



ORIGINAL RESEARCH PAPER

Law

CONUNDRUM OF HATE SPEECH IN INDIA: A JUDICIAL PERSPECTIVE

KEY WORDS: Freedom, Fundamental, Hate, Judicial, Speech

Dr Sunaina*

Assistant Professor of Law, Panjab University SSG Regional Centre, Hoshiarpur *Corresponding Author

ABSTRACT

Freedom of speech with certain restrictions is recognised as a fundamental right under the Constitution of India. But excessive (mis)use of this fundamental right has led to serious implications, primarily resulting in violence in the country. In the recent past there has been a surge in the rising cases of hate speech and resultantly violence has been the consequence. According to media reports in 2020 there was a 500% rise in cases filed under hate speech laws in seven years. While 2014 (323 cases) saw the least number of cases in seven years, the year 2020, with 1,804 cases, saw the highest. This research is an effort to analyse hate speech through the prism of judicial perspective. The study will find out the causes of hate speech in India. It will also explore the legislative and judicial approach towards hate speech vis-a-vis the incidents of hate speech in India. The research will also explore the remedies to abate the issue of hate speech in India.

INTRODUCTION

Freedom of speech with certain restrictions is recognised as a fundamental right under the Constitution of India. But excessive (mis)use of this fundamental right has led to serious implications, primarily resulting in violence in the country. In the recent past there has been a surge in the rising cases of hate speech and resultantly violence has been the consequence. According to media reports in 2020 there was a 500% rise in cases filed under hate speech laws in seven years. While 2014 (323 cases) saw the least number of cases in seven years, the year 2020, with 1,804 cases, saw the highest. This research is an effort to analyse hate speech through the prism of judicial perspective. The study will find out the causes of hate speech in India. It will also explore the legislative and judicial approach towards hate speech vis-a-vis the incidents of hate speech in India. The research will also explore the remedies to abate the issue of hate speech in India.

Legislative Outline

The various variants of hate speech are recognised under the statutory laws, despite not particularly stated in any statute at all. According to the Indian Penal Code's sections 153A, 153B, 295A, 298, 505(1), and 505(2), any spoken or written words that incite hostility, hatred, or insults based on race, caste, ethnicity, culture, language, region, or other factors are illegal and subject to punishment. Section 153A punishes the encouragement of hostility between various groups. Section 153B penalises allegations and claims that are harmful to national integration. Section 505 penalises rumours and disinformation that encourage hostility among the community. Section 295A makes it illegal to disparage someone's religious beliefs by using language with malice or intent.

Judicial Perspective

N. V. Sharma Vs Union of India

In N.V. Sharma Vs Union of India, the Supreme Court had rebuked a former spokesperson of the ruling Bharatiya Janata Party, Nupur Sharma, over her controversial comments about the Prophet Muhammad during a TV debate in May end 2022 which incensed Indian Muslims and outraged Islamic nations. The court asked the suspended spokesperson to apologise to the whole country, observing that she has threatened the security of the nation. The Court had said that "her loose tongue has set the entire country on fire" and blamed her for "igniting emotions across the country" adding that her outburst is responsible for the unfortunate incident at Udaipur, where a tailor was murdered.

Shaheen Abdulla Vs Union of India and Others

Recently, the Supreme Court of India in the case of Shaheen

Abdulla Vs Union of India and Others passed an interim order and held that "immediately as and when any speech or any action takes place which attracts offences such as Sections 153A, 153B and 295A and 505 of the IPC etc., suo motu action will be taken to register cases even if no complaint is forthcoming and proceed against the offenders in accordance with law. Any hesitation to act in accordance with this direction will be viewed as contempt of this Court and appropriate action will be taken against the erring officers. We further make it clear that such action will be taken irrespective of the religion that the maker of the speech or the person who commit such act belongs to, so that the secular character of Bharat as is envisaged by the Preamble, is preserved and protected." The interim directions were primarily meant for the police of Delhi, Uttar Pradesh and Uttarakhand. The court issued notices to above three States and asked them to submit reports on action taken on hate speech cases.

Pravasi Bhalai Sangathan Vs Union of India and others

The Supreme Court in the case of Pravasi Bhalai Sangathan Vs Union of India and others analysed the issue and stated that Hate Speech marginalises individuals based on their identity that Hate Speech lays the foundation for attacks on the vulnerable people including violent ones. It also observed that issue of hate speech deserved deeper consideration by the Law Commission of India.

State of Karnataka Vs Praveen Bhai Thogadia

In State of Karnataka Vs Praveen Bhai Thogadia, the Supreme Court held that if the speeches "are likely to trigger communal antagonism and hatred", the concerned authorities should issue prohibitory orders.

Tehseen S. Poonawalla Vs Union of India and others

In Tehseen S. Poonawalla Vs Union of India and others, the Supreme Court issued directions to states regarding preventive, punitive, and remedial measures to be taken in respect of mob lynching.

Kodungallur Film Society and another Vs Union of India and others

In Kodungallur Film Society and another Vs Union of India and others, the Court held that "Hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results in a reign of terror." The PIL highlighted law and order problems arising out of the release of the film Padmavat on the ground that it offends cultural/religious sentiments.

Amish Devgan Vs Union of India

In Amish Devgan Vs Union of India, the petitioner, while

hosting the debate, had described Pir Hazrat Moinuddin Chishti, as “aakrantak Chishti aya... lootera Chishti aya... uske baad dharam badle”. The court rejected the prayer for quashing of the FIRs but granted interim protection to the petitioner against arrest subject to his cooperating in investigation.

Analysis And Suggestions

Speech has the potential to be both constructive as well as destructive. Despite numerous provisions and judgments the problem of hate speech is increasing. There is a need to analyse how this issue can be addressed. Some suggestions are mentioned below:

1. A social problem cannot be solved outside the society. The solution meant for the benefit of society must be found from within the society and with the involvement of society. Law and society have a deep and intense relationship with each other and their segregation can be disastrous. One is hollow without the other. Therefore education as a means and mode has been proposed as a solution to bring transformation in the society in addition to the study of revamping existing laws. Existing education too has its own flaws and its amalgamation with the legal approach may not be fully effective. Hence removal of such deficiencies in the existing educational setup is also equally crucial.

2. Appropriate mode of education is one such component that has the potential to achieve the desired goals in the long run. It can bring a transformation in the society if channelled in the right direction. The annals of history have the evidences of bringing change and transformation in the society through constant efforts of educating the masses in addition to protests, struggle and legal backing. Widow remarriage, prohibition of sati/devadasi system and prohibition of child marriages, are certain examples of transformation in the societal outlook through combined endeavours of law and education.

3. The New Education Policy has indeed shown some ray of hope in the refinement of education system in India. Although overnight change is not possible but one step taken today in the right direction can result in a sparkling and radiated future tomorrow. Education has the potential to illuminate the minds and change the thinking of the people and that is why education has an eternal effect on one's life. It enables people contemplate and behave in a particular way. Not only does it help ameliorate personal satisfaction of the individual but also of society. Education augments human personality, thoughts and social skills and also prepares people for life experiences. Education has the ability to reinforce our thoughts and strengthen our character and behaviour towards others. Probably that is why it is said that 'pen is mightier than sword'.

4. There is an urgent need to have elaborate law on hate speech rather than having scattered and indirect provisions on the same.

5. Stringent punishments for proven hate speech need to be imposed. Although freedom of speech is equally important but nation's security cannot be compromised in the name of free speech. Punishment need to be more stringent when such offence is committed by a celebrity or a political personality as it has more chances of spreading hatred

6. The habit of appropriate speech must be inculcated in people right from their childhood so that people become responsible citizens.

7. The fundamental duty of parents to send their children to school should be extended to teaching and inculcating the moral values in them too.

8. Lastly, a self check and self responsibility is a must while

choosing one's words. Tolerance towards each other must prevail.

CONCLUSION

Words can make and words can destroy. Excess of everything is bad. Hence, too much of freedom of speech can also yield disastrous results. The amalgamation of efforts of legislative, judicial and educational organs towards mitigation of hate speech can certainly bring positive results. The two way approach of people to government and government to people in understanding their perspectives is also pertinent. The failure to address the malaise can be dangerous for the security of the nation. This is high time to sincerely delve deeply and seek redressal.

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