
HATE SPEECH AS AN OFFENCE: AN INDIAN PERSPECTIVE

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ABSTRACT

The term “hate speech” seems to be consist of verbal, written or symbolic communication (including electronic communication) of hatred towards some specified communities based on their ethnicity, race, colour, religion, language, sexual orientation etc. International conventions strongly discourage such practice and mandate the member States of the United Nations to adopt suitable legislative measures for curbing such menace. Most of the civilized nations of the world have their own enactments which prohibit these activities with suitable penal measures. India is not an exception. The Constitution of India imposes reasonable restrictions on the freedom of speech and expressions. The Bharatiya Nyaya Sanhita (BNS), the prevailing penal code of India and the Representation of People’s Act,1951 have categorised the activity as an offence though the term ‘hate speech’ is not explicitly defined in the penal law of India. A definition of *hate speech* per se should be inserted in the BNS and/or it should be categorised as an organized crime. An exclusive legislation prohibiting hate speech seems not to be so necessary.

KEY WORDS: Communication, Hatred, Discrimination, Disharmony, Organised Crime.

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INTRODUCTION

Verbal, written or behavioural communication which attacks, threatens, insults or generates hatred towards a specified group based on ethnic, religious, linguistic or gender orientation aiming to incite violence or discrimination against that group may be categorised as *hate speech*. Damage created by hate speech has become a worldwide menace. The problem has recently been escalated by unscrupulous use of social media platforms through technological advancement in electronic communication systems.

CONCEPT UNDER INTERNATIONAL LAW

International Convention on Civil and Political Rights (ICCPR) protects freedom of expression subject to restrictions under specific circumstances necessitated for respecting rights and reputations of others and for protection of national security, public order, public health or morals¹. The States parties to this Convention are duty bound to legislate penal measures for advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence².

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) mandates the States parties to this Convention to declare all dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination against any race or group of persons of another colour or race as punishable offence³. Curbing speech that possess a direct risk of violence or discrimination has been emphasised by international bodies like UN Office of the High Commission for Human Rights (OHCHR).

LEGAL PROVISIONS IN INDIA

Freedom of speech is guaranteed as a fundamental right under the Constitution of India⁴ subject to limitation to be imposed on the following grounds :- maintenance of sovereignty, integrity and security of the State; maintenance of friendly relations with other States, public order, decency and morality; restraintment of contempt of court, defamation and incitement to an offence⁵.

¹ Article 19 ICCPR

² Article 20 *Supra*

³ Article 4 ICERD

⁴ Article 19(1)(a) of the Constitution

⁵ Article 19(2) – (6) *Supra*

Though “Hate Speech” *per se* has not explicitly been defined in the Bharatiya Nyaya Sanhita (BNS)⁶, the prevailing penal statute of India, the same has impliedly been referred many times in different provisions of the said Act for explaining several offences. Spoken or written words, signs and visible representations comprising of electronic communications seem to be the ingredients of idea of ‘speech’ in accordance with the BNS. The following kinds of such *speech*, may be, in terms of the provisions laid down under the BNS, categorised as ‘*hate speech*’ if the said Act is so interpreted :

- (a) Which excites or attempts to excite secession, armed rebellion, subversive activities; encourages feelings of separatist activities or endangers sovereignty, unity and integrity of India⁷;
- (b) Which promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste, community or otherwise, disharmony, feelings of enmity, hatred or ill-will among different religious, racial, linguistic or regional groups or castes or communities that mat tantamount to be prejudicial to the harmony among those groups or castes or communities or likely to disturb public tranquility⁸;
- (c) Which makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, linguistic or regional group, caste or community, bear the true faith and allegiance to the Constitution of India or uphold the sovereignty and integrity of India; be denied or deprived of their rights as citizens of India that may likely to cause disharmony or feelings of enmity or hatred or ill-will between such members or other persons⁹;
- (d) Which insults or attempts to insult the religion or religious belief of any particular class of the citizens of India deliberately with malicious intention of outraging the religious feelings of that class¹⁰.

In terms of the Representation of People’s Act (RPA), 1951¹¹ a person convicted of illegal use of the freedom of speech is prevented from contesting an election¹². Promotion of hatred among different classes of citizens on the grounds of race, religion, community, caste or language in

⁶ Act No. 45 of 2023

⁷ Section 152 BNS

⁸ Section 196(a) and (b) *Supra*

⁹ Section 197 (a), (b) and (c) *Supra*

¹⁰ Section 299 *Supra*

¹¹ Act No. 43 of 1951

¹² Section 8 *Supra*

reference to elections is prohibited which may be categorised as corrupt election practice in terms of the said Act¹³.

LEGAL POSITION IN UK

Though the term ‘hate speech’ is not explicitly defined in the law of UK, expressions amounting to verbal abuse, incitement of hatred against individual or group on the basis of race, religion etc. are unlawful.

In terms of the provisions laid down under the Public Order Act, 1986, intentional threatening, using abusive or insulting words or behaviour and displaying of any writing, sign or other visible representation causing such harassment, alarm or distress towards a person are categorised as punishable offences.

The Public Order Act, 1986 was amended by the Racial and Religious Hatred Act, 2006 which defines threatening words, behaviour or displaying written material with intention of stirring up religious hatred as offence punishable up to seven years of imprisonment.

Hate crime provision mentioned in Part 3A of the Public Order Act, 1986 was extended to cover “hatred against a group of persons defined by reference to sexual orientation” by the amending legislation namely the Criminal Justice and Immigration Act, 2008¹⁴.

LEGAL POSITION IN USA

There is no definition of hate speech in the law of USA. Rather, the idea of ‘hate speech’ is protected by the First Amendment to the Constitution of USA.

LEGAL POSITION IN CANADA

Though there is no specific law against ‘hate speech’ in Canada, advocacy in favour of genocide, wilful promotion of hatred against specified groups of individuals etc. are offences under Canadian law¹⁵. In terms of the provisions laid down thereunder, these offences are punishable with imprisonment up to two to five years. The penalty may be enhanced in appropriate circumstances¹⁶.

¹³ Sections 123(A) and 125 *Supra*

¹⁴ Section 74 and Schedule 16 of the Criminal Justice and Immigration Act, 2008

¹⁵ Sections 318 and 319 of the Criminal Code Provisions of Canada

¹⁶ Section 718.2 *Supra*

LEGAL POSITION IN AUSTRALIA

Though there is no explicit legal impediment on the term *hate speech* in Australia, public performance of acts reasonably offending, insulting, humiliating or intimidating others based on their race, colour or ethnic origin is unlawful in terms of the provisions laid down under the Racial Discrimination Act, 1975 of Australia¹⁷.

Criminal Code Act, 1995 of Australia contains provisions against inciting violence towards individuals or groups. Urging violence intentionally towards those persons based on their characteristics like race, religion etc. is an offence in terms of the provisions laid down under the said Act¹⁸ punishable with imprisonment up to 5-7 years.

LEGAL POSITION IN NEW ZEALAND

Publication and distribution of words which, being abusive, threatening or exciting, likely to generate hostility or contempt towards a group based on its racial, national or ethnic origin in terms of the provisions laid down under the Human Rights Act, 1993¹⁹ which may be enhanced vide the Sentencing Act, 2002 of that country in cases of offences motivated by hate, though there is no specific law against hate speech *per se*.

LEGAL POSITION IN FRANCE

Public persuasion for hatred, discrimination or violence on the basis of race, sex, sexual orientation, ethnicity, nationality, religion, disability etc. is categorised in French Law as ‘hate speech’ which is strictly prohibited and dealt with primarily by the provisions laid down under the 1881 Law on the Freedom of Press²⁰, amended from time to time. Penal measures are imprisonment up to one year and a fine amounting to Euro 45,000. Online platforms are liable to “manifestly illegal” hate speech contents within 24 hours in terms of the ‘*Avia*²¹ Law of 2020’ of this country.

LEGAL POSITION IN SPAIN

¹⁷ Section 18C of the Racial Discrimination Act, an Australian legislation

¹⁸ Sections 80.2A and 80.2B of the Criminal Code Act, 1995, an Australian legislation

¹⁹ Section 131 of the Human Rights Act, 1993 of New Zealand

²⁰ Articles 24, 32 and 34 of the Law on the Freedom of Press of France

²¹ derived from the French word ‘avion’ meaning *airplane* in English.

Incitement of hatred, discrimination or violence against groups based on racism, ideology, gender, sexual orientation or disability etc. is prohibited primarily in terms of the provisions laid down under the Spanish Penal Code²². Punishments for committing such offences are imprisonment from one to four years and fine.

LEGAL POSITION IN GERMANY

Incitement of hatred or violence against specified individuals or religious groups is prohibited by the provisions laid down under the '*Strafgesetzbuch*' (StGB / Criminal Code of Germany)²³ which attracts five years of imprisonment as penalty to be inflicted upon the offenders. Online hate speech activities are dealt with by the application of the provisions laid down under the Network Enforcement Act (NetzDG) which mandates social media platforms with 2 million users to delete such contents within 24 hours, otherwise, imposition of fines up to Euro 50 million are to be inflicted upon such platforms.

LEGAL POSITION IN ITALY

Inciting violence, discrimination or hatred targeting specified race, ethnicity, nationality or religion is treated as hate speech in terms of Italian law which is prohibited by the Italian Penal Code²⁴ and the Mancino Law of (1993)²⁵. Punishments for committing these offences are imprisonment up to 18 months and fines up to Euro 6000 which may be enhanced for six months to four years in cases of propaganda and violence.

LEGAL POSITION IN SOUTH AFRICA

The statute aiming to reduce offending speech and preventing hate crime in South Africa is the Combating of Hate Speech Act, 2023²⁶ which signed into law in 2024. Intentional communication generating hatred or inciting harm on the basis of gender, religion, race, sexual orientation etc. are categorized as offences under this Act punishable with imprisonment and fines. The offenders are also barred from enjoying the right of free speech as enshrined in the South African Constitution²⁷.

²² Article 510 of the Spanish Penal Code

²³ Section 130 StGB

²⁴ Articles 604-bis and 604-ter

²⁵ Law No. 205 of Italy

²⁶ Act No. 16 of 2023

²⁷ Section 16 of the South African Constitution

CONCLUSION

It reveals from the above discussion that excepting USA, most civilized countries have either express or implied law against hate speech including India. Though the term is not explicitly defined in the penal code of this country, necessary implication as to prohibition and/or condemnation of the same is well understood from various Indian legislations.

In Karnataka, one of the most cosmopolitan states of India, a Bill for curbing hate speech and hate crimes namely the Karnataka Hate Speech and Hate Crimes (Prevention) Bill, 2025²⁸ was passed in 2025 in which the term “hate speech” is defined as an expression made, published or circulated in either spoken or written words or signs, visible representations through electronic or other mode caused in public view intentionally to generate injury, disharmony or feelings of enmity, hatred or ill-will against a living or deceased person, class or group of persons or community based on religion, race, caste, community, sex, gender, sexual orientation, place of birth, residence, language, disability or tribe²⁹. The offence is cognizable and non-bailable, the punishment being imprisonment of 1-7 years and fine amounting to Rs. 50, 000 /- which is enhanced up to imprisonment of 2-8 years and fine amounting to Rs. 1,00,000 /- in case of repeated offenders³⁰

It may be referred here that the BNS³¹, the prevailing penal code of India has incorporated provision as to *organised crime*³² within itself from some pre-existing State legislations, notable among them being the Maharashtra Control of Organised Crime Act, 1999³³. Accordingly, a new definition as to the concept of *hate speech* similar to that of the Karnataka Bill may be incorporated in the BNS and/or it may be categorised as one of the *organised crimes* as mentioned in Section 111 of the BNS as the same may be continuing unlawful activity conducted by any person or group of persons colluding singly or jointly, either as a member of an organised crime syndicate as defined in that Act or on its behalf, by application of violence, threat of violence, intimidation, coercion etc.³⁴

²⁸ Karnataka L. A. Bill No. 79 of 2025

²⁹ Section 2(1) *Supra*

³⁰ Section 3(1) *Supra*

³¹ *Supra* in Note 6

³² Section 111 BNS

³³ Maharashtra Act No. XXX of 1999

³⁴ *Supra* in Note 32

It may be noted that though the offences of kidnapping³⁵, robbery³⁶, theft³⁷ and extortion³⁸ are categorised under the heading of '*organised crime*' in the BNS due to gravity of their nature of criminality, *kidnaping 'per se'* is incorporated in the chapter concerning the *offences affecting the human body*³⁹, *theft, robbery and extortion* are *exclusively* placed under the chapter of *offences against property*⁴⁰. The offence of *hate speech* is of such a nature that it may be placed both in the Chapter VII⁴¹ and in the Chapter⁴² of the BNS simultaneously. Sections 352⁴³ and 353⁴⁴ of the BNS are also concerned with this particular crime.

It also reveals from the contents of the Section 111 BNS that apart from the offences mentioned in the previous paragraph, other offences like vehicle theft, contract killing etc. are not defined elsewhere of the BNS or any other law prevailing at present in India.

Accordingly, it may be suggested that without legislating any separate statute in respect of *hate speech* like Karnataka, it may be incorporated in BNS inserting the definition and penal provisions of the concerned 2025 Bill of Karnataka therein and the same may also be categorized as an *organized crime*.

³⁵ Section 137 *Supra*

³⁶ Section 309 *Supra*

³⁷ Section 303 *Supra*

³⁸ Section 308 *Supra*

³⁹ Chapter VI *Supra*

⁴⁰ Chapter XVII *Supra*

⁴¹ Offences against the State

⁴² Offences relating to religion

⁴³ Intentional insult with intent to provoke breach of peace

⁴⁴ Statements conducting to public mischief