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NEED FOR STRONGER LAWS AGAINST HATE SPEECH

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ABSTRACT:

Hate speech is a threat to values of democracy, social peace, and social stability. Hate speech must be confronted at all times as a matter of principle. Even if a situation worsens and the weak become victims, silence can show apathy to racism and intolerance. Combating hate speech is also critical for advancing the agenda by assisting in preventing armed conflict, atrocity crimes, and terrorism, the elimination of violence against women, other serious human rights violations, and the promotion of peaceful, inclusive, and just societies.

"Hate discourse is interrelated to the opportunity of expression, person, group, and minority rights, as well as standards of nobility, uniformity, and individual security."

Keywords: Democratic values, hate speech, peaceful

INTRODUCTION:

Benjamin Franklin says, without Freedom of Thought, there can be no such thing as Wisdom; and without Freedom of Speech, there is no such thing as Public Liberty; which is the Right of Every Man, so far as it does not harm or control the Right of Another; and this is the only check that it ought to suffer, and the only Bounds it ought to know.

For many years, much has been said about free speech and the ability to express oneself. It progresses from human rights to basic rights. Article 19 of the Constitution of India envisages free expression. However, with time, free speech has been hampered by the State in the form of defamation, sedition, and hate speech.

CONTEXTUAL MEANING:

Hate discourse is characterised as any frame of communication, whether verbal, composed, or physical, that targets or employs defamatory or unfair dialect in connection to an individual or a gather based on who those people are, such as their religion, ethnicity, nationality, race, colour, plunge, sex, or other personality figures. This is frequently founded in and fosters intolerance and hatred and can be humiliating and divisive in particular settings.

LEXICAL MEANING:

Abusive or threatening rhetoric or literature expresses prejudice towards a particular group, typically based on race, religion, or sexual orientation. *

Hatred or violence aimed at a person or group based on race, religion, sex, or sexual orientation are examples of public discourse. **

* Oxford languages

** Cambridge dictionary

LOCUS OF PROVISION OF FUNDAMENTAL RIGHTS IN THE CONSTITUTION:

Article 19 of the Constitution-

Article 19(1)(a) of the Indian Constitution declares that "all citizens shall have the right to freedom of speech and expression," which protects freedom of speech and expression as a fundamental right. The Indian constitution, however, has imposed a reasonable restriction under Art 19(2), with the term reasonable implying a balance between the use and misuse of this right. 1

1- INDIAN CONST. art.19

PROVISION OF LAW:Indian Penal Code, 1860

Section 153B pertaining to the Indian Penal Code 1860 criminalises imputations and assertions made by speech targeted at specific members of a group that emerges from their participation in such a community and makes them accountable for such speech. 2

Code of Criminal Procedure, 1973

Section 196 is a procedural safeguard that precludes frivolous prosecution for "hate speech" offences that can cause public disturbance and are considered severe and exceptional in character. 3

RATIONALE OF FUNDAMENTAL RIGHTS:

The primary purpose of fundamental rights is to establish the "rule of law rather than the rule of men." There should be no space for the majority's tyranny over the minority. They should establish certain conduct, citizenship, justice, and fairness criteria. In the area of all those rights that are vital for man's material and moral completeness, the Indian Constitution has swept away privileges and provided perfect equality between one section of the community and another. 4

HATE SPEECH AND POLITICS:

Hate is a human emotion that can be triggered or heightened by certain types of information. Hate is defined by a long-term dislike, a lack of empathy, and even a wish to kill specific targets. Hate speech is usually believed to be directed at persons or groups who share immutable characteristics such as nationality, religion, ethnicity, gender, age, or sexual orientation. On the other hand, speech encompasses a wide range of mediums, including spoken words or utterances, text, photos, videos, and even gestures. With incendiary rhetoric that stigmatises and dehumanises minorities, migrants, refugees, women, and any so-called "other," public discourse is being weaponised for political gain. 5 When politicians use inflammatory language, such as hate speech, they exacerbate existing fissures, making society more vulnerable to political violence and terrorism. Hate speech control has proven to be a challenging undertaking. 6

The anti-hate speech statute is being challenged because it interferes with an individual's right to free speech and expression. The law constantly walks a sharp edge between regulation and total limitation in practice. Despite the adoption of strict legislation, hate speech prosecutions continue to climb. The Law Commission of India proposed even more stringent laws in 2017 to combat hate speech, resulting in a proliferation of regulations and an over criminalisation of speech-related offences. 7

DECODING THE TYPES OF HATE SPEECH:

There are three sorts of hate speech.

The first is degrading and demonising the out-group and its members, which is most typically linked with hate speech.

The second is a physical manifestation of the first, comprising instigation to violence and, in extreme cases, murder against the out-group.

2- The Indian Penal Code, 1860, Acts of Parliament (India)

3- The Code Of Criminal Procedure, 1973, Acts of Parliament (India)

4- JAMES PIAZZA, WHEN POLITICIANS USE HATE SPEECH, POLITICAL VIOLENCE INCREASES

2020, available at <https://theconversation.com/when-politicians-use-hate-speech-political-violence-increases-146640>

5- BRITTAN HELLER & LARRY MAGID, COMBATING HATE SPEECH 2010, available at [HTTPS://www.connectsafely.org/wp-content/uploads/2019/10/Hate-Speech-8.5x11.pdf](https://www.connectsafely.org/wp-content/uploads/2019/10/Hate-Speech-8.5x11.pdf)

6- Ibid

7- Ibid

The third is the early stage. Dehumanisation or instigation is rarely the starting point of group-based hate speech, which is usually more nuanced and measured. 8

MAINSRING OF DEMOCRACY:

Non-discrimination and equality are two keystones of democracy.

Election campaigns are vital proving grounds for adherence to these ideals; therefore, it's concerning to see scapegoating, discriminatory language, and hate speech becoming more prevalent. Ordinary people suffer as a result of this, losing their dignity and reputation at the least if they are not also alienated or attacked. Discriminatory language and hate speech undermine social cohesiveness and lead to a downward spiral of intolerance and insecurity. Because of their potential to manipulate a large audience, politicians bear a special duty in this regard. Political discourse is a potent weapon for change, and it is well protected by constitutional protections that recognise freedom of expression as a fundamental democratic right. However, it can provoke widespread intolerance and even hate crimes if used in a cruel and discriminating manner. Therefore, politicians should exercise caution in exercising their right to free speech and promote their election agenda fairly and courteously. 9

ELECTIONS, HATE SPEECH AND PREVAILING CONDITIONS:

Hate speech is described as an endeavour to marginalise individuals based on their membership in a group and express hatred of a particular group of people, and social media has played a negative role in its transmission.

This propagation becomes particularly harmful during election seasons since hate speech is a potent tool for swaying public opinion against a group, as hate speech is based on the 'politics of hatred.' The Indian Penal Code 11 and the Representation of People Act, 1950 12 are among the laws preventing hate speech.

These laws exist, but their execution has been ineffective. Specific provisions, such as Section 124A, are on the verge of being repealed. 13 The recent case of *Abhiram Singh v. C.D. Commachen* 14 made it apparent that no appeals can be made based on religion, race, caste, community, or other factors, and that this is a corrupt election practice. This was done to maintain national unity and give Section 123(3) of the RPA a broad interpretation.

Hate speech against minorities has become commonplace thanks to social media. Islamophobic content accounted for 37 per cent of all hate speech on Facebook in India. In contrast, fake news (16 per cent), casteism (13 per cent), and gender/sexuality hate speech (13 per cent) were the following most popular topics. 15 Hate speech during election season in India, where religious tensions exist between Hindus and Muslims, exacerbates the already existing divide between the two communities. Hate speech, moreover, jeopardises the voting process. At their most basic level, elections present the potential to develop a nation or the risk of pulling democracy down.

8- BABAK BAHADUR, CLASSIFYING AND IDENTIFYING THE INTENSITY OF HATE SPEECH November 2020 available at <https://items.ssrc.org/author/babak-bahador/>

9- "COMBATTING DISCRIMINATION AND HATE SPEECH IN ELECTION CAMPAIGNS" 2019 available at <https://equineteurope.org/combating-discrimination-and-hate-speech-in-election-campaigns/>

10- BERND CARSTEN STAHL, "ON THE DIFFERENCE OR EQUALITY OF INFORMATION, MISINFORMATION, AND DISINFORMATION: A CRITICAL RESEARCH PERSPECTIVE", *Informing Science*

Journal, 2006.

11-The Indian Penal Code, 1860, ss. 124A,153A, 153B and 295A.

12-The Representation of People Act, 1950, ss.8, 123(3A) and 125.

13-Government of India, "Consultation Paper on Sedition", Law Commission of India, 2018, available at- [HTTP://www.lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf](http://www.lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf)

14 -Abhiram Singh v. C.D. Commachen, (2017) 2 SCC 629.

15- David Gilbert, 'Facebook in India Is Drowning in Anti-Muslim Hate Speech', Vice News,2019, available at[HTTPS://www.vice.com/en_in/article/mb8xxb/facebook-in-India-is-drowning-in-anti-Muslim-hate-speech](https://www.vice.com/en_in/article/mb8xxb/facebook-in-India-is-drowning-in-anti-Muslim-hate-speech)

Secondly, when it comes to the liability of various social media sites, there is a lack of regulatory mechanisms, making it challenging to prohibit and filter hate speech and propaganda by imposing intermediary liability on the social media sites. 16

STRATEGIES TO COMBAT HATE SPEECH TO ELECTORAL MANAGEMENT

BODIES {EMB's}

- Speak Out Against Discrimination and Hatred Early
- Model Good Behaviour

EFFECTIVE WAYS:

- Consequences warnings
- Shaming and labelling
- Empathy and affinity
- Humor
- Public Dialogue in a Pluralistic Environment

RECONSTRUCTION RECOMMENDED:

Embrace a Stronger Legal Framework to Address Hate Speech. Suppose, domestic legislation is insufficient to combat hate speech during election seasons, poses implementation issues, and fails to fulfil international responsibilities and best practices. In that case, the EMB should provide its unique viewpoint and expertise to legal reform efforts. Some EMBs are hesitant to advocate for electoral change since they do not have a legislative mandate. EMBs should be able to engage in "information exchange" and "awareness-raising" with legislators at the very least. 17

Because election laws are only one part of a larger body of law that affects campaigns and elections, the EMB should consider joining broader-based advocacy coalitions where the EMB's and other groups' interests intersect (e.g., as they relate to the advancement of human rights, elimination of discrimination, mitigation of violence, and opening the space for free speech, civil society activism, and independent media). Broader coalitions help to demonstrate public interest in hate crime issues beyond the election season and beyond specific target groups. 18

CONCLUSION:

Counter speech is a precise and unambiguous response to hate speech, with the express purpose of reversing the harm caused by hate speech in the first place. As a campaign strategy, hate speech is being used. Elections have increasingly become a do-or-die situation, with politicians utilising every means at their disposal, including unfair techniques, to 'grab' power. With less restraint and deliberation, electioneering {rhetoric} becomes increasingly inflammatory and violent. There's a widespread belief that "Elections are wars, and only the victor is a skilled strategist."

"It inalienably infers promotion of national, racial, or devout scorn, requires that the advocacy includes incitement, which the actuation is connected to segregation, threatening vibe, or violence."

16- Vasu Mohan, 'Countering Hate Speech in Elections: Strategies for Electoral Management Bodies, International Federation for Electoral Systems, 2018, available at- http://www.ifes.org/sites/default/files/2017_ifes_countering_hate_speech_white_paper_final.pdf

17-Supra note at 8

18-Ibid.