



LAWS AGAINST HATE SPEECH IN INDIA

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INTRODUCTION

Put together two people of varying opinions and you may give them various moot points within an hour of conversation. It is of no surprise that the growth of social media in the present day has enabled the masses to put forward a variety of ideas and opinions on the public portals which may or may not be admired by all, thereby stirring debates over certain views expressed by people.

India, a country of varying beliefs, cultures and creeds shows a great involvement among its people, as a result of which differing opinions emerge as a consequence. The Constitution of India, being the largest in the world, has provided its citizens with a good number of rights for their protection. Part III of the Constitution of India (Articles 12-35) contains *fundamental rights*, which include the right to equality, protection against discrimination, freedom of movement within the territory of India, etc. Among all those rights, the most unchecked, yet the most exercised right happens to be the *right to freedom of speech and expression*.

FREEDOM OF SPEECH AND EXPRESSION – AN OVERVIEW

Taking into account the *freedom of speech and expression*, provisions regarding the same are contained under various international conventions like Universal Declaration of Human Rights,¹ European Convention on Human Rights and Fundamental Freedoms,² International Covenant on Civil and Political Rights,³ etc. Under the Constitution of India, freedom of speech and expression has been enshrined in *Article 19 of the Constitution*, and it enables all the Indian citizens to express their thoughts freely by words of mouth, writing, printing, pictures or by any other feasible means [Article 19(1)(a)].

The necessity of such freedom has been observed by Patanjali Sastri J. – “*Freedom of speech and of the Press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of Government, is possible*”.⁴ Article 19(2) indirectly puts a responsibility for a person's own words, which was added by way of **Constitution (First Amendment) Act, 1951**. Even a speech that is ‘vehement, caustic, and sometimes unpleasantly sharp’ is protected from State intervention as the importance of allowing diversity of opinion guides the principles of free speech.⁵

Every person may have his/her unique opinion and/or expression which may or may not be embraced by another person due to his own personal reasons.⁶ At times, there may

¹ Article 19, Universal Declaration of Human Rights, 1948

² Article 10, European Convention on Human Rights and Fundamental Freedoms, 1950

³ Article 19, International Covenant on Civil and Political Rights, 1966

⁴ *Romesh Thappar v. State of Madras* [AIR 1950 (SC) 124]

⁵ *New York Times v. Sullivan* [376 U.S. 254 (1964)].

⁶ *Bijoe Emmanuel v. State of Kerala* [1986 3 SC 615]



be certain statements shared by individuals that may harm the sovereignty and integrity of the country, or dismantle public order or morality. This may, in turn, cause conflicts and may even incite violence in the worst of cases. Hence, such a regulation is justified for the security of the country.

LAWS CONCERNING FREEDOM OF SPEECH IN INDIA

The Supreme Court of India has reiterated the provisions concerned with dealing of hate speech in India in *Pravasi Bhalai Sangathan v. Union of India*⁷ as under:

- The Information Technology Act, 2000 (Section 66A, 69, 69A)
- The Representation of the People Act, 1951 (Section 8, 123 (3-A), 125)
- The Indian Penal Code, 1860 (Section 124A, 153A, 153B, 295A, 298, 505(1), 505(2))
- The Constitution of India, 1950 (Article 32, 226, 51A, 19(1)(a), 19(2))
- The Code of Criminal Procedure, 1973 (Section 95, 107, 144, 160)
- Unlawful Activities (Prevention) Act, 1967 (Section 2(f), 10, 11, 12)
- The Protection of Civil Rights Act, 1955 (Section 7(1)(c))
- The Religious Institutions (Prevention of Misuse) Act, 1988 (Section 3, 6)
- The Cable Television Networks (Regulation) Act, 1995 (Section 5, 6, 11, 12, 16, 17, 19, 20)

- The Cinematograph Act, 1952 (Section 4, 5B, 7)

Some of the laws mentioned above have been described in detail as follows:

Indian Penal Code, 1860

Ever since it came into effect, the Indian Penal Code, 1860 has incorporated almost all forms of criminal acts that could possibly take place within the country. However, those which were not mentioned in the Code were later added after the Courts encountered cases relating to them; a glaring example of which tends to be the *Criminal Law (Amendment) Act, 2013* which brought certain offences under the umbrella of the Indian Penal Code that were not previously covered by it, such as *acid attacks, sexual harassment, voyeurism, stalking*, etc. There are various provisions in the Indian Penal Code, 1860 that govern freedom of speech in India too. These are mentioned as under:

11. Sedition (Section 124A)

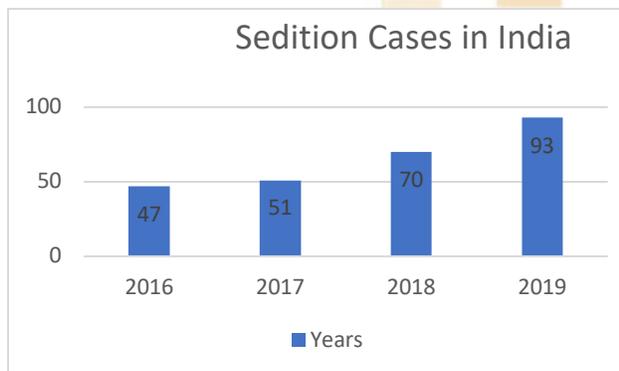
- It has been directed that no one must make others feel enmity towards the Government of India in any possible way; as such an act may cause a person or a group of persons to take heinous measures against the Government that may prove to be harmful to the sovereignty of India and may also jeopardize safety and order within its territory.
- The explanations given under this section make it clear that ‘if a person shows discontentment with any of the administrative or other actions of the Government, he is free to criticize it publicly, even in strong words, but

⁷ [(2014) 11 SCC 477]



within reasonable limits and in consistence with the fundamental right of freedom of speech and expression’.

- *This section has been subjected to challenges many a times* in its history. In the opinion of Mahatma Gandhi, section 124A is “the prince among the political sections of IPC designed to suppress the liberty of the citizens”, and Pt. Jawaharlal Nehru’s opinion did not differ too much by calling it “obnoxious” and “highly objectionable” and “the sooner we get rid of it, the better”.
- The law relating to sedition is highly misused in India. Many FIRs get filed under this provision that may or may not succeed against the alleged perpetrator. In the recent years, there has been a surge in the number of sedition cases in the country. However, the number of convictions has been very low.



- As per National Crime Records Bureau data from 2016 to 2019, the total number of sedition cases registered in India exceeded 250, but the total number of convictions in the given years amounts to 6 only.

2. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. (Section 153A)

- This section puts in check the propagation of hatred between two or more classes of persons or communities within the society. It is due to differential opinions of people and sometimes, the involvement of the element of mischief against certain notions within the society may promote *class hatred*. For example, making derogatorily false comments on the private life of a Saint or a Prophet of a community with the object of producing enmity would be deemed punishable.⁸
- If a person, with a *maligned intent*, uses language in a manner meant to annoy the members of a particular community so as to degrade them in the eyes of other groups or communities, he should be considered to promote feeling of enmity and hatred.⁹ A person must be presumed to intend the natural consequences of his act through the language used in his writing.¹⁰
- A fair criticism of any character does not constitute an offence under this section if such act was done in order to make people realize the shortcomings or imprudence of such character in actual sense.¹¹

3. Imputations, assertions prejudicial to national-integration. (Section 153B)

- This section was added to curb objectionable activities by associations

⁸ *Kali Charan*, [I. L. R. 49 All. 856]

⁹ *Harnam Das v. State of Uttar Pradesh*, [(1957) 1 All. 528]

¹⁰ *Gopal*, [(1969) 72 Bom. L. R. 871]

¹¹ *Joy Chandra Sarkar*, [I. L. R. 38 Cal. 214]



that incite hatred and enmity between classes of persons on the grounds of race, religion, language, caste or community.

- Unlike in Section 153A, the intent of the publisher or author is of no relevance to invoke liability under this section.
- It is directed that in estimation of the effect of an impulsive idea through any speech or any method of publication, the court must look at it as a whole, and not to any sentence or phrase in particular.¹²

4. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs. (Section 295A)

- Penalizes the act of speaking or writing words, or making signs or visible representations that would tend to hurt the religious feelings of any class of persons or a community.
- The intent of the author/speaker is necessary to impose liability on the person concerned.
- There is a requirement as per Section 196(1) of the Code of Criminal Procedure, 1973 that a prior sanction of the concerned Government is necessary to file a complaint under Section 295A of the Indian Penal Code.

5. Statements creating or promoting enmity, hatred or ill-will between classes. [Section 505(2)]

- Penalizes the making, publishing and/or circulating statements or reports about religions that are derogatorily false and are likely to promote a feeling of hatred, enmity or ill-will between classes of persons.

- This section also requires previous sanction of the concerned Government for filing of a case under this provision as per Section 196(1) of the Code of Criminal Procedure, 1973.
- This section causes no violation of the fundamental right of freedom of speech and expression under Article 19(1)(a) of the Constitution.¹³

Information Technology Act, 2000

1. Punishment for sending offensive messages through communication service, etc. (Section 66A)

- Texts on social media that tend to promote enmity, hatred or ill-will, or cause annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation are subjected to check through this section.
- The intent of the person has to be kept in mind for imposition of liability.

2. Power to issue directions for interception or monitoring or decryption of any information through any computer resource.

- This section enables the Central and State Governments or any of the officers specially authorised by the Central Government or State Governments in this behalf, to intercept or monitor or decrypt any information that is generated, transmitted, received or stored in any computer resource, if such Government is satisfied that it is necessary to do so in the interest of sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign States or public

¹² *Vishambher Dayal Tripathi v. Emperor* [AIR 1941 Oudh 33 at 41].

¹³ *Kedar Nath*, [AIR 1962 SC 955]



order or for prevention of incitement to the commission of any cognizable offence.

3. Power to issue directions for blocking for public access of any information through any computer resource. (Section 69A)

- The Central Government or any of its officers specially authorised may direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource, if such information is contrary to the public policy and/or is not in the interest of sovereignty and integrity of India.

Information Technology (Intermediaries guidelines) Rules, 2011

- Social media websites such as Twitter, Facebook, Instagram, etc. are referred to as *intermediaries* because they provide a platform between an individual to the rest of the world for the dispersal of thoughts and opinions.
- #### 1. Due diligence to be observed by intermediary [Rule 3]

The intermediaries are provided with the duty to notify their users through the rules and regulations, terms and conditions or user agreement on how to use their websites for dispersal of information, including not to host, display, upload, modify, publish, transmit, update or share any information that is harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable,

disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever; or threatens the unity, integrity, defence, security or sovereignty of India.

Unlawful Activities (Prevention) Act, 1967

1. Penalty for being member of an unlawful association, etc. (Section 10)

- This provision penalizes any person from being a member of unlawful association.
- An “unlawful association” has been described in Section 2(p)(ii) of the said Act, under which it has also covered the offences under Sections 153A (*Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony*) and 153B (*Imputations, assertions prejudicial to national-integration.*) of the Indian Penal Code, 1860.

2. Penalty for dealing with funds of an unlawful association. (Section 11)

- Any person on whom a prohibitory order has been served in respect of any moneys, securities or credits is found to pay, deliver, transfer or otherwise deal in any manner whatsoever in contravention with such public order is made liable under this section.

Protection of Civil Rights Act, 1955

1. Punishment for other offences arising out of “untouchability”. [Section 7(1)(c)]

- Propagation of the notion of ‘untouchability’ through words (spoken or written), signs or visible



representations has been prohibited under this section.

The Religious Institutions (Prevention of Misuse) Act, 1988

1. **No religious institution or manager thereof shall use or allow the use of any premises belonging to, or under the control of, the institution. (Section 3)**
 - Under this provision, no religious institution or manager thereof is allowed to do any act that could promote or attempt to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or carrying on any activity prejudicial to the sovereignty, unity and integrity of India.
2. No religious institution or manager thereof shall allow any ceremony, festival, congregation, procession or assembly organised or held under its auspices to be used for any political activity. (Section 6)

HOME MINISTRY ON LAWS RELATING TO HATE SPEECH

As per a report in newspaper ‘The Hindu’, dated 25th May, 2021, the Committee for Reforms in Criminal Laws is seen to gain momentum on the subject of ‘hate speech’. It has been observed that there is no definition of ‘hate speech’ in the Indian Penal Code, 1860. The Bureau of Police Research and Development published a manual which defined hate speech as a “language that denigrates, insults, threatens or targets an individual based on their identity and other traits (such as sexual orientation or disability or religion etc.).” The panel constituted by the Home Ministry may propose a separate

provision for offences relating to freedom of speech and expression. The 267th Report of the Law Commission of India on ‘Hate Speech’ mentions of the Human Rights Council’s ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ which addresses the issue of content regulation on internet to restrict the freedom of expression on the following grounds:

- Child Pornography (to protect the rights of children);
- Hate Speech (to protect the rights of the affected communities);
- Defamation (to protect the rights and reputation of others against unwarranted attack);
- Direct and public incitement to commit genocide (to protect the rights of others).

The recommendations of the Committee for Reforms in Criminal Laws will be taken into account by the Home Ministry before adoption of any changes.

LANDMARK JUDGEMENTS CONCERNING HATE SPEECH

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

The Supreme Court upheld the constitutional validity of Section 295A of the Indian Penal Code, 1860 and ruled that this section does not penalise every act of insult to or attempt to ‘insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.’



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

The Supreme Court refused to adjudge speech in isolation and held that a movie that intends to impart message of peace cannot be considered to violate Article 19(1)(a) of the Constitution only because it shows fanaticism and violence in order to express the futility of such acts. Thus, it is not the act itself but the potentiality of the act and its effect on public tranquility that justifies restriction under article 19(2). It was observed that a restriction on speech was justified only if it was imminently dangerous to the community.

***Bal Gangadhar Tilak v. Queen Empress*¹⁴**

The word ‘disaffection’ in the provision of the law of Sedition (Section 124A of the Indian Penal Code, 1860) has been taken as a stressed subject wherein it was held that the *first explanation* to the section seems to indicate that disaffection cannot mean absence of affection. It is necessary to determine the intention of the speaker, and also, the time, circumstances, place and occasion need to be taken into account.¹⁵

***Shiv Kumar Mishra v. State of U. P.*¹⁶**

Where there are no words to promote feeling of enmity or hatred between different religious, racial or language groups or castes or communities on grounds of religion, race, language, caste or community, the author cannot be convicted for any offence under this section.

***Bilal Ahmad Kaloo v. State of Andhra Pradesh*¹⁷**

If there is no attempt of promotion of hatred between two or more different groups or communities, and the comments of the author pertain only to a particular community without any reference to any other community or group, it cannot attract accusation under this section.

***Gurjatinder Pal Singh v. State of Punjab*¹⁸**

Having disregard of the Constitution of India and criticism of the Government does not invoke a liability under this section. The words spoken by the accused must be such as to target a particular community or group by excitement or attempt of excitement of hatred in the minds of people belonging to another community or group.

***Sujata Bhadra v. State of West Bengal*¹⁹**

Where the author wrote an autobiography which consisted of an illustration of women in her society who belonged to Muslim families, was not considered to be an objectionable material that could hurt the religious feelings of the followers of Islam. Hence, the order of forfeiture of such autobiography was set aside by the court.

CONCLUSIONS / SUGGESTIONS

The regulation of hate speech is necessary for the betterment and maintenance of order within the society as India is a country of mixed cultures. The makers of the Constitution had envisaged the idea of India as a unified nation, thereby adopting the idea of ‘secularism’ which states that the nation

¹⁴ [39 Ind Cas 807]

¹⁵ *Satyendra Nath Mazumdar v. Emp.*, [AIR 1931 Cal. 337]

¹⁶ [(1978) Cri. L. J. 701]

¹⁷ [(1997) Cri. L. J. 4091 (SC)]

¹⁸ [2009(3) RCR (Criminal) 224]

¹⁹ [(2006) Cri. L. J. 368 (Cal.)]



has no affiliation with any religion whatsoever. This is why, every citizen of India has been provided with the right to practice and profess the religion of his choice. The protection of minorities is also to be conceived as an idea to keep all the majority and minority religions together. Therefore, it is necessary to prevent the notion of hate speech in order to keep the peace within the society.

