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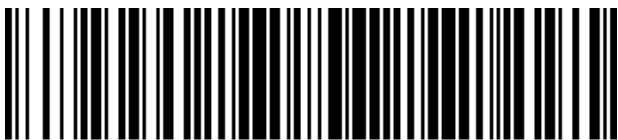
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**Paradigm Shift of Hate Speeches with the Boom of Social Media**

Akanksha sharma

Shreya chaurasia

## ABSTRACT

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*Freedom of Speech is a fundamental right guaranteed by the Constitution of India to each and every citizen of India, but this fundamental right is accompanied by reasonable restrictions. However, people taking advantage of this Freedom people often indulge in Speeches which are full of hatred or incites hatred which may be against any group, individual, religion or race which is in common language termed as "Hate Speech".*

*This paper will define hate speech and discuss the various stages of its evolution since the time. The Author will try to understand and draw a relative comparison between the laws on Hate Speech in colonial times and how it has evolved in the modern times with increasing role of social media in our lives. It will highlight on the current Indian as well as International Laws on Hate Speech.*

*The Paper will delve into the increasing contours of hate speech in this time and age where Social Media and 4G Connection is ubiquitous and easily accessible. Through this paper the author will attempt scrutinize, analyse and review the interpretation and understanding of Hate Speech by the Indian Judiciary and how this interpretation and understanding has evolved with digitization, technology and high-speed internet. The Author had tried to study the different challenges faced while curbing the problem in relation with Hate Speech Online. Finally, numerous suggestions have been made to keep in check these problems.*

*Key Words: Social Media, Hate Speech, Online, Freedom of Speech and Expression, Counter Hate Speech*

## UNDERSTANDING HATE SPEECH

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*“Darkness cannot drive darkness; Light can do that.  
Hate cannot drive out hate; Love can do that.”*

*-Martin Luther King*

When it comes to defining what Hate Speech means, none of the Indian laws can substantiate in the matter<sup>1</sup>. Freedom of speech and expression is a fundamental right enshrined under Article 19 of the Constitution of India. The freedom to propagate one’s ideas & thoughts is an intrinsic part of freedom of speech and expression. This Freedom, however, is not absolute. It comes with certain restrictions as laid out in Article 19(2) of the Constitution. Freedom of Expression has also been provided as under Article 19 of the Universal Declaration of Human Rights.<sup>2</sup> Dissent with the people in power is very important for the working of a healthy democracy. Thus, while drafting the Constitution, the members of the constitution assembly were in a dilemma as to whether the proviso to fundamental right of freedom of speech and expression would cover that is likely to promote hatred.<sup>3</sup>

The term Hate Speech has no specific definition and is rather used to condemn and to suppress widely varying expression. As stated by Nadine Strossen, *“The most generally understood meaning of ‘Hate Speech’ is expression that conveys hateful or discriminatory views against specific individuals or groups, particularly those who have historically faced discrimination”*<sup>4</sup>. The main objective of Hate Speech is to compromise the dignity of the victim, both in his own eyes and in the eyes of other members of the society.<sup>5</sup> It aims to stigmatize the basis of his reputation by associating externalized characteristics like religion, or ethnicity, or race with conducts that preclude the victim from being treated as a member of society in good standing<sup>6</sup>.

The discussions of Hate Speech have been overcast by censures and confounding many kinds of expression and exertions. However, a clear distinction must be drawn between ideas that are disapproved, disturbing or feared, which should be safeguarded and acts which are discriminatory and violent in nature, which should be punished. According to Weinstein and Hare, *‘In its purest forms, Hate Speech is simply an expression which articulates hatred for another individual or group, usually based*

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<sup>1</sup> Law Commission of India, *Hate Speech*, Report No.267, 5, (March 2017), available at <http://lawcommissionofindia.nic.in/reports/Report267.pdf> (Last visited on June 17, 2020).

<sup>2</sup> U.N.G.A. Res. 217 A (III), 1948.

<sup>3</sup> CONSTITUENT ASSEMBLY DEBATES, Nov. 4, 1948 *speech by* DR. RAJENDRA PRASAD, available at <http://164.100.47.194/Loksabha/Debates/cadebatefiles/C04111948.html> (Last visited on June 17 2020).

<sup>4</sup> NADINE STROSSEN, HATE: WHY WE SHOULD RESIST IT WITH FREE SPEECH, NOT CENSORSHIP 21 (Oxford University Press 2018).

<sup>5</sup> ERWIN CHEMERINSKY & HOWARD GILLMAN, FREE SPEECH ON CAMPUS 7 (Yale University Press 2017).

<sup>6</sup> Brendan Kennedy et. al., *The Gab Hate Corpus*, NSF CAREER (June 17, 2020), <https://osf.io/k7u93/download>.



on characteristics (such as race) which is usually shared by members of target groups.<sup>7</sup> With the diversification in the school of thoughts, people have started to interpret hate speech as distinctive range of messages that they find unacceptable. Abhinav Chandrachud, in his book, equates hate speech with violent conduct of crime.<sup>8</sup>

Hate Speech can be defined in simple words as verbal speeches or expressions with the agenda to incite and promote hatred and malice on the basis of either one's religion, race, caste, gender, ethnicity, beliefs, descent or lineage etc. In India there is no specific law targeted at regulating Hate Speech, the reason being the difficulty to draw the line between hate speech and free speech. It has always been a difficult to demarcate as to what is Hate Speech and identify it. Also, Hate Speech in this age and time can be propagated through any medium with the new scientific developments. As the social media gained popularity, people started to misuse it by writing, commenting or either making videos that are full of hatred targeted to incite people's reaction or may be to create a ruckus in the society and hurt other citizen's or community's sentiments. Most of the Hate Speech laws ever contemplated are barred by the 'public order' exception under Art. 19(2), also it has been difficult to make such laws and justify them as reasonable otherwise will be barred by the Right under Art.19. It has been established that restrictions imposed on any Fundamental right should be justifiably reasonable, thus the restrictions should not be arbitrary or excessive.<sup>9</sup>

Through the case of *Pravasi Bhalai Sangathan v. Union of India & Ors.*<sup>10</sup>, the Supreme Court observed that in order to examine the issues raised with respect to hate speeches, a deeper consideration by the Law Commission of India is crucial. It further stated that "*the same requisites defining the expression "Hate Speech" and making recommendations to the Parliament to strengthen the Election Commission to curb the menace of hate speeches*".

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<sup>7</sup> IVAN HARE & JAMES WEINSTEIN, *EXTREME SPEECH AND DEMOCRACY* 12-42 (Oxford 2010).

<sup>8</sup> ABHINAV CHANDRACHUD, *REPUBLIC OF RHETORIC: FREE SPEECH AND THE CONSTITUTION OF INDIA* 247 (Penguin Books India Pvt Limited 2017).

<sup>9</sup> *V.G. Row v. State of Madras*, A.I.R. 1951 Mad 147.

<sup>10</sup> *Pravasi Bhalai Sangathan v. Union of India & Ors*, AIR 2014 SC 1591.

## EVOLUTION OF THE CONCEPT OF HATE SPEECH

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As such there was no specific term used for offensive, slanderous and defamatory content, the term said to have been developed from various English Common Law principles like seditious and blasphemous libel. When the Britishers colonized India they engrained the concept of blasphemous libel and sedition in the Indian Criminal Laws like Section 124A<sup>11</sup> for sedition still continues to be a provision under Indian Penal Code, 1860. These principles are still a bane to the Indian democracy just as much as the anarchical laws that are still prevalent and are being used to depress down Free Speech. Recent example of such misuse can be gathered from the recent defamation case<sup>12</sup> filed against Kashmiri Activist, Shehla Rashid for criticizing the Modi Government in its decision to struck down Article 370 and imposing an uncertain internet and media blackout while deploying troops and keeping the political leaders of Kashmir under House arrest, which is all violative of the human rights of the Kashmiris.<sup>13</sup>

Macaulay, who drafted the Indian Penal Code, while drafting the law, had added the Chapter “Of Offences related to religion”. Lord Macaulay himself was against England Blasphemy Laws as he was of the opinion that everyone should have such liberty to convey and portray their own ideas of one’s religion but such liberty should not be misused so as to cause someone pain, disgust, outrage or thereby, infringe rights of others. This thinking of Macaulay has been the basis for him while drafting our Indian Penal Code. Other thinkers like Mill while discussing the concept of Liberty has explained how curbing speech could be harmful and detrimental to blossoming of new ideas. He was the perpetrator of the thought that to disregard contrary opinions as to the majority’s opinion is the biggest mistake.

Hate Speech jurisprudence in India can be traced back to the case of *Brij Bhushan v. State of Delhi*<sup>14</sup>, where the Supreme Court observed ‘*public order would come under the ambit of public safety and would be counted equal to that of State security*’. However, the court in the case of *Ram Manohar Lohiya v. State of Bihar*<sup>15</sup>, distinguished the two by keeping Security of State under the ambit of Public Order itself.

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<sup>11</sup> Indian Penal Code, 1860, §124A.

<sup>12</sup> PTI, *Complaint filed against Shehla Rashid for controversial tweets on Kashmir*, THE TRIBUNE (Aug 19, 2019), <https://www.tribuneindia.com/news/archive/nation/complaint-filed-against-shehla-rashid-for-controversial-tweets-on-kashmir-819805>.

<sup>13</sup>Rifat Fareed, *UN report on Kashmir calls for probe into human rights violations*, AL JAZEERA (July 8, 2019), <https://www.aljazeera.com/news/2019/07/report-kashmir-calls-probe-human-rights-violations-190708155531803.html>.

<sup>14</sup> *Brij Bhushan and Anr. v. State of Delhi*, AIR 1950 SC 129.

<sup>15</sup> *Ram Manohar Lohiya v. State of Bihar*, (1966) 1 SCR 709.

Further through the case, *Ramji Lal Modi v. State of U.P.*<sup>16</sup>, the court held Section 295A IPC<sup>17</sup> constitutionally valid by enforcing restrictions under Article 19(2)<sup>18</sup> ‘in the interest of public order’. The evolving era of hate speeches had started to cover many other statutes other than IPC and Constitution. Section 66A<sup>19</sup> of Information Technology, through the case of *Shreya Singhal v. Union of India*<sup>20</sup>, was held constitutionally invalid by restrictions covered under Art 19(2) of the Indian Constitution. In the case of *Arumugam Seervai v. State of Tami Nadu*<sup>21</sup>, the Court upheld that ‘*the prosecution under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for using the words ‘pallan’, ‘pallapayal’ ‘parayan’ or ‘paraparayan’ with the intent to insult’*. Many such recent decisions show how resolute and cautious the state government is while dealing with the restrictions covered under Article 19 of the Indian Constitution considering the matter to be of religious sentiments. After striking down of Section 66A of the Information Technology Act, the government made a committee led by former Lok Sabha General Secretary TK Vishwanathan to implement stricter laws to curb problems reacted to hate speech online. Through its report, the said committee added two major provisions in the Indian Penal Code which were Section 153C and Section 505A. Section 153C IPC do not consist of any ambiguity present in Section 66A under the Information Technology Act. Sub section (a) of the Section, very specifically, mentioned that the speech has to be ‘*gravely threatening*’ for treating it as an offence under the said provision. Sub Section (b) criminalizes offensive and annoying speech making it an offence under the section. It also criminalizes any online content that is either causing hatred or the inciting an offence. Section 505A criminalizes any means of communication that is done with an intent to cause injury or fear or provoke violence on the grounds of religion, race, caste, or community, sex, gender, sexual orientation etc.

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<sup>16</sup> *Ramji Lal Modi v. State of UP*, AIR 1957 SC 620.

<sup>17</sup> Indian Penal Code, 1860, §295A.

<sup>18</sup> INDIAN CONST. art. 19, cl. 2.

<sup>19</sup> The Information Technology Act, No. 21 of 2000, §66A.

<sup>20</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

<sup>21</sup> *Arumugam Seervai v. State of Tami Nadu*, (2011) 6 SCC 405.

## INDIAN AND INTERNATIONAL LAWS ON HATE SPEECH

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### NATIONAL LAWS:

Under the Indian Laws, **Indian Penal Code, 1860** envisages various provisions which have the effect of barring hate speech i.e. criminalizing such form of speech. Section 124A inflicts penalty on acts of Sedition. Section 153A (a) penalizes any person or group who incites by word either spoken or written, enmity and hatred among various groups on the grounds of religion, race, caste, community, place of birth, residence or either language, creating disharmony or ill-will between the groups. Lord Macaulay drew inspiration for Section 153A from the sedition law of the British Parliament as amended by them in the year 1898. Section 153B penalizes '*imputations, assertions prejudicial to national-integration*'.

Similarly, Section 295A of the Indian Penal Code, 1860 penalizes any person for deliberately and maliciously, by spoken words or otherwise, outrages the religious sentiments of other, or insults another individual's religious sentiments or beliefs of that class, is liable for imprisonment and fine or both. Further, Section 298 sets a penalty for '*uttering, words, etc., with deliberate intent to wound the religious feelings of any person*'. Section 505(1) and (2) IPC penalizes '*publication or circulation of any statement, rumor or report causing public mischief and enmity, hatred or ill-will between sections.*'

Apart from Indian Penal Code, 1860, there exists certain other Laws, Rules & Regulations which have the effect of dealing with Hate Speech. **The Cable Television Network Rules, 1994** prohibits television channels and providers to restrain from running such show, advertisements or promotional taglines which can have the effect of hurting/ harming religious sentiments against any community or group, it also prohibits television programs which promotes certain communal beliefs. Even any audio-visual representation on Television Programmes that either criticizes, maligns, demeans, defames any community or group on the basis of their religion, origin, language or ethnicity is also prohibited as per the Cable Network Rules.

Rule 7 of the Cable Television Network Rules specifically forbids displaying on the television such Advertisements that can hurt religious sentiments by demeaning any race, caste, religion or colour, creed or nationality.

Under the **Representation of People's Act, 1951**, Section 8 bars a person to contest elections if there have been any earlier convictions of acts of illegal use of freedom of speech and expression. Section 123(3A) and Section 125 of the act prohibits '*encouragement of hatred on grounds of religion, race, caste, community or language in the electoral practices.*'

Section 3(g) of **The Religious Institutions (Prevention of Misuse) Act, 1988** *“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.”*

**The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**, was promulgated to prohibit acts which are in any way atrocious to the Scheduled Castes and Scheduled Tribes (SC/ST). The Act is aimed at criminalizing such verbal speeches which in any way is otherwise harmful or degrading to the marginalized groups.

**The Protection of Civil Rights Act, 1955** is the legislation which penalizes the practice of untouchability and offences related to it. Section 7(1) (c) of the Protection of Civil Rights Act, 1955 penalizes *“any person who by words either spoken, written or by signs, incites or encourages any other persons or group of persons to practice untouchability”* and Section 7(1) (d) punishes *“any person who either insults or attempts to insult any person on the grounds of untouchability is guilty of any offence under this Act.”*

**The Code of Criminal Procedure, 1973** also embodies in itself a number of sections incorporating the conceptual of hate speech. Section 95 authorizes the State Government to penalize publications that are not in conformity with Sections 124A, 153A, 153B, 292, 293 or 295A IPC. It prevents the person from committing any act of harming public peace and tranquility by empowering the Executive Magistrate to punish for the same under Section 107 of CrPC. Further, Section 144 empowers the District Magistrate, a sub-Divisional Magistrate or any other Executive Magistrate order under cognizable offences in cases of nuisance or apprehended danger. Section 155 authorizes the police officer to arrest without the magistrate’s order or warrant where there is a case affecting liberties of citizens.

### **HATE SPEECH UNDER THE CONSTITUTIONAL FRAMEWORK:**

Article 19 (1) (a) ensures Freedom of Speech and Expression to a Citizen and limitations can only be placed which is a reasonable restriction including security of the country, friendly relations with other states, public order, decency and morality, sovereignty and integrity of the nation. Many of the Hate Speech Laws were challenged but are saved by the restriction under either *“public order”*, *“decency”* or *“morality”*. But such restrictions have always to be justified and should be reasonable. The use of the word *“reasonable restrictions”* has a connotation that the restrictions imposed on Freedom of Speech and Expression must be reasonable and not as such which are unnecessary and arbitrary. As mentioned before the exception of *“public order”* has always been helpful and a

protective cover for the Laws framed to curb Hate Speech. For Example; in a case<sup>22</sup> Punjab and Haryana High Court held that “*Section 124A and 153A are unconstitutional as it imposes unwarranted restriction on Freedom of Speech & Expression.*”

In the case of *S. Rangarajan v. P. Jagjivan Ram*<sup>23</sup>, the Supreme Court held that “*Speech can only be curtailed if in case is intrinsically dangerous to public interest.*” The Supreme Court in the case of *Shreya Singhal v. Union of India*<sup>24</sup>, was of the opinion that “*while deciding whether any statute is imposing any arbitrary restrictions. Also, the Act has also to be assessed on the standard whether such act causes any ruckus or disturbance within any community or within a society.*”

### **INTERNATIONAL LAWS:**

**The International Covenant on Civil and Political Rights (ICCPR)** is one of the International Instruments which recognizes free speech, the ICCPR to which India is a signatory and has signed and ratified, which forms the basis of Article 19 (1) (a) of the Constitution of India.

“Article 19 of the ICCPR reads that:

1. *Everyone has the right to hold opinions without anyone’s interference.*
2. *Everyone shall have a right to freedom of expression, which includes freedom to seek, receive as well as impart ideas of all kinds through any form of media either orally, writing or in print.”*

Article 7 of **United Nations Declaration of Human Rights** provides equality before law and protection in cases of incitement to discrimination.

The first ever international treaty concerning Hate Speech was **International Convention on the Elimination of all Forms of Racial Discrimination (CERD)**, adopted by the UN General Assembly in 1965. It differentiated 4 facets of hate speech under Art 49(a):

1. Dissemination of ideas based on racial superiority;
2. Dissemination of ideas based on racial hatred;
3. Incitement to racial discrimination; and
4. Incitement to acts of racially motivated violence.

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<sup>22</sup> Tara Singh Gopi Chand v. The State, AIR 1951 Punj 27.

<sup>23</sup>S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.

<sup>24</sup> INDIAN CONST. art. 19, cl. 2.

## **SOCIAL MEDIA AND HATE SPEECH**

Over the last decade, there has been a rapid advancement of technology and the internet. It has provided a consortium, where everyone and everything is easily accessible and available. Also, now with internet data available at such cheaper rates and that too at reasonably fast speed, there has been a boom in the current internet media.

With this, people on the internet have got a voice, and they have realized that with this voice and freedom, which is made available to them within the safe space and comfort of their homes, their lifestyles have been glorified. But with this power some people have forgotten their responsibility to use this voice to their advantage and for the greater good by addressing actual & substantial issues. Social Media might comprise of WhatsApp, Instagram, Twitter and Snapchat etc.

Not just a way to communicate, Social Media has become a platform to express one's opinion and day by day increasing social media population has allowed hateful content to reach a broader audience, without editorial restrictions and sometimes through anonymity.

These social media platforms were developed to make connection easier, but on the contrary, there have been many instances or complaints of abuse of the same. A large number of objectionable materials are widely consumed and circulated by people all over the internet. Hate Speech Online is an intersection of the conflicts of expression between distinct groups and transforming potential of technologies. This can be seen as both opportunities and challenges to maintaining of an equilibrium between the Fundamental Rights and Human Dignity<sup>25</sup>.

To regulate such objectionable material or content, Parliament enacted Information Technology Act, 2000. The Act was enacted to regulate internet crimes, in 2009 it was amended to include Sec 66A<sup>26</sup> to regulate cyber-crimes or frauds over the internet.

Section 66A<sup>27</sup> mainly penalized any person who is either communicating or spreading over the electronic means, any content or material that is: -

- 1.) Grossly Offensive;
- 2.) False and meant for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will; or
- 3.) Meant to deceive or mislead the recipient about the origin of such messages, etc. shall be punishable with imprisonment up to three years and with fine.

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<sup>25</sup> Zachary Laub, *Hate Speech on Social Media*, COUNCIL FOREIGN RELATIONS (June 7, 2019), <https://www.cfr.org/background/hate-speech-social-media-global-comparisons>.

<sup>26</sup> The Information Technology Act, No. 21 of 2000, §66A.

<sup>27</sup> *Id.*

But in the year 2015, the IT Act, 2000 suffered a setback in the case of *Shreya Singhal v. Union of India*<sup>28</sup>. The Act prohibited people from posting offensive, seditious or obscene content through the medium of a computer or any other electronic device, the perpetrator of such material or content would be liable to a punishment of maximum three years of imprisonment and fine. The offence being a cognizable offence aided the police authorities to arbitrarily use such power so as to imprison any person against whom complaint for posting such material has been registered. Along with Section 66A, questions were also raised on other provisions like Section 69A<sup>29</sup> and Section 79<sup>30</sup> of the Act as well as the Rules made thereunder. Section 69A gave the power to an Officer of Central Government to block or cause to be blocked any information transmitted, stored or received, if it is in the interest of sovereignty, integrity, security, public order or friendly relations with other states. On the other hand, Section 79 gave immunity to the intermediaries from being liable for the third-party information, data or communication. In the *Shreya Singhal Case*<sup>31</sup>, the Supreme Court upheld the Constitutional Freedom of Free Speech and Expression and opined that Section 66A violated the right as they are arbitrary and unreasonable. The case was in such spotlight due to many arbitrary arrests which were heavily criticized by many activists and intellectuals especially lawyers, media, journalists. In one of many such incidents, the water reached the boiling level when two women were arrested in Maharashtra u/s 66A I.T. Act, 2002. One of them posted a comment on Facebook criticizing the Mumbai Bandh (Mumbai shut down) in the honour of Late Bal Thackeray's death. The other woman's only fault was that she liked the Facebook post, to this both the women were harassed by the Shiv Sena members and one of their family member's clinic vandalized.<sup>32</sup> The court in this case took reference from various cases upholding free speech and expression, for example in the case of *Romesh Thappar v. State of Madras*<sup>33</sup> wherein the court stated that freedom of speech lay at the foundation of all democratic organizations. In *Sakal Papers (P) Ltd. & Ors. v. Union of India*<sup>34</sup>, "The Constitution Bench of this Court said freedom of speech and expression of opinion is of paramount importance under a democratic constitution which envisages changes in the composition of legislatures and governments and must be preserved." In a separate concurring judgment of *Bennett Coleman & Co. & Ors. v. Union of India*<sup>35</sup> Beg J. said "that the freedom

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<sup>28</sup> *supra* note 20.

<sup>29</sup> *supra* note 26, §69A.

<sup>30</sup> *Id.*, §79

<sup>31</sup> *supra* note 20.

<sup>32</sup>PTI, *Anti-Thackeray Facebook post: 9 arrested for vandalising woman's uncle's clinic*, INDIA TODAY, Nov. 20, 2012.

<sup>33</sup>*Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>34</sup> *Sakal Papers (P) Ltd. & Ors. v. Union of India*, [1962] 3 SCR 842.

<sup>35</sup> *Bennett Coleman & Co. & Ors. v. Union of India*, AIR 1973 SC 106.



*of speech and of the press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions.*<sup>36</sup> It can be understood from all the cases that the Court gave high stature to Free Speech in these cases, but such interpretation had one drawback that it gave the right to hate perpetrators on the internet a free card to abuse such freedom under the garb of free speech and expression. Such interpretation also failed to define or to delineate as to what is obscene, offensive and creates hatred towards an individual's caste, creed, color, ethnicity or religion.

Insofar as abridgement and reasonable restrictions are concerned, both the U.S. Supreme Court and this Court have held that a restriction in order to be reasonable must be narrowly tailored or narrowly interpreted so as to abridge or restrict only what is absolutely necessary. It is only when it comes to the eight subject matters that there is a vast difference. The law in U.S. is that if there is a compelling necessity to achieve an important governmental or societal goal, a law abridging freedom of speech may pass muster.

But in India, such law cannot pass muster if it is in the interest of the general public. Such law has to be covered by one of the eight subject matters set out under [Article 19\(2\)](#)<sup>37</sup>. If it does not, and is outside the restrictions under Art 19(2), Indian courts will strike down such law. However, even these 'reasonable restrictions' as mentioned under the Article is so obscure that it has not specified as to what all would be counted as 'reasonable' while implementing such restrictions. But with these restrictions to protect free speech sometimes, legitimate dissent is also curbed down and leaves no scope to restrict hatred spread over the internet. The striking down of Section 66A<sup>38</sup>, thus, again leaves as such no specific law curbing down or addressing the menace caused by the hate speech in India over the internet.

Many reports, worldwide, have declared 2018 as the "year of online hate"<sup>39</sup>, Facebook, the social media giant, in its 'Transparency Report' disclosed alarming statistics wherein it ended up taking down 3 million hateful posts from its platform<sup>40</sup>, YouTube, which allows free sharing of video content on its site, removed 25,000 videos in a single month alone.<sup>41</sup> These statistics are only the tip of the iceberg and evident how the situation can become out of control in the coming days.

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<sup>36</sup> Soli J. Sorabjee, *Freedom of the Press, its Contents and Facets*, 13 JSTOR 173, 222-223 (1986).

<sup>37</sup> INDIAN CONST. art. 19, cl. 2.

<sup>38</sup> The Information Technology Act, No. 21 of 2000, §66A.

<sup>39</sup> Geoffrey A. Fowler, Drew Harwell et. al, "2018 was the year of online hate. Meet the people whose lives it changed", THE WASHINGTON POST (Dec. 28, 2018), [https://www.washingtonpost.com/business/technology/2018-was-the-year-of-online-hate-meet-the-people-whose-lives-it-changed/2018/12/28/95ac0558-f7dd-11e8-8c9a860ce2a8148f\\_story.html?noredirect=on&utm\\_term=.89512577b520](https://www.washingtonpost.com/business/technology/2018-was-the-year-of-online-hate-meet-the-people-whose-lives-it-changed/2018/12/28/95ac0558-f7dd-11e8-8c9a860ce2a8148f_story.html?noredirect=on&utm_term=.89512577b520) (.).

<sup>40</sup> Facebook, Community Standards Enforcement Report (November, 2018) <https://transparency.facebook.com/community-standards-enforcement#hate-speech>.

<sup>41</sup> *Supra* note 39.

When these incidents of online hate is disregarded, it takes an aggravated form. Like the dreadful hate crimes India keeps witnessing including communal riots, series of violent clashes between religious communities<sup>42</sup>, all arising as a result of inflammatory speech propagated by divisive groups.<sup>43</sup> Mob lynching is another such example of confrontation of gruesome killings where ‘hate’ for another group has led to various disturbing forms of violence..<sup>44</sup> In these situations, words were employed in their most dangerous form, “...as weapons to ambush, terrorize, wound, humiliate and degrade”<sup>45</sup> individuals and groups.

In this era of technological advancement where social media platforms are accessible and within the reach of most of the world’s population, connecting with people has been made easier. But some miscreants instead of utilizing internet and social media for the good, it is used to spread hate by words written or spoken. According to a report, the popular Facebook networking website could not take down 93% of the Hate posts or comments reported by users on Facebook. It is a recurring news that “Facebook is used as a platform to spread hate and often people with fake Facebook profiles or accounts try and target people on Facebook and harass them anonymously”<sup>46</sup>. With Social Media being much in trend mostly among the youngsters, intellectuals and activists the conversations over the internet has taken a new turn and everybody is having opinions which they want to express. Conversations around topics like homosexuality, feminism, misogyny are often indulged by the users, but often such conversations turn into a much-heated debates where offensive and demeaning words are posted and commented online.

*“The Media often only reports incidents which inadvertently act as a vehicle for politicians who use hate speech as a tool for identity politics. In the process, the media often lose sight of the manufactured quality of hate spin, especially where the line between hate speech and free speech are blurred.”<sup>47</sup>*

There are a lot of incidents of hate speech that has happened in Indian history. Incidents involving politicians are common. For instance, In 2015, Indian author Perumal Murugan in a dramatic and

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<sup>42</sup> FP Staff, “Muzaffarnagar riots: The inciteful speeches that fanned rioters’ fury” (Sept.13, 2013) <https://www.firstpost.com/politics/muzaffarnagar-riots-the-inciteful-speeches-that-fanned-riotersfury-1103789.html>.

<sup>43</sup> Harsh Mander, “The mob that hates”, INDIAN EXPRESS (July 19, 2018) <https://indianexpress.com/article/opinion/columns/supreme-court-on-mob-lynching-law-againstlynching-case-social-media-whatsapp-rumuors-5265173/>.

<sup>44</sup> Alison Saldanha, “2017 : A year of hate crimes in India: Number of violent incidents related to cows, religion is rising”, FIRST POST (Dec. 28, 2017) <https://www.firstpost.com/india/2017-a-year-of-hate-crimesin-india-number-of-violent-incidents-related-to-cows-religion-is-rising-4278751.html>.

<sup>45</sup> Thomas J. Webb, “Verbal Poison - Criminalizing Hate Speech: A Comparative Analysis and a Proposal for the American System” 50 WASHBURN L.J. 445 (2011).

<sup>46</sup> Maya Mirchandani, *Digital hatred, real violence: Majoritarian radicalisation and social media in India*, ORF OCCASIONAL PAPER, Aug 29, 2018.

<sup>47</sup> *Id.*

extremely emotional twist of events announced his literary “death” and withdrew his entire set of published works from all online and offline public domain, vowing to never write again because the fictional portrayal of tradition of annual festival in Tiruchengode revering the Ardhanareeswarar Temple’s presiding deity hurt the sentiments of the devotees.<sup>48</sup>

In 2017, #notinmyname or Not In My Name a campaign was launched on social media where prominent public figures supported the response to several incidents of mob-lynching, violence based on religion.<sup>49</sup>

Umar Khalid, JNU student leader, was attacked in August 2018 as a result of hate campaign over social media by calling him anti-national.<sup>50</sup> In 2018, Late Sushma Swaraj (the then External Affairs Minister) was made a victim of hate speech online when she ordered to suspend the passport of Madhu Kishwar (who was later described to the Soldier of Islam). She was trolled for having ‘an Islamic Kidney’. She had a kidney transplant in 2017 and as she made it very clear ‘*it had nothing to do with the religion of the donor*’.<sup>51</sup>

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<sup>48</sup> Devika Agarwal, *Hate speech in India*, FIRST POST (September 14, 2018), <https://www.firstpost.com/india/hate-speech-in-india-medias-rabble-rousing-doesnt-help-cause-proves-counter-productive-to-free-speech-5182231.html>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Maya Mirchandani, *Letting online hate speech go unpunished*, FIRST POST (Sept 2, 2018), <https://www.firstpost.com/india/in-india-letting-online-hate-speech-go-unpunished-unchallenged-has-real-and-violent-repercussions-5079331.html>.

## **CHALLENGES TO COUNTER ONLINE HATE SPEECH**

With boosting technologies and internet services, it can be culminated that the same technology that promotes social media to incite democracy activists and influencers can be used by hate groups planning to conspire and radicalize. An increasingly connected cyber space may look like the content produced on the internet but it is in itself a reflection of what is happening offline. While it is rapidly becoming a tool to oppress and circulate hatred and violence, it has become the need of the hour to curb issues related to Hate Speech over the Social Media Sites. There has been a mounting number of hate speech incidences all across the Social Media nationally as well as internationally and the responses to curb the same have been uneven. This has posed a unique threat to Human Rights and Dignity and the Right to Freedom of Expression too. The following reasons can be contributed faced while curbing hate speech and other problematic content online:

**DEFINITION:** With no proper definition to expound the term ‘Hate Speech’ under the National laws, different people interpret the same according to what they believe is their idea of harm to one’s dignity is, which leads to lack of clarity and mechanisms to identify hateful messages. Various internet intermediaries have deduced their own definition of hate speech in order to restrict the freedom of expression by binding the users to a set of rules. However, a universally accepted definition is unlikely to be reached, thus, its regulation lacks extreme precision.

**JURISDICTION:** The internet’s speed and reach make it difficult for governments to enforce a national legislation in the virtual world<sup>52</sup>. Issues related to Hate Speech Online requires the private spaces and public functions to pose certain necessary regulations to handle challenges related to it and even though, these Social Media handles have become more responsive in tackling the problem, they have failed to completely incorporate solutions to identify and respond to Hate Speeches. With no proper legislations specifically made for regulating the Hate Speeches online, it is difficult to recognize any particular jurisdiction for such cases.

**COMPREHENSION:** The nature of hate speech online and its association to speech and action offline are usually misinterpreted. Various discussions by academics, activists and politicians have vocalized about the same however, the underlying causes, or identification of the content emerging or leading to actual hatred or violence are still in the dark. Therefore, the links between hate speech online and other occurrences of social phenomena, online or offline must be established.

**STATISTICS:** UN Human Rights Council Special Rapporteur on Minority Issues poses a challenge of unavailability of statistical data of the problems or incidents of Hate Speech. While statistics

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<sup>52</sup> GAGLIARDONE, IGINIO, ET AL., COUNTERING ONLINE HATE SPEECH, 8 (UNESCO Publishing, 2015).

offering a global overview of the phenomenon are not available, both social networking platforms and organizations created to combat hate speech have recognized that hateful messages disseminated online are increasingly common and have elicited unprecedented attention to develop adequate responses.<sup>53</sup> The problem of spotting a hate speech crime is associated to the idea of harm where on one hand, a statement is endorsed, on the other, the same can be indicted as impugned.

**ANONYMITY:** ‘The Internet facilitates anonymous and pseudonymous discourse, which can just as easily accelerate destructive behavior as it can fuel public discourse<sup>54</sup>.’ This anonymity can pose greater threat to dealing with hate speech online. It allows the individual to publish offensive or anything which is not in conformity with the public order by keeping his identity in disguise. This increases the probability of committing a crime and not facing the repercussions. Anonymity makes it easier for people as they wouldn’t have to face the consequences for the same. Hate Speech attacks from pseudonymous accounts. Online trolling are mainly proliferated through the anonymity of the users, being one such example.

**ITINERANT NATURE:** The Social Media is a web of multiple platforms linked together and by the time a hateful conduct over the internet of identified, it has been seeking exposure to a larger audience. This itinerant nature of Social Media causes more damage to the victim than it can normally inflict. The itinerant nature of hate speech materials online also means that poorly formulated thoughts that would have not found public expression and support in the past, which now, land on spaces where they can be visible to large audiences. As the internet is not governed by a single entity, concerned individuals, governmental and non governmental organizations may have to address internet intermediaries on a case-by-case basis, although leaving the owners of specific online space to also decide how to deal with users’ actions on ongoing basis<sup>55</sup>.

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<sup>53</sup> *Id.*

<sup>54</sup> Terfa T. Alakali, *Audience Perception of Hate Speech and Foul Language in the Social Media*, ACADEMICS 111, 152 (2018).

<sup>55</sup> TATIANA-ELENI SYNODINOU, PHILIPPE JOUGLEUX ET AL., *EU INTERNET LAW: REGULATION AND ENFORCEMENT* 222-229 (Springer, 2017).

## RECOMMENDATIONS AND CONCLUSION

India's Deputy Permanent Representative to the UN Ambassador K Nagaraj Naidu during the informal meeting of the General Assembly on 'Combating Antisemitism and Other Forms of Racism and Hate said "*We need to treat hate speech as we treat every malicious act: by condemning it and refusing to amplify it. That does not mean limiting freedom of speech; it means keeping hate speech from escalating into something more dangerous, particularly incitement to discrimination, hostility and violence, which is prohibited under international law.*"<sup>56</sup>

For regulating the Hate Speech, two approaches have been identified by different countries. One is the 'Slippery Slope Approach'. Slippery Slope Argument hold that we should resist a particular practice or policy, either on grounds that allowing it can lead us to follow another practice or policy that is clearly objectionable, or on the grounds that we can draw no rationally defensible line between the two<sup>57</sup>. This approach is practiced in strong and persuasive countries like USA. Second is 'Fatal Slope Approach' where a particular policy or practice is banned if it is not in consonance with other laws and might incite violence and lead to mass scale killings and other hate crimes. This is practiced in countries like Europe.<sup>58</sup>

In cases of hate speech, India is a follower of the later approach which penalizes it on the grounds of race, religion or ethnicity. With so many legislations barring hate speech in their own respective manners, a tangled web of different provisions has been created which makes it difficult to comprehend the exact hate speech that is penalized under the Indian jurisdiction.

After striking down of Section 66A of the Information Technology Act, the government specified a committee led by former Lok Sabha General Secretary TK Viswanathan to endorse stricter laws to curb problems reacted to hate speech. Through its report, the said committee added two major provisions in the Indian Penal Code which were Section 153C and Section 505A as already mentioned earlier.

While facing the problematic content online and to stop the widespread hate speech, the following recommendations can be followed for better and effective goal achievement:

**SPECIFIED DEFINITION:** With no proper defined nature of hate speech, it becomes impossible to determine and identify the content as an offensive, intolerant and injurious to human dignity.

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<sup>56</sup>Drew Harwell, *Speech Online*, THE WASHINGTON POST (December 2018), [https://www.washingtonpost.com/business/technology/2018-was-the-year-of-online-hate-meet-the-people-whose-lives-it-changed/2018/12/28/95ac0558-f7dd-11e8-8c9a-860ce2a8148f\\_story.html?noredirect=on](https://www.washingtonpost.com/business/technology/2018-was-the-year-of-online-hate-meet-the-people-whose-lives-it-changed/2018/12/28/95ac0558-f7dd-11e8-8c9a-860ce2a8148f_story.html?noredirect=on).

<sup>57</sup> Eugene Volokh, *The Mechanism Of Slippery Stone*, HARVARD LAW REVIEW 116, 116-120 (2002).

<sup>58</sup> *Id.*

With various legislations dealing with this issue, it becomes important to implement specific laws to determine jurisdictions and finer comprehension for the same.

**INVOLVEMENT OF JUDICIARY:** Even though it is widely accepted the challenges of Internet needs to be dealt momentarily but there should be a balance between the interest of the people and the infringed right. The same can be done by via continued participation of the judiciary in such decision making.

**CLARITY OF FRAMEWORK:** The laws in India are not so stringent when it comes to the matter in concern. When a large portion of society's sentiments are hurt, it might lead to mass mobilization of hatred and hateful conducts all over the country and such will be against the public order. Yet, the country lacks any lucidity in the framing of regulations for censoring these acts.

**ASSESS "REASONABILITY" OF RESTRICTIONS:** Article 19(2) of the Indian Constitution precludes the absolute nature of Freedom of Speech by posing "Reasonable Restrictions" on the same. However, these reasonable restrictions often remain obscured. Legislations need to specify the actions that are both necessary and proportional in order to justify the reasonability of such restrictions.

**TRANSPARENCY:** While determining the cases of censorship, it is important that the government stand transparent on its part. People should be made aware what is being censored and why. Transparency sets out legitimacy of the Indian Government and people will understand the content that can be considered as inappropriate or offensive.

Harmful content has for a long time corroded the Internet's standing place for conversation and community. Viciousness escalates through these online internet amenities where the most atrocious posts gets the most consideration. It thrives in a polarized ambience where making a political statement makes him open to personal abuse. However, the broader influence of hate speech online is more tenuous and widespread, hampering people's mentally that remain as a scar for a longer than the attacks themselves. Therefore, many victims do not talk about it openly as they are afraid that the online wrath could become real world attacks. It is, thus, the need of the hour to take considerations of complications of boom of hate speeches with day by day increasing social media activities and take effective measures for the same.