

HATE SPEECH AND FREE SPEECH: FINDING A MIDDLE COURSE

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ABSTRACT

The legal research paper aims at discussing the intricacies involved in the concept of 'hate speech' and the necessary limitations in this regard. The authors have concentrated on the colossal diversity prevalent in India and the consequent importance of maintaining peace and order in such a society. The various legal provisions in criminal law that deal with discrimination, incitement to violence on grounds of racial, religious, sexist, linguistic differences and the confinements on the freedom of expressions have been emphasized in this work of research. The paper goes on to discuss the constitutional aspect of hate speech laws in India and whether they are an infringement of Article 19(1) (a) of the Indian Constitution-the freedom of speech and expression. To understand the reasonableness of the restriction imposed, the provision given in Article 19 (2) of the Constitution has been brought in light. A number of cases have put forth conditions under which these restrictions can be imposed. The most important judgment in this regard is that of the case *Kedarnath v State of Bihar*. It has been witnessed that the judiciary enjoys a considerable amount of discretion in evaluating the reasonableness of any restriction imposed.

The distinction between hate speech and free speech has been a topic of intense debates for a long time. In this paper the authors have tried to bring under the limelight, how the laws in India strive to promote a balance between an individual's dignity and his right, going on to discuss how no freedom can be absolute. Then again, the paper illustrates how it is as important to be able to distinguish between a right and a duty. It is our right to speak freely about matters that concern us and that form the essence of a democracy. At the same time, it is also our duty to respect and be tolerant towards cultural differences, feelings and sentiments. The authors have put across their views about the merits and demerits of having hate speech laws in a country like India. They have also emphasised on certain reforms that need to be brought in

the criminal laws of India, in order to deal better with hate speeches and the disharmony that have a tendency to instigate. Thus, this paper is one which aims at putting across a possible middle course between hate speech and free speech.

Keywords: Hate speech, freedom of speech and expression, reasonable restriction, criminality, constitutionality, balance.



INTRODUCTION

India accommodates a surprisingly diverse blend of religious, linguistic, ethnic and cultural backgrounds with an aim to establish a liberal pluralistic form of government. For instance, a population of 1.2 billion comprises of six major groups, like Hindus, Muslims, Christians, Buddhists, Sikhs, Jains as well as Zoroastrians and Jews. These religious segments are often always divided into multiple sub groups. The nation is divided into 29 states and 7 union territories and each of them offers variation with respect to costume, language, culture and tradition. In the context of this vast diversity concomitant tensions are inexorable in the society. In addition to this the caste system prevalent in the Hindu culture which, *inter alia*, outcasts an entire section of the society, that is, the Dalits has made the work of the Indian legislators and law makers difficult. Hence, the central objective of the Constituent Assembly was to enshrine the values of equality, liberty and justice in India's constitution in 1947.¹

Hate speech is intricately linked with a person's prejudice or disaffection towards a certain section of the society. The aim of such a speech is to instigate violence through degrading or intimidating a particular religion, ethnic group, nationality, sex, sexual orientation, disability, social class, *inter alia*. The historic significance of hate speeches can be witnessed in Nazi Germany when such provocative speeches were used by Hitler to incite violence against the Jews. According to Michel Rosenfeld, University Professor of Law and comparative democracy at Benjamin N. Cardozo School of Law, "hate speech" can be defined as speech premeditated to endorse hatred on the basis of ethnicity, race, national origin or religion. He further puts forth that this poses complex and vexing problems for constitutional right to freedom of expression.² In a resolution passed by the 13th Session of the Human Rights Commission, it has been noted that defamation of religions is majorly disrespectful to human dignity which leads to restriction on freedom of religion. This also creates a field to incite religious hatred and violence.³

In India's context the laws relating to hate speech gain paramount importance because India is

¹ Venkat Eswaran, *Advocacy of National, racial and religious hatred: The Indian Experience, Striking a Balance*, 200.

² Michel Rosenfeld, *Hate Speech in Constitutional Jurisprudence: A Comparative Analysis (2002-2003)* 24 *Cardozo Law Review* 1523, 1523.

³ *Hate Speech in India*, Accessed at http://jmi.ac.in/upload/menuupload/11_ccmg_hatespeech.pdf on 17th July, 2017.

a land of people from all religious communities and a number of races. There is no singular legal provision in India's criminal law system which concentrates solely on hate speech. Nonetheless, a number of sections in the Indian Penal Code, 1860 are regarding hate speeches. Sections 153A (1)(a) and 153B state that any person who promotes hatred, enmity, disharmony or ill-will between different linguistic, religious, regional groups or racial, communities or castes, by verbal or written expression is punishable for disrupting public order. Also, Section 295A of the Code states that writings, signs or speeches with a preconceived intention to cause insult to a religion or religious belief is punishable and could lead to 3 years of imprisonment. Protection of Civil Rights Act, 1955 prescribes severe punishment to who-ever practices untouchability, includes provisions penalizing hate speeches against Dalits. Section 125 of the Representation of the People Act confines political parties and individuals from generating enmity or hatred between different classes of citizens of India. Furthermore, Section 123(3) of the Act puts forth that no party or candidate is allowed to appeal for votes on the grounds of community, religion, language, race, caste and so on.

Like most laws prevalent in India, offences related to hate speech are also a heirloom of the British colonization of India. The British viewed the laws regarding hate speech as an integral part of maintaining security and stability in culturally diverse India. The primary objective was to avoid the occurrence of riots, communal disharmony or tension in the country. Their rationale behind the imposition of such laws was the perceived religious and cultural sensitivity of the Indian milieu. The question whether an insult to one's religion should be met with punishment does not depend on whether that religion is true or false. The religion may be untrue but the agony that such insults bring about to its followers is not.⁴

STATUTORY PROVISIONS REGARDING HATE SPEECH

The Codified form of Criminal law in India has been in existence since 1860 A.D. and that is when came into force under the colonial Legislative Council. The Code of Criminal Procedure enhances the provisions of the Code which was initially brought into force in 1898 and considerably amended in 1973.⁵ Indian law doesn't provide for any absolute and concrete legal

⁴ Thomas Macaulay, Indian Penal Code, 1838, 2002 reprinting, 101-102.

⁵ Venkat Eswaran, Advocacy of National, 'Racial and Religious Hatred: The Indian Experience, Striking a Balance', 94.

provision for hate speech. However, in the Penal Code there are five primary provisions which deal with the limitations on the freedom of expression, discrimination and incitement to hatred and violence.

Section 153A makes it an offense if any person attempts to promote or promotes, by usage of written or spoken words or by signs or any other obvious representations of hatred, enmity, disharmony or feelings of ill will between different religious, lingual, racial, or religious groups or communities or castes which can hold the offender liable for punishment with imprisonment for up to three years or with a fine or with both⁶.

Section 153B of Indian Penal Code puts forth the making or publishing affirmations which: (a) indicate that "any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India"; or (b) propose that "any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India": or (c) brings about or are likely to bring about "disharmony or feelings of enmity or hatred or ill-will between such members and other persons". The above offences are also punishable with fine or imprisonment for up to three years.⁷

The provision of **Section 295A** criminalizes the acts of a person who with malicious and deliberate intention of outraging the religious feelings of any class of citizens of India, attempts to insult or insults the religious beliefs or the religion itself of a particular class by signs, spoken or written words or by any other perceptible representations. This section too confers a punishment of fine and imprisonment up to three years or both on the offender.⁸

Section 298 of the Code provides a wider angle which aims at protecting the religious understanding and makes it an offence for a person with the deliberate intention of wounding the religious feelings of any [other] person to make any gesture or sound or utter any word in the presence of that other person. A person booked under this Section can be imprisoned up to

⁶ Section 153A, Indian Penal Code, 1860.

⁷ Section 153B, Indian Penal Code, 1860.

⁸ Section 295A, Indian Penal Code, 1860.

one year. This section limits its ambit to only spoken words and cannot be used for published words.⁹

The final provision of the Code dealing with free speech and incitement is **Section 505(2)** according to which a person who makes, circulates or publishes any statement or report containing alarming news or rumor with the intention of promoting or creating, or which has the potential of promoting or creating, on grounds of race, religion, residence, place of birth, language, community or caste or any other possible ground, feelings of hatred, enmity or ill-will between different racial, religious, lingual or regional groups or communities or castes, shall be punishable with an imprisonment extending up to three years, or along with a fine, or both. If this offence is committed in any place of worship, the person committing the offence maybe potentially exposed to aggravated punishment of imprisonment for up to five years, with or without a fine. Nonetheless, this section provides for an exception for rumors, statements or reports made by a person who has reasonable grounds to believe them to be true and publish or makes them under the impression that his knowledge is bona fide.¹⁰

The Indian electoral laws provide for strict rules against the use of communal or religious hate speech. Under **Section 124(5) of the Representation of the People Act, 1951** when any candidate or his representative makes a systematic appeal to refrain from voting or vote on grounds of race, caste, religion or community or uses or appeals to national and religious symbols such as the National Flag for increasing the candidates electoral prospects; commits an offence.¹¹ In the case of *Jamuna Prasad v Lachchi Ram*¹², the Supreme Court overhauled a challenge to this provision on the grounds that it did not pose any unreasonable restriction on the right provided by Article 19(1) (a).¹³

Lastly, the Cinematograph Act, 1952 has provisions for the prior censorship of motion pictures, allows the restriction or banning of films which contains words or visuals contemptuous of religious, racial, or other such groups' or which promote communal attitudes.¹⁴ The constitutionality of pre-censorship of films itself has been endorsed by the Supreme Court. The above legal clauses provide for a system which aims at putting limitations and not making the

⁹ Section 298, Indian Penal Code, 1860.

¹⁰ Section 505(2), Indian Penal Code, 1860.

¹¹ Section 124(5) of the Representation of the People Act, 1951.

¹² *Jamuna Prasad v Lachchi Ram*, AIR 1954 SC 686.

¹³ Article 19 (1) (a), Constitution of India, 1950.

¹⁴ Section 5B of the Cinematograph Act, 1952.

freedoms guaranteed under our Constitution absolute. This further helps the society get an idea about its Constitutional validity.

HATE SPEECH: CONSTITUTIONAL ASPECT

The drafters of the Indian Constitution aimed to strike a balance between the right of freedom of speech and various instances of its misuse. This was accomplished by the inclusion of Part III of the Constitution which dealt with fundamental rights of individuals and specifically article 19(1)(a) which simply states that 'all citizens must have the freedom of speech and expression'. According to Article 19 (1) (a) of the Constitution of India, the right of the citizens to 'Freedom of speech and expression' is fundamental. This constitutional right is the bastion of a democratic government. It is also vital for the even working of the system. Such a freedom is considered to be primary to the concept of liberty and occupies one of the top places in the pecking order of liberties guaranteed. On a number of occasions this right has been viewed as a basic human right, a natural right and the like. The responsibility to implement these provisions in the Constitution was undertaken by the Indian judiciary. In the landmark judgement laid down by Justice Bhagwati in the case of *Maneka Gandhi v. Union of India*¹⁵ it was observed that the essence of a democratic government is open discussion and free debate, since it is the only check on arbitrary decisions taken by the government in a democratic system.

Reasonable Restrictions:

An important characteristic of articles 19(2) is the presence of the concept of 'reasonable restriction'. The major fact in issue to be determined by the courts is whether the restrictions imposed under this provision are reasonable or not. There is no set definition for the word 'reasonable' and hence it is difficult to determine the reasonability of a restriction. The Courts have considered factors which include the extent and the duration of the restriction, the method in which and the conditions under which the imposition has been sanctioned. The nature of the concerned infringed right emphasizes the purpose of the imposed restrictions, the urgency and the extent of the evil sought to be remedied thereby, the imbalance of the imposition and the

¹⁵ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

predominant circumstances at that time.¹⁶ If a law infringes a right that is guaranteed under Article 19(1)(a) to Article 19(1)(g) it will lead to the nullification of the same, unless it falls under the protective provisions of Article 19(2) to Article (19)(6). The burden of proof always lies on the State to prove the reasonableness of the restriction imposed. In the *Telecasting case*¹⁷ involving the state owned Doordarshan, it was stated that a change should be realized with passage of time in the concept of reasonableness. This change should absorb the current socio-economic values of the society. The Supreme Court has also observed that the directive principles¹⁸ hold a major position in determining whether a restriction on a given fundamental right is reasonable or not. If the restriction aims to promote a directive principle, then it is generally considered to be reasonable. This was put forth in the case of *Kasturi Lal Lakshmi Reddy v State of Jammu and Kashmir*¹⁹.

Various judgments have upheld that this issue should be adjudged on a case to case basis.²⁰ There can be no freedom which is completely unrestricted or absolute. The provision under Article 19 (1) (a) has not been expressed in absolute terms but is subject to ‘reasonable restrictions’ as enshrined in Article 19 (2)²¹. It is liable to be controlled, curtailed and regulated to some extent by laws made by Parliament or the State Legislatures. Freedom of speech and expression is subject to limitations keeping in mind the interests of ‘the sovereignty and integrity of India’²², ‘public order’, ‘decency and morality’ ‘the security of the State’, and ‘friendly relations with foreign States’. It is also applicable in cases of ‘contempt of Court’ which has been dealt with under Article 129, Article 215, Article 144, Article 141, Article 142 and Article 261(1) of the Constitution of India., ‘incitement to an offence’, or ‘defamation’. Basically, the reason to prohibit and introduce the element of penalizing hate speech is to protect public order. Article 19(2) broadly deals with concepts of ‘public order’ and ‘security of State’.

In the case of *Kedarnath v. State of Bihar*²³, the Court asserted that when a legal provision is

¹⁶ M. P. Jain, Indian Constitutional Law, 7th Edition, LexisNexis, 1017.

¹⁷ *Director General, Directorate General of Doordarshan v Anand Patwardhan*, AIR 2006 SC 3346.

¹⁸ Part IV of the Indian Constitution, 1950, Article 36-50.

¹⁹ *Kasturi Lal Lakshmi Reddy v State of Jammu and Kashmir*, AIR 1980 SC 1992.

²⁰ *State of Madras v V. G. Row*, AIR 1952 SC 196.

²¹ Article 19 (2), Constitution of India, 1950.

²² Preamble to the Constitution of India.

²³ *Kedarnath v. State of Bihar*, AIR 1962 SC 955.

capable of two interpretations, one which is constitutional and the other unconstitutional, the interpretation making it constitutional should be given preference. Subsequently, the Court put forth that a merely criticizing of a government action no matter how strongly worded would be in consistence with the right of freedom of speech and expression. The words having deleterious tendencies or made with the intention to create unrest in the law and order situation of the nation would be penalised keeping in mind the welfare of public.

In the case of *A.K. Gopalan v State of Madras*²⁴, the Supreme Court justified the reasonable restrictions as given under Art. 19 (2) on utilitarian grounds, (utilitarianism theory deals with normative ethics which primarily holds that the best moral action is the one that maximises utility). Justice Sastri goes on to emphasize how certain restrictions on freedom are necessary at times so that others may also enjoy the freedoms that they are entitled to. The Judicial system in India has contributed towards the issue of hate speech since it collides with the concept of public order and has been emphasized in the cases of *Gopal Vinayak Godse v Union of India*²⁵ and others and *Ramji Lal Modi v State of Uttar Pradesh*²⁶. In *Ramji Lal Modi* case, the Supreme Court upheld the constitutionality of Section 294 of the Indian Penal Code since it was viewed as a 'reasonable restriction' upon free speech in the interest of public order.

In the case of *Gopal Vinayak Godse*, the Union judiciary adopted a broad concept of what may be categorised as hate speech. Gopal Vinayak Godse, the author of *Gandhi hatya Ani Mee*, who was the brother of Nathuram Godse, contended that Section 99A of the CrPC (under which copies of his book were confiscated) was an infringement of the freedoms of speech and profession. The Court, rejecting his contention, emphasized the importance of curbing promotion of hatred between different classes of citizens. However the Court upheld that the book does not deal with any communal problem and has a limited scope to incite public disorder. Hence, the intention of the writer becomes irrelevant as far as the provision of Section 153A of the IPC is concerned.

Nonetheless, the broad interpretation of hate speech as viewed by the Supreme Court in this case is limited by certain provisions such as Article 25 of the Indian Constitution.²⁷ This need

²⁴ *A.K. Gopalan v State of Madras*, AIR 1950 SC 27, 69.

²⁵ *Gopal Vinayak Godse v Union of India*, AIR 1961 SC 600.

²⁶ *Ramji Lal Modi v State of Uttar Pradesh*, AIR 1957 SC 620.

²⁷ Article 25- Freedom of conscience and free profession, practice and propagation of religion.

for a complete understanding was put forth in *Chandmal Chopra v State of West Bengal and Ors*²⁸. In this particular instance, an endeavour to ban the Quran on the grounds that it incited violence and promoted feelings of enmity between various religious sections, was overhauled, stating that it was the Court's primary duty to respect all religions equally. Failure to do so would result in the violation of the right to freedom of religion which encompasses the right to profess, propagate and practice one's religion.²⁹

However, the Indian Courts have also interpreted the law liberally. The case of *Raj Kapoor v State*³⁰, decided by Justice Krishna Iyer stated that "the world's greatest paintings, sculptures, songs and dances, India's lustrous heritage, the Konarks and Khajurahos, lofty epics, luscious in patches, may be asphyxiated by law, if prudes and prigs and State moralists [proscribe] heterodoxies." The case laws clearly indicate that the Supreme Court or any other competent Court in India enjoy a considerable amount of discretion in evaluating the reasonableness of a restriction³¹ and it can be duly concluded after analyzing such cases³² that the Indian Courts have upheld the constitutional guarantee of freedom of speech and expression and have not unjustifiably submitted to State interests and have adopted a consistent and wise approach.

HATE SPEECH v/s FREE SPEECH

The right of freedom of expression has been existent either directly or indirectly since times immemorial. But we also know that, censorship (like that imposed by the Roman Catholic Church) has also been in existence for long. Article 19 of the Universal Declaration of Human Rights has acknowledged this right, thus making it a recognized law under international human rights. However, it also mentions the responsible usage of the exercise of this right. Hence, for purposes of maintaining public order or the protection of national security it is important to understand that such rights are never absolute and are always paired with a duty to be vigilant.³³

It is of prime importance to exercise the freedom of expression in an equitable manner. It means that this knowledge and the right to receive it should be taken into consideration while

²⁸ *Ramji Lal Modi v State of Uttar Pradesh*, 1988 Cri.LJ 739 Cal.

²⁹ Article 25 of the Indian Constitution.

³⁰ *Raj Kapoor v State*, AIR 1980 SC 258.

³¹ *Papnasam Labour Union v Madura Coats Ltd.*, AIR 1995 SC 2200.

³² *Ramesh s/o Chhotalal Dalal v Union of India and Ors*, 1988 SCR (2) 1011, 1022, 1023.

³³ Article 19 of the Universal Declaration of Human Rights, accessed at http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf, on 21st July, 2017

circulating information from seemingly provocative sources. The law in our country strives to promote a balance between an individual's dignity and his rights. For this very purpose, the freedom cannot be absolute. The Constitution provides for freedom of expression to the press and does not intend to restrict debate about the prevalent situation in the country, which is indispensable in a democracy. While doing so and while keeping the cultural diversity and sensitivity of the people of this country it also goes onto specify restrictions subject to their reasonability. This authority is upon the judiciary to analyze each case on its merits and demerits. A bold example of this is the striking down of the censorship imposed on the press (for the very first time) by the government headed by Ms. Indira Gandhi in June 1975, thus maintaining the right to dissent.

We have already established that the judiciary has interpreted laws relating to hate speech quite liberally and keeping in mind the context in each situation. The late artist M.F. Hussain had to witness a lengthy battle of legal allegations and actions because of his portrayals of Hindu religious figures and iconography. The Delhi High Court decided in the artist's favor in the case of *Maqbool Fida Hussain v Raj Kumar Pandey and others*³⁴. The case dealt with the artist's intention elaborately in analyzing and determining what constitutes as 'offensive or injurious to the religious feelings' of the respondents. Using the elements of Section 298 of the Indian Penal Code (which aren't met), Justice Sanjay Kishan Kaul came to the conclusion that 'mere knowledge of the likelihood that the religious feelings of another person maybe wounded would not be sufficient to be called as hate speech.

The controversy related to Salman Rushdie during the Jaipur literary festival includes blasphemy but more so hate speech which should not be understood as a concept of singular acts and individual sentiments being hurt but attracts a vaster ambit of socio-political context. This is due to the existing competition between myriad social groups. He went on to say that, "What is freedom of expression? Without the freedom to offend, it ceases to exist."

Whether a particular statement should be considered as hate speech or not is subjective in nature. What might offend an individual or a group might or might not be offensive to some other. Hence, injuring the other person's feelings cannot solely be a legitimate basis for categorizing it as 'hate speech'. Each and every debate specially the ones revolving around religious or social reforms are bound to hurt the sentiments of the people who maintain the

³⁴ *Maqbool Fida Husain v. Raj Kumar Pandey*, 2008 Cri. LJ 4107.

prevalent orthodoxy. If a minority regime oppressive in nature decides to restrict free speech as was done during British rule in India and also during the apartheid movement in South Africa, it will be counterintuitive to the idea of democracy. Therefore, promoting objectionable doctrines, however absurd, but not qualifying as incitement to violence should not be criminalized. The motive behind this is that false ideologies should be countered with sound and true ones as being afraid of free debate would be paradoxical to the concept of democracy.

Limited cases which are in all likelihood unreasonable, and can definitely lead to situations like riots and any other unlawful course of action where a race, religion, belief or color has been maliciously spoken about, with an intention to cause disharmony or violence, should be criminalized. The important term here is that the expression (for it to be constituted as hate speech) should be of such a nature that it incites violence deliberately and which cannot be suppressed due to its offensive condition. Simply said, fanatics and bigots should not have the power to hold the freedom of speech and expression to ransom. A society like India which is pluralist cannot survive if a religion seeks to dominate the others and demand that the core ideologies which form the religion be imposed on the others.

It is inevitable to create a universal model which can work everywhere and is accepted by all in the debate between hate speech (or restriction to speech) and freedom of speech and expression. The latter has been granted an upper hand. There can exist only one rule while deciding as to where the balance should tilt: not towards suppression, but definitely towards expression.³⁵

Emphasis should also be laid to the application of this law when the situation is grave and non-pardonable in nature. Recent examples of the lynching at Dadri (Uttar Pradesh) and Sodhana (Gujarat) of Muslim and Dalit men (respectively) by extreme right wing upper caste community should be taken into consideration. These are grave offences and are often either preceded or succeeded with hateful remarks about a person's caste and have a tendency to instigate communal violence. It should be kept in mind that, just like wars, riots also begin in men's minds. If a government fails to protect individuals against such atrocities is definitely culpable. Hate speech creates communal atmosphere and hence is required in the law to rectify injustices. The vulnerable sections which are often the minority should not be deprived of their

³⁵ Soli J. Sorabjee, Hate Speech Dilemma, accessed at http://www.jstor.org/stable/pdf/25554070.pdf?_=1468938639051, on 19th July, 2017.

right to equality. It is true that the interpretation of such laws which criminalize hate speech can be difficult, but it is equally imperative for them to exist. If the publications by the Shiv Sena or the RSS or any other political group strongly opinionated incite violence, they should rightly be punished under existing laws. This helps us reach the conclusion that hate speech laws, although subject to restrictions which should be reasonable, cannot be fully done away with. Hence the existence of such laws is justified on a single condition of interpreting it rationally.

OUR VIEWS AND SUGGESTED REFORMS

The freedom of speech and expression include within its domain the right to criticize, protest or dissent. It is certainly clear that such demonstrations of the right to freedom of speech and expression do not come under the purview of 'hate speech'. At the same time it is important to reflect upon the nuances of the freedom that come along with this right. The focus needs to be shifted from whether hate speech laws should exist to where a distinction should be made between right and a duty. The right to free speech and the responsibility that comes with it go hand in hand. In an attempt to balance contending interests which the IT companies, like Facebook, Twitter, Microsoft and Youtube, claim to uphold the formulation of a code of conduct in order to counter hate speech in the virtual platform, i.e., the social media.³⁶ This goes on to show the endorsement of the need to balance both the aspects of this law were felt by the international community at large. In accordance with this the Indian Constitution along with various statutory provisions, penalize hate speeches on the basis race, religion, place of birth, language and caste if the speeches are of a nature that can disturb social harmony by instigating violence.

In this context, the immediate goal of the Law Commission of India should be to suggest reform. The Law Commission needs to work towards defining the expression 'hate speech' and provide for guidelines for the reasonable use of this law. It should also be ensured by the election commission that hate speeches are not used as a tool to disrupt public order during

³⁶ V. Ramasubramanian, Hate Free Speech v Free Hate Speech, accessed at <http://www.thehindu.com/opinion/op-ed/hatefree-speech-vs-free-hate-speech/article8765314.ece>, dated June 24-2016 on 19th July 2017.

political campaigns and elections. Leaders of religious groups or political outfits should also be included in the ambit of law. It has been seen that the courts are hesitant to punish religious or political leaders due to the sensitivity of such actions. Additionally, there should be extensive awareness campaign amongst the keepers of law of order in the society, i.e. the police force.

Hate speech has been methodically used in contemporary times especially during and as well as after elections to instigate hatred towards minorities and result in actual violence. This has led to polarization of communities. The police should invoke the relevant sections of the Representation of People's Act and the Indian Penal Code that have been included to deal with such offences, though it has been observed that these provisions are rarely used. In a recent incident, Dalits at Una, Gujarat, were thrashed and assaulted in the name of protecting the cultural heritage of one caste.³⁷ Such incidents are always preceded by the usage of offensive language about a person's religion, race, caste or language. The fundamental rights to equality, equal protection to all individuals by the law of the land, freedom of expression, residents and associations, right to life, and freedom to practice, propagate and profess one's faith and the rights of religious minorities need to be tilted in favour of the oppressed and vulnerable sections of the society. These provisions have been guaranteed by our Constitution.³⁸ But what lacks, is their honest and consistent application. In order to give rise to tolerance awareness should be spread about the land's diversity which would subsequently shrink the hatred and prejudice.

Thus, when the question of whether to allow free speech including hate speech or to allow only hate-free speech arises, it is near perfect to throw light upon what English philosopher G.K. Chesterton had to say, *"To have a right to do a thing is not at all the same as to be right in doing it."*

³⁷ Gopal V Kateshiya, Una Thrashing: My son was forced to assault Dalits, says 17 year old Muslim boy's father' accessed at <http://indianexpress.com/article/india/india-news-india/una-dalit-thrashing-cow-skinning-muslim-boy-father-2924696/>, on 21st July 2017.

³⁸ Sabrang Factsheet Indian Law accessed at <http://www.sabrang.com/leaction/hatespeech.pdf> on 19th July, 2017.