feelings of any person
- e. **Section 505(1)** Whoever makes, publishes or circulates any statement, rumour or report
- f. **Section 505(2)** Statements creating or promoting enmity, hatred or ill-will between classes

Above mentioned sections declare that any word, spoken or written, or employing signs or any kind of visual representation that are used to promote —

“ disharmony, enmity, hatred or ill-will or offends or insults on the basis of religion, culture, language, region, caste, community, race etc. is a punishable offence and the person found guilty will be punished under the act”.

2. **Section 8 of Representation of People Act**¹⁵ it disqualifies a person from contesting any kind of election if he is convicted by the court for indulging in acts amounting to illegitimate use of freedom of speech and expression and, **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.
3. **Under section 95 of Cr.P.C**¹⁶. it empowers the Government to forfeit publications that are offensive under above mentioned sections of IPC. **Section 107** of the Act vests the Executive Magistrate with a power to prevent a person from committing a breach of peace and disturb the public tranquility.

Hate speech is defined in terms of damage to the community at the larger scale rather than one. Though the purpose of above mentioned legislations is preferably stop hate speech altogether but these have not been very operative in this aspect and only limited success has been received in restricting the hate speech in the nation.

¹⁵ Representation of People Act, 1950

¹⁶ Code of Criminal Procedure, 1973

CASES ON HATE SPEECH

1. *Jafar Imam Naqvi v. Election Commission of India*¹⁷

The petitioner filed a writ petition challenging the vitriolic speeches by the candidates in the election and prayed in the Hon'ble Court for issue of mandamus to the election commission for taking appropriate steps against such kind of speeches. However, the court dismissed the petition on the grounds that the petition under Article 32 regarding speeches delivered during the campaign of election does not qualify as PIL.

2. *Pravasi Bhalai Sangathan V. Union of India*¹⁸

The Hon'ble Supreme Court dealt with the case where the petitioner prayed that the appropriate State should take actions against makers of hate speech. The Hon'ble Supreme Court did not go beyond the purview of existing laws to penalize hate speech as this would amount 'judicial overreach'.

The court detected and looked that the implementation of the present active laws would resolve the problem under the ambit of hate speech to a larger amount. The matter was referred to the law commission to look into and if deems fit to define the hate speech and make references to the parliament to strengthen the EC to curb the plague of hate speech.

3. *Arumugam Seervai V. State of Tamil Nadu*¹⁹

The Hon'ble Supreme Court upheld the prosecution under the SC and ST Act²⁰ for using the words 'pallan', 'pallapayal' 'parayan' or 'paraparayan' with the intent to insult. The historical context of the impugned words was examined in this case.

¹⁷ AIR 2014 SC 2537

¹⁸ AIR 2014 SC 1591

¹⁹ (2011) 6 SCC 405

²⁰ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

CONCLUSION

From the above reading we would have come across the point how to challenge the hate speech. The study demonstrates that 'hate speech' is addressed in numerous varieties of laws and regulations. In many in all six countries, even the criminal provisions relevant to the most serious forms of 'hate speech' are myriad and complex, and would benefit from greater rationalization. In some cases, individuals have succeeded in bringing civil actions in 'hate speech' cases. Such actions are, however, reasonably rare, and are unlikely to act as an effective restraining force on 'hate speech', including on media practices. The media regulatory authorities and national human rights bodies are often carrying out important activities in terms of positive measures in response to hate speech and these efforts should be strengthened.