

DISSENT, NOT HATE: EXTINGUISHING THE INFLAMMABLE HATE SPEECH

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“Where there is love there is life”

- Mahatma Gandhi

Democracy thrives on dissent and citizens’ participation. In fact, a democratic form of government demands that its citizens take an active and intelligent part in the affairs of the community for it to be truly termed as a “government of the people, by the people, for the people¹”. The Hon’ble Supreme Court in **S. Rangarajan v. P. Jagjivan Ram**,² observed, “Public discussion with Peoples participation is a basic feature and a rational process of democracy.” It is universally recognized that freedom of thoughts and expression is an inalienable right³ and forms one of the pillars of individual

liberty and democracy. Free speech acts as a device to ensure transparency and awareness, much needed in a Democracy, for its citizens to make informed choices.

India prides on being a largest Democracy in the world. Keeping with its commitment as a Democratic State, Article 19 of the Indian Constituting (“**Constitution**”) confers, *inter alia*, right to “freedom of speech and expression” on all its citizens. A careful reading of the said Article would demonstrate that the right provided therein includes also the manner in which the same may be exercised⁴. Pursuant to

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¹ Abraham Lincoln

² (1989) 2 SCC 574

³ *Express Newspapers (P) Ltd. v. Union of India*, (1986) 1 SCC 133

⁴ *S. Rangarajan v. P. Jagjivan Ram & Ors.*, (1989) 2 SCC 574 (which may be either by means of words of mouth, writing, printing, pictures or by any other mode)

a vigorous Judicial exercise, Article 19(1)(a) is, now, understood to encompass within itself, *inter alia*, freedom of propagation of ideas through freedom of circulation⁵; freedom of volume of news and views⁶; right to carry out peaceful demonstrations⁷; right to silence⁸; etc., and the realms of the said Article are ever expanding. Pertinently, the right conferred under Article 19(1) of the Constitution is not unbridled, rather, may be confined within the reasonable restrictions which the State may impose on its exercise, in terms of the provisions of Articles 19(2)⁹ till (6) of the Constitution. It is a settled law¹⁰, reasonableness of such restriction must be adjudged in an objective manner, from case to cases basis and that the parameters constituting reasonableness cannot be confined within rigid parameters. Clearly, the object behind such restriction(s) is to strike a balance between the freedom guaranteed under any of the clauses under Article 19(1) of the Constitution and the control permitted by the Clauses (2) to (6), thereof.

Use of speech as a weapon to fight against societal evils cannot be overemphasized. Indian History is witness to the fact that this weapon was vigorously employed by the country's freedom fighters to ignite revolutions and stimulate social consciousness. Justifiably, use of speech as an armament to exterminate the colonial regime was much needed at that time. However, it is not unknown that even then, the use of the 'speech weapon' was confined to voice concerns against the devils of colonialism, exploitation, slavery and oppression, in distinction to its misuse to incite communal disharmony, violence or hate. Unfortunately, situations have changed drastically in the years. Once considered a resource for social upliftment, speech, has changed its tenor to "Hate Speech" and in experience, is seen to be often deployed to poison innocent minds with elements of hatred and contempt. As per the United Nations¹¹, "*Hate speech is a menace to democratic values, social stability and peace.*" Courts in India have, time and again, condemned "Hate Speech", acknowledging that Hate Speech amounts to as

⁵ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124

⁶ *Bennett Coleman & Co. v. Union of India*, (1972) 2 SCC 788

⁷ *Kameshwar Prasad v. State of Bihar*, AIR 1962 SC 1166

⁸ *Bijoe Emmanuel v. State of Kerala* 1986 3 SC 615

⁹ "(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the

interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence"

¹⁰ *Krishnan Kakkanth v. Government of Kerala and Ors.*, (1997) 9 SCC 495

¹¹ United Nations Strategy And Plan of Action on Hate Speech, dated May, 2019 and launched on 18.06.2019

an attempt to marginalize individuals based on their membership in a group. In the words of the Hon'ble Supreme Court¹², "*hate speech seeks to delegitimize group members in the eyes of the majority, reducing their social standing and acceptance within society*".

Despite its universal recognition as a social evil, the term 'Hate Speech' till date, dodges an explicit internationally acceptable definition. Probable reasons for the same being, the term cannot be confined within rigid parameters and that any attempt to provide certainty, may lead to conflict with the essence of free speech. Nevertheless, 'Hate Speech' is now understood as a broad concept, which captures a wide range of expressions. In this regard, reference may be made to Article 20 of the International Covenant on Civil and Political Right, which prohibits, "*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*". Similarly, under Article 4 of the International Convention on the Elimination of Racial Discrimination, 1965, member States have obliged themselves to penalize, *inter alia*, acts of "*dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of*

persons of another colour or ethnic origin.." Even the United Nations, while acknowledging the lack of definition of Hate Speech, for the purpose of its working, adopted the meaning¹³ of the said term as, "*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 on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.*" At the same time, the United Nations adopted a Strategy And Plan of Action on Hate Speech, *inter alia*, with its key commitments to monitor and analyze Hate Speech; address root cause, drivers and actors of Hate Speech; engaging and supporting the victims of Hate Speech; using technology; engaging in advocacy; etc. Clearly, to determine some of the elements of Hate Speech, said provisions may be considered.

India, too, does not have a specific law defining Hate Speech or dealing with Hate Speech related offences. However, several legislations do exist, prescribing punishment for such offence. Under the Indian Penal Code, 1860/IPC, provisions for penalty for the commission of offences of sedition (Section 124A); promotion of enmity between different groups

¹² *Pravasi Bhalai Sangathan v. Union of India (UOI) & Ors.*, (2014) 11 SCC 477

¹³ Under the United Nations Strategy And Plan of Action on Hate Speech

on ground of religion, race, place of birth, residence, language, etc. (Section 153A); making or publishing, etc., imputation, assertions prejudicial to national-integration (Section 153B); deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs (Section 295A); uttering, words, etc., with deliberate intent to wound the religious feelings of any person (Section 298); publication or circulation of any statement, rumour or report causing public mischief, etc. (Section 505); etc., exist. Similar provisions penalizing the offence related to/ comprising elements of Hate Speech exist under the Representation of the People Act, 1951¹⁴; Protection of Civil Rights Act, 1955¹⁵; Religious Institutions (Prevention of Misuse) Act, 1988¹⁶; Cable Television Network Regulation Act, 1995¹⁷ and the Cinematograph Act, 1952¹⁸. Under the Code of Criminal Procedure, 1973, provisions for forfeit publications that are punishable under sections

124A, 153A, 153B, 295A IPC (Section 95); Executive Magistrate's power to prevent a person from committing a breach of the peace or disturb the public tranquility (Section 107); District Magistrate's/ Sub-divisional Magistrate's/ any other (duly empowered) Executive Magistrate's power to issue order in urgent cases of nuisance or apprehended danger; etc., are provided to confront the 'Hate Speech' demon.

The Indian Judiciary has also, time and again, intervened to deal with the issues and incidents related to Hate Speech. In one of its earlier cases¹⁹, the Hon'ble Apex Court, while thoroughly scrutinizing the material presented before it, observed that the said material/ articles "*promote feelings of enmity, hatred and ill-will between the Hindu and Muslim communities on grounds of community and this cannot be done in the guise of political thesis or historical truth.*" In ***Das Rao Deshmukh (Dr.) v. Kamal Kishore Nanasaheb Kadam, (1995) 5 SCC 123***, a poster containing remarks urging voters to

¹⁴ Section 8 provides for disqualification of candidates on the ground of conviction for indulging in acts amounting to illegitimate use of freedom of speech and expression. Further, Sections 123(3A) and 125 prohibit promotion of enmity on grounds of religion, race, caste, community or language in connection with election, terming the same as also a form of corrupt electoral practice.

¹⁵ Punishment for other offences arising out of "untouchability" (Section 7)

¹⁶ Prohibition on religious institution or its manager to allow the use of any premises belonging to, or under the

control of, the institution for promoting or attempting to promote disharmony, feelings of enmity, hatred, ill-will between different religious, racial, language or regional groups or castes or communities (Section 3(g))

¹⁷ Sections 5 and 6 read with Rule 6 and 7 of the Cable Television Network Rules, 1994

¹⁸ Sections 4, 5B and 7 empower the Board of Film Certification to prohibit and regulate the screening of a film

¹⁹ *Babu Rao Patel v. State (Delhi Admn.)*, (1980) 2 SCC 402

vote on religious grounds was held by the Hon'ble Apex Court to constitute corrupt practice under the provisions of the Representation of the People Act, 1951. Quite recently, the Hon'ble Supreme Court in ***Pravasi Bhalai Sangathan v. Union of India (UOI) & Ors., (2014) 11 SCC 477***, noted that Hate Speech can have a societal impact. As per the Hon'ble Court, *"Hate speech lays the groundwork for later, broad attacks on vulnerable that can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide."*

Unfortunate, though, a reality, despite law(s) in place, incidents of Hate Speech are quite rampant. Propagandist play foul with innocent and vulnerable minds, corrupting them with feelings of enmity and hate. This problem becomes even more grave, in the present technology driven age, where dissemination of information is just a click away. India has witnessed several incidents related to incitement and Hate Speech in past and such events, sadly, continue till date. In the year, 2009, an eminent member of political party was arrested and prosecuted for making inflammatory comments against Muslims. Further, in the preceding year, sever incidents,

involving inciting tweets/ social media posts²⁰; sexist and derogatory remarks²¹; anti-Muslim/ anti-Islamophobic comments; etc., were witnesses. Regrettably, the list is quite long.

The Law Commission of India ("**Law Commission**"), carried out an exhaustive review of the current Hate Speech related Laws in India; adequacy, need of definition of Hate Speech, etc. and submitted its Report²² thereon. Though, the Law Commission, refrained from defining Hate Speech, however, proposed insertion of Sections 153C (prohibiting incitement to hatred) and Section 505A (causing fear, alarm or provocation of violence in certain cases) under IPC and corresponding amendments under the First Schedule of the Code of Criminal Procedure, 1973. Besides these, the existing provisions were considered, mostly adequate, by the Law Commission.

Besides being a Democratic State, India prides on being a Secular country, with rooted principles of religious tolerance and equality. Accordingly, such incidents of provocation by Hate Speech, gravely hurt the core of our Constitution and ruptures the principles of peace and tolerance on which our country is

²⁰ Tweet by (then) MLA from the Karawal Constituency in Delhi "destroy the womb that gives birth to terrorists."

²¹ Samajwadi Party leader's derogatory comments against former lady Member of Parliament.

²² Report No. 267 (Hate Speech, March 2017)

based. No Democratic country, India more so in particular, can afford to bear with any kind of intolerance, which has a tendency to malign and impact a certain group's ability to respond to the substantive ideas under debate. Such intolerance, further, hampers with the overall progress of a nation and poses a serious barrier to such group's full participation in Democracy. Rightly so, there is no absence of law dealing with Hate Speech related offences in India, rather, the issue boils down to their effective implementation. Courts and the law enforcement machinery have an important role to play for ensuring that no one feels oppressed in the process of restriction of speech in societal interest. Undoubtedly, progress of our country depends on the collaborative upliftment of its citizens and cannot be at the cost of one above the other. Under such circumstances, therefore, it becomes

incumbent on all to develop a feeling of tolerance and compassion. It is equally required for all to "think twice" before expressing and when situations demand, abide by the golden rule, "*speech is silver, silence is gold.*" Clearly, citizens, just like Courts and law enforcement authorities, have an active role to play in dealing with this menace by understanding the importance of responsible speech and the damage which 'inflammable Hate Speech' is capable of causing. It is only when, the citizens take an active role in eradicating Hate Speech in all its forms, we can pride ourselves as a tolerant State. In the words of Nelson Mandela, "*No one is born hating another person because of the colour of his skin, or his background, or his religion. People must learn to hate, and if they can learn to hate, they can be taught to love, for love comes more naturally to the human heart than its opposite.*"