



# Defining Hate Speech in Electoral Discourse: Legal Challenges and Framework in India

Vedansh Sharma<sup>1\*</sup>, Dr. Meenakshi Punia<sup>2</sup>

<sup>1</sup>Ph.D. Research Scholar, Department of Law, Sardar Patel University of Police, Security and Criminal Justice

Lordi Panditji Village, Jodhpur, Rajasthan, India – 342037, +91-9537365771

Email: [phd21vedansh@policeuniversity.ac.in](mailto:phd21vedansh@policeuniversity.ac.in)

<sup>2</sup>Assistant Professor of Law, Department of Law, Sardar Patel University of Police, Security and Criminal Justice Lordi Panditji Village, Jodhpur, Rajasthan, India – 342037, +91-7728888187

Email: [meenakshilaw@policeuniversity.ac.in](mailto:meenakshilaw@policeuniversity.ac.in)

**Citation:** Vedansh Sharma (2023), Defining Hate Speech in Electoral Discourse: Legal Challenges and Framework in India, *Educational Administration: Theory and Practice*, 29(4), 2644 -2650

Doi: 10.53555/kuey.v29i4.7330

## ARTICLE INFO

## ABSTRACT

The primary ethos of the idea of India lies in a just and unbiased democratic process. The secular polity that India cherishes is laid on the foundations of a staunch commitment to creating an inclusive society where every citizen is guaranteed individual rights and liberty. The pluralist and inclusive society faces a persistent and perpetual threat from the schismatic political rhetoric amplifying polarizing political narrative.

The political jibes and rhetoric are proving detrimental to the notion of coexistence in India. The exponential surge in political hate speeches is the endeavors aiming to vilify the candidate or his community thereby creating political polarization and harnessing voter sentiments. One of the core obstacles in dealing with hate speech is that it is a phenomenological concept with no exhaustive definition and no directly associated criminal attributes.

The lack of any explicit legal provision in the criminal law or under the Representation of People Act, 1951 makes it further difficult to control this spike. The existing model code of conduct is toothless because of the lack of proper enforcement mechanisms. Hate speech ignites emotional sentiments as well as influences public behavior leading to further violation of not only the legal provisions but also tarring the social fabric. The beliefs stemming from these speeches result in social harassment, radicalization, and violent conflicts between communities. Further with the advancement of social media, online harassment, and cyberbullying are prominently found.

This research paper aims to exhaustively review the interaction of the criminality of hate speech and the associated political polarization. An extensive examination of the various definitions of hate speech is done here discussing the Indian and international perspectives. The consequential impact of hate speech on the electoral outcomes is also assessed here. The last part is dedicated to examining the existing legal framework for curbing hate speech during the electoral process.

The research identifies gaps in the present mechanism and provides suggestions for fostering a conducive electoral environment in the country.

**Keywords:** Criminality, Hate Speech, Hate Crimes, Electoral Polarization.

In the current epoch, democracy and secularism are seen as the foundational pillars of various nation-states. It provides a framework for inclusive governance cherishing diversity and ensures the right to equality for all its citizens. The Indian constitutional governance developed after the long independence struggle and being a nation divided on communal grounds ensured that democracy and secularism reside in the core.<sup>1</sup>

In India, the idea of democracy and secularism differs from the Western connotation in its commitment to address diversity and pluralism. The Indian understanding accommodates the diverse cultural, linguistic, and

<sup>1</sup> Pandey, G. (2001), *Remembering Partition: Violence, Nationalism and History in India*. Cambridge University Press.

religious landscape through constitutional guarantee and protection.<sup>2</sup> Being the largest and the most populous democracy in the world, India has been a testament to a vibrant multi-party system, remarkable electoral participation, and a deep political understanding of the electorate.

The gradual rise of communal hatred and muscular ethnocentric nationalism in India has tested the secular and inclusive foundations of Indian democracy. The surge of majoritarianism intertwined with the emotive political narratives has posed serious challenges to the idea of a governance free from any religious dominance and a vision reflective of the tapestry of Indian culture, religion, and language.<sup>3</sup>

The robust commitment to democracy and secularism faces severe blows by the use of religious narratives by political parties and candidates resulting in polarized elections. With every election, the nation is witnessing a significant withdrawal of secular ethos from the political scenario leading to a communally charged casting of votes instead of the idea of having a citizen-centric governance model as envisaged by the framer of the Indian constitution.

Hate Speech serves as the most important and prominent tool for creating divides in society. It is used to polarize groups in the name of language, religion, caste, gender, ethnicity, and other social factors.<sup>4</sup> Hate Speech has often resulted in violent clashes between different groups, dreadful communal riots, and mob lynchings. The reason for such dreadful incidents is often found as a communal inflammatory speech provoking emotive sentiments which are often based on fake news resulting in the gruesome incidents degrading the fraternity in India.<sup>5</sup>

Hate Speech is an issue of global concern. There are numerous references made by the international community in this regard. The first treaty that directly addresses the concern of hate speech was the *ICERD* (*“International Convention on the Elimination of all Forms of Racial Discrimination”*)<sup>6</sup> along with *ACHPR* (*“African Charter on Human and People’s Rights”*).<sup>7</sup> The European Union Parliament is progressively working on classifying hate crimes & hate speeches as declared ‘EU Crimes’.

In this contemporary era of digitalization and social media, it is exceedingly facile for users to express their opinions, amplify their beliefs, and participate in online debates impacting the political discourse. Also, during elections, social media is hyperactively used for political canvassing and voicing support for the party or candidate or to criticize them leading to a fierce political battle. The majority of political parties and prevailing political today have established social media wings to build political narratives and curated campaigns catering to the electorate.<sup>8</sup>

While social media serves as a tool for the free flow of information and a more informed citizenry due to its vast outreach, it also serves as a potent platform to be misused to spill out hate. The subtle religious differences are often exposed on public platforms by the propagation of religious narratives which has at times resulted in communal and hate violence.<sup>9</sup>

### What is Hate Speech?

As per the Black’s Law Dictionary,

*“The 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”.*<sup>10</sup>

As per The United Nations Strategy and Plan of Action on Hate Speech,

*“Any kind of communication in speech, writing or behavior, that attacks or uses pejorative or discriminatory language with reference to a person or a group based on who they are, in other words, based on their religion, ethnicity, nationality, race, color, descent, gender or other identity factor.”*<sup>11</sup>

The Convention on Elimination of Racial Discrimination forbids any spread of thoughts based on supremacy of race or hatred which can lead to incitement of racial discrimination or racially motivated violence.<sup>12</sup>

<sup>2</sup> Pardesi, M. and Oetken, J. (2008), Secularism, Democracy and Hindu Nationalism in India. Asian Security, 4(1), 23-40. <https://doi.org/10.1080/14799850701783148>

<sup>3</sup> Bhargava, R. (2010), The Promise of India’s Secular Democracy. Oxford University Press.

<sup>4</sup> Yadav, A. (2018), Countering Hate Speech in India: Looking for Answers beyond the Law. ILI Law Review. Winter Issue Vol, II.

<sup>5</sup> Webb, T. J. (2011). Verbal Poison - Criminalizing Hate Speech: A Comparative Analysis and a Proposal for the American System. 50 Washburn L.J. 445.

<sup>6</sup> United Nations. (1966). International Convention on the Elimination of All Forms of Racial Discrimination. Treaty Series, 660, 195.

<sup>7</sup> Organization of African Unity. (1981). African Charter on Human and People’s Rights. African Union.

<sup>8</sup> Mir, A. A.; and Rao, A. N. (2022). The Use of social media In Indian Elections: An Overview. Webology, 19(6).

<sup>9</sup> Parwez, Z. (2022). An Exemplifying Study on Voting Behaviour, Fake News and Associated Laws. Journal of Positive School Psychology, 2784–2792.

<sup>10</sup> Black’s Law Dictionary, 9<sup>th</sup> Edition, 2009.

<sup>11</sup> <https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech> (Last visited on 15th August, 2023).

<sup>12</sup> Article 4(a), United Nations. (1966). International Convention on the Elimination of All Forms of Racial Discrimination. Treaty Series, 660, 195.

Similarly, the ACHPR prevents any speech based on hatred as per on race, nation, or religion that might cause lawless violence.<sup>13</sup>

The SC stated that,

*“Hate Speech is an attempt to marginalize individuals based on their membership in a group. Using expression that exposes the group to hatred, hate speech seeks to delegitimize group members in the eyes of the majority, reducing their social standing and acceptance within society. Therefore, hate speech rises beyond causing distress to individual group members. It can have a wide societal impact as it lays the foundation for later, broad attacks on the vulnerable that can range from discrimination to ostracism, segregation, deportation, violence, and, in the most extreme cases, genocide. It also impacts a protected group’s ability to respond to the substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy.”*<sup>14</sup>

In India, because of the diversity it hosts, and the partition based on communal lines, it is further important to categorically address the issue systematically. In one such attempt, the Bureau of Police Research & Development came up with an Investigative Workflow Manual on Cyber harassment cases in 2021 in which hate speech was defined as,

*“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).”*<sup>15</sup>

A more straightforward explanation of hate speech is of being a speech that is derogatory towards someone else.<sup>16</sup> Hate speech is defined in more ways than just offensive speech; in contemporary times it includes discriminatory, derogatory, insulting, or provocative speeches which in turn can lead to a violent hate crime. In the case of India, because of the large diversity it holds, there is a surge in hate speech and hate crime observed across different communities.

Hate speech is aimed at steering a person’s immutable characteristics, religious identity, or ethnic background to cause harm. Hate speech has a psychological and societal effect on the victim and can change their behavior.<sup>17</sup> As a society, most democracies discredit the use of hate speech as it can easily cause a law-and-order situation of disrupting the public order and can lead to violent hate crimes.<sup>18</sup> The impact of hate speech is not always a violent crime, it even includes the psychological harm done to the target which is not easy to compute.<sup>19</sup>

The propagation of hate speech today is facilitated using social media. With the idea of the world being at a fast pace, the dissemination of information has increased rapidly publishing of thoughts or ideas is being done instantly over the internet. Social media as a tool has very little censorship, unlike the traditional media setup which had a proper editorial review of the work before the same is circulated to the public in general, and therefore it was possible to fix liabilities on those responsible, which is not the case with self-published social media sites.<sup>20</sup>

### International Perspective on Hate Speech

Internationally, hate speech is a growing concern and is often found in confrontation with the idea of free speech and expression. All the global democracies deal with the menace of threats, violence, and animosity between different groups and sections of society because of hate speech. Hate speech damages the idea of inclusiveness and individual dignity across the globe.<sup>21</sup> Apart from the definitions provided by UDHR, ICERD, and ACHPR, countries have included provisions to curb the usage of hate speech in their legislation.

The Human Rights Act of New Zealand has prohibited the usage of threatening, insulting, or abusive words that are likely to be published or broadcasted against people of any race, color, ethnic, or national origin and declares the same as unlawful.<sup>22</sup>

<sup>13</sup> Article 13(5), Organization of African Unity. (1981). African Charter on Human and People’s Rights. African Union.

<sup>14</sup> Pravas Bhalai Sangathan v. Union of India & Ors., AIR 2014 SC 1591.

<sup>15</sup> Chauhan, B. S. (2014). Freedom of Expression and Hate Speech: Role of Police and Civil Society. The Indian Police Journal. Vol LXI, No 2.

<sup>16</sup> Bhatia, G. (2016). Offend, Shock or Disturb: Free Speech under the Indian Constitution. Oxford University Press.

<sup>17</sup> D’souza, T. Griffin, L. et. al. (2018). Harming Women with Words: The failure of Australian Law to Prohibit Gendered Hate Speech. UNSW Law Journal. 41(3).

<sup>18</sup> Lokur, M. B. (2022). Navigating the Meaning of Hate Speech and Sedition in India. Policy Brief Series No. 138 (2022). Torkel Opsahl Academic EPublisher. <https://www.toaep.org/pbs-pdf/138-lokur-damojipurapu/> (Last Visited on 15th August, 2023)

<sup>19</sup> Bureau of Police Research & Development. (2021). Investigative Workflow Manual on Cyber Harassment Cases. National Cyber Research & Innovation Centre.

<sup>20</sup> Farhanaa, EV. S. (2022), Tackling Social Media’s Hate Speech Problem in India: An Analysis. International Journal of Legal Science and Innovation. 4(1), 808-814.

<sup>21</sup> Waldron, J. (2012). The Harm in Hate Speech. Cambridge, Massachusetts: Harvard University Press.

<sup>22</sup> S. 61(1), Human Rights Act, 1993 (NZ).

Under section 319(1) of the Canadian Criminal Code, a maximum punishment of 2yrs is given to any person who provokes animosity toward any particular group thereby leading to a breach of peace.<sup>23</sup>

Similarly, UK's Public Order Act of 1986, a person who intends to incite resentment toward race or taking into account the situation that might have resulted in racial hatred is considered guilty of commission of the offense.<sup>24</sup>

The Denmark Penal Code imposes imprisonment or a fine for 2yrs with the intent of publicly disseminating statements or pronouncements to threaten, degrade, or make fun of a group of people due to their ethnicity, race, nationality, or moral background.<sup>25</sup>

According to the German Penal Code, a person may be imprisoned for 3 months - 5 years if they intentionally damage the reputation or defame another group of people, disturb public peace, incite hatred toward certain groups of people, or violate someone's right to human dignity.<sup>26</sup>

The Dutch Criminal Code under Article 137 (c) and (d) prohibits insulting groups based on individual affiliations to any race, religion, or sexual orientation and prohibits the incitement of hate and discrimination against them.<sup>27</sup>

In the Indian scenario, the court provides for a reasonable restriction on free speech, but the same is not the case in the US. The American Judiciary in the case of *Schenk vs. United States*, laid down the 'clear and present danger test'.<sup>28</sup> Justice Holmes gave prominence of the prevailing circumstances that were present at the time of the speech, and post that. If it creates a direct and imminent danger, then the government has a right to prevent such speech.<sup>29</sup> In another case, the American court laid down that the utterances made can be punished only when such restriction is for the sake to maintain public order along with the substantive evil needs to be truly awful.<sup>30</sup>

The courts in these nations have been vigorously dealing with the conflict between hate speech, freedom of expression, and speech. The Canadian SC laid down three principles to deal with the issue in the case of *Canada (Human Rights Commission) v. Taylor*. The court said that firstly the approach of the court must be objective, secondly, the interpretation of the word hate must be of extreme detestation and vilification and, lastly, the focus of the adjudicating authority must be regarding the impacts of hate speech expression.<sup>31</sup>

The issue of Hate is not defined under British law. In the case of *R. VS. Britton*, a seventeen-year-old boy distributing pamphlets to MPs stating 'Blacks not wanted here' was found innocent as the intent was not to stir hate or violence but to oppose the immigration taking place.<sup>32</sup> The major approach of the European Courts is to adopt a liberal approach upholding the rights of individual personal liberty. The definition of incitement of hate and violence is considered liberally, in an Irish case it was considered that since only two people heard a statement and they too supported the victim, the statement was not considered to be inciting hate.<sup>33</sup>

### Hate Speech and Indian Elections

The Indian General Elections is the largest democratic participation across the globe. With around 94.50 crore eligible voters, and more than 65% of them participating in the elections marks the greatest single election in the world.<sup>34</sup> Every citizen of India with the age of more than 18 years can cast their votes irrespective of their religion, community, gender, ethnicity, and linguistic communities.

Indian elections are categorically known for severe battles among opponents, frenetic campaigns, populist slogans, and tremendous religious and caste-based polarization. The elections in India are not only fought by political parties and the candidates, but it also has seen the great presence of religious and caste-based fundamentalist groups which are technically '*non-political*' in nature. There have been increasing religious references during elections against minorities. Such clashes have claimed thousands of lives and are to be considered a real threat to the survival of this secular democracy.

Considering the diverse nature of the Indian polity it is very easy to create clashes between the communities. Hate Speech is the result of divisive politics and creates an identity threat in the minds of the electorate.<sup>35</sup>

<sup>23</sup> Criminal Code (R.S.C., 1985, c. C-46) (CA). s.319(1).

<sup>24</sup> Public Order Act, 1986 (U.K.). s. 18(1).

<sup>25</sup> Penal Code, 2008 (DK). Art. 266(b).

<sup>26</sup> German Criminal Code, 1998. s. 130(1).

<sup>27</sup> Dutch Criminal Code, 1988.

<sup>28</sup> 249 US 47 (1919).

<sup>29</sup> Sugand, D., Saxena, V. (2019). Counterbalancing the Right to Speech with Hate Speech. Indian Legal Solution International Journal of Law and Management.

<sup>30</sup> Bridges v. California. 314 US 252 (1941).

<sup>31</sup> (1990) 3 SCR 892 (Can SC).

<sup>32</sup> [1967] 2 QB 51.

<sup>33</sup> Director of Public Prosecutions v O'Grady. [2019] IECA 33.

<sup>34</sup> PTI. (2023, February 02). India has over 94.50 crore voters as on Jan 1: Government. The Economic Times. <https://economictimes.indiatimes.com/news/india/india-has-over-94-50-crore-voters-as-on-jan-1-government/articleshow/97559222.cms?from=mdr> (Last Visited on 15th August, 2023).

<sup>35</sup> Patni, R., Kaumudi, K. (2009). Regulation of Hate Speech. NUJS Law Review. Oct-Dec 2009.



Politicians often exploit the fault lines in Indian society and polarize the voters to vote for them. In the absence of any definite law that defines and deals with hate speech categorically in India, the characterization of the same becomes very difficult. Hate Speech is a difficult task to interpret in general, but it becomes extremely tricky when it is analyzed in the diverse context of Indian politics.

The landscape of Indian politics is so vast that it includes various anecdotes, subtle references, and figures that are in themselves competent to deliver a strong hateful message to the community by just referring to them. Often the rhetoric is constructed in a manner wherein a clear indication is drawn towards a collective group, without naming them.

The fallacious narratives as often time and again busted by fact finders are backed by aspects of muscular nationalism, an imaginary threat to national security, terrorism, and bringing all sorts of labels on opposition parties and candidates. The emergence of narratives like '80-20', 'Bulldozer Raj', 'Thokshahi', 'Taliban', and 'Khatre Mein' creates a clear political divide among the voters by delegitimizing the minority.<sup>36</sup>

It is imperative for scholars to establish a clear distinction among the concepts of freedom of speech, freedom of expression, and hate speech. A highly emotive speech in which a person tends to justify the superiority of his community without discrediting or speaking ill of any other community might still be found offensive to some.

The Election Commission of India has expressed that since there is no particular law regulating hate speech in India, it is bound to resort IPC (1860)<sup>37</sup>, The Representation of Peoples' Act, 1951 (RPA)<sup>38</sup>, and Model Code of Conduct (MCC) to prevent disharmony in the society.<sup>39</sup>

### Hate Speech and Indian Legal Framework

A majority of European countries, including India, have adopted the "fatal slope" approach to addressing hate speech, which forbids speech outright due to the possibility that it could incite violence or other hate crimes.

Hate speech is not mentioned anywhere in any law, but it is identified in various forms in different laws. The incitement of violence and discrimination are illegal acts everywhere in the world, there it is generally considered as a subset of the general rule of prohibition on incitement of a crime. The IPC under different sections namely Sections 124A deals with sedition, 153A deals with the promotion of enmity between different religious groups, Section 153B deals with provisions about the publication or imputation of statements harmful to the statement of the nation, Section 292 deals with the prohibition on publication or sale of obscene books, Section 293 addresses prohibition of the sale of objects that are offensive to the youth, Section 295 dealing with injuring or defiling of worship intending to insult any other religion, Section 295(A) dealing with intentionally hurting or offending a religion, section 298 dealing with penalizing uttering of words with the intent to incite religious feelings and Section 505(2) deals with publication or circulation of any report promoting hatred, enmity or hostility towards a person or group on basis of religion, race, place of birth, language, residence, or caste.<sup>40</sup> All these mentioned provisions carry different penal and pecuniary punishments in cases of violation. The 1973 Code of Criminal Procedure, Section 95, grants the state government the authority to cancel or ban such publications that can promote disharmony or communal violence in the state.<sup>41</sup>

The RPA, 1951 has numerous provisions namely, section 8 provides for disqualification of candidates convicted under laws prohibiting the spread of hate, section 8A provides for disqualification on grounds of corrupt practices, section 123(3) defines corrupt practices for elections, section 123(3A) defines the corrupt practice of seeking votes in the name of religion and section 125 provides for punishing person who promotes enmity between classes in respect of elections.

The SC has enabled the state to prevent hate speech even though it was not categorically criminalized. It upheld the decision to the restriction imposed on certain individuals considering the case as communally sensitive in light of the inflammatory speeches made by the speaker.<sup>42</sup> In the *Pravasi Bhalai Sangathan Case*, the court acknowledged the existence of sufficient and effective measures to deal with hate speech but realized the issues with their efficient performance. The court even denied issuing any guidelines to supplement the existing law. It also upheld that violence, or a scope of violence should not be considered as a precursor for deciding on hate speech.<sup>43</sup>

<sup>36</sup> Fatima, M., Barton, N., Jafri, A. (2022, March 03). 100+ Instances of Hate Speech, Religious Polarisation, Hindutva Supremacy in Adityanath's Poll Speeches. The Wire. <https://thewire.in/communalism/100-instances-of-hate-speech-religious-polarisation-hindutva-supremacy-in-adityanaths-poll-speeches> (Last Visited on 15th August, 2023).

<sup>37</sup> Indian Penal Code. Act No. 45. (1860).

<sup>38</sup> Representation of Peoples' Act. Act No. 43. (1951).

<sup>39</sup> Rajagopal, K. (2022, September 15). No specific law against hate speech: Election Commission. The Hindu. <https://www.thehindu.com/news/national/hate-speech-took-action-under-provisions-of-ipc-rp-act-due-to-lack-of-specific-law-ec-tells-sc/article65889106.ece> (Last Visited on 15th August, 2023).

<sup>40</sup> Indian Penal Code. Act No. 45. (1860).

<sup>41</sup> Code of Criminal Procedure. Act No. 02. s95. (1973).

<sup>42</sup> State of Karnataka v. Praveen Bhai Thogadiya. (2004) 4 SCC 684.

<sup>43</sup> Supra note 12.

In the case of *Jafar Imam Naqvi*, the court declined to address the problem of hate speech during electoral campaigns citing the preexisting provisions under the Representation of People Act.<sup>44</sup> In a similar vein, the court declined to drop the criminal case against news anchor Amish Devgan who made derogatory statements against an Islamic saint thereby affirming the adequacy of the existing laws on the subject. The three components of hate speech— intent, content, and impact—were restated.<sup>45</sup>

The Law Commission of India prepares a report on the hate speech's subject matter. It opined that there cannot be incitement to violence considered as the only determinative test for identifying hate speech, along with it the commission proposed to consider the aspect of discrimination which is caused by such speech as a critical aspect. It pointed out that the existing legal structure was insufficient to tackle the less overt forms of hate speech.

The Commission suggested inserting two new provisions in the IPC, namely, Section 153 which deals with persons who use gravely threatening words or advocate hatred through any means in the community to be penalized with 2 yrs in prison and a fine of rupees 5K or both. Similarly, another provision Section 505A was to be inserted which deals with by way of threatening or derogatory speeches that cause fear or alarm in the society or intend to incite the use of illegal force to be punished with an imprisonment term extending for one year or a fine of rupees five thousand or both.

A bill proposed in the Rajya Sabha on *Hate Crimes and Hate Speech (Combat, Prevention and Punishment) Bill, 2022* attempted to define hate speech and hate crimes. It defines hate speech as the one which harm or incites to harm or bring hate or prejudice intolerance against an individual or community due to his immutable characteristics of race, religion, caste, community, gender, sex, residence, birth place, sexual orientation, language, tribe, or disability. It made hate crime a non-cognizable and non-bailable offense. It does provide leverage to *bonafide* artistic, academic, or scientific activity. It provides for imprisonment extending to 3 years and a fine of 5K rupees or both. It even provides for victim impact assessment.<sup>46</sup>

The courts have distinguished between hate speech, freedom of speech, and expression. It has upheld the position of affirming aspects like criticizing the government, its policies, and political speeches of not constituting hate speech majorly relying on having no discernable intent to incite hate.

The aspect of absolute liability must be brought within the domain of hate speech jurisprudence. The absence of any clearly defined hate speech often leaves the decision to determine hate speech at the behest of the police and other executive authorities.

The misuse of hate speech laws is often seen as curbing political dissent. Often a criticism of the governance, especially in the case of journalists pointing out government apathy towards a particular section of society, is booked under criminal charges for promoting enmity between various social groups. In the case of *Patricia Mukim*, the SC has quashed the criminal case citing that disapprobation of the inaction of a government should not be branded as an attempt to incite hate.<sup>47</sup>

The SC has even issued directions to the state governments to register *suo-moto* FIRs in the incident of hate speeches where no complaint is received stressing the imminent threat hate speeches pose to the secular credentials of the nation. It went on to register contempt against the police officers who failed to comply with the order issued.<sup>48</sup>

## Conclusion

Hate speech is a matter of world wide concern and it hurts even more when it is done in a country like India which boasts its diversity. Hate speech leads to the erosion of trust and fraternity in the country and leads to social unrest, undermining democratic values. Hate speech has a adverse consequence on the minority community making them vulnerable to large-scale prosecution. The political narrative of 'us vs. them' leads the minority to lose faith in the founding values of this nation and alienation from the majority. The centuries-long struggle for independence from invaders and colonial rule further provides an easy context for spreading hate in society.

It is felt that India requires an elaborate legal framework to deal with hate speech firmly. The idea of identifying hate speech and the robust implementation of the existing laws must be closely evaluated by the government and judiciary. India is a classic case of over-regularization and poor execution. The researcher believes that the

<sup>44</sup> *Jafar Imam Naqvi v. Election Commission of India*. (2014) 15 SCC 420.

<sup>45</sup> *Amish Devgan v. Union of India*. (2021) 1 SCC 1.

<sup>46</sup> *Hate Crimes and Hate Speech (Combat, Prevention and Punishment) Bill, 74*. (2022). <https://sansad.in/getFile/BillsTexts/RSBillTexts/Asintroduced/hate-91222-E12142022113024AM.pdf?source=legislation#:~:text=6..magistrate%20of%20the%20first%20class.&text=7>. (Last Visited on 15th August, 2023).

<sup>47</sup> *Patricia Mukim v. State of Meghalaya*. (2021) SCC 258.

<sup>48</sup> *Rajagopal, K.* (2023, April 28). Register FIRs against hate speech even in absence of complaints, Supreme Court directs States. *The Hindu*. <https://www.thehindu.com/news/national/register-firs-against-hate-speech-even-in-absence-of-complaints-sc-directs-states/article66789344.ece> (Last Visited on 15th August, 2023).

existing laws are competent enough to deal with the menace of hate speech, but the execution of these laws remains a vital concern.

Hate speech has a chilling impact on free speech and expression. It takes away the constitutional right to express values and beliefs at the risk of being targeted resulting in self-censorship. Free speech is an inherent right of every individual, it is witnessed that often government uses the garb of hate speech to curb political dissent. There must be a proper mechanism to check the actions of the government and keep them within the constitutional ambit. The harm test which is currently being used as a working model for defining hate speech is not very potent.

Even in the draft Criminal Law (Amendment) Bill of 2017, it was proposed to criminalize speeches that express hate to a specific target individual or group even though they don't incite any violence. The newly passed criminal codes in India have made a separate category of murders by mob lynching and hate crimes. It has also provided for a punishment of three years and a fine for hate speech relating to religion.

While considering the hate speech's criminal implications on the individual and society, it is equally important to acknowledge the psychological effects of hate speech on the victims. Hate speech directly targets the identity of the victim, it causes emotional distress, depression, long long-term trauma and makes them vulnerable to numerous mental health issues. It even leads to the social withdrawal of the individual from society, bringing down his social interactions and increasing loneliness. Though the 2022 bill proposed in this regard talks about emotional impact assessment, a proper guideline is very much required in this regard.

In conclusion, the inclusive nature of the Indian democracy as well as the secular nature of our polity is under severe threat by the rising hate. The sensitivity of administration, effectiveness in implementation, and judicial review of the state action must be done to protect the democratic ethos of the country. Legislative efforts and judicial precedents are regularly attempting to bring clarity to the approach of the administration, but with the faulty execution, no considerable good is met.