

INCORPORATING LIMITS: THE HINDU EDITORIAL ON IPC AND HATE SPEECH

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

Speech is free, but it is a freedom that comes with responsibility. And responsible speech is not just something that does not contain abuse, defamation or incitement to violence. It is increasingly seen as expression that tends not to discriminate against or incite hatred towards groups based on race, gender, caste, religious belief, sexual orientation, nationality or immigration status. The world has moved away from a free speech doctrine based on a formal equality among different viewpoints to one that discourages the targeting of any vulnerable section. The term 'hate speech' and calls for laws that specifically seek to punish it arise from this inclusive understanding of the basis on which speech is restricted in modern democracies. In this backdrop, the proposal to incorporate provisions against hate speech in the penal law is quite welcome. A committee appointed by the Union Home Ministry, tasked with recommending changes in criminal law, is now [seeking to formulate new provisions that will make hate speech a separate offence](#). The term 'hate speech' may not be used, but the panel is examining recommendations made by the Law Commission and the Expert Committee headed by T.K. Viswanathan, on adding Sections 153C and 505A to the IPC. The proposed Section 153C would target speech that gravely threatens any person or group with intention to cause fear or alarm, or incite violence towards them, and prescribe a sentence of two years in prison and a fine. Section 505A, on the other hand, proposes to punish speech or writing that causes fear or alarm among a group, or provokes violence against it, on grounds of race, religion, gender, sexual orientation, place of birth or disability.

The [Committee for Reforms in Criminal Laws attracted criticism](#) when it was formed last year, as many feared a hurried process without adequate and wide consultation. Some lawyers and activists said it was not inclusive and questioned its ability to gather a wide range of opinion in the midst of a pandemic. While such points of criticism remain, it appears that the panel would go ahead and make its recommendations soon. In the context of the hate speech provisions, it must direct its efforts to define narrowly the sections it proposes to formulate and avoid the pitfall of using vague and overbroad terms that would fall foul of the Constitution. Section 66A of the Information Technology Act, it may be recalled, was struck down by the Supreme Court because it failed to define some terms that sought to criminalise offensive and annoying messages. Ever since this 2015 decision, some governments see a lacuna in the law concerning offensive messaging over the Internet. If at all new sections are to be introduced, it should be clear that what is sought to be punished is incitement to violence or advocacy of hatred, posing an imminent threat to public order or a targeted group. Only then will it be a valid curb on free speech.

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