



Online Hate Speech: An Attempt To Identify And Regulate Challenges Of Online Hate Speech In India

¹Mr. Shubhankar Shrikant Malegaonkar, ²Prof. Richa Dwivedi, ³Prof. Shubham Shandilya

¹Student, (PRN- 22010143110), Symbiosis Law School, Pune, India

^{2,3}Professor, Symbiosis Law School, Pune, India

ABSTRACT:

Hate Speech can be simply defined as any speech, behavior, writing, or display that may provoke violence or unfavorable action against or by a protected individual or group, or that disparages or threatens a protected individual or group. Speech that disparages an individual or group based on characteristics like gender, ethnicity, religion, race, handicap, or sexual orientation broadly covers the contours of hate speech. Simultaneously, with significant advancements in technology, the use of the Internet is expanding as well. The internet has arguably been the most significant communication-related invention in human history as it is, the most influential breeding ground for the spread of hate speech all over the world and Indian society is no exception. The article discusses the impact of online hate speech while scrutinising the efficiency of current laws to restrain the erecting rise of online hate speech crimes in the country. This article, provides an elucidation of the IT guidelines, imperative to regulate online hate speech crimes along with the recommendations and suggestions put forth by the Supreme Court of India and distinctive expert committees which still remain shunned. At last, this article emphasis on the need of having a robust legal framework catering to the modern forms of hate speech.

Key Words: Online Hate Speech, IT Guidelines, Judicial Pronouncements, 267th Law Commission Report, Non-State Regulations.

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1. INTRODUCTION:

“That the law shall be certain, and that it shall be just and shall move with the times”. - Lord Reid, Judge as Law Maker

The definition of hate speech is extremely elusive in character and through there isn't a singular definition for hate speech, hate speech can be defined by variegated sociologists and anatomist crime analysts as an expression or series of expressions that incites hatred on the grounds of race, religion, or nationality.¹ Black's Law Dictionary defines hates 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 the Indian context, hate speech can be majorly associated with linguistic diversity, race, culture, public/political choice, etc. Although the internet is of the greatest inventions of the 21st century, the internet, invented for providing connectivity and ease of communication seems to be a major catalyst for the spread of hate speech today. The global COVID-19 pandemic saw a record surge of 51% from 230 million in 2019 in India, which is expected

¹ “Federal Laws and Statutes,” United States Department of Justice, <https://www.justice.gov/hatecrimes/laws-and-policies#>. (last visited on Jan 30, 2023)

to grow to 900 million by 2025.² According to Facebook's "Transparency Report," 3 million hostile posts were removed in 2018³, and YouTube confessed on removing 25,000 videos in a month.⁴ In India, these political disinformation operations and anti-minority discourse have emerged as two of the most challenging online hate speech issues.⁵ These numbers demonstrate the seriousness of the crisis and the incapacity of the current legal framework to deal with it, demanding the need to strengthen the hate speech laws in the country.

India is a diverse country in terms of caste, religion, cultures, and ethnicities, and because of this, the nation is prone to fragility because it must uphold rights and respect all of these differences. In India, the emergence of communalism in politics as a result of religious organisations on opposing sides, is what is causing the influx of hate speech in the political realm and has gotten a push due to easy connectivity. In the middle of confrontations between these groups, politicians set up vote-bank scenes and turn into self-interest groups which is feasible due to social media connectivity.

This article examines the various aspects of online hate speech in India and how it has taken political and national turns in light of the recent dramatic spike in hate speech cases over the past five years along with judicial pronouncements such as the State of U.P. v. Lalai Singh Yadav⁶ for example. Even the national crime bureau reports have claimed that India needs improvement with regard to the execution of laws that still exist in India, while the judiciary has urged certain revisions from the law makers.

Thus, this article makes an attempt to deal with the concept of online hate speech and reviews the various legislation with reference to online hate speech such as the Indian Penal Code, 1860, the Information Technology Act, 2002 relevant to today's contemporary scenario. Along with this, the article provide suggestions to tackle the extensive use of online hate speech with the help of recommendations put forth by the Hon'ble Supreme Court, expert committees which seemed to be ignored till date. Further, an embargo on the use of the internet for spreading hate speech will in turn stop other catalysts such as dehumanization, violence, incitement and demonization leading to riots, mob-lynching, online hate speech during election campaigning etc. Thus, this need to dissect, bisect and trisect the efficiency of the current laws on online hate speech, which will help us understand the impact of online hate speech and in turn provide measures to stop the rampant spread of online hate speech which is rather necessary for upholding the fundamental principal of free speech and expression safeguarded by the Indian Constitution.

2. ONLINE HATE SPEECH:

In the current age of the internet, when anybody can access harmful content, the problem of hate speech has grown even more serious. The internet has clearly made the globe a smaller place, but it has also given rise to unrestrained forms of expression. Modern technology makes it possible for internet users to conceal their identities, giving criminals a free hand to produce and disseminate unpleasant content. Therefore, to define online hate speech becomes imperative.

To begin with, the United Nations Human Rights Council in its report on the promotion and protection on the right of freedom of opinion and expression clarified that though the internet provides for a platform to express one's right to expression and free opinion; the report also emphasises on the fact

² Internet in India, <https://www.livemint.com/news/india-to-have-around-900-million-internet-users-by-2025-report-11659063114684.html>.

³ Facebook, Community Standards Enforcement Report (November, 2018), <https://transparency.facebook.com/community-standards-enforcement#hate-speech>. (last visited May 23, 5:00 pm).

⁴ 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/.

⁵ Maya Mirchandani, "Fighting Hate Speech, Balancing Freedoms: A Regulatory Challenge" 9 Journal of Indian Law and Society 47, 50 (2018).

⁶ State of U.P. v. Lalai Singh Yadav, AIR 1977 SC 202.

that the current international human rights framework clearly recognises some restrictions on this right based on the implications and intent of such restrictions.⁷

In India, the development of digital media platforms has given rise to certain legal and governance concerns, but despite this, the law has evolved steadily over time owing to judicial action. Due to the velocity and magnitude of distribution across numerous platforms and formats that are connected, there are unique issues associated with the circulation of hate content online, perplexing the government to regulate online hate speech in the country.

At the outset, the laws against hate speech in India are nonpartisan; they perennially apply to theatre, radio, broadcasting, print, and the internet, unable to cater to various platforms.

For instance, in 2008, the Information Technology Act of 2000 underwent a significant change when Section 66A was added to address online hate speech.⁸ However, the Supreme Court invalidated the aforementioned provision in *Shreya Singhal v. Union of India*⁹, finding it to be unconstitutional. The Supreme Court first ruled that online speech is entitled to the same constitutional protection as speech that is available offline. In light of the basic freedom of speech and expression protected by Article 19(1)(a) of the Constitution, it then examined Section 66A. The Court stated that the right to freedom of speech and expression was arbitrarily and excessively curtailed by Section 66A. Thus, the Court concluded that Section 66A violated Article 19(1)(a) of the Constitution because it did not qualify as a reasonable restriction under Article 19(2). In another incident too, a Facebook post that was classified as “hate speech” which led to two teenage girls being charged under Section 66A of the IT Act. The arrest was roundly criticised, garnering significant media attention in India and around the world, on the grounds that the clause was too vague and would be abused for political purposes.¹⁰ A Public Interest Litigation was brought before the Supreme Court following the charging and arrest of numerous individuals under the clause, and the court ultimately ruled that the provision was unconstitutional.¹¹

Further, the district magistrate has the authority to order an internet shutdown in their respective districts owing to Section 144 of the Cr. PC. The Supreme Court heard a case in which Section 144’s legality was contested, *Madhu Limaye v. Ved Murti*.¹² The Court upholding the section ruled that the prospect of misuse of the clause is insufficient justification for its repeal. According to the Supreme Court, Section 144’s goal is to address urgent situations by averting negative events. The Supreme Court has made it plain that the threat must be actual and not hypothetical or based on possibility.

3. OBJECTIONABLE MATERIAL AND INTERNET:

Due to more affordable cell phones, data plans, and increasing internet penetration over the past ten years, social media usage has gradually increased in India. The media discourse linking “social media” to “public order disturbances” has been more prevalent in India during the past ten years. Since 2010, there have been a number of violent occurrences connected to internet postings that have been documented. Such material is now referred to as “objectionable” material. Since the time of the colonial era, it has been forbidden to publish objectionable information in one way or another. To

⁷ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN General Assembly,

file:///C:/Users/User/AppData/Local/Microsoft/Windows/Temporary%20Internet%20Files/Content.IE5/LORTO LSM/A.HRC.23.40_EN.pdf, (last visited on May 15, 2023, 11:00 am)

⁸ Section 66A, Information Technology Act, 2000.

⁹ *Shreya Singhal v. Union of India* AIR 2015 SC 1523.

¹⁰ India is policing the Internet for all the sad and wrong reasons; <http://www.firstpost.com/india/india-ispolicing-he-internet-for-all-the-sad-and-wrong-reasons-531235.html>;

¹¹ “Supreme Court strikes down Section 66A of IT Act”, <http://timesofindia.indiatimes.com/india/SupremeCourt-strikes-down-Section-66A-of-IT-Act-which-allowed-arrests-for-objectionable->

¹² *Madhu Limaye v. Ved Murti*, 1971 SCR (1) 145.

control film in India, for instance, the Indian Cinematograph Act was created in 1918. The Act attempted to stop the film industry from showing offensive material.

A research on the statistical mapping of hate speech and counter-hate speech on social media platforms in India was published in March 2018 by the Observer Research Foundation. According to this survey, the majority of the hate speech in India is motivated by religion and religio-cultural customs including clothing and food. According to the study, over the course of a year (the study's duration), there was an increase in these occurrences from 19 to 30%. Further according to this survey, the majority of remarks have the potential to inspire violence against the Muslim community, which makes up a minority of the overall population. The topics that sparked hate speech included opposition to interfaith weddings, human rights concerns, cow protection, and beef consumption. Lastly, the survey also revealed that an increasing percentage of users are turning to these technologies to encourage violence, despite the social media corporation's frequent claims that they help facilitate constructive relationships.¹³

Today's social media platforms serve as a fertile ground for negative and divisive discourse. For governments all across the world, containing the threat of hate speech and fake news is becoming increasingly difficult. It is not only a technology issue, but also a social one. For example, in Christchurch, New Zealand, in 2019, a gunman opened fire at two mosques, killing at least 49 worshippers and wounding many more. The culprit broadcast the event live on Facebook. An anti-Muslim remark that linked readers to the Facebook page that was live-streaming the incident emerged on an anonymous discussion board before it happened. The video was eventually removed, but not before everyone had seen it. The incident sparked a new discussion about how governments should respond to stop hate speech online.

Unquestionably, the stories that are written on internet platforms are frequently having real-world repercussions. Following the spread of stories about child traffickers on the popular messaging app WhatsApp or other platforms in 2018, a number of lynchings were observed in rural regions. The phrase "Desh ke gadaaron ko, Goli maaro saalon ko" was recently screamed by an official during the election campaign for the Delhi Legislative Assembly elections.¹⁴ A few days after the gathering, a young man at Jamia Millia Islamia University opened fire on demonstrators in retaliation for these statements. These occurrences demonstrate the real-world repercussions of hate speech.¹⁵

In India, offensive content is frequently centred on touchy subjects like caste, gender, or religion. The legislation to address these problems are also insufficient and dispersed among several rules, including the Criminal Procedure Code, Information Technology Act, and Indian Penal Code.

More recently, the Karnataka High Court rejected a PIL brought by an NGO seeking to take action against political figures and media outlets for making derogatory remarks about the Muslim community after numerous Tablighi Jamaat members tested positive for Covid 19. The divisional bench of Justices BV Nagarathna and MG Uma's division bench ruled that "in the absence of any specific legislation," it would be incorrect to conduct a substantive examination or provide a detailed definition of "hate speech."¹⁶

Along with recognising the immunity enjoyed by the intermediaries in the wake of the Shreya Singhal case, the Hyderabad High Court also in its judgement pertaining to a defamation case brought against Google for content hosted on its blogging platform in 2016 noted that due to the lengthy legal process, "the current law under Information Technology Act is not able to provide such immediate reliefs to

¹³ Maya Mirchandani, Dhananjay Sahai and Ojasvi Goel, Encouraging Counter Speech by Mapping the Contours of Hate Speech on Facebook in India, Observer Research Foundation.

¹⁴ "Shoot the traitors' slogan raised at Union Minister Anurag Thakur's rally, Delhi CEO seeks report", The Indian Express, Jan, 28 2020. 56

¹⁵ "Massive Protests After Man Shoots Jamia Student, Shouts 'Yeh Lo Azaadi' available at <https://www.ndtv.com/india-news/man-waves-gun-at-protesters-near-jamia-university-in-delhi-shouts-yeh-lo-aazadi-2172057>, (last accessed on 23rd May, 2023, 4:00pm). 57 HC declines PIL seeking action against 'hate speeches' The Hindu, May 13, 2020.

¹⁶ 'HC declines PIL seeking action against 'hate speeches' The Hindu, May 13, 2020.

the person aggrieved by such defamatory or sexually explicit content.”¹⁷ Therefore, for a better defence of the public interest, the court recommended that the statute be changed. The necessity of legislative action to address the problem is highlighted by this. The courts frequently hesitate to consider such problems since there are no clear legal requirements on the subject.

4. NEED FOR A LEGISLATIVE REFORM:

Hate speech is undoubtedly seen as an infringement on one’s right to free speech, hence it does not belong in the category of protective discourse. Hateful content unquestionably has a genuine, negative impact on people’s lives and jeopardises their safety. Additionally, it has negative effects on society as a whole. It stifles societal advancement and divides the communities. By encouraging people to commit acts of mass murder, terrorism, ethnic cleansing, etc., hate speech can occasionally have disastrous results. Furthermore, as those who have experienced hate speech, they “feel fear, reluctance to engage in conversation or to enter public spaces, and may alter their behaviour or appearance in an effort to avoid hate speech.”¹⁸ Hate speech frames its targets as those who are not only “discriminated against but are also seen by others as undesirable target and legitimate objects of hostility.” The most pernicious and harmful effect of hate speech on a person's feeling of security and right to live with dignity is its intangible nature.

Therefore, given its ability to disturb public order, spark hate crimes, among other serious repercussions, the majority of governments around the world currently forbid hate speech. The Law Commission of India issued some recommendations in 2017 about the country’s laws against hate speech. As part of its suggestions, the Indian Penal Code should be amended to incorporate new and additional provisions that punish inciting to violence.¹⁹ Regarding the criminalization of speech, there is ongoing debate among legal academics on the ideal categories of speech that should go under this category; for example, whether all hate speech should be made illegal, merely a specific category, or whether it should be under civil law.²⁰ However, it is undeniable that any conduct that has the potential to incite violence is significant and necessitates strict action to prevent future harm. Therefore, it may be thought that criminal punishment is the best course of action in certain situations.

There have been few attempts to revive specific parts of Section 66A of the Information Technology Act after the Supreme Court’s ruling invalidating the provision. The Law Commission of India was requested in a letter from the Ministry of Home Affairs in 2018 to write a law to prevent hate speech in India’s online communities which after T.K. Viswanathan, chair of the Parliamentary Standing Committee, suggested tighter regulations to stifle online hate speech in a report delivered in 2015.²¹ Incorporating measures that criminalise online hate speech along the lines of Sections 153A and 153B of the IPC was proposed as one of the report’s modifications to the IT Act.²² Further, due to the “fast and wider spread” implications of online content and its propensity to have serious repercussions, research also argued for tougher penalties than those outlined in the IPC for hate speech under Sections 153A and 153B.²³ The report also suggested that anyone who transmits material while claiming to be

¹⁷ Google India Private Limited v. M/S Visaka Industries Limited And Ors, 18 November, 2016.

¹⁸ Anandita Yadav, Countering Hate Speech in India: Looking for answers beyond the law, 2 Indian Law Institute L.R., (2018).

¹⁹ Law Commission of India, 267th Report on Hate Speech (March 2017).

²⁰ Tanya D'souza, Laura Griffin, et.al., Harming Women With Words: The Failure Of Australian Law To Prohibit Gendered Hate Speech, 41(3) UNSW Law Journal 943 (2018).

²¹ Vijayta Singh, Centre plans law on online hate speech,, The Hindu, March 19, 2018.

²² “Expert Panel Tells Government to Amend Laws to Punish Online Hate Speech”, <https://thewire.in/law/post-section-66a-central-panel-tells-government-to-amend-ipc-crpc-it-act-to-punish-online-hate-speech>, (last visited on May 23, 2023, 10:00am).

²³ Ibid.

merely “innocently forwarding” it should be held accountable for the same offence as the information's original author.²⁴

The proposed Section 153C of the IPC reads:

Whoever on the grounds of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe, uses any means of communication to:

- (a) gravely threaten any person or group of persons with the intention to cause fear injury or alarm; or
- (b) advocate hatred towards any person or group of persons that causes, or is likely to cause, incitement to commit an offence shall be punishable with imprisonment of either description for a term which may extend to two years or a fine up to Rs 5000, or with both.

The committee feels that the vagueness and ambiguities found in the former Section 66A have been eliminated by Section 153C. There is very little room for doubt because the proposed Section specifically identifies the type of speech that violates the Section as an offence.

The other proposed provision, Section 505A reads as:

Whoever, intentionally, on the grounds of religion, race, caste or community, sex, gender, sexual orientation, place of birth, residence, language, disability or tribe, uses any means of communication to communicate

- (a) highly disparaging, indecent, abusive, inflammatory, false or grossly offensive information with the intention to cause fear of injury or alarm; or
- (b) gravely threatening or derogatory information with the intent to provoke the use of unlawful violence, against any person or group of persons, shall be punished with imprisonment for a term which may extend to one year and with fine up to Rs 5000, or both.

Furthermore, it was also suggested that the Vishwanathan Committee's, and the MP Bezbaruah committee's suggestions were to be combined into one “comprehensive draft law” as part of the Law Commission's assignment. The Bezbaruah committee was established in February 2014 as a result of numerous assaults on people from the northeast. The introduction of Section 153C of the IPC, which punishes the promotion or attempt to promote acts prejudicial to human dignity, and Section 509A, which punishes actions, gestures, or words intended to insult members of a particular race, was recommended by the committee in an effort to stop racial discrimination and violence.

With the suggested adjustment, a step in the right direction has been made, but it hasn't yet produced any tangible benefits, therefore it's still in its early stages.

5. NON-STATE REGULATIONS:

Along with the rules established by sovereign states, social media behemoths like Twitter, Facebook, and Google have also set up community standards and norms.

Facebook has laid down specific Community Standards that prohibit offensive content because, in accordance with the standards, it can sometimes encourage real-world violence and can foster an environment of intimidation and exclusion. According to these rules, hate speech is an outright attack on someone based on what are known as protected characteristics, including race, ethnicity, national origin, religion, sexual orientation, caste, sex, gender, and gender identity.²⁵ Further, it defines a verbal assault as “violent or dehumanising speech, statements of inferiority, or calls for exclusion or segregation”. There are 3 tiers of offence. Tier 1 attacks include those that make fun of the concept or victims of hate crimes using violent and dehumanising words. Expressions of inferiority, scorn, and disgust are considered Tier 2 attacks. Whereas, exclusionary or segregator actions against an individual

²⁴ Ibid.

²⁵ Ibid.

or a group are considered Tier 3 assaults. Additionally, phrases used as disparaging designations are prohibited under the guidelines. However, “humour and social commentary related to these topics” are acceptable. Additionally, it is acceptable to share any material with the intention of teaching or creating awareness among others. Facebook also permits speech that doesn't aim to offend, although the user might need to provide context.²⁶ During the most recently reported period, Facebook eliminated 11 million pieces of content containing hate speech from 10.6 million during the third quarter of 2022.²⁷ Similar to this, Twitter too has guidelines for its users. Users are prohibited from inciting violence against, threatening, or harassing other people on Twitter on subjects related to race, ethnicity, national origin, sexual orientation, gender, gender identity, affiliation with a particular religion, age, handicap, or serious illness, the user is forbidden from using offensive pictures or symbols in their profile header or image as well. Additionally, users have the option to report anything they believe violates the policy if they come across it. Following an assessment of the data, Twitter would take appropriate action, which might include permanently suspending the person or permanently deleting their account.²⁸ Likewise, viewers have the option to self-report content that they believe violates YouTube's community rules by flagging it. The terms “hateful content,” “violent and graphic content,” “harmful or dangerous content,” “nudity or sexual content,” copyright breaches, and threats are all used to describe this behaviour.²⁹

6. FREEDOM OF SPEECH VS HATE SPEECH:

All Indian citizens are guaranteed under Article 19 which expounds on the concept of freedom of speech and expression of the Indian Constitution, subject to some justifiable limitations termed as reasonable restrictions.

According to Article 19(1)(a), “all citizens shall have the right to speech and expression.” There are also certain restrictions on this particular right. These limitations are stipulated in Article 19(2) of the Indian Constitution. In accordance with the constitution, the State has the authority to impose certain reasonable restrictions in order to protect India's sovereignty and integrity, its security, its friendly relations with other countries, its public order, decency, or morality, or in the event of judicial contempt, defamation, or incitement to commit an offence.

To support this, the Supreme Court ruled in the case of *Ramji Lal Modi* that the State has the jurisdiction to control any conduct that threatens the peaceable functioning of society and the public order.³⁰ The Indian Penal Code's Section 295A was upheld by the court. The decision was utilised up until very recently in 2016 to deny a petition that questioned the constitutionality of the aforementioned clause.

Further, in the case of *Virendra v. The State of Punjab*,³¹ the court ruled that circumstantial evidence must be considered in order to ascertain the “interest” of the conduct. The Court ruled that only the state conduct can be contested, not the legislation from which the state is getting its authority to do so, in deciding whether the act or speech fits inside the purview of reasonable limitation or not. The legitimacy of Article 19(2) has been further confirmed by this decision, and it has been used in several situations involving the problem of hate speech.

Even though the Indian Constitution does not specifically define hate speech, it is covered by reasonable limitations. However, the line between a reasonable restriction and a basic freedom of

²⁶ Facebook Data Requests Report, 2017.

²⁷ Facebook: hate speech content removal as of Q4 2022; Published by [Statista Research Department](https://www.statista.com/statistics/1013804/facebook-hate-speech-content-deletion-quarter/), Mar 9, 2023
<https://www.statista.com/statistics/1013804/facebook-hate-speech-content-deletion-quarter/>

²⁸ Twitter Hateful Conduct Policy, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>, last accessed on July 20, 2020, 5:00 pm)

²⁹ YouTube Community Guidelines.

³⁰ *RamjiLalModivs The State of U.P.*, 57 AIR 620.

³¹ *Virendra v. The State of Punjab*, 1957 AIR 896.

speech and expression is extremely narrow. Therefore, while making decisions about hate speech, this must be taken into account.

7. THREAT OF OVER CRIMINALIZING OF HATE SPEECH:

Concerns about the potential abuse of laws intended to safeguard vulnerable groups and uphold social peace are raised by India's overcriminalization of hate speech. Although the goal of laws against hate speech is to stop the encouragement of prejudice and violence, there is a chance that these rules will be enforced in a way that limits free speech and silences acceptable discourse.

The 2016 case of *Subramanian Swamy v. Union of India*³² is one that illustrates the difficulties in identifying and interpreting hate speech. In this case, the Indian Supreme Court considered whether Sections 499 and 153A of the Indian Penal Code, which deal with defamation and inciting animosity between various groups, respectively, were constitutional. The court maintained the validity of these clauses but stressed the necessity for a precise and defined definition of "hate speech" to prevent misunderstandings.

In addition, cases like *Arup Bhuyan v. State of Assam* (2011)³³ and *Pravasi Bhalai Sangathan v. Union of India* (2014)³⁴ demonstrated the importance of the "incitement to violence" test when addressing matters involving hate speech. The courts in these cases stressed that mere offensiveness or producing wounded feelings may not merit criminal punishment, and that only communication that incites or has the potential to incite violence should be considered hate speech.

These case examples show the judiciary's efforts to strike a compromise between defending the fundamental right to freedom of expression and safeguarding vulnerable communities from hate speech. When addressing hate speech offences, they stress the significance of precise definitions, precision, and a high threshold of incitement to violence. Thus, while regulations prohibiting hate speech are essential for preserving societal harmony, care must be taken to avoid over criminalizing certain speech. It is crucial to make sure that laws are clearly stated, detailed, and applied in a way that safeguards both freedom of speech and vulnerable communities from being incited to violence. Maintaining democratic ideals and defending human rights in India depend on finding this fine balance.

8. CURSORY GLANCE OF LANDMARK JUDICIAL PRONOUCEMENTS ON HATE SPEECH:

Ramji Lal Modi v. State of U.P.:³⁵

The Supreme Court ruled that Section 295A of the Indian Penal Code, 1860 is constitutionally valid and that it only punishes acts of insult to or attempts to disrespect the religion or the religious convictions of a group of people, which is done with the purposeful and malicious objective of upsetting that group's religious feelings.

Ramesh v. Union of India:³⁶

The Supreme Court refrained to judge speech on its own, holding that a film that seeks to spread a message of peace cannot be said to have violated Article 19(1)(a) of the Constitution simply because it depicts extremism and violence to illustrate the futility of such actions. Therefore, the possibility for the act and its impact on public tranquilly, rather than the conduct itself, supports restriction under article 19(2). It was noted that a restriction on speech was only appropriate if it posed an immediate threat to the community.

³² *Subramanian Swamy v. Union of India*, Ministry of Law & Ors. (2016) 7 SCC 221.

³³ *Arup Bhuyan v. State of Assam*, (2011) 3 SCC 377.

³⁴ *Pravasi Bhalai Sangathan v. Union of India*, (2014) 5 SCC 745.

³⁵ *Ramji Lal Modi v. State of U.P.* [AIR 1957 SC 620]

³⁶ *Ramesh v. Union of India* [AIR 1988 SC 775]

Bilal Ahmad Kaloo v. State of Andhra Pradesh:³⁷

If there is no attempt to incite hate between two or more groups or communities and the author's views are limited to that community and make no reference to any other groups or communities, they are exempt from prosecution under this provision.

Arun Jaitley Vs State of U.P.:³⁸

The Delhi High Court examined Sections 153A and 295A of the Indian Penal Code in this case as they relate to hate speech. The court was absolutely clear that there must be a conscious and malicious purpose to inflame religious sentiments or foster hostility between various groups in order for an offence to be found under these provisions. Hate speech does not always result from the straightforward voicing of thoughts or criticism.

Pravasi Bhalai Sangathan v. Union of India (2014):³⁹

In this case, the Supreme Court considered the legality of Section 66A of the Information Technology Act, which made it illegal to express oneself online if it was “grossly offensive” or had a “menacing character.” Because Section 66A was ambiguous, wide, and prone to abuse, the court decided it infringed upon the fundamental right to freedom of speech and expression.

Shreya Singhal v. Union of India (2015):⁴⁰

This significant decision underlined the value of free expression online. The Information Technology Act's Section 66A was overturned by the Supreme Court because of its confusing language and potential to restrict free speech, according to the court. To avoid arbitrary or unreasonable restrictions on free speech, the court's ruling placed emphasis on the necessity for precise and explicit laws against hate speech.

These landmark judgements have made a significant contribution in the development of hate speech laws, while striking the right balance between the fundamental rights guaranteed under the Indian Constitution and simultaneously regulating hate speech laws.

9. CONCLUSION:

There is an urgent need to handle complex issues like hate speech. Haters will hate, as they say, but it does not mean we can't do more to stop them from spreading their hatred. The urgent need is for a strong legal framework to address emerging types of hate speech, especially online hate speech. The current legislation on intermediary responsibility, which shields social media corporations from any culpability for the actions of the users, also needs to be reviewed. The level of legal protection dictates how eagerly these platforms are willing to invest in high-quality content moderation.

While it is natural to be concerned about these platforms over-censoring information, this fear may be greatly reduced by employing content moderators with the proper training who are more familiar with the political and social landscape of a varied country like India. Global activists have recommended that Facebook take into consideration developing region-specific moderation criteria as opposed to adhering to a uniform policy.

Hate speech proponents frequently hide out because law enforcement and social media prohibitions are ineffective. Direct threats and the instigation of violence on social media platforms may be efficiently dealt with, even if trolling is a complicated subject. The creation of effective reporting and response procedures is required.

³⁷ Bilal Ahmad Kaloo v. State of Andhra Pradesh [(1997) Cri. L. J. 4091 (SC)]

³⁸ Arun Jaitley Vs State of U.P ; 2016 (1) ACR 890, 2016(1)ADJ76, 2016 (92) ALLCC 352

³⁹ Pravasi Bhalai Sangathan v, Union of India & Ors., AIR 2014 SC 1591.

⁴⁰ Ibid.

Additionally, the current laws need to be harmonised and unified. It is necessary to take into account the Law Commission and Expert Committee's suggestions. Furthermore, it is necessary to make changes to the old intermediary guidelines' regulations in order to address the new types of hate speech that are prevalent online.

Lastly, the importance of fact-checking, fostering a critical mindset, helping disadvantaged groups, and monitoring internet information cannot be overstated. These are all components of independent, high-quality journalism. Only then will we be able to bring people who have been victimised by such acts to justice.

In light of this, Rabindranath Tagore's words are appropriate to conclude, "Into that heaven of freedom, my Father, let my country awake."

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