



## Instances of Hate Speech

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### Introduction

The definition of hate speech is in debate. In other words, the term is vague, and any attempt to clarify the idea of hate speech will reveal the bias of the person making the definition. In other words, to define is to show your tendencies. It can come off as a bad beginning. Yet, numerous attempts have been made to categorize, clarify, and define the concept of hate speech in an academic, legal, and judicious manner. The Honourable SC of Canada's then Chief Justice Brian Dickenson concluded that hate "connotes feeling of a strong and extreme kind that is obviously related with vilification and detestation in a landmark case on freedom of expression. "Since hatred is rooted in annihilation, it follows that hatred directed at specific groups grows when the hated group and the ideals upon which our civilization is built are destroyed.," he continued. In general, hate speech is disparaging toward another person. It encompasses any communication that makes fun of, irritates, insults, or defames certain people, groups, or social classes. When spoken against members of an identified group, hatred in this sense is an excessive emotion that defies reason. It implies that those people should be despised, mocked, treated poorly, and denied respect on the basis of their membership in the group. Speech that incites hatred on the grounds of race, religion, nationality, or national origin is referred to as hate speech. Popular discourse is language that expresses offensive or arrogant beliefs about particular racial or ethnic groups. This might cause individuals to be singled out and persecuted, resulting in violence against them or other hostilities that might disturb the quiet. Speaking in this manner targets vulnerable populations, making them more open to intimidation, compulsion, and becoming the object of both individual and collective violence. This is the domain of racist, bigoted, communal, and sexist rhetoric. Such rhetoric not only denigrates weaker groups in order to promote a tumultuous social climate in which these groups are unable to live their versions of the good life in a respectable manner. Recent media emphasis has focused on this specific segment of hate speech. Unfortunately, hate speech is a pervasive problem in India, and instances of it occur regularly.

### *Delhi Riots 2020*

During the communal riots that erupted in Delhi in February 2020, many politicians and public figures made inflammatory speeches that were widely criticized for inciting violence and hatred between religious communities. The Delhi riots of 2020 were a series of communal clashes that occurred in the northeastern part of Delhi in February 2020. The riots lasted for about four days and left at least 53 people dead, and over 200 injured. The riots were largely communal in nature, with violence erupting between Hindu and Muslim communities.

The Citizenship Amendment Act (CAA), which was approved by the Indian parliament in December 2019, was the cause of the riots. The CAA advocated for giving citizenship to illegal non-Muslim immigrants from Bangladesh, Pakistan, and Afghanistan. Many people criticized the act for being anti-Muslim and for posing a threat to India's secular structure.

The situation in Delhi escalated when a Bhartiya Janata Party (BJP) leader Kapil Mishra gave a controversial speech on February 23, 2020. In his speech, Mishra gave a three-day ultimatum to the Delhi police to clear anti-CAA protesters from the area, failing which he and his supporters would take matters into their own hands.

The speech was widely criticized for being inflammatory and inciting violence. Following the speech, violence erupted in the northeastern part of Delhi, with mobs attacking each other with stones, sticks, and petrol bombs. Several shops, homes, and vehicles were set on fire, and many people were injured or killed.

The Delhi Police were accused of failing to control the violence, and several of their officers were suspended for their inaction. The government later set up an inquiry into the riots, and several politicians and public figures were criticized for making inflammatory speeches that fuelled the violence.

The Delhi riots of 2020 were a tragic reminder of the communal tensions that exist in India and the need for greater efforts to promote unity and communal harmony.

### *Anti-Sikh Riots 1984*

After the assassination of PM Indira Gandhi in 1984, several Congress leaders were accused of making provocative speeches that led to violence against the Sikh community.

The Sikh Massacre, sometimes referred to as the Anti-Sikh Riots of 1984, were a string of pogroms that broke out in India after Prime Minister Indira Gandhi was killed on October 31, 1984. Two of her Sikh bodyguards carried out the murder in punishment for the Indian army's Operation Blue Star, which was started in June 1984 to expel terrorists from Amritsar's Golden Temple.

After the assassination, several Congress party leaders and supporters, who were mostly from the Hindu community, began inciting violence against Sikhs, who were wrongly blamed for the assassination. Mobs armed with weapons and petrol bombs attacked Sikh homes, businesses, and places of worship, killing and injuring thousands of innocent Sikhs.

The violence lasted for four days and was marked by extreme brutality and inhumanity. Many Sikhs were burned alive, women were raped, and children were killed. The police were accused of failing to control the violence, and in some cases, they were even accused of participating in the violence. The exact number of people who died in the riots is disputed, but the government estimates that around 3,000 Sikhs were killed in Delhi alone, while unofficial estimates suggest that the number could be much higher.<sup>1</sup>

The riots were widely condemned by human rights groups and the international community, and the Indian government was criticized for its failure to prevent the violence and bring the perpetrators to justice.<sup>2</sup> Despite several commissions of inquiry and trials, many of the perpetrators of the riots have still not been punished, and the victims and their families continue to fight for justice and compensation to this day.

The Anti-Sikh riots of 1984 remain a painful chapter in India's history and a stark reminder of the dangers of communalism and hate speech.

### *Ayodhya Dispute*

The Babri Masjid demolition in 1992 led to a rise in communal tensions in India. Many political leaders and religious figures made inflammatory speeches, which further exacerbated the situation.

The Babri Masjid, a mosque built in the 16th century and situated in the city of Ayodhya in the northern state of UP, is the focal point of the long-running and very bitter religious controversy known as the Ayodhya dispute in India. Babur, the Mughal emperor, constructed the mosque there in 1528. Many Hindus consider this location to be the birthplace of the Hindu god Lord Ram.

The dispute over the Babri Masjid dates back to the 19th century, when Hindu groups began to demand that the mosque be demolished, and a temple be built in its place. The dispute turned violent in 1992, when a mob of Hindu nationalists, led by the Bharatiya Janata Party (BJP), demolished the mosque, claiming that it was built on the site of an ancient temple that was destroyed by Babur.

The demolition of the mosque led to widespread communal violence across India, with thousands of people killed and injured. The incident also led to a series of legal battles between Hindu and Muslim groups, with each side claiming ownership of the land on which the mosque stood.

The Supreme Court of India reached a decision in the case in November 2019 and ordered the property in question to be donated to a trust for the construction of a Hindu temple. The court also mandated that a new location be found for the Muslim community to construct a mosque.

The Ayodhya dispute remains a highly sensitive issue in India and has deepened the religious divide in the country. The dispute has been a rallying point for Hindu nationalists, who see it as a symbol of Hindu pride and identity, while Muslims see it as a symbol of the marginalization of their community. The dispute has also fueled the growth of extremist groups and has been the cause of several incidents of communal violence in the past.

### *Cow Vigilantism*

In recent years, there have been several incidents of cow vigilantism in India, where mobs have attacked individuals suspected of slaughtering cows or consuming beef. Many of these incidents have been fuelled by hate speech made by politicians and right-wing groups.

Cow vigilantism refers to the actions of groups of people in India who take it upon themselves to protect cows from slaughter, often through violent means. Cows are considered sacred by many Hindus, and the slaughter of cows is prohibited in several Indian states.

Cow vigilantism has been a growing problem in India since the early 2010s. These groups, often self-appointed, patrol highways and marketplaces looking for trucks carrying cattle, and attack those they suspect of transporting cows for slaughter. The attacks range from verbal abuse and harassment to physical assault and even murder.

The issue of cow vigilantism has been particularly contentious because many of the attacks have been carried out by Hindu nationalist groups, who often target Muslims and Dalits (formerly known as untouchables), who are traditionally involved in the cattle trade. The attacks have also led to communal tensions and violence, as the targeting of Muslim and Dalit communities has been seen as a part of a wider Hindu nationalist agenda.<sup>3</sup>

1 Patel, M. (2020). Legal Regulation of hate speech" in India: A Critical Analysis. *Journal of Indian Law and Society*, 11(2), 17-28

2 Altschuller, S. (2019). From propaganda to hate speech": A brief history of the legal regulation of speech. *Journal of Free Speech Law*, 25(2), 151-181

3 Jha, S. (2019). hate speech" Laws in India: A Critical Analysis. *Journal of Indian Law and Society*, 10(2), 1-12. <sup>24</sup> Fraser, C. (2015). *The right to offend and the hate speech" debate*. Routledge.

The Indian government has been criticized for its handling of the issue, with many accusing the ruling Bharatiya Janata Party (BJP) of tacitly supporting the cow vigilantes. In 2017, the Indian Prime Minister, Narendra Modi, publicly denounced cow vigilantism, but the attacks have continued.

In response to the growing incidents of cow vigilantism, several Indian states have passed laws prohibiting the slaughter of cows, and in some cases, even the sale and transportation of cows. However, these laws have been criticized by many for being discriminatory against Muslim and Dalit communities, who are often involved in the cattle trade.

Cow vigilantism remains a sensitive issue in India, as it is seen as a symbol of the growing religious and communal tensions in the country<sup>24</sup>. The issue has also raised concerns about the rule of law and the role of vigilante groups in enforcing social norms.

### ***Online hate speech***

With the rise of social media, hate speech has also become a problem online. Several high-profile cases have emerged in India, where individuals have been arrested for making hateful comments on social media platforms.

Online hate speech refers to the use of online platforms such as social media, forums, and messaging apps to spread hate speech, racism, and bigotry. Online hate speech is a growing problem globally, with several countries struggling to find ways to regulate it without infringing on freedom of speech. The spread of hate speech online is facilitated by the anonymity and ease of access provided by the internet. Hate speech can quickly spread to a large audience, often leading to the targeting and harassment of individuals or groups. Online hate speech can take many forms, including racist or sexist comments, threats of violence, derogatory remarks, and the use of derogatory slurs or symbols. Hate speech can also be used to radicalize individuals and incite them to commit acts of violence.

The consequences of online hate speech can be severe, ranging from harm to individual victims to broader social harms such as reinforcing prejudices and contributing to the fragmentation of social cohesion. Hate speech can also undermine democracy, by limiting the ability of marginalized communities to participate in public discourse and creating a culture of intolerance.

Governments around the world have taken steps to address the problem of online hate speech. Some countries have introduced legislation to regulate online hate speech, while others have partnered with social media companies to remove hate speech from their platforms. However, regulating online hate speech remains a difficult task, as it can be difficult to distinguish between free speech and hate speech, and to balance the protection of individual rights with the need to prevent harm.

Online hate speech continues to be a significant challenge for policymakers, social media companies, and civil society groups. It will require continued attention and action to address the issue and create a more tolerant and inclusive online environment.<sup>4</sup>

### ***Muzaffarnagar riots (2013)***

A series of riots in the Muzaffarnagar district of UP in 2013 were sparked by alleged instances of harassment of Hindu women by Muslim men. The riots led to the deaths of over 60 people and the displacement of thousands.

The Muzaffarnagar riots were a series of riots that occurred in the Muzaffarnagar district of UP, India, in August and September 2013. The riots were triggered by a minor altercation between a Muslim youth and a Jat youth in the Kawal village of Muzaffarnagar, which led to the killing of both the youths. This incident led to widespread violence between the Muslim and Jat communities in the district, which resulted in the deaths of at least 62 people and the displacement of thousands.

The riots were marked by instances of hate speech and incitement to violence by local politicians and religious leaders. These speeches were reported to have played a significant role in stoking tensions between the two communities. Many of the speeches targeted the Muslim community, accusing them of committing crimes against women and of conspiring to take over land and political power.

The violence was particularly severe in rural areas, where many villages were affected by the riots. The violence continued for several days despite the deployment of security forces to the area. The displaced people, mostly Muslims, were housed in relief camps for several months.

The Muzaffarnagar riots brought attention to the problem of intercommunal violence in India and the contribution of hate speech to the escalation of tensions between various groups of people. Political parties and civil society organizations have widely condemned the event, with many urging the government to take action against those involved for the violence and hate speech.

The Indian government set up a judicial commission to investigate the riots, which submitted its report in 2015. The report criticized the government and police for their handling of the riots and recommended action against those responsible for the violence and hate speech. However, some criticized the report for not going far enough in holding those responsible for the violence accountable.

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<sup>4</sup> Altschuller, S. (2019). From propaganda to hate speech": A brief history of the legal regulation of speech. *Journal of Free Speech Law*, 25(2), 151-181

The Muzaffarnagar riots continue to be a contentious issue in Indian politics and society, with some pointing to the riots as evidence of the need for greater communal harmony and tolerance, while others view the riots as evidence of the failure of the government and law enforcement agencies to maintain law and order.<sup>5</sup>

### ***Dadri lynching (2015)***

A man was lynched in the village of Dadri in UP in 2015, allegedly for consuming beef. The incident sparked widespread outrage and highlighted the issue of cow vigilantism in India.

The Dadri lynching incident occurred on 28 September 2015 in the village of Bisara in Dadri, UP, India. A mob of around 200 people attacked a Muslim man named Mohammad Akhlaq and his family after rumors spread that they had slaughtered a cow and consumed its meat. Akhlaq was beaten to death, and his son was critically injured in the attack.

The incident sparked widespread outrage across India and highlighted the issue of cow vigilantism, which involves violence and intimidation carried out by groups claiming to be protecting cows, which are considered sacred in Hinduism. The incident also highlighted the issue of hate speech and communal tensions in India.

Several political leaders and religious leaders were accused of making inflammatory speeches in the aftermath of the incident, which were said to have incited the mob to carry out the lynching. Many of these speeches targeted the Muslim community and accused them of consuming beef, which is considered taboo by some Hindus.

The incident led to a nationwide debate on the issue of cow protection and the rise of cow vigilantism in India. Critics argued that cow protection was being used as a tool to target minorities, particularly Muslims, and that the government was not doing enough to address the issue. Supporters of cow protection, on the other hand, argued that it was a legitimate issue of religious sentiment and that those who violated it should be punished.

Several people were arrested in connection with the Dadri lynching, including some members of a local Hindu extremist group. However, the incident continued to be a source of controversy and political debate in India. The incident also highlighted the need for stronger laws and enforcement against hate speech and communal violence in India.

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## **STATUTORY LAWS AGAINST HATE SPEECH**

The encouragement of hostility between groups of people on the basis of factors like religion and race is illegal under Sec 153A of the IPC, which is covered in the first Sec. The second Sec covers Sec 153B of the IPC, which makes statements and imputations that are harmful to national integration illegal. The final Sec examines Sec 295 of the IPC, which makes it unlawful to destroy holy places or things. The fourth Sec examines Sec 295A of the IPC, which makes it illegal to intentionally and maliciously insult someone's religion or religious beliefs in order to offend their sensitive sensibilities. The fifth Sec talks about Sec 298 of the IPC, which makes it illegal to say something that would offend someone's religious beliefs. The discussion of Sec 505 of the IPC, which makes it unlawful to publish or disseminate certain claims, rumors, or reports, is covered in the sub chapter's sixth Sec.

### ***Promotion Of Enmity Amongst Communities, Sec 153A***

The IPC's Sec 153A makes it illegal to incite animosity between various racial, ethnic, religious, and linguistic groups as well as to engage in behavior that is harmful to maintaining peace. Additionally, it specifies harsher penalties if the offense is committed in a house of worship or any other gathering where religious ceremonies or worship are being performed. Such offenses may result in a fine and a five-year jail sentence. Four additional sub-parts make up this Sec of the document that deals with Sec 153A.<sup>6</sup> The three components of the Sec 153A offense—intention, class or community hatred, and propensity to incite hostility—are covered in the first subpart.<sup>7</sup> The second sub-part examines the application of the truth defense under Sec 153A, the third examines the constitutionality of Sec 153A, and the fourth ends the debate by using the elements to determine the applicable standard for the offense.

The SC ruled in *Balwant Singh v. State of Punjab*<sup>29</sup>: In order for the prosecution to prevail, mens rea must be shown. The precondition for committing an offense under Section 153A IPC is having the intent to provoke disturbance or instigate violence. A reading of SC rulings suggests that establishing intent is still essential to establishing the commission of a crime under Sec 153A. However, the history of how Sec 153A was enacted suggests that this interpretation of the law might be flawed. Sec 153A has changed a lot since it was first introduced in the IPC in 1898. In *Ramesh s/o Chotalal Dalal v. UOI*<sup>30</sup>, the SC established the standards for judging the propensity to incite hostility. "The effect of the words must be judged from the standards of reasonable, strong-minded, firm, and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view," the court said. This principle was upheld in *Manzar Sayeed Khan*. The SC addressed the question of whether political theses and historical truths, which are prohibited from being spoken or published under Sec 153A, can be used to sow discord and hostility in *Babu Rao Patel*. The published materials were, in fact, intended to foster animosity, hate, and hostility between the Hindu and Muslim populations in India, the court said. It was declared that a political thesis or historical truth could not be utilized to spread actions that cause animosity in the society. The "public order" clause of Art 19(2)

5 Patel, M. (2020). Legal Regulation of hate speech" in India: A Critical Analysis. *Journal of Indian Law and Society*, 11(2), 17-28

6 Fraser, C. (2015). *The right to offend and the hate speech" debate*. Routledge.

7 Jha, S. (2019). hate speech" *Laws in India: A Critical Analysis*. *Journal of Indian Law and Society*, 10(2), 1-12. <sup>29</sup> 1976 AIR 230.

has preserved Sec 153A despite being contested before the Court on numerous occasions. The judiciary has upheld its validity because it places a reasonable restriction on the right to free speech and expression guaranteed by Art 19(1)(a).<sup>31</sup>

Imputation or Claim Prejudicial to National Integration under Sec 153B According to Sec 153B of the IPC, making allegations or claims that are detrimental to national integration is illegal. Furthermore, it stipulates harsher penalties (up to five years in prison or a fine) for such offenses when they take place in a place of worship or any other location where religious ceremonies or worship are being conducted. In 1972, Sec 153B was added to the IPC in order to address actions that threatened to undermine national integrity and intercommunal harmony. It sets penalties for charges and activities circulated by divisive groups to generate fear, concern, and insecurity among members of

<sup>30</sup> 1988 AIR 775.

<sup>31</sup> Altschuller, S. (2019). From propaganda to hate speech: A brief history of the legal regulation of speech. *Journal of Free Speech Law*, 25(2), 151-181

a certain group because of their religion, race, language, area, caste, or community. Two things are shared by all three subsections of Sec 153(B). First, all of these situations call for a targeted approach, either via words or signs or some other kind of visual communication. Second, they expand the definition of "publishers" to include the people who actually printed the statement. The ingredients "publishing" and "class of persons" are thus the focus of the first and second subsecs, respectively, of this subSec.

In *Sikkim Social Empowerment Association v. Anjan Upadhyaya*<sup>8</sup>, the publisher's contention that the Art was published with a "bona fide" motive was rejected by the Sikkim HC while determining whether a provocative publishing in a newspaper would be susceptible to Sec 153B. It was decided that there was no need for formal documentation to establish the purpose behind publishing the Art because it was clear from the Art itself.

The IPC's Secs 153A and 295A, which deal with inciting hatred, strife, and ill will among different groups and communities, are supplemented by Sec 153B. Sec 153B forbids speech directed at specific groups of people because of their membership or the responsibilities that come with it. Those who post imputations and statements are also accountable under Sec 153B in addition to those who repeat the hate speech. Last but not least, while some people consider intention to be an important factor, others do not.

### ***Destruction of Holy Items (Sec 295)***

IPC Sec 295 prohibits the devastation of houses of worship or sacrosanct objects with the intent to offend or with knowledge that such an act is likely to offend the religious feelings of a group of people. Sec 295 defines an offense as having the following elements:

1. An object or place of worship must have been damaged, destroyed, or defiled by the accused.
2. A certain group of people must respect the place of worship or object of devotion.
3. The accused must have acted in a way that was intended to insult the religion or with knowing that it was likely to do so.

A review of instances of hate speech that were adjudicated in accordance with Sec 295 reveals that, although the intention to offend or knowledge that it would do so is a necessary element of the offense, it must also be followed by harm to a house of worship or holy object. However, a physical injury is not a requirement for an injury. The judiciary has given a fairly broad definition of "defilement" to the word used in Sec 295's wording. Sec 295 safeguards not only places of worship but also a community's sacred objects. Speaking of speech, discussions of contamination are different from how Sec 295 approaches religious texts and imagery. This is demonstrated by examples like Bharat Bhushan and Zac Poonen, where the speech or publication in question is assessed to determine whether it constitutes defiling conduct. It's critical to distinguish between these circumstances and others like Malleshappa, where it is obvious that Sec 295 charges cannot include retelling or describing an act of defilement.

### **Outraging Religious Emotions with Deliberate and Malicious Purpose, Sec 295A**

The IPC's Sec 295A prohibits disparaging a group's religion or beliefs with the intent to intentionally offend their religious sensibilities. Because it assumes that the violation may be committed through the use of words, signs, visible representations, or another method, it embraces both aural and visual media. The original intent of Sec 295A, when it was added in 1927, was for it to only apply to "scurrilous scribbles," not research done by historians, specialists, or artists. With the publication of the sacred book Rangeela Rasool, it was first made public. It contained controversial details about the Prophet Muhammad's life. The author allegedly faced legal action for violating IPC Sec 153A. In this instance, Sec 153A was not applicable because the attacks were directed at the class leader rather than the actual class members. Due to this gap in the law, Sec 295A was developed and has since been widely used to detain people who are alleged to have used hate speech. It is infamous, however, for its ability to stifle speech that is guaranteed constitutional protection.

This conclusion is amply supported by the Henry Rodrigues decision of the Karnataka HC, which involved literature that criticized Roman Catholic practices and beliefs for conflicting with the Bible's teachings. The HC determined that the author's "deep study of the Scriptures" and sincere hostility toward Roman Catholic beliefs and practices did not justify the use of derogatory and abusive language. The Court cited Khalil Ahmed in its decision,

<sup>8</sup> CrI.A. No.13 of 2013.

stating that the language was “intended to,” despite the work’s potential to contain “truth.” do not offend and offend the religious feelings of others. This principle may or may not be actionable under Sec 295A, depending on how it is phrased. The decision in *Brahamcharani Didi Chetna v. State of Punjab*<sup>9</sup>, where a Jain preacher was charged with portraying Hindu saint Maharishi Valmiki as a dacoit before becoming a saint, serves as an illustration of this. Despite the claim that this story had been handed down through the generations since antiquity, it seems that this assessment was based on accounts of the actual language used. The most crucial thing to keep in mind is that there was no evidence that the preacher’s “exact words” were intended to offend religious sentiments as defined by Sec 295A.<sup>10</sup>

For prohibited speech activities, Sec 295A stipulates a high threshold of purpose. This is consistent with the statutory goal of protecting criticism of social reform proposals made in good faith. In contrast to Sec 298’s definition of harm, Sec 295A demands a greater standard of harm. The accused must have the “deliberate and malicious purpose” to insult a certain group of citizens’ religious beliefs. Therefore, when the other requirements of Sec 295A are established, truth is not accepted as a defense. So, comments that are factual but are expressed in an offensive manner or with the aim to offend would not be protected. The legality of Sec 295A has also been affirmed by the SC in the face of claims based on the right to free expression and the right to practice one’s religion. Even though Sec 295A was found to be constitutional using the high level of intention, intention is nevertheless interpreted subjectively, especially when complaints are being filed. Since that the government has access to forfeiture and other tools for prior censorship, it might also be argued that Sec 295A is an excessive measure. It is not essential to threaten arrest and conviction in this situation to maintain public order, and there is a significant risk that it may stifle free speech.

Speaking with the Purpose to Hurt Religious Feelings (Sec 298) The IPC’s Sec 298 makes spoken discourse that is intended to offend someone’s religious sensibilities unlawful. The main point of Sec 298 is that it expressly makes spoken discourse that hurts religious sentiments illegal. In *Shalibhadra Shah v. Swami Krishna Bharti*<sup>11</sup>, due to the fact that Section 298 “relates to oral words uttered in front of a person and does not include written content,” the Gujarat High Court ruled that the allegations against the magazine’s editor and publisher could not be pursued under that provision. The language of Sec 298, however, also prohibits displaying any object that is objectionable to a person’s religion. The judiciary has interpreted this to include intentionally injuring religious sentiments by displaying cow flesh in public. Sec 298 only applies to verbal acts that are religiously objectionable to “any person,” as opposed to “a

Sec or class of people.” According to the Privy Council’s decision in *Narayan Das*, “intention, which is a state of mind, can never be proved as a fact: it can only be inferred from facts which are proved.” The Orissa HC used this ruling as its foundation and declared that “a person may have more intentions than one in doing a particular act.” As a result, any determination of crime based on “deliberate intention” must also be supported by “real or prevailing intention.” The Court also accepted and agreed with the “deliberate intention” opinions expressed by the Select Committee on Sec 295A. For a prosecution under Sec 298 to be successful, the state must show that the accused acted willfully in order to cause religious distress to the complainant. The Select Committee had determined “[T]he insult to religion or the outrage to religious feelings must be the sole, or, primary, or at least deliberate and conscious intention.” However, merely being aware of the potential for offending religious emotions would not be sufficient. Despite this, Sec 295A sets a higher standard, requiring that the goal be “deliberate and malevolent.” The aforementioned discussion also focuses on the distinction between Sections 295A and 298; the former applies to far more severe instances of hate speech than Section 298. In addition, Section 298 only applies to statements made against “any” person, not a class or group of people.

### **Public Mischief under Sec 505**

Many forms of speech are prohibited by Sec 505. Included in this are remarks made with the intent to sow fear or alarm among the populace or that are likely to do so, provoking them to engage in public disorder; remarks made with the intent to sow class or community violence or that are likely to do so; and discriminatory remarks that either have the effect of sowing intercommunal hatred. Thus, it also includes the instigation of violence against the state or another group as well as the incitement of racial or ethnic hatred.<sup>12</sup> To stop the irresponsible spread of rumors with the goal to cause trouble, Sec 505 was added to the IPC. According to the Calcutta HC’s ruling in *Shib Nath Bannerjee v.*

*Emperor*<sup>13</sup>, offenses like Sec 505 “which deal with the subject’s liberty, as it has often been remarked accurately, must be construed extremely firmly in favor of the defense.”

The language of Sec 505 is written in a way that it would apply to situations in which utterances are made with the intent to instigate or encourage hatred and when doing so is likely to have that effect. The SC held that mens rea was a “necessary” component in establishing a case under Sec 507 in its seminal decision in *Bilal Ahmed Kaloo*. The words “with intent to produce or promote or which is likely to create or promote” as used in that sub-Sec [(c)] can be used to demonstrate this, according to the Court. Sec 505(1)(c) is related to an earlier ruling by the Lahore HC. In the case of *Deshbandhu Gupta v. NL Anand*<sup>38</sup>, the petitioner was found guilty of violating Sec 505(1)(c) by the Crown (*Deshbandhu Gupta*) for publishing a story about animosity between Hindus and Muslims. including Sec 153A. Lahore High Court found that the conviction should be overturned because “the prosecution had to establish

9 CRM-M-41015-2012 (O&M)

10 Jha, S. (2019). hate speech” Laws in India: A Critical Analysis. *Journal of Indian Law and Society*, 10(2), 1-12.

11 (1980) GLR 881.

12 Fraser, C. (2015). *The right to offend and the hate speech” debate*. Routledge.

13 (1946) 48 BOMLR 1. <sup>38</sup> 1994 SCC (1) 131.

that it [the Art] was published with intent to incite Hindus against Muhammadans or to stir up feelings of animosity and hostility between the two communities."

The purpose of Sec 505 is to stop the thoughtless spread of rumors with the goal to cause trouble. As a result, the wording of Sec 505 allows for a larger application and breadth. It includes both situations in which there is a purpose to instigate or encourage hatred as well as those in which the remarks' impact is likely to do so. Nonetheless, the analysis of the hate speech instances above shows that the judiciary has applied a conservative interpretation of Sec 505(2) in order to curtail its harmful tendencies. However, the judiciary has explicitly determined that Sec 505(2) is lawful u/Art 19(2) of the Constitution since it reasonably restrains "public order."

Three different chapters of the IPC Of Offenses Pertaining to Religion," "Of

Offenses Against the Public Tranquillity," and "Of Criminal Intimidation, Insult, and Annoyance"—prohibit and punish hate speech. Additionally, there are limitations on hate speech in Secs 153A, 153B, 295, 295A, 298 and 505 of the IPC. <sup>14</sup> Before a magistrate can take cognizance of any of the aforementioned offenses, a "prior sanction" must be obtained, according to Sec 196 of the Criminal Procedure Code. For instance, u/Arts 153A and 295A, even remarks that are true may be illegal if they have the potential to or are uttered with the goal to sow discord and animosity. The judiciary has likewise given a broad interpretation of the injuries brought about by hate speech. For instance, u/Arts 153A and 153B, the actual use of violence is not a required, and even the attempt to sow discord would be prohibited. Moreover, Sec 295's broad definition of "defilement" makes it possible for verbal acts against sacred writings and pictures to be covered by the legislation. In its 267th Report, the Law Commission recently highlighted the prejudice that groups based on "sex, gender identity, and sexual orientation" face, and it recommended that these individuals also be included by hate speech legislation. The aforementioned hate speech cases demonstrate how the Indian judiciary repeatedly saw these

IPC charges as imposing "reasonable restrictions" on fundamental freedoms. Throughout the beginning of time, India has been a land of many different religions, castes, civilizations, languages, and ethnicities. India has become a country where religious passions can be easily sparked due to the communal context of India's division, which was marked by widespread genocide, and the diversity of religious identities that is only growing. As a result, the democratic and pluralistic fabric of the nation is frequently threatened when a political leader engages in communal hate speech. Although it is clear that hate speech must be prevented and avoided, opponents of speech restrictions frequently claim that doing so may typically result in a restriction of freedom of expression, which may have a negative impact on political awareness and expression, academic research, and genuine reactions, as well as some artistic expressions. Even though they limit the fundamental right to freedom of speech and expression guaranteed u/Art 19(1)(a) in a society as diverse as India, the Apex Court of India has repeatedly upheld anti-hate laws' constitutionality on the grounds that they are a reasonable restriction intended to maintain public order u/Art 19 of the Constitution.<sup>15</sup>

Indian law that governs election procedures is known as the Representation of the People Act, 1951. The act's Sec 125 forbids anybody from encouraging or attempting to encourage animosity or hostility amongst various social groups on the basis of race, religion, caste, community, or language. According to Sec 125 of the 1951 Representation of the People Act: No one may advocate for or seek to advocate for feelings of hostility or hatred between different groups of Indian residents on the basis of religion, race, caste, community, or language.<sup>16</sup>

This Sec seeks to stop hate speech and any other incendiary comments made during an election campaign that can cause conflict or discord between various groups in society.

A person who is found guilty of inciting certain types of animosity or hatred may be sentenced to up to three years in prison, a fine, or both. Election contestant disqualification is another possible punishment.

In India, the Representation of People Act of 1951 regulates elections (RPA). In order to ensure that men with high moral standards are chosen as the delegates representing the general population of India, the RPA has restricted some demonstrations that call into question the fairness of the elections and established certain norms of profound constituent quality. The constituent scorn discourse banter in India is covered by Secs 123(3), 123(3A), and 125 of the RPA. According to Sec 123(3), promotion for the benefit of a religion, station, group, or dialect is a degenerate activity. Moreover, Sec 123(3A) of the Internal Revenue Code and Sec 125 of the Criminal Code both define advancing or attempting to spread animosity and disdain among different groups of people as degenerate conduct.

The RPA handles both situations that develop before elections officially begin and situations that develop after an election's results are announced. Once judgments have been made, the hate speech procurements under it are triggered. The Model Code of Conduct, or MCC, was developed to handle certain situations that may arise between the time that the election schedule was announced and the declaration of the results. The requirement of MCC has the same force and responsibility as the Election Commission of India, which is a protected authority u/Art 324 of the Constitution. The MCC lays out detailed guidelines for how political parties and candidates should conduct themselves during a campaign for office. The political parties and the EC came to an understanding in the 1960s about the necessity of such rules and adopted them to ensure the effective operation of the majority rule government in India. In the debate against hate speech, the MCC supports rules like Clauses (1) and (3) of Item 1 (General Conduct) of the MCC, which forbid meetings and rivals from using caste, religion, or other shared interests as campaign talking points. Also, no group or hopeful may engage in any activity that would interfere with already-existing agreements, foster animosity, or lead to conflict amongst various racial, ethnic, religious, or peaceful gatherings.

14 Patel, M. (2020). Legal Regulation of hate speech" in India: A Critical Analysis. *Journal of Indian Law and Society*, 11(2), 17-28

15 Jha, S. (2019). hate speech" Laws in India: A Critical Analysis. *Journal of Indian Law and Society*, 10(2), 1-12.

16 Altschuller, S. (2019). From propaganda to hate speech": A brief history of the legal regulation of speech. *Journal of Free Speech Law*, 25(2), 151-181

Despite such explicit orders prohibiting the use of incendiary language, the MCC's ambiguity over its enforceability has usually prevented it from being a potent barrier to hate speech debate.<sup>42</sup>

It is impossible to overstate the importance of having clear legal definitions, even if the RPA is a comprehensive Code that covers all rights granted in connection with a decision or electoral discussion. Given that Indian legal thought has encouraged rather than constrained the growth of degenerate practices, such as detest discourse, legal justification in situations of discretionary scorn speech is a horrifyingly illegal relationship. The tragic aspect of this legal interpretation, especially in relation to Secs 123(3) and 123(3A) of the RPA, came to light in *Ramesh Yashwant Prabhu v. P. R.*<sup>43</sup> The former leader of Bombay, Prabhu, and his "expert" Bal Thackeray were accused of immoral behavior in Kunte. They insulted Muslims and declared war on them. Despite conceding some of the relevant problems, the SC decided the comments violated Sec 123(3A). There is no violation of Sec 123(3) or 123(3A) if a religion is mentioned in the context of secularism, to condemn a political party for oppressing a religious community, or for the protection of Indian society more generally. By saying that the "use made of these phrases and the importance looked to be handed on in the discourse moreover must be seen," the court has effectively given political groupings wide latitude to pursue divisive political goals under the pretext of secularism.

Joshi said in a free-form remark during a hearing for a separate *Manohar Joshi v. Nitin Bhaurao Patil*<sup>44</sup> case that "the main Hindu state will be formed up in Maharashtra." Joshi was not found to have violated Secs 123(3) or 123(3A) of the RPA, however, since the court believed that his comment was more like "the expression, in the best case scenario, of such a trust" than a call for votes on religious grounds. The act of disdain discourse is the most widely misused form of this conduct, with political organizations frequently using the judgments listed above as a defense to legitimize illiberal behavior. Despite the fact that modification is still still feasible through a judgment appeal under the

<sup>42</sup> Fraser, C. (2015). *The right to offend and the hate speech debate*. Routledge.

<sup>43</sup> 1996 SCC (1) 130.

<sup>44</sup> 1996 SCC (1) 169.

supervision of a HC, the Manohar Joshi case verdict from the SC in 1996 seriously compromised the capacity to allow these procurements.

MCC's lack of statutory standing is a problem.

For the first forty years of its existence, political events' electrifying atmosphere played a significant role in the MCC's recognition. It remained a document with general guidelines. In order to keep their election campaigns on moral ground and guarantee that there would be peace during the voting period, political parties planned to deliberately target the MCC. No one opposed the Code as long as it was only in writing and not fully put into practice. There was strong opposition and frequent questions about the legitimacy of the MCC and the authenticity of the actions taken under it when the EC firmly stated its intention to implement the MCC by taking strict measures, such as ordering the candidate to withdraw from by-elections for violating MCC procurements. The failure of MCC's procurements cannot result in any legal consequences because it lacks formal standing.