

HATE SPEECH IN THE TIME OF FREE SPEECH

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

He is declaring and announcing something important. He is full of spirit, emotion, and clenching his fist while shouting with the loudspeaker.

The rising frequency of hate speech in India has not gone unnoticed. The [Supreme Court has agreed to hear a petition](#) on [the events organised by the Hindu Yuva Vahini in Delhi and by Yati Narsinghanand in Haridwar](#) on December 17 and 19, 2021, respectively, wherein calls to violence were made against Muslims. But the [laws dealing with hate speech](#) are ineffective and deficient. So, the Supreme Court has been asked to review hate speech laws and various High Courts have been called upon to provide interpretation of ingredients of hate speech. The lack of clear legislative guidance has meant that we are seeing discordant judicial outcomes. Nevertheless, this growing incidence of hate speeches, especially those targeting minorities, in combination with the judicial ambiguity has provided an opportunity to chart legislative reforms.

Hate speech is neither defined in the Indian legal framework nor can it be easily reduced to a standard definition due to the myriad forms it can take. Black's Law Dictionary has defined it as "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." Building on this, the Supreme Court, in [Pravasi Bhalai Sangathan v. Union of India](#) (2014), described hate speech as "an effort to marginalise individuals based on their membership in a group" and one that "seeks to delegitimise group members in the eyes of the majority, reducing their social standing and acceptance within society."

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The current legislative set-up has several provisions to criminalise offences which can be characterised as hate speech. The High Court of Karnataka, in *Campaign Against Hate Speech v. The State of Karnataka* (2020), [was of the opinion](#) that the Indian Penal Code illegalises speeches that are intended to promote enmity or prejudice the maintenance of harmony between different classes. Specifically, sections of the IPC, such as 153A, which penalises promotion of enmity between different groups; 153B, which punishes imputations, assertions prejudicial to national integration; 505, which punishes rumours and news intended to promote communal enmity, and 295A, which criminalises insults to the religious beliefs of a class by words with deliberate or malicious intention, contribute to combating hate speeches. The Supreme Court has upheld the view that the objective behind such provisions is to "check fissiparous communal and separatist tendencies and secure fraternity so as to ensure the dignity of the individual and the unity of the nation".

The Supreme Court, in [State of Karnataka v. Praveen Bhai Thogadia](#) (2004), emphasised the need to sustain communal harmony to ensure the welfare of the people. In the *Pravasi Bhalai Sangathan* case, the Supreme Court underlined the impact hate speech can have on the targeted group's ability to respond and how it can be a stimulus to further attacks.

The Madras High Court has on several instances dealt with the issue of hate speech, characterising it as small spark capable of merely lighting a lamp to destroying a forest. In *G. Thirumurugan Gandhi v. State* (2019), [the Madras High Court explained](#) that hate speeches cause discord between classes and that responsibility attached to free speech should not be forgotten. Summing up these legal principles, in [Amish Devgan v. Union of India](#) (2020), [the](#)

[Supreme Court held](#) that “hate speech has no redeeming or legitimate purpose other than hatred towards a particular group”.

Is the freedom of speech absolute?

Despite judicial guidance from the *Amish Devgan* case, uncertainty around interpretation of hate speech has resulted in the adoption of varying standards. The Madras High Court, in *Maridhas v. State* (2021), [quashed an FIR](#) alleging hate speech involving targeting of minorities by holding that the ‘YouTuber’ is entitled to protection under Article 19(1)(a) of the Constitution and distinguished this case from the application of the ‘Who? What? Where? test’ laid down in the *Amish Devgan* case. Per contra, the Madras High Court, in the case of *Fr. P. George Ponnaiah v. Inspector of Police* (2022), [gave no relief to the petitioner](#) by holding him to be a person of influence. By doing so, the High Court has failed to appreciate that a YouTuber with more than 4 lakh subscribers and a periodic record of publishing motivated content would have more influence than a priest with a limited audience from an isolated incident. It is trite that statements made by ‘persons with influence’ having the mere likelihood of breach of peace have to be construed to constitute hate speech.

Unfortunately, divergent decisions from constitutional courts expose the lack of established legal standards in defining hate speech, especially those propagated via the digital medium.

Tackling hate speech

The [Law Commission of India, in its 267th report](#), recommended the insertion of two new provisions to criminalise and punish the propagation of hate speech: Section 153C and Section 505A of IPC. Section 153C was drafted to cover an offence committed when any person uses threatening words which are intended to cause fear, or commends hatred for the purpose of inducing violence through words, spoken or written, visible representation or signs on the grounds of race, caste, religion, sex, gender identity and other characteristics. Section 505A was to include provisions penalising causing of fear, alarm, or provocation of violence. Furthermore, the 189th Report of the Parliamentary Standing Committee on Home Affairs, in 2015, recommended the incorporation of separate and specific provisions in the Information Technology Act to deal with online hate speech. None of the recommendations have been acted upon and this has partly given rise to ambiguity in construing hate speech by various constitutional courts.

Much of the existing penal provisions deal with hate speech belong to the pre-Internet era. The need of the hour is specialised legislation that will govern hate speech propagated via the Internet and, especially, social media. Reference can be drawn to the Australian federal law called the Criminal Code Amendment Act, 2019, which imposes liability upon Internet service providers if such persons are aware that any abhorrent violent material, which is defined to include material that a reasonable man would regard as offensive, is accessible through the service provided by them.

Editorial | [Incorporating limits: On IPC and hate speech](#)

Action commonly taken against modern-day hate speeches have a whack-a-mole effect wherein the underlying objective of inciting communal disharmony or hatred, despite the detention of the offender, survives through digital or social media platforms for eternity. Thus, taking cue from best international standards, it is important that specific and durable legislative provisions that combat hate speech, especially that which is propagated online and through social media, is enacted by amending the IPC and the Information Technology Act. Ultimately, this would be possible only when hate speech is recognised as a reasonable restriction to free speech.

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