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HATE SPEECH LAWS IN INDIA

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INTRODUCTION

Hate Speech laws in India were made keeping in mind the fact that, the goal is to prevent friction between any communities of any race, religion, caste, residence or any other grounds whatsoever. The 'communal atmosphere' is created by hate speech, the state is empowered to punish such offenders and deal with such kind of speech. But to prevent such laws from being a dead letter, just the adequacy of law is not enough as it also demands political will and administrative resolve.

India restricts the freedom of expression expressly hate speech via several sections under the Indian Penal Code, the Code of Criminal Procedure and some other laws. In its most recent view, "We cannot restrict people's fundamental rights because they are precious rights protected by the Constitution", a bench led by Justice RM Lodha ruled in 2014. The bench added that because India is a mature democracy with 1280 million citizens and 1280 million points of view, each individual is free to disagree with the views of others. The court further stated that perception is key and that what one person finds offensive may not be to another.

So, the questions that stand today before us and the court are, where does a line have to be drawn to strike a balance between securing freedom of expression and restricting the same for national security and harmony?

Friction between freedom of speech and censorship is inevitable. The apex point lies in the balance of all relevant factors. No one rule

can be acceptable everywhere or to everyone. There cannot be one hard and fast rule except one, that is when in doubt do not let suppression edge over expression.

REVIEW OF LITERATURE

- **Sorabjee, Soli J. "Hate Speech Dilemma." *Fortnight***
A journal article talking about the dilemma our nation faces in the inherent right to freedom of expression of an individual and the centuries long practice of censorship.
- **Viswanath, R. (2016). *Economies of Offense: Hatred, Speech, and Violence in India. Journal of the American Academy of Religion***
An article going into detail of history of concepts of religious sentiments. Communal violence and government intervention in the matters from the colonial era. Also the discrepancy of how law treated the Dalits and the upper caste strata.
- **Noorani, A. G. (1992). *Hate Speech and Free Speech. Economic and Political Weekly***
Hate Speech and Free Speech A G Noorani
In regard to the law against hate speech responsible for inciting communal passions, the central reality in India is not abuse of the law, but persistent refusal to enforce it.

STATEMENT OF PROBLEM

The Constitution of India expressly grants each and every citizen of India the right to freedom of expression. However, it also puts some restrictions on the same in the spirit of national security and communal harmony.

These provisions restricting freedom of expression in certain circumstances remained a dead letter but in recent times may have also become a tool used by the state to strike down valid criticism of the government. Where does one draw a line to strike balance between freedom of expression and national security?

HYPOTHESIS

Statutory provisions and penal law provide sufficient remedy to curb the menace of hate speeches, and the executive as well as civil society have to perform their roles in enforcing the already existing legal regime. At the end of the day, it is the court's discretion to ensure there is no abuse of power with respect to such laws as each matter has its own unique conditions.

METHODOLOGY

The methodology adopted in the present study is in accordance with the research problem, research objectives and research questions. It follows the problem based doctrinal research methodology in the compilation, organization, interpretation and systematization of the primary and secondary source material.

RESEARCH OBJECTIVES

- The project aims to study and analyse the hate speech laws in India. Their meaning, their eligibility and their importance.
- To study the extent to which citizen's rights to freedom and expression can supersede the state's right to ensure national security and harmony.
- To analyse the cases and judgments related to such hate speech laws.

RESEARCH QUESTIONS

- What is an equitable point of balance where hate speech laws ensure right to speech as well as restrict harmful propaganda?
- Remaining a dead letter for a quite a while, has the strengthening of such

laws, put too much power in the hands of the government to be abused?

RELIGIOUS SENTIMENTS AND HATE SPEECH

Long ago, Marc Galanter made the uncommon observation that post-colonial Indian law is "extraordinarily solicitous" of offending religious sensitivities. However, it was not until the middle of the nineteenth century that religious emotion began to influence Indian polity. The occasion was Queen Victoria's declaration of religious neutrality, which expressly vowed not to meddle with aboriginal Indians' religious rituals and beliefs. The "non-interference in religion" that the Queen offered was not founded on the secularist principle that religion and state should be kept separate; rather, it was made public shortly after a significant military uprising that was attributed to offended religious scruples. The idea that religion in India was the cause of erratic emotions that posed a threat to the peace sparked Victoria's pronouncement.

It was therefore not any and all religious sentiments that proved to be the cause of official concern: only injured sentiments supported by the danger of violence were believed to demand official action from the very moment when the law was first recruited to safeguard religious sentiment. They posed a threat to law and order, which form the cornerstone of the state's justification for its claim to legitimacy and sovereignty. It was always considered that maintaining public order could, and in fact must, take precedence over free speech when additional specific legislation, such as Section 295A, to protect people from offensive speech, evolved.

What role section 295(A) plays?

Section 295A of the Indian Penal Code-1860 imposes penalties on anyone who knowingly and maliciously tries to insult the faith or religious emotions of any class of Indian citizens. This Section demonstrates how the Indian Constitution forbids hate speech.

Dalit activists at the time could see how biased the state's concern for hurt feelings was. M. C.



Rajah, the most prominent Dalit leader in Madras Presidency during the early decades of the 20th century, made the following statement in an appeal to the British administration to defend Dalits' rights with the same level of concern as religious feelings were protected:

"We are denied the elementary rights of citizenship [such as walking on] the king's highway and drawing water from public wells, places to which every man and woman ought to have free access by virtue of their citizenship. ... I ask that the Government may make it perfectly clear that the depressed classes [the term then in use for Dalit] . . . have the right as citizens of British India to use all . . . [things] constructed and maintained out of public funds to which the depressed classes contribute as rate-payers. . . . Are our rights to be sacrificed simply because of ... so-called religious scruples which are really the fetters with which [some] seek to enslave others"¹⁰⁶

Rajah's emphasis on these points clearly relates to India's present politics of feeling. Every state will be required to decide whose scruples should be the object of protection, or more specifically, which subset of the population has a greater claim on the protection of the state, if one person's scruples are another person's fetters. The maintenance of peace has been given priority in both colonial and postcolonial Indian nations instead of, say, safeguarding the victims of violence. For this reason, individuals who can incite prolonged violence—typically numerical majorities or economic and social elites—are primarily granted the right to express upset feelings.

ECONOMIES OF OFFENCE

Think about another piece of legislation, the Prevention of Atrocities Act 1989 (henceforth PoA Act)¹⁰⁷, which outlines the variety of punishable offences that may be committed against members of those the state refers to as Scheduled Castes and Scheduled Tribes, or the

majority of Dalits in India as well as what it called tribal groups. In accordance with the act's provisions, anyone from a Scheduled Caste or Scheduled Tribe who "intentionally insults or intimidates with the intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view" may be charged with a crime (Government of India 1989, ch2,3,1(x)). So, the PoA Act also limits free speech like Section 295A does. However, it was put in place precisely to shield the majority of Dalits and tribal people from so-called "hate speech".

Speech that is considered offensive under the PoA Act is in no way comparable to appeals to emotion that result in assaults on libraries, the forcible removal of books from shelves, and—most importantly—threats and acts of violence by members of the dominant community acting as self-appointed protectors of Hinduism.

Because it is well known among attorneys and campaigners that the PoA Act is more frequently upheld in violation. Although the law theoretically permits it, it has never been used to prosecute hate speech in cases when it has been asserted. It must be underlined that even for egregious acts of violence against Dalits and Adivasis for which there is a wealth of proof of wrongdoing, prosecution and conviction under this act are incredibly rare.

The socially and legally enforced ban on statements deemed harmful to majoritarian Hindu groups contrasts sharply with the prevalence of offensive speech publicly aimed against Dalits. The existing offense-specific economy in India is referred to as this preferred regulatory framework.

In its 2016 report on India, "Stifling Dissent: The Criminalisation of Dissent in India,"¹⁰⁸ the international human rights organisation Human Rights Watch (HRW) lists a number of harsh Indian laws that "restrict freedom of expression."

¹⁰⁶ Government of Madras 1920 (152-152)

¹⁰⁷ The PoA Act of 1989 supplanted earlier similar legislation, notably the Protection of Civil Act of 1955

¹⁰⁸ <https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india>

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and its amendment, the SC and ST (Prevention of Atrocities) Act, 2015, are also included in the list alongside predictable inclusions like section 124 A (the sedition law) and section 295 A (hurting of religious sentiments) of the IPC.

The study singles out section 3 (1) (x) of the SC/ST Prevention Act as a provision ripe for abuse despite the fact that it calls the Act "one of the most essential pieces of legislation for the protection of Dalits." Anyone who "intentionally insults or intimidates with purpose to humiliate a member of a Scheduled Caste or Scheduled Tribe in any location within public view" is subject to punishment under this clause.

SEDITION LAWS

A colonial-era provision known as the sedition law, section 124A of the Indian Penal Code (IPC), was previously applied against political leaders who sought independence from British authority. Sadly, it is still frequently applied against those who disagree with authority, advocate for human rights, and criticise the government.

The maximum penalty under the statute is life in jail. Any visual cues or verbal expressions that might incite "hatred or contempt, or stir or seek to create disaffection" with the government are forbidden. This statement is imprecise, overbroad, and in violation of India's commitments under international law, which forbids restricting free speech on the basis of national security unless it is carefully interpreted, required, and reasonable to address a serious danger. Although the Supreme Court of India has placed restrictions on the application of the sedition statute and made inciting violence an essential component, police continue to pursue sedition charges even in situations when this criterion is not satisfied.

Even though sedition convictions are uncommon, the police continue to book and detain people for it. The National Crime Records Bureau of the government, which began

compiling precise data on sedition in 2014, reports that year saw the registration of 47 instances nationwide, 58 arrests, and one conviction. The Hoot, a media watchdog website, reported a dramatic spike in arrests in the first quarter of 2016. Official 2015 statistics is not yet available. In the first three months of 2016, 11 cases were filed against 19 persons, as opposed to none in the same time span the prior two years.¹⁰⁹

A student union representative at Jawaharlal Nehru University named Kanhaiya Kumar was detained by Delhi police in February 2016 after the Bharatiya Janata Party (BJPstudent)'s wing accused him of uttering anti-national statements at a gathering held on campus. The public gathering was staged on February 9 in opposition to Mohammad Afzal Guru's 2013 execution. Guru was found guilty of participating in a December 2001 attack on the parliament that resulted in the deaths of nine people. The execution of Afzal Guru is still a hotly contested topic in the nation.

The Delhi police acknowledged in court that the video evidence did not show Kumar shouting any anti-national slurs. In March, the Delhi High Court granted him bail. Two other students, Umar Khalid and Anirban Bhattacharya, were detained and later freed on bail; five further students were charged in the case.

Although the police admitted that they had no proof of Kumar shouting anti-national slogans and most definitely no proof of inciting violence, the administration has yet to acknowledge that the arrests were improper. Thus, Kumar's detention highlights how split the nation is still over what tolerance means and the necessity of legal protection for peaceful, albeit unpopular, expression.

There are several additional well-known instances of how the sedition provision has been used to stifle political expression. For instance, hundreds of people who had

¹⁰⁹ <https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india>

peacefully protested the development of a nuclear power project in Kudankulam were the targets of sedition allegations filed by Tamil Nadu police in May 2012. 8,956 persons are accused of sedition in 21 instances, according to S.P. Udaykumar¹¹⁰, the founder of the People's Movement Against Nuclear Energy, which spearheaded the opposition to the project. An open hearing held by members of the Chennai Solidarity Group in May 2012 ruled that the state had suppressed the protestors' rights to free expression and assembly. The hearing was presided over by a former chief judge of the Madras and Delhi High Courts.

Authorities in Uttar Pradesh accused more than 60 Kashmiri students of sedition in March 2014 for supporting Pakistan during a cricket match against India. Only after requesting legal advice from the law ministry did the government of Uttar Pradesh dismiss the accusations. On the basis of an allegation that they had refused to stand during the playing of the national anthem inside a movie theatre, Kerala authorities in August 2014 accused seven teenagers, including students, with sedition.

Authorities in Tamil Nadu state detained folk musician S. Kovan in October 2015 for violating the sedition statute with two songs that denounced the state's alleged profiteering from state-run liquor stores at the cost of the underprivileged.

LAWS REGULATING THE INTERNET

The rapid growth of the Internet appears to have alarmed Indian authorities, who have struggled to control it. Laws intended to control social media, like India's Information Technology Act, are readily transformed into instruments for criminalising speech, frequently in order to defend prominent political people. Section 66A of that law has frequently been used to detain people who criticise the government and to suppress information since it criminalises a wide spectrum of expression.

For instance, five students were briefly held in Bangalore in May 2014 after they were accused of spreading a message critical of Narendra Modi, the recently elected prime minister, via the messaging app "WhatsApp." Ambikesh Mahapatra, a chemistry professor at Jadavpur University in the eastern state of West Bengal, was detained under section 66A in April 2012 after he forwarded an email that mocked Mamata Bannerjee, the chief minister of the region. A month later, Puducherry police detained a businessman for tweeting comments that questioned the fortune accumulated by the son of the nation's finance minister.

The Indian Supreme Court deemed Section 66A invalid in March 2015. In order to bring section 66A into compliance with constitutional standards, the administration has stated that it is reviewing the Supreme Court's ruling. The Supreme Court's decision establishes crucial protections for India's future Internet freedom. A new legislation should be in accordance with the protections outlined in the court's decision and with international human rights norms, even though certain sections of the verdict concerning the banning of Internet material raise concerns (discussed in this article later on).

CONCLUSION

Constitution of India guarantees freedom of expression but also puts restrictions on the same in the spirit of national security and communal harmony. There are provisions for hate speech under the Indian Penal Code, the Code of Criminal Procedure and other laws. Section 295A of the Indian Penal Code-1860 imposes penalties on anyone who knowingly and maliciously tries to insult the faith or religious emotions of any class of Indian citizens. This Section demonstrates how the Indian Constitution forbids hate speech. No one rule can be acceptable everywhere or to everyone.

¹¹⁰ <https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india>



There cannot be one hard and fast rule except one, that is when in doubt do not let suppression edge over expression. They posed a threat to law and order, which form the cornerstone of the state's justification for its claim to legitimacy and sovereignty. Dalit Rajah: "Are our rights to be sacrificed simply because of so-called religious scruples which are really the fetters with which [some] seek to enslave others". Rajah's emphasis on these points relates to India's present politics of feeling. The maintenance of peace has been given priority in both colonial and postcolonial Indian nations.

Constitution provides crucial protections for India's future Internet freedom, the Supreme Court has ruled. Section 66A of India's Information Technology Act criminalises a wide spectrum of expression. The administration has stated that it is reviewing the ruling to see if it complies with constitutional standards.

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