

LEX SCRIPTA MAGAZINE OF LAW AND POLICY, VOL-1, ISSUE-2
ISSN-2583-8725

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ISSN- 2583-8725

VOLUME-1 ISSUE-2
YEAR: 2023

EDITED BY:
LEX SCRIPTA MAGAZINE OF LAW AND
POLICY

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FREEDOM OF SPEECH AND HATEFUL SPEECH

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ABSTRACT

Freedom of expression and hate speech coexisting has been the subject of much discussion and controversy. Although free speech is a cornerstone of a healthy democracy, hate speech endangers both community peace and individual well-being. This abstract examines the challenges inherent in striking a fair balance between free speech and the suppression of hate speech. It examines what hate speech is and how it affects people, focusing on how it can lead to prejudice and physical violence. Freedom of expression and its role in creating more inclusive communities are also discussed. The need of establishing a balanced method that safeguards free speech while protecting vulnerable populations is emphasised. The purpose of this abstract is to offer a preview of the complete research piece by providing an overview of the complex relationship between free speech and hate speech.

Keywords: Freedom, Speech, Democracy, Suppression, Population, Expression

INTRODUCTION

One of the most important factors in the exercise and preservation of other rights is the right to freedom of speech and expression, which is a fundamental human right. A society's potential for democracy and institutional commitment to democracy are measured by its citizens' ability to express themselves and exchange information. Freedom of expression, however, can be exploited in other situations, leading to a totally distinct problem. It is possible for certain people or organisations to propagate ideas about how superior a race, religion, or nation is in order to degrade others who do not identify with "their" group and to inspire exile, isolation, and even massacre. While freedom of speech is viewed as a political right, freedom of thought is a fundamental civil right, making it impossible for anybody to suppress or restrict human thought. On the other hand, remarks that incite hate, anarchy, and instability in society happen all over the world under the name of free speech. The Nazi Party's anti-Jewish propaganda, the anti-Bengali rhetoric of Pakistan's leaders, the anti-Tutsi propaganda in Rwanda, and the anti-Western propaganda of terrorist organisations up to the present are only a few instances. Free speech, sometimes referred to as freedom of expression, is a widely accepted value that permits individuals to express themselves freely without worrying about punishment, censorship, or interference from the government. In a democratic society, the law imposes formalities, conditions, limitations, and penalties on this freedom. A remark that incites violence or prejudice against an individual or a group because of their race, religion, ethnicity, sex, gender, ability, sexual orientation, or any other attribute is referred to as hate speech.

LEGAL FRAMEWORK IN INDIA

Article 19(1)(a) of the Indian Constitution states that everyone has the right to free speech and expression. The Preamble of the Indian Constitution protects people' freedom of speech and expression. Although this privilege is not unqualified, Article 19(2) describes the restrictions that may be imposed on its exercise.

The importance of the right to free speech and expression to liberal democracies has been generally acknowledged across the world. According to Article 19 of the Declaration of Human Rights, everyone has the right to freedom of expression. Furthermore, under Article 19(2) of the International Covenant on Civil and Political Rights, everyone has the right to freedom of speech and expression. India recognises the importance of its citizens' right to freedom, as evidenced by its acceptance of a wide range of international treaties.

Section 124A of the Indian Penal Code penalises anyone who, via spoken or written words, visual representation, or any other means, intend to create hatred or contempt for the lawfully established government. The sedition act, which dates back to the colonial era, has been widely criticised for its restrictive nature towards free speech and expression. Despite the fact that the section's reasons make it clear that only attempts to promote hate, contempt, or disaffection constitute sedition, the law has repeatedly been exploited to punish genuine criticism with the goal of effecting change. To be considered an act of sedition, there must be an intention to cause a disturbance in the public order. The Supreme Court ruled in *Kedarnath Singh v. State of Bihar* that only individuals who exploit their First Amendment rights to incite violence or other illegal activity are subject to prosecution under Section 124A. In the case of *Shreya Singhal v. Union of India*, the court stressed the importance of their being a connection between the words stated or expressed and the public disturbance that arises. However, in practise, it has become common to accuse critics of the current government of sedition. In light of this abuse of the law, calls have been made to repeal the Section in order to protect the importance of free speech and expression.

The Indian Constitution forbids the expression of hate speech while claiming the right to free speech and expression. Expressions that could be offensive to others are forbidden. The Indian Constitution's Article 51A (h) mandates that people cultivate a humanistic outlook, a scientific mindset, and a spirit of change. In India, a number of criminal statutes also prohibit hate speech. With the slogan "teach a lesson to Muslims," the appellant in *Dr. Das Rao Deshmukh v. Kamal Kishore Nanasaheb Kadam* solicited votes. The Supreme Court ruled that the poster cannot be justified because it can incite hatred between communities and cause tension between them. It was insulting and incompatible with the nation's secular framework.

There are a number of provisions in the Indian Penal Code of 1860 that limit one's ability to speak freely. Under Section 153A of the Indian Penal Code, it is illegal to actively or passively incite "discord or feelings of enmity, hatred, or ill will between different groups on the basis of religion, race, place of birth, residence, language, region, caste, or community." The section is written in broad terms that may be used to any kind of representation, including speech, writing, and the visual display of material items.

"Deliberate and malicious acts intended to outrage the religious feelings of any class by insulting its religion or religious beliefs" are punishable under Section 295A. In a similar vein, Section 505(2) forbids the creation, publishing, or dissemination of any statement or report that might incite hatred or dislike amongst members of various groups. The State government has the right to seize any book or material proven to be in violation of the aforementioned rules. The Protection of Civil Rights Act of 1955, whose purpose was to carry out the constitutional prohibition against "untouchability," also includes provisions that punish hate speech directed at those in the "dalit" group. The Act's Section 7(1)(c) forbids the promotion

or inducement "to practise untouchability in any form." The Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, which was created to safeguard the honour and dignity of those who belong to these groups, punishes if the members of these categories are purposefully humiliated by others.

THE CURRENT CONTEXT: FREEDOM OF SPEECH VS HATE SPEECH

A gathering dubbed "Dharam Sansad" took place in the city of Haridwar, during which Hindutva extremists presented and spread a series of hate speeches against minorities and openly advocated for genocide. Everyone would agree that this type of statement is hate speech. [Unfortunately, these cases were feebly pursued by complicit state officials, and the matter is currently in dispute before the Supreme Court of India.] Similar remarks were made against Muslim candidates who passed the UPSC examination in a recent case before the Supreme Court against Sudarshan TV, which aired the programme "Bindass Bol" (Free Talk). This case hinted at a larger conspiracy and bias. Even the Supreme Court has expressed disapproval of this. There are several examples of prominent people, including politicians, making hateful comments, as well as persons spreading hateful material that serves to reinforce negative stereotypes and discriminatory attitudes. The process of separating free speech from hate speech—which needs to be rigorous—is one that comes up in legal proceedings and academic settings.

A troubling free speech scenario has arisen in India as a result of demonstrations against proposed revision to the Indian Constitution. The executive director of Amnesty International India, Avinash Kumar, pleaded with the prime minister and the chief minister of Uttar Pradesh to permit protesters to demonstrate peacefully and demanded an independent investigation into police brutality. "Permissions for peaceful protests had been denied, protestors had been arrested, the state police had used excessive force, and state officials openly threatened and intimidated protestors," he claimed. Following the repeated chanting of "Shoot the Antinational" by demonstrators during public rallies and election campaigns, which served as inspiration for the anti-Muslim riots that erupted in a section of Delhi, there were acts of violence. Similar phrases with religious connotations were in a song that the Bhartiya Janata Party used in their electoral campaign for the 2020 Delhi elections. It had passages that threatened dissidents, people who did not glorify Rama and those who at the time were labelled traitors (dissenters opposing the laws and policies of the current government).

There is no getting around the truth that diverse viewpoints and debates are essential to a democracy. A society that is progressive values disagreement and dissent. However, it is equally crucial to make sure that the public conversation does not open the door for a statement that is harmful to the peace. Therefore, it is the responsibility of the State to prevent individuals from exercising their freedom in a way that is contrary to the rules of society. The Constitution acknowledges that rights cannot be used in an unrestrained way. As a result, it includes some restrictions on the use of these rights. The state is permitted to impose reasonable restrictions on the exercise of freedom of speech and expression under Clause (2) of Article 19 on the basis of certain considerations, including

- (i) the security of the State and the sovereignty and integrity of India,
- (ii) friendly relations with foreign States,
- (iii) public order,

- (iv) decency or morality, or
- (v) in relation to contempt of court, defamation, or incitement to commit an offence.

JUDICIAL PERSPECTIVE

N.V. Sharma Vs Union of India

Nupur Sharma, a former spokesman for the governing Bharatiya Janata Party, was reprimanded by the Supreme Court (SC) for her inflammatory remarks regarding the Prophet Muhammad during a TV discussion in May 2022, which upset Indian Muslims and offended Islamic countries. The court ordered the suspended spokesman to apologise to the whole nation, noting that she had put the country's security at jeopardy. The Court had said that "her loose tongue has set the entire country on fire" and accused her of "igniting emotions across the country," adding that her outburst was to blame for the unfortunate episode in Udaipur, where a tailor was killed.

Shaheen Abdulla Vs Union of India and Others

In this case, the SC recently issued an interim order holding that "Suo motu action will be taken to register cases even if no complaints are forthcoming and proceed against the offenders in accordance with law as soon as any speech or any action takes place that attracts offences such as Sections 153A, 153B, 295A, and 505 of the IPC, etc. Any unwillingness to follow this directive will be seen as a breach of this Court's authority, and the offending officials will face the proper consequences. In order to safeguard and defend the secular character of Bharat, as envisioned by the Preamble, we also make it plain that such action will be taken regardless of the faith of the speaker or the person who commits the crime. The police in Delhi, Uttar Pradesh, and Uttarakhand were the primary recipients of the interim directives. The court sent letters to the aforementioned three States and requested information on the actions they had taken in relation to hate speech instances.

Pravasi Bhalai Sangathan Vs Union of India and others

The SC in this instance conducted an analysis of the problem and determined that abominable Speech marginalises persons based on their identity and creates the conditions for assaults on the weak, even violent ones. It further stated that the Law Commission of India should give the subject of hate speech more thought.

LEGAL FRAMEWORK IN OTHER COUNTRIES

The harm that hates speech poses to society's ability to run smoothly has already been acknowledged by many nations throughout the world.

The First Amendment to the United States of America's Constitution provides extensive protection for freedom of expression, which encompasses all forms of communication, including hate speech, within its ambit. The Communications Decency Act, which was established in the USA in 1996, provided social media sites with a limited amount of protection.

The Public Order Act is the main piece of legislation in the UK that forbids any visible representations of hate speech, which includes hate speech expressed online. Additionally, there are additional, more general rules in effect that regulate online interactions. According to the Malicious Communication Act of 1988, sending any information over an electronic media that is sexual, offensive, false, or known to be false is punishable by up to two years in jail.

Since anti-racism campaigners challenged ultranationalist movements against ethnic Koreans ten years ago, hate speech in Japan has been a topic of regulation. In response to the UN Committee for the Elimination of Racial Discrimination's harsh condemnation of the issue in 2014, Japan adopted a framework like that of Europe in 2016 and instituted a nationwide prohibition on hate speech. Municipal governments are obligated by law "to eliminate unjust discriminatory words and deeds against People from Outside Japan."

CONCLUSION

The contemporary right to freedom of speech and expression is not absolute and unquestionable, but it is crucial to individual autonomy, liberty, and democracy. Due to the reciprocal nature of rights and responsibilities, it is incumbent upon every individual to make ethical use of their liberties. This will help keep a good attitude intact. Many have pondered the limits of one's freedom of expression and where they should draw the line in terms of their own independence. We've all heard the argument that one person's rights and freedoms shouldn't come at the expense of another's hardship or inconvenience. Our right is only absolute when it does not infringe upon the rights of others. We have the right to express ourselves freely so long as our words do not incite violence within the country or are not threatening or defamatory against another person. Criticism is welcomed and even encouraged in a democratic system. Critique is vital to improving the quality of our legal system. Any criticism, however, ought to be legitimate and not be used as a double-edged sword to both express and feed turmoil in the country. Nonetheless, due to its very nature, this privilege will always be somewhat open to interpretation.

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