Hate Speech

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“Like an unchecked cancer, hate corrodes the personality and eats away its vital unity. Hate destroys a man’s sense of values and his objectivity. It causes him to describe the beautiful as ugly and the ugly as beautiful, and to confuse the true with the false and the false with the true.”¹

Hate speech, or inflammatory speech, has always resulted in censorship throughout history. The definition of hate speech has been ambiguous, but usually narrow and tailored to the interests of the ruling power of the state. The definitions of “hate speech” typically depend on the cultural and moral ethos of any society; when societies have been well-defined, for example through geography, it was relatively easier to reach a consensus on such a definition. This was because that definition would only be enforced in a certain area by an enforcing authority that was known and respected, or feared, by everyone in that area. The rise of the internet, a global means of communication, has stripped away such geographical boundaries. While this has led to rapid technological growth through the cooperation of people from all over the world, it has also set up very peculiar questions of law and its enforcement. The very definition of “hate speech”, already ambiguous, was made even more so when made applicable to anything written on the internet, since it could be created by anyone, anywhere in the world, posted to a server anywhere in the world, and be accessed by (or targeted at) anyone, anywhere in the world. This paper seeks to identify a possible solution to this conundrum within the specific context of India.

According to Law Commission of India² hate speech is “incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like”. The report of the commission 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.”³

Hate Speech in India

India has had a multiplicity of religions, castes, cultures, languages and ethnicities. Also, the communal background to India’s partition and the continued religious diversity within the country has turned India into a fragile nation where religious passions can be easily ignited.
Therefore, when a political leader unleashes communal hate speech, it often threatens to destroy the democratic and plural fabric of the country. Recognising this, the Hon’ble Supreme Court of India had warned:

“Our political history made it particularly necessary that these differences, which can generate powerful emotions, depriving people of their powers of rational thought and action, should not be permitted to be exploited, lest the imperative conditions for the preservation of democratic freedoms are disturbed.”

When for the first time the right to Freedom of speech and expression was tabled in the Constituent Assembly, from then to now, there have been demands for putting limitations on this freedom that led to the Constitution (First Amendment) Act, 1951 and the Constitution (Sixteenth Amendment) Act, 1963 that added various ground of imposing restrictions under Article 19(2) of the Constitution.

The state of affairs are that Hate Speech has not been defined in any of the laws of the country, only prohibitions for using certain forms of speeches and expressions are stated.

The Black’s Law Dictionary identifies hate speech as the speech that carries no meaning other than expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence.

In a civil society like ours, man is regarded as a doer of rational things but when it comes to his expressions, he has to be controlled, modulated, monitored and balanced with the expression and thoughts of another man who inculcates the similar desires. With the baggage of a population of diverse caste, creed, religion the importance of delivering a responsible speech becomes a mandate for backing the principles of liberty and democracy enshrined in the Constitution.

One of the greatest challenges is not to exercise the principle of autonomy and free speech principle that are detrimental to any section of society. Free speech is necessary to promote a plurality of opinions where hate speech becomes an exception to Article 19(1) (a).

Thus, even if a speech that is vehement, caustic, and sometimes unpleasantly sharp is protected from State intervention. It acts as palisade against the States power to regulate speech. The value accorded to the expression is greater in the lists of the rights that become the reason of the reluctance of the lawmakers and judiciary in creating exceptions to it that might curtail the spirit of this freedom provided. Perhaps, this could be one of the important reasons behind the reluctance in defining hate speech.

**Laws dealing with hate speech in India**

Legal Aspect Apart from the Constitution, there are various other legislation and self-regulatory mechanisms under which hate speech is negated, like:
I. As per the directions of Supreme Court of India, the Law Commission of India in its report titled ‘Hate Speech’ recommended the addition of two more provisions in the IPC. The provisions were intended to criminalize hate speech which causes incitement to violence and speech that causes fear, alarm or provocation of violence in certain cases. However, the Criminal Law (Amendment) Act, 2018 which was passed in August this year does not make any changes relating to hate speech to the IPC. Sections 153A and 153B of Indian Penal Code, 1860 make any act a punishable offence that incites or promotes disharmony or feeling of enmity or hatred between different religious or racial or linguistic or regional groups or castes or communities. The objective of having such a provision was “to check fissiparous communal and separatist tendencies and secure fraternity so as to ensure the dignity of the individual and the unity of the nation”.

II. Section 295A of Indian Penal Code, 1860 provides for punishment for any act done by anyone with deliberate and malicious intention to outrage the religious feelings of any class of the citizens, insults or attempts to insult the religion or the religious beliefs of that class of citizens. Under S. 295A what is required to constitute an offence, is the presence of both, namely, the intention must be deliberate and malicious. However, the Supreme Court in Ramji Lal Modi v. State of Uttar Pradesh held that “Section 295A makes crime only grave types of conduct involving abuse to religion or religious beliefs. The provision does not punish every act of or attempt to, insult religious beliefs of a class of citizens, but only those aggravated forms of abuse to religion which are executed with the deliberate and malicious intention of outraging the religious feelings of a class of citizens.” It is important to note that section 295A is restricted to offending the feelings of Indian Citizens only, while the one doing that offending act may be a citizen as well as non-citizen.

III. Under Section 298, punishment is prescribed for any act committed with the deliberate and malicious intention of hurting the religious feelings of any person. Thus, it is restricted to protect the hurting of any religious feeling only, however, unlike Section 295A, it protects any person, whether citizen or non-citizen.

IV. Section 505(1) & (2) makes the making, publishing or circulating of any statement or rumour an offence, which is likely to incite any class or group of persons to commit any offence against other class or group of persons, or promotes or is likely to promote feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. In Section 505(2), words “whoever makes, publishes or circulates” cannot be interpreted disjunctively but only as supplementary to each other. If it is construed disjunctively, any person, making a statement that may attract section 505, would be held liable without any publication or circulation.
V. One important feature of sections 153A and 505(2) of IPC is that there must be at least two groups or communities involved. Mere abuse of the feeling of a community or group without any reference to any other community or group, cannot attract either of the two sections.

2 The Representation of the People Act, 1951: Sec. 8; Sec. 123(3); 123(3A) and Sec. 125.
3 The Protection of Civil Rights Act, 1955: Sec. 7
4 The Religious Institutions (Prevention of Misuse) Act, 1988: Sec. 3 (g)
5 The Cable Television Network Regulation Act, 1995: Sec.5 and 6 of the Act prohibits transmission or retransmission of a program through cable network in contravention to the prescribed program code or advertisement code. These codes have been defined in rule 6 and 7 respectively of the Cable Television Network Rules, 1994.
6 The Cinematograph Act, 1952: Sec.4, 5B and 7 empower the Board of Film Certification to prohibit and regulate the screening of a film.
7 The Code of Criminal Procedure, 1973:
   I. Section 95 empowers the State Government, to forfeit publications that are punishable under sections 124A, 153A, 153B, 292, 293 or 295A IPC.
   II. Section 107 empowers the Executive Magistrate to prevent a person from committing a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably cause breach of the peace or disturb the public tranquillity.
   III. Section 144 empowers the District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf to issue the order in urgent cases of nuisance or apprehended danger.

The above-mentioned laws may not directly deal with the issues of hate speech but the Constitution has been interpreted elaborately by the Supreme Court to confine these provisions under the reasonable restrictions of Article 19(2). Hence, the notion of hate speech has been made wider in our country to maintain peace and public order. Despite such enumerate provisions in our laws, contradictory questions have been raised about them, first, it is inadequate and second, it restricts the freedom to express. This perplexing confusion is depicted by two different cases of the Hon’ble Supreme Court:

I. PravasiBhalaiSangathan v. Union of India Where the petitioners found the existing laws related to hate speech inadequate and prayed that the State should enact stricter regulation and take peremptory action against people promoting hate speech. But the Court observed that the implementation of existing laws would solve the problem of hate speech to a great extent. The matter of hate speech deserved deeper consideration by the Law Commission of India. Therefore, the Commission after taking into view the laws and various pronouncements on hate speech had submitted its Report No.267 before the Government of India in March 2017 for consideration.

II. SubramaniamSwamy v. Union of India In this case arguments were raised on the reasonableness of the restrictions imposed by Sections 499-500 IPC on free speech in light of settled law that restrictions should be narrowly tailored and should not be
excessive, arbitrary or disproportionate. Subramanian Swamy argued that half a dozen sections of the Indian Penal Code, 1860 should be declared unconstitutional for violating Article 19(1) (a).

Therefore, it can be observed that there are mixed feelings regarding the concept of hate speech in our country where because of no concrete platform about it makes its implementation ineffective. The doers escape challenging the laws to be restrictive in nature while some who are the victims of this hatred, demands for stricter provisions for their safety and prosperity. ShreyaSinghal v. Union of India Issues were raised about Section 66A of the Information Technology Act, 2000 relating to the fundamental right of free speech and expression guaranteed by Article 19(1) (a) of the Constitution, where the Court differentiated between discussion, advocacy, and incitement and held that the first two were the essence of Article 19(1).S. Rangarajan etc. v. P. Jagjivan Ram In this case, the Court held that freedom of expression cannot be suppressed unless the situation so created are dangerous to the community/ public interest wherein this danger should not be remote, conjectural or far-fetched. There should be a proximate and direct nexus with the expression so used. The Judicial decisions depict that India follows a speech protective regime, meaning the words that are used by the people to express themselves are critically heard and then reacted on them if the words go against public morality. Although the Courts are extremely cautious about putting restrictions on Article 19 because of the sole reason for it to be misused by the State negatively.

**Worst hate speeches of 2019 onward**

There is no dearth of political figures making controversial or inflammatory statements full of hatred towards certain class of people. India’s hate factory has produced some deplorable hate speeches this year. Here’s a look at the some worst hate speeches of 2019 in India.

I. After the terrorist attack on CRPF jawans in Pulwama, Kapil Mishra, an MLA from the Karawal Constituency in Delhi, made series of deeply disturbing tweets some of which were a virtual call to commit genocide. His worst quote being "destroy the womb that gives birth to terrorists". He was suspended from AamAadmi Party after this comment and he is now a member of BJP.

II. Feroze Khan, Samajwadi Party leader and close aid of Azam Khan, made series of sexist and derogatory comments against former Member of Parliament Jaya Prada for which he was issued a notice by the National Commission for Women (NCW). While responding to that fact that Jaya Prada was contesting against Azam Khan in Rampur, Foeorze Khan said, “Nights would now become more colourful in Rampur.” He added that Jaya Prada would now enthral people with her ghungroos and thumkas. He seems to be following the footsteps of his master as Azam Khan had called her a nachnewali earlier.

III. With an aim to ignite communal tension immediately before and after the Ayodhya verdict of the Supreme Court, news channels like AajTak posted on their social media, a
highly inflammatory statement full of othering. The post has an image of Lord Ram and it said, “Janmabhoomihamari, Ram hamare, Masjid wale kaha se padhare” (The birthplace is ours; Ram is ours, where have these ‘mosque people’ come from?). CJP filed a complaint against this with the News Broadcasting Standard Authority and NBSA has issued a notice to that regard to the news channel.

IV. At a pro-Citizenship Amendment Act (CAA) protest which Kapil Mishra, now part of BJP, was leading on Friday night in Delhi despite Section 144 being imposed there, he and his followers were heard chanting “shoot the traitors” as they marched on with their protest. This was an apparent reference to the people who were opposing the Citizenship Amendment Act, 2019.

Way Forward As victims of hate speech they fear and are indeed nervous to enter public spaces or participate in the discourse. This brings a change in their behaviour, such intangible effects of hate speech on people are the most insidious and damaging to their right to live with dignity.

Therefore, steps should be taken to tackle such problems that could be -

I. The most efficient way to dilute hatred is by the means of Education. Our education system has a prominent role to play in promoting and understanding compassion with others.

II. Awareness programs and initiatives about maintaining cordial relationship must be taken by not only the government but also by private people.

III. Although there are many laws regarding hate speeches but stricter penalizing is required as religious sentiments and beliefs are a precious thing for an individual.

IV. Fight against hate speech cannot be isolated. It should be discussed on a wider platform such as the United Nations. Every responsible government, regional bodies, and other international and regional actors should respond to this threat.

V. Cases of hate speech can be addressed through Alternative dispute resolution as it proposes a shift from the long procedures of the court to the settlement of the dispute between parties by way of negotiation, mediation, arbitration and/or conciliation.

Union Minister Mr. Anurag Thakur and BJP MP Mr. Parvesh Verma received a ban of 72 hours and 96 hours respectively from campaigning for the Delhi Elections. The reason behind the same was the ‘Hate Speech’ that they delivered in their respective rallies in Delhi. While Mr. Thakur urged the crowd in a rally to shout “GoliMaaro (gun down the traitors)”, Mr. Verma claimed in a rally that those who are protesting at ShaheenBagh against the new Citizenship Law will one day enter the houses and rape sisters and daughters.

In present scenario, it is a question of great concern that Prashant Bhushan case is related to free speech, ‘hate speech’ and the ‘Right to dissent’.
Conclusion

Hate Speech is the starting point in the chain of marginalizing and putting a particular class of persons under fear of threat. For a country like India with a massive population of diverse backgrounds and culture, subjects like Hate Speech become a complex issue to deal with as it is difficult to differentiate between free and hate speech. Several factors are to be considered while restraining speeches like the number of strong opinions, offensive to certain communities, the effect on the values of dignity, liberty, and equality. Certainly, there are laws for such atrocities but a major part of work is still left. For a prosperous India, we all have to work together and communicate efficiently to make our country a healthy place to live in. In both instances, it has seen success by direct and active engagement of the victims and the speakers, be it online or offline. Moreover, by bringing all the parties to the discussion table it may also begin the process of healing the harm caused by hateful speech. By resorting to alternate means of settlement in case of hate speech, it would provide both the parties a space for discussion and possible settlement outside of the formal rigours of the legal system. The outstanding characteristic of these approaches is that they do not impinge on freedom of speech and expression of an individual unlike the criminal anti-hate speech laws. In fact, in the case of counter speech, it encourages more positive speech in response to speech invoking hate or violence. In this way, it does not act as a restriction on free flow of views in the “marketplace of ideas” in that is to be upheld as sacrosanct in today’s liberal democracies. The state’s prime objective should be to provide a secular, pluralist and multicultural environment so that there is harmony and peace which aids free interplay of ideas in order to promote growth and development.

References

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