

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to

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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He

participated in several workshops on research methodology and teaching and learning.

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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LAW AND POLITICS ON HATE SPEECHES, HATE CRIME AND SEDITION

Authored by - Vineet Pratap Singh

Without Freedom of Thought, there can be no such Thing as Wisdom and no such Thing as public Liberty, without Freedom of Speech which is the Right of every Man, as far as by it, he does not hurt or control the Right of another and this is the only check it ought to suffer, and the only Bounds it ought to know.

- Benjamin Franklin (1722)

INTRODUCTION

We have liberty in the shape of fundamental rights as citizens of a democratic India. These freedoms enable us to live freely, without artificial impediments or unreasonable limitations. However, an over appropriation of fundamental freedoms and liberties leads to disorder and terror in society.

Freedom of speech and expression and the right to express oneself have been hot topics for many years. From human rights to fundamental rights, the discussion continues. In India, **Article 19(1) of the Indian Constitution** guarantees the right to free speech. But as time went on, the State began to restrict free speech in the form of hate speech, sedition, and defamation, which in turn led to hate crimes.

The right to freedom of speech and expression is granted to all people by **Article 19(1)(a)(1) of the Indian Constitution**, but when misused, it can result in the occurrence of “hate speech”, which can have terrible consequences like hate crimes. Consequently, reasonable limitations on the right to freedom of speech and expression are justified by the need to protect India’s sovereignty and territorial integrity, as well as the nation’s overall security.

Any sort of speech or reference that expresses a specific level of animosity towards another person, group of people, etc. is considered hate speech. However, it is a phrase established out of social context and typically refers to any speech that a specific segment of the community deems unworthy of it. The term “hate speech” has not been explicitly defined in any of the Indian laws.

With the advent of the internet and social media, the impact of mass communication quickly increases. In other circumstances, these speeches or texts cause a disturbance and have a significant impact on a big number of individuals in the form of hate crimes against a certain community or group and sedition against those who have opposing views by the time law enforcement agencies step in. In light of recent events involving Mohammed Zubair and Nupur Sharma and the controversy they caused in India, it is necessary to examine the subtleties of this phrase and how it is used or more accurately misused.

WHAT IS HATE SPEECH?

In India, hate speech is nothing new. According to reports, in 1990, certain mosques in Kashmir broadcast lectures intended to incite hatred towards Hindus, which led to their departure from the Kashmir Valley's Muslim majority.

According to Black's Law Dictionary, Hate Speech is, **“Speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence”**.

Hate speech is defined as any communication that targets someone or a group primarily on the basis of their religious identity and employs derogatory, insulting, or discriminatory language, including dog-whistling, with the intention of reaching a large audience.

Hate speech can be defined as an idea, an offence, something that violates human dignity and worth, or something that reduces tolerance in society. Hate speech is not protected by the constitution. It defies constitutional morality in public discourse and is something different. Hate speech in modern India also reveals a low level of politics, particularly communal politics. The **Indian Penal Code of 1860**, as well as other special statutes like the **Representation of the People Act of 1951** and the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989**, contain specific provisions that deal with specific situations that are referred to as offences, which may also include instances of hate speech.

In India, there is currently no statute that clearly defines hate speech. However, the Hon'ble Supreme Court distinguished between three types of speech - discussion, advocacy, and

incitement in the case of **Shreya Singhal v. Union of India**¹. It was decided that a speech can only be restricted on the basis of the exceptions listed in article 19(2) when it crosses the incitement threshold. Article 19(1) mandates that all other forms of communication be protected, even those that are hurtful or unpopular. Therefore, the fundamental element in establishing whether a restriction on free speech is constitutional is “incitement”.

In **Babu Rao Patel v. State of Delhi**², the Supreme Court discussed the effects of hate speech on society as a whole. The Supreme Court did not punish hate speech in the well-known case of **Pravasi Bhalai Sangathan v. Union of India**³ since it is not prohibited by any of India’s pre-existing laws. However, in order to refrain from entering the realm of judicial activism, the Supreme Court asked the Law Commission to handle this matter. This is the main reason the Legislature was given control of the situation.

A recent example is the case of **Amish Devgan v. Union of India and Ors.**⁴ wherein the petitioner, while hosting a debate, had described Pir Hazrat Moinuddin Chishti, also known as Pir Hazrat Khwaja Gareeb Nawaz, as aakrantak Chishti aya... aakrantak Chishti aya... lootera Chishti aya... uske baad dharam badle. Supreme Court⁵ refused to quash the FIRs registered against News18 Journalist Amish Devgan for using the term “Lootera Chisti” in one of his shows but has granted interim protection to him against arrest subject to his joining and cooperating in investigation till completion of the investigation.

In order to determine how hate speech should be understood, this case concentrated on a number of important legal requirements. The **Indian Penal Code’s Section 153A**, which deals with inciting hostility among communities and engaging in behaviour that undermines harmony was construed.

As part of its decision regarding the FIRs brought against Amish Devgan, the Apex Court also considered the FIRs legality. Despite the fact that the petitioner’s request to have the FIRs dismissed refused, the Apex Court granted him temporary protection in exchange for his apology and cooperation with the investigation.

¹ AIR 2015 SC 1523

² 1980 AIR 763

³ AIR 2014 SC 1591

⁴ 2020 SCC ONLINE SC 994

⁵ <https://www.sconline.com/blog/post/2020/12/08/freedom-rights-cannot-armour-those-who-promote-incite-violence-15-notable-excerpts-on-hate-speech-from-supreme-courts-verdict-in-amish-devgan-case/>

The case of **Vinod Dua**⁶, which used Amish Devgan's case as a citation, came after that. Vinod Dua was the subject of several FIRs for allegedly making seditious remarks towards the government. The Supreme Court nullified it on the grounds that the statement amounted to disapproval and that **Section 124A**⁷ was not violated, and it provided him immunity from arrest for sedition while the inquiry went forward in accordance with the FIR. The interpretation of hate speech was greatly influenced by this case. The main issue in this case was free speech, which included criticism.

REPERCUSSIONS OF HATE SPEECH TO HATE CRIMES

On January 30, 1939, Adolf Hitler addressed the Reichstag in a speech that called for the eradication of "European Jewry" from the planet, marking the sixth anniversary of his appointment as chancellor of Germany. Nazis had carried out widespread atrocities in Europe two years earlier. Hitler, unfortunately, was a by-product of the same culture that for ages had persecuted Jews through hate speech and hate crimes, which subsequently helped the Nazis rationalize the systematically eradicating of Jews.

As organised hate speech rallies have started to appear in many parts of northern India under the fictitious name of "Dharm Sansad", they have taken centre stage in India's legal-political conversation. Hate Grips the Nation, a book commemorating the 20th anniversary of the Gujarat massacre, just published a report on India's increasing occurrences of hate speech and hate crimes. It demonstrates how anti-minority incidents, primarily targeting the Muslim and Christian minorities, have been rising alarmingly quickly throughout India. In eight years, 2017 saw the most number of cases ever reported. The primary perpetrators of hate speech and hate crimes in India seem to be Hindutva organisations.

According to this definition, hate crimes are violent assaults committed against the person or property of a person or group of people because of their religion. 53 persons were killed in communal violence in northeast Delhi in February 2020⁸, with 35% of the victims being Muslims. A hardline Hindutva leader named Yati Narsinghanand Saraswati had already made hateful statements that had the power to inspire people before the tragedy.

⁶ Vinod Dua v. Union of India, 2021 SCC OnLine SC. 414

⁷ Indian Penal Code, 1860

⁸ The Hindu newspaper.

There are increasing instances of hate speech (61.6%) and hate crimes (38.4%) directed at Muslims⁹. The year-by-year research demonstrates that Muslim hate crimes have gradually overtaken Muslim hate speech, which illustrates how hate speeches have sparked Muslim hate crimes in India.

The incidence of hate crimes (96% in the case of the Christian community) is larger than the rate of hate speech (4%). Even while the percentage of hate crimes against Christians appears to be larger than the percentage of hate crimes against Muslims, Muslims continue to have a higher numerical value. A total of 878 instances of hate speech and hate crimes have been reported throughout India, with more than half of those incidents occurring in Uttar Pradesh, Delhi, Madhya Pradesh, Maharashtra, and Gujarat.

More over half of these attacks occurred in October 2022, with 29 hate crimes against Muslims occurring alone during the holiday season. Weekly demonstrations against namaaz took place in Haryana throughout the month. They culminated in a Govardhan Puja that was held on land that had previously been used for namaaz and included chants of the now-famous “goli maaro” slogan. Given that they purposefully imposed the exclusion of Muslim bodies from a public venue, these have been recorded as hate crimes.

In addition, the Navratri season was used as justification by Hindutva organisations to close down meat markets and commit a spree of crimes against Muslim-owned businesses. Only in the month of October, there were 11 instances where threatening orders were given or meat stores were forcibly closed in Gurugram, Faridabad, Chhindwara, Bulandshahr, Palwal, Saharanpur, and Gautam Buddha Nagar. These closures were primarily the fault of Hindutva organisations like the Samyukta Hindu Sangharsh Samiti, Hindu Gauraksha Dal, Bajrang Dal, and the Hindu Vahini, with specific people like Ved Nagar and Jeet Vashishth actively participating.

Six cases of Hindutva organisations damaging churches, disrupting celebrations, and in one case threatening a school with legal action for “forcing children to dress as Santa” occurred on Christmas Eve and Christmas Day throughout these six states. The VHP and Bajrang Dal also damaged a catholic school in Madhya Pradesh earlier in the month of December 2021.

⁹ Ibid.

The United Nations Human Rights Office in their ‘Citizens Against Hate’ report explained that in the second term of the Modi led government and various state governments passed laws, including the controversial **Citizenship (Amendment) Act, 2019**, and the reading down of Article 370¹⁰ in Kashmir and anti-minority laws such as the anti-conversion law (named ironically ‘Right to Freedom of Religion’ in Karnataka) which is more commonly known as the “love jihad” law, since these incidents of systematic discrimination against minorities gave law enforcement and vigilante groups free reign to target members of the minority population, it is vital to note that activists who spoke out against these laws would be imprisoned on charges of sedition.

Recent incidences of communal violence during the Ram Navami and Hanuman Jayanti festivals across India are evidence of the influence of hate speech by well-known members of the national ruling party and Hindutva organisations.

Such a phenomenon is difficult to comprehend, especially when hatred is expressed by a powerful organisation. People who raise their voices in opposition to these horrible atrocities are accused of sedition and charged with hate speech and its consequences, which are almost same across languages, countries, and cultures. People have occasionally been referred to historically as “insects”, “vermin”, or “threats” which is comparable to the Indian context.

INEFFICACY OF EXECUTIVE TOWARDS HATE CRIMES

In their practical handbook on hate crime laws, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe defines a hate crime as a crime committed with a bias purpose. A hate crime can be any type of criminal offence, including murder, violent abuse, damage to property, and much more. An individual who committed a crime with a bias motive selected their victim based on a protected trait, such as race, ethnicity, religion, caste, or another comparable group. Official statistics on hate crimes in India might be challenging to verify because they are occasionally not made public. However, according to data from Amnesty International, there were 619 hate crimes against Dalits between 2015 and 2019, 196 against Muslims, 31 against Adivasis, 29 against transgender individuals, and 18 against Christians. “Halt The Hate” initiative of Amnesty International records crimes committed in India against Dalits, Muslims, Adivasis, and

¹⁰ Constitution of India.

transgender individuals.

Recent events in the nation that received a lot of media attention were the killing of Pehlu Khan by vigilante gau rakshaks and the killing of Junaid Khan, which also had a communal motive. There is more to the police's involvement as facilitating agents in crimes with racial or ethnic motivations than apathetic indifference or tacit approval.

In response towards the outrage that followed these incidents, the SC issued many directives for the police to follow when dealing with hate crimes in **Tehseen S. Poonawalla v. Union of India and Ors.**¹¹ These include the speedy filing of FIRs, the establishment of task forces by high-level nodal officers in each district, and the filing of cases for hate crimes under **Section 153A of the Indian Penal Code 1860**, which makes it unlawful to incite animosity between various racial, religious, and ethnic groups based on factors such as place of birth, residence, language, and so forth. The cited instances are not outliers. They stand in for the way that society as a whole views racist violence against marginalised communities.

INVIGILANCE OF EXECUTIVE TOWARDS SEDITION

The provision of Sedition under Section 124 A of the Penal Code, on the other hand, has been used arbitrarily by the executive by making use of the vague and overly broad terms of their provisions. This is in stark contrast to the government's and police's approach, which has been grossly insufficient in handling cases involving hate crimes in India. According to the National Crime Records Bureau's (NCRB) report, the number of cases filed under Section 124A of the Indian Penal Code 1860, increased by 165% during the same time period.

This is what has led to a resurgence of the discussion around the validity of India's sedition statute. Recently, applications seeking the Hon'ble Supreme Court's revocation of Section 124A have been submitted on the basis that it violates people's basic rights. Due to the provision's ambiguity and the inclusion of words like "contempt", "hatred" and "disaffection", which do not have a defined range, almost any criticism of a government action can be included under the section's purview. This is due to the fact that the authorities would have a lot of leeway in deciding what would constitute a seditious purpose or an act or utterance that may potentially disturb the peace.

¹¹ (2018) 9 SCC 501.

This clause has been arbitrarily invoked in recent times to accuse journalists, students, and authors of criticising the executive's acts. Disha Ravi¹² was accused under this section because of her suspected participation in an online toolkit for the Indian farmers' movement. According to the authorities, she was connected to Pro-Khalistan activists and that toolkit was seditious in character since it would spark disturbance. It was noted that no sedition wrongdoing was committed because there was no proof linking her activities to the subsequent mayhem.

DISTINGUISHING SEDITION FROM HATE SPEECH

Additionally, it's important to distinguish between hate speech and sedition. The distinction between sedition and the offences covered by Chapter VIII (which include features of hate speech) is that sedition directly harms the State, whereas hate speech damages it indirectly by upsetting the peace in the community.

Sedition should be differentiated from inciting class hatred, according to a Select Committee considering the Bill in 1897 when changes to section 124A of the IPC were being considered. It concludes as it appears to us that the offence of inciting class hatred varies from the offence of sedition against the State in many significant ways.

It belongs more fittingly in the section on offences against public peace and quiet. The core of the offence is that it predisposes classes of individuals to activity that may disrupt the peace of the community as it only directly affects the Government or the State. There are likely historical reasons for this offense's classification as seditious libel in England. It has nothing to do with rational reasoning.

The sovereignty, integrity, and security of India as well as the State must be threatened by the challenged remark for it to be considered sedition. Expressions inciting hostility toward the State should not be covered by the proposed provision on hate speech because they are already a separate offence under section 124A. Additionally, under section 153B IPC, accusations or claims that are harmful to national cohesion are illegal.

¹² Disha A. Ravi vs State (Nct Of Delhi) & Ors. 2021 SCC OnLine Del 822.

CONCLUSION

Although maintaining Section 124A (sedition) of the Indian Penal Code, 1860 constitutional validity, the Supreme Court's **Kedar Nath's case**¹³ decision restricted the provision's application. According to the ruling, encouragement to violence or a propensity for causing public disorder must exist for a sedition offence to be considered valid. Unfortunately, in the modern era, this clause is now being flagrantly misapplied by law enforcement organisations, who are using it to restrict people's freedom of speech and expression. The executive branch, on the other hand, appears to have a rather lenient approach against hate crimes, notwithstanding a recent rise in their frequency. Recent rulings on hate speech by the Indian Supreme Court include **Tehseen S. Poonawalla against the Union of India (2018)**¹⁴, **Kodungallur Film Society versus the Union of India (2018)**¹⁵, and **Amish Devgan versus the Union of India (2020)**¹⁶. A clear line is drawn between hate speech and hate crimes in the Amish Devgan ruling. It is doctrinally outstanding and jurisprudentially sound.

These aforementioned are examples of how the problem of combating hate speech has been tackled outside of the bounds of the current legal system. It has been successful in both cases thanks to the victims and speakers direct and active participation, whether online or in person. Additionally, by bringing everyone to the negotiation table, it could help start the process of repairing the damage done by hate speech. In the event of hate speech, resorting to alternative dispute resolution methods would give both sides a forum for dialogue and a potential resolution outside of the formal constraints of the court system. The distinguishing feature of these methods is that, in contrast to criminal anti-hate speech legislation, they do not restrict an individual's freedom of expression. In reality, counter-speech promotes more uplifting discourse in reaction to statements that incite hatred or violence. This prevents it from acting as a barrier to the free exchange of ideas in the "marketplace of ideas", which is to be preserved as sacred in today's liberal democracies.

Therefore, we must establish a separate classification. We must understand that hate speech is not protected speech. Else to put it another way, hate speech does not have the same protection as free speech under Article 19(1)(a) of the Constitution, or it

¹³ Kedarnath Singh v. State of Bihar AIR 1962 SC 955.

¹⁴ Tehseen S Poonawalla v. Union of India and Ors. (2018) 9 SCC 501.

¹⁵ Kodungallur Film Society v. Union of India, 2018 SCC OnLine SC 1719

¹⁶ 2020 SCC ONLINE SC 994

should be understood that expressing one's beliefs and thoughts openly should not constitute seditious activity. This difference is important. Hate speech is not protected under the constitution. It is different, it violates constitutional decency in public discourse, and punishing someone for sedition because of their opinions on government officials is an infringement on their constitutional rights. As it is well said by the Supreme Court of India that **“Freedom & rights cannot armour those who promote & incite violence”**.

