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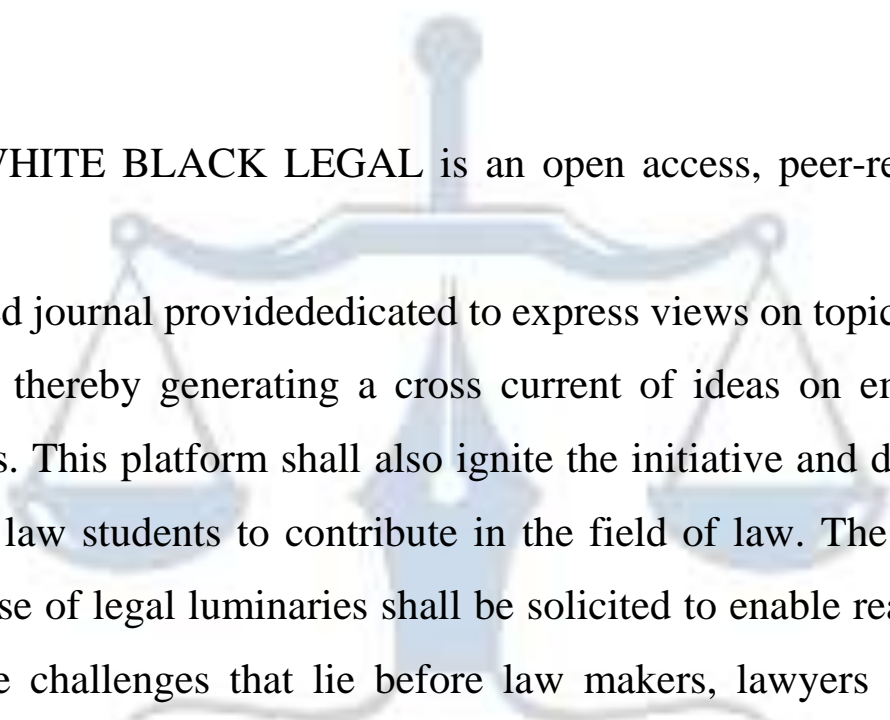


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE BALANCE BETWEEN FREEDOM OF SPEECH AND EXPRESSION AND HATE SPEECH IN INDIA**

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## **ABSTRACT**

Freedom of expression is an important fundamental right guaranteed by the Indian Constitution under Article 19(1)(a). However, it is subject to reasonable restrictions outlined in Article 19(2) of the Constitution. This right makes individuals to freely express their opinion and thoughts on important social issues, access information, and hold those in power accountable, playing a vital role in the healthy development of any society. At the same time, freedom of speech and expression should not violate Article 15 of the Indian Constitution, which prohibits discrimination based on race, caste, religion, language, and other such grounds. Similarly, Article 17 ensures the prohibition of untouchability in a welfare society. The restriction of hateful and offensive speech represents a fine line between individual liberty and the collective interests of society.

Hate speech brings up sensitive issues pertaining to liberty, democracy, free speech, and dignity.

This paper uses actual and constitutional examples to highlight how difficult it is to strike a reasonable balance in the modern era between the right to free speech and speech that is illegal. It is difficult to make unlawful people under the Bharatya Nyaya Sanhita and other New Criminal Laws, and other legislation.

Since hate speech can be construed and twisted in a variety of ways. The unrestricted exercise of free expression, when it violates the fundamental principles of society, can lead to societal imbalance and may be prosecuted under constitutional provisions, international instruments,

and national legal frameworks. This research paper emphasizes the need to regulate the balance between freedom of expression and hate speech through Indian laws. It also highlights that Section 124A of the IPC (Sedition) has been relocated in the New Criminal Laws and it should not be misused against civilians and social activists by those in power in India.

### **KEY WORDS:**

Freedom of Expression, Limitation of Free Speech, Hate Speech, Offensive Speech, Judicial Intervention, Sedition.

## **INTRODUCTION**

**“If liberty means anything at all, it means the right to tell people what they do not want to hear.”<sup>1</sup>**

A person in the society should not be discriminate others. Freedom of expression is an individual can make his opinion on the public issue to empower the public domain in terms of socially, economically and politically. Hate speech by the leaders, political party members towards the minority peoples, sensitive religious statement were affecting some groups in India. Further stated that the balance between the freedom of speech and expression and hate speech can be identified in critical way, because it has some very thin line to identify whether it may be freedom of speech or hate speech. The hate speech directly assaults another person in way of his dignity and human rights and touch is liberty and democracy. Rules and regulations of a hate speech which is a challenging part in our days. It may affect to another group of people in a sensitive manner. It can be expose and set a secular country in a fire mode. The famous philosopher George Orwell state that a person who has the right to listen what he wants also he has the right to what they do not want to hear. Also, a same thing get “democracy is a base essentially and debate and open discussion is a freedom of speech and expression” which was guaranteed in the famous landmark judgement of *Menaka Gandhi Vs Union of India*.<sup>2</sup> We all know that the freedom of speech and expression is also include the speech from your mouth, writing, printing, taking a movie and publish a newspaper also a motive of this research is provided in the constitution. An individual in a country should participate in the public issues also a person to contribute his opinion to the respective issues but it has some reasonable restriction under this law. A regulation of hate speech and guaranteed for an

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<sup>1</sup> George Orwell

<sup>2</sup> AIR 1978 SC 597

individual freedom of speech and expression all around the world is necessary in our days. for example, in United States of America the first amendment in their constitution which was guaranteed freedom of speech and expression in the famous case of *Associated press Vs United States*<sup>3</sup> it implies that all around the world a person can express is opinion into a government policy for Welfare the society to empower the downtrodden people and vulnerable groups in the society. At the same time, we should not violate apart from the constitution which was provided a speech. In various regulation was made out to control the hate speech in the India after the famous case of *Pravasi Bhalai Sangathan Vs Union of India*<sup>4</sup> the supreme court observed that the law commission should take necessary action to control the hate speech in India also prepare some recommendation to regulate freedom of speech and expression and hate speech. The 267<sup>th</sup> Law Commission report clearly state that different recommendation was made and almond in the Indian penal code to control in nowadays a spokesperson of Union Government in the form the Muslims believes prophet Muhammad in a TV debate about outrage of Islamic belief, further Supreme Court mention that her “loose tongue has set entire country on fire, igniting emotions across the country”. Dr. Ambedkar, the term democracy has wider dimension. He opined that the “democracy is a form and a method of Government whereby revolutionary changes in the economic and social life of people are brought about without bloodshed.”<sup>5</sup>

### **RESEARCH PROBLEM:**

The ordinary people's last chance inside social institutions is justice and the legal system. After India gained its independence, it inherited a system of advertising adjudication of various kinds of disputes pertaining to the freedom of expression in the public through the press, writings, public speech, election campaign, individual video publishing, and other means that is still popular today. According to the 267<sup>th</sup> Law Commission of India, there are suitable methods to guarantee the control of hate speech and to emphasize the value of freedom of expression. The Law Commission report expose the international perspective of restriction the hate speech and make ensure the limitation can be provide to the individual in the civilized welfare society. The rules and regulation in the judiciary system to make authoritative response through in the part of freedom of expression from various landmark judgements like *Indian Express*

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<sup>3</sup> 326 US 1

<sup>4</sup> AIR 2014 SC 1591

<sup>5</sup> Dr. Ambedkar's address at Poona District Law Library on December 22, 1952

*Newspaper Vs Union of India*<sup>6</sup>, *Sakal Papers Ltd. Vs Union of India*<sup>7</sup> etc.

Contemporary situation in India to deliver a justice in the sensible matter cases like freedom of expression and hate speech about religious by the individuals, political party members should be simple, cheap, effective, substantial and speedy. Over the years, the system's underlying inadequacies have become more apparent. Until some alternatives are developed, the establishment of numerous courts, strengthening of the judiciary, and other measures might not be sufficient to address the issues surrounding hate speech in society. The Indian Constitution and the New Criminal Laws have several rules pertaining to balancing hate speech and freedom of expression. Similarly, some lacunae can be identified in the existing laws. Strict regulation supposed to be implemented against the hate speech by the individuals and make ensure the broad mind think to enlarge the larger perspective in issue of freedom of speech and expression. Past few decades, most of the innocent public, social activist and democratic advocates was arrested by the Sedition<sup>8</sup>. “*Necessity is the mother of Invention*”<sup>9</sup> likewise in current Indian society need a clearcut conceptual method to handle a freedom of expression and hate speech. This research can detail interpretation of the misuse of Sedition laws by the ruling authorities and expose the limitation in the existing freedom of expression laws. The measurement of hate speech plays a main role in the Indian judiciary as that result this type of research can balance the necessity of freedom of expression by the procedure established by law.

### **RESEARCH OBJECTIVES:**

The following are the main objectives culled out from the research questions:

1. To critically analyze the balance between freedom of expression and hate speech.
2. To examine the merits and demerits in freedom of expression and hate speech.
3. To understand the national and international perspectives of the freedom of expression and hate speech.
4. To empathize the practical aspects of the freedom of expression and hate speech in India.
5. To analyze constitutional validity of the freedom of expression article 19(1)(a) and hate

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<sup>6</sup> 1985 1 SCC 641

<sup>7</sup> AIR 1962 SC 305

<sup>8</sup> Section 124A of Indian Penal Code deals with “Sedition”

<sup>9</sup> Plato

speech under Indian Constitution, 1950.

6. To analyze the existing free speech jurisprudence is competent to tackle the issues of contemporary society.
7. To examine the legal provisions relating to the Hate speech.
8. To examine the “Sedition” in the old Act IPC and comparison with new Criminal Acts.
9. To understand the implications of the Section 124A of IPC in the Courts of Judiciary.
10. To critically analyze the journalist freedom of expression in past decades.
11. To critically analyze the media freedom of expression in past decades with reference to Indian laws.

### **RESEARCH QUESTIONS:**

In this backdrop, the following research questions attract significance to be probed and answered to result this work of research fruitfully and correctly:

1. What is meant by freedom of speech and expression under Constitution of India?
2. What is meant by hate speech?
3. How we can relate the balance between the freedom of expression and Hate speech?
4. Whether the constitution of India provides wider perspective in freedom of speech?
5. What is the main objective of the application of the freedom of expression?
6. Whether there is any freedom of expression to journalist in India?
7. Whether there is a safe guard in “Sedition” to protect the freedom of expression?
8. Whether there is any possible to control hate speech by strict implementation of sedition laws in India?
9. What are the legal provisions enshrined under the International Covenants on freedom of speech and expression?
10. Whether there is any provision to control the hate speech during the election campaign?
11. What is democracy can empower the freedom of speech and expression and control the hate speech in India?
12. Whether the judiciary is entitled to intervene in the control of hate speech in the contemporary situation?
13. What is practical applicability of implementation of sedition laws strictly?
14. What is democracy in freedom of speech and expression in Pre-Independence Era?
15. Every coin has two sides. Do the interpretation and balance between the freedom of expression and hate speech?

## **RESEARCH HYPOTHESIS:**

The critical examination of freedom of speech and expression in the context of democracy, the right to dignity, and freedom of conscience in a civilised welfare society. In order to manage the particular issue of hate speech and freedom of press and speech in the past decades, it intended to examine the extent and constraints of the Indian legal system in the framework of Constitutional Law and the Indian Penal Code. The study focused on instances of freedom of speech, expression, and conscience violations that occurred after Indian independence and took place in the context of literature, film, election campaigns, news broadcasts, etc.

## **REVIEW OF LITERATURE:**

For this research, the researcher has read various books, acts, legislations, statutes, rules, regulations, case laws in both Indian and International perspective via online and offline mode. The following are some of the literatures relied by the researcher for the research work:

- a. **M.P. Jain in his book “Indian Constitutional Law”** offered an integrated picture of the Indian Constitution to the students of law and for the members of legal fraternity. The chapters of the book are: (i) Introductory (ii) The Central Government (iii) The State Government (iv) The Federal System (v) Political and Civil Rights (vi) Miscellaneous Topics (vii) Constitutional Interpretation and Amendment
- b. **Chris Taylor in his book “Constitutional and Administrative law”** provided an extensive collection of articles of constitution, rules and regulations with special emphasis on case laws.
- c. **J.N. Pandey in his book, “The Constitutional Law of India”** was first published as 25<sup>th</sup> Edition in the year 1993 by Central Law Agency. There are totally 42 chapters in the book put forward by the author.
- d. **A.V.Dicey in his book, “Introduction to the Study of the Law of Constitution”** was first published in 1885 in London by Macmillan & Co. New editions were issued by the same publisher in 1886, 1893, 1902, 1946, 1957, 1985 and 2014. In each of these editions, Dicey attempted to reflect such constitutional changes as he believed had occurred since the previous edition.

## **FUNDAMENTAL RIGHTS OF FREEDOM OF EXPRESSION:**

In this research the freedom of speech and expression and hate speech play a vital role in the society now a days. It can be exposed freely ensured by the Constitution of India. Freedom of

speech and expression was objective way approach of in universal. So much of rights relating to equality and freedom of speech can be enriched by the international covenants and foreign laws. The freedom of expression may expose their opinion towards Socio- Economic concern. The great Philosopher Karl Marx viewed free press and speech as the vigilant eye of the people's soul therefore considered the newspaper as an instrument of public communication to empower the people in terms of Socio-Economic view. In the medieval period of human rights evolution includes the freedom of speech and expression in extraordinary transformation from The Bill of Rights (1689) granted freedom of speech in Parliament. The French Revolution (1789) adopted the Declaration of the Rights of Man and of the Citizen, specifically affirmed freedom of speech as an inalienable right.

### **FUNDAMENTAL RIGHTS IN INDIAN CONSTITUTION:**

The Constitution of India provided Fundamental Rights which are as follow-:

1. Right to equality (Articles 14–18)
2. Right to freedom (Articles 19–22)
3. Right against exploitation (Articles 23–24)
4. Right to freedom of religion (Articles 25–28)
5. Cultural and educational rights (Articles 29–30)
6. Right to constitutional remedies (Article 32)

### **FREEDOM OF SPEECH:**

Freedom of expression has been necessity of the current society from ancient times to modern. Similarly, censorship and reasonable restrictions in the specific matter are also ancient and universal phenomenon of factor to control the violation. The creators of Indian constitutions were well aware of the rights and restrictions, and they explicitly mentioned reasonable restrictions in Article 19 when they were first drafting the legal framework. The Indian judicial system's progressive rulings have helped achieve this. A society cannot enjoy complete freedom of expression, which is why important social issues involving the broadest restrictions on this right also govern hate speech. Issues pertaining to freedom of expression that are in the public interest such as national security, public order, public health, and individual rights like the right to privacy are primarily adjudicated by the judiciary. To ensure the balance between Freedom of Speech and Expression and Reasonable restriction can be improved by the judiciary through pronounced several landmark judgements.

## **THE ARTICLE 19 (1) OF INDIAN CONSTITUTION:**

The fundamental rights include the freedom of speech and expression provides specifically mentioned with sub-clauses of Article 19 (1) as under (a) Freedom of speech and expression; (b) Assemble peaceably and without arms; (c) Form associations or unions; (d) Move freely throughout the territory of India; (e) Reside and settle in any part of the territory of India; and (f) Practice any profession, or to carry on any occupation, trade or business.

In this research paper concentrate on the balance between freedom of speech and expression and hate speech. It has been ensured in the Constitution of India under Article 19(1)(a).

## **THE ARTICLE 19(1) (A) OF THE CONSTITUTION OF INDIA STATES THAT:**

“All citizens shall have the right to freedom of speech and expression”<sup>10</sup>. The motive behind this Article lies in the Preamble of the Constitution, where a solemn resolve is made to secure to all its citizen, liberty of thought and expression freely without any interruption. The exercise of this right is, however, subject to “reasonable restrictions” for certain purposes being imposed under Article 19(2) of the Constitution of India.

## **THE ARTICLE 19 (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.”<sup>11</sup>

## **THE MAIN ELEMENTS OF FREEDOM OF SPEECH & EXPRESSION:**

1. This right is guaranteed only to a citizen of India and not to foreign nation peoples.
2. According to Article 19(1)(a), the freedom of speech includes the ability to freely express one's thoughts and ideas on any issue by any media, including writing, speaking, printing, photography, film, and more.
3. The right to free speech and expression is not an absolute right, and it provides the government the authority to create laws that impose reasonable constraints for the

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<sup>10</sup> The Constitution of India – 1950 Article 19 deals with Protection of Fundamental Rights

<sup>11</sup> The Constitution of India – 1950 Article 19 (2) deals with Protection of Fundamental Rights

protection of India's integrity and sovereignty, national security, good relations with other countries, public order, morality, and the prevention of defamation, incitement to crime, and contempt of court. To ensure the uninterrupted protection of constitutional laws, a state can exercise this right.

4. Every Indian citizen's right to free expression may be restricted by the state's actions as much as by its inaction. Therefore, it also falls against Article 19(1)(a) for the State authority to fail to ensure that all of its citizens have the fundamental right to freedom of speech and expression.
5. This right has been recognized by the International Covenants of Civil and Political Rights and International Covenants of Social, Economic and Cultural Rights.

### **LANDMARK JUDGEMENTS OF SUPREME COURT OF INDIA:**

Freedom of Speech and Expression Judicial creativity, judicial wisdom and judicial activism have included with the scope of freedom of speech & expression by including in it the following aspects;-

- i. Freedom of Press
- ii. Freedom of Commercial Speech
- iii. Right to Broadcast
- iv. Right to Information
- v. Right to Criticize
- vi. Right to expression beyond national boundaries
- vii. Right not to speak or Right to silence is also included in the Right to speech and expression.

#### **3.1.1 FREEDOM OF PRESS DEMOCRACY:**

Press freedom works as the legislature's watchdog and has been bringing public opinion to the forward. Subject to suitable constraints imposed under Article 19(2), the right to free expression includes the ability to express one's opinions through print media or any other communication medium, such as radio or television. This kind of right can be ensured by the Hon'ble Courts in India. Various High courts and Apex courts pronounced freedom of expression is fundamental right in the democratic welfare society. Every individual has a right to share his opinion with reasonable restriction.

### **ROMESH THAPPAR Vs. STATE OF MADRAS<sup>12</sup>:**

In this popular historic case, everyone who is an Indian citizen must have their right to free speech protected by the constitution. The Supreme Court will decide this matter, stating that freedom of the press is a component of freedom of speech and expression. According to Justice Patanjali Sastri, freedom of speech and the press are fundamental to all democratic institutions because they allow for public education, which is crucial to the effective functioning of the political system. Based on this situation, India should enact press regulations to curb the proprietor's hate speech. The Indian Constitution's Article 19(2) permits reasonable restrictions.

### **INDIAN EXPRESS NEWS PAPER Vs. UNION OF INDIA<sup>13</sup>:**

It has been said that in a democracy, the press is extremely important. If there is any abuse of the freedom of the press, the courts have an obligation to protect it and declare all legislation and administrative measures unjust. Publication, circulation, and resistance to pre-censorship are all included in the freedom of the press.

### **SAKAL PAPERS LTD. Vs. UNION OF INDIA:<sup>14</sup>**

In *Bennett Coleman and Co. Vs. Union of India*, the Supreme Court of India declared that the Newsprint Control Order, which set a maximum page count, was invalid because it violated Article 19(1)(a) and was not a reasonable restriction under Article 19(2). This decision overturned the Daily Newspapers Order 1960, which set the number of pages and size at which a newspaper was published at a price. The government's argument that it would support the expansion of small newspapers was dismissed by the court.

The Supreme Court observed in famous case of *Union of India v. Assosiation for Democratic Reforms<sup>15</sup>*

“One-sided information, disinformation, misinformation and noninformation, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions”.

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<sup>12</sup> 1950 SCR 594, 607; AIR 1950 SC 124

<sup>13</sup> 1985 1 SCC 641

<sup>14</sup> AIR 1962 SC 305

<sup>15</sup> (2002) 5 SCC 294

Again, the hon'ble court ensured that the freedom of speech and expression of the individual make opinion freely in his own way. In the year of 2005 the Right to Information Act was introduced by the Union government, to know every detail of state operation, public authorities, educational institution by the individual.

### **THE NECESSITY OF FREEDOM OF EXPRESSION IN NOW A DAYS:**

The case was initially brought before the Delhi High Court through a PIL writ petition in this environment of ineffectiveness on the part of the government, Parliament, and political parties. The Constitution's Article 19(1)(a) guarantees the right to information as well as the freedom of speech and expression. One essential component of the freedom of speech and expression is having access to knowledge. By establishing the idea that freedom of speech encompasses both the giving and receiving of information, the Supreme Court has given Art. 19(1)(a) a broad interpretation. Information transmission and reception are two sides of the same coin. A key aspect of liberty of expression and speech is the ability to exchange ideas and information without restriction. One cannot form a knowledgeable opinion in the absence of sufficient facts. The general public has a right to know the circumstances behind the allocation of funds to their elected representatives when accusations of political patronage are made. Union of India v. Onkar Lal Bajaj <sup>16</sup>We have all experienced hate at some point in our life. Since the mass media has emerged as the most well-known news distribution channel in recent years, hate speech has grown in popularity. Hate speech is currently the most effective technique to damage someone's reputation and cause suffering for others. Mass hate speech has the power to destroy individual lives and objectives, as seen by the leader's comments during the CAA, which sparked rioting.

### **JOURNALISTS' FREEDOM OF SPEECH AND EXPRESSION IN INDIA IS BEING QUESTIONED:**

#### **J&K, UTTAR PRADESH, MADHYA PRADESH, TRIPURA TOPPED IN ATTACKS ON JOURNALISTS IN 2021:**

According to a rights group based in New Delhi, at least six scribes were slain, 108 were injured, and 13 newspapers were targeted in 2021. According to research in the New Delhi, the states and union territories with the highest number of attacks on journalists and media organizations in 2021 were Jammu and Kashmir, Uttar Pradesh, Madhya Pradesh, and Tripura.

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<sup>16</sup> (2003) 2 SCC 673

According to the data analysis, Tripura had the greatest number of attacks by outsiders, whereas J&K had the highest number of attacks by State actors. Eight female reporters were arrested, summoned, and required to register First Information Reports. The country's civic space is continuing to decline as seen by the spreading attacks on press freedom from J&K to Tripura. The government's intention of suppressing media freedom is affirmed by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

### **SPOT LIGHT ON J&K:**

J&K continues to be the focus of attacks on media freedom in 2021. The report stated that five of the 17 journalists who were arrested or imprisoned nationally were from J&K, while Delhi coming in third, Maharashtra, Manipur, and Tripura in second and third, and Assam, Chhattisgarh, and Haryana in first. At least 24 journalists countrywide are accused of being physically assaulted, threatened, harassed, and prevented from carrying out their jobs by public servants, including police, in 2021. FIRs were filed against 44 journalists.

### **HATE SPEECH IN INDIA:**

The key element of the freedom of speech guaranteed by Article 21 of the Constitution is responsible speech. Hate is an emotion that certain members of political parties and prominent people use to criticize others. Reports state that after 2018 was announced, many people in India used online platforms to spread hate speech in huge numbers. It is hateful to play anyone based on their ethnicity, gender, religion, age, disability, or untouchability in order to urge others to do the same. but for the welfare society as a whole to intentionally protect the right to free speech. There is no definition of hate speech under Indian law. However, some laws forbid specific types of speech as an exception to one's right to free speech within reasonable limits.

The simple term it may defined as Directed Action + Hate Speech = Hateful Conduct. "Hate speech is a direct assault on our core values of tolerance, inclusion and respect for human rights and human dignity." Nowadays, hate speech can be found all over the world in the form of violent misogyny, discrimination against Jews, anti-Muslim hatred, xenophobia, and intolerance and racism. Today, hate speech is also common in digital communications, particularly on social media sites. YouTube, Instagram, Facebook, etc.

## **HATE SPEECH IS PROHIBITED IN INDIA UNDER SEVERAL PROVISIONS:**

### **Bharatya Nyaya Sanhita (BNS):**

#### **MOB LYNCHING:**

Crimes connected to hate crimes and mob lynchings are codified in Clause 103. In circumstances in which a group of five or more people commit murder due to their race, caste, community, language, place of birth, or personal beliefs, it is relevant. The penalty under this provision ranges from death to life in prison.

### **IN OLD INDIAN PENAL CODE, 1860**

Section 124A punishes sedition, while Section 153A punishes activities that are harmful to the preservation of harmony and the encouragement of enmity between various groups based on factors such as religion, race, place of birth, domicile, language, etc.

- Imputations and statements that are harmful to national integration are punished under Section 153B.
- Section 295A punishes intentional and malicious actions meant to offend a class's religious sentiments by insulting its religion or beliefs in religion.
- Section 298 punishes speech, statements, etc. that are intentionally intended to offend someone's religious sentiments.
- Any speech, rumor, or report that incites tensions among people and animosity, hostility, or animosity between classes is punishable by Section 505(1) and (2).

### **THE REPRESENTATION OF THE PEOPLE ACT, 1951**

If someone is found guilty of engaging in activities that constitute an unlawful exercise of their right to free speech and expression, they are not eligible to contesting in election under Section 8.

As a corrupt electoral practice, the promotion of enmity based on religion, race, caste, community, or language in connection with elections is prohibited by Section 123(3A) and Section 125.

### **THE PROTECTION OF CIVIL RIGHTS ACT, 1955**

encouraging to promote untouchability through written or spoken words, signs, visual

representations, or other means is prohibited by Section 7.

### **THE RELIGIOUS INSTITUTIONS (PREVENTION OF MISUSE) ACT, 1988:**

The use of any property owned or controlled by a religious institution for the purpose of encouraging or trying to promote hatred, enmity, or ill-will between various religious, racial, linguistic, or regional groups, castes, or communities is forbidden by Section 3(g).

### **THE OLD CODE OF CRIMINAL PROCEDURE, 1973:**

Publication that are punishable under sections 124A, 153A, 153B, 292, 293 or 295A of the IPC can be forfeited by the State Government under Section 95.

- Section 107 provides the Executive Magistrate the authority to stop someone from breaking the law, disturbing the peace, or doing any wrongdoing that could likely do so.
- Section 144 gives the District Magistrate, a Sub-divisional Magistrate, or any other Executive Magistrate specifically designated by the State Government to issue orders in cases of immediate nuisance or alleged danger. The crimes listed above are punishable by law. have major effects on people' rights and provide a police officer the authority to make an arrest without a warrant or a magistrate's consent, as allowed under section 155 CrPC.

A penalty for hate speech. Hatred is an emotion that can be hidden below a statement that others may find reasonable and normal. In addition to being hidden, there are a few essential characteristics that aid in identifying hate in a speech or statement. Anyone found to be engaging in hate speech against their origin, region, or place of birth faces a maximum sentence of two years in prison, a fine of rupees 5,000 or both according to a report.

### **WILL HATE SPEECH BE CRIMINALIZE IN INDIA?**

To combat hate speech, the government has set up a code of conduct for websites like Facebook, Twitter, and YouTube. A bill aimed at regulate speech on social media, other messaging apps, and over-the-top (OTT) content was requested to be prepared by the law commission. In the 2015 case of Shreya Singhal v. Union of India, the Supreme Court declared that section 66 A of the IT Act was unconstitutional, citing its inability to combine the right to free speech and expression with its limitations. It was stated that no one in society should be offended by any information that is disseminated online. Since section 66A of the IT Act has been repealed, hate speech that was covered by it has been prosecuted under sedition and other

IT Act sections.

### **IMPACT OF HATE SPEECH ON ARTICLE 19**

One of the fundamental rights guaranteed to the nation's citizens is the freedom of speech and expression. The basic concept of liberty was to hold diverse views on any novel matter in the modern world. The range of opinions held by people in society serves as the primary guideline for the right to freedom of speech and expression. The state also protects speech that is offensive or hurts other people. Although hate speech is not clearly defined in either the constitution or the laws, it may be subject to the reasonable restrictions imposed by the laws. Considering that hate speech may now be reached by many people in a short amount of time due to the internet, it is thought to be a significant issue.

Restricted the right to free speech in some situations these days for the following reasons:

1. child pornography
2. Hate speech that has an impact on a community.
3. Defamation to safeguard another person's reputation.
4. Provocation to commit a crime.
5. Provocation of violence or discrimination on the basis of national race or religion.

### **RELYING ON IPC, RP ACT IN ABSENCE OF LAW ON HATE SPEECH: ELECTION COMMISSION TO SUPREME COURT:**

The Election Commission informed the Supreme Court that it has been depending on the Indian Penal Code (IPC) and the Representation of the People Act of 1951 because there is no statute in India that addresses "hate speech." No Indian legislation currently in effect defines hate speech. The Election Commission of India uses various provisions of the IPC and the RP Act-1951 to ensure that members of political parties or even other individuals do not make statements that result in disharmony between different sections of society, particularly to establish a patrician between the majority and minority religions in India, since there is no specific law governing "hate speech" or "rumor mongering" during elections.

In an affidavit, the EC informed the SC. The purpose of the affidavit was to request orders to stop "hate speech." The EC noted that the Supreme Court addressed the problem of "hate

speech" during elections in the 2014 case of Pravasi Bhalai Sangathan vs. Union of India<sup>17</sup>, in which the petitioner asked the government to take preventative action against individuals who engage in it. According to the affidavit, the SC had then noted that the situation will be largely resolved by implementing the current laws. The affidavit further stated that the Law Commission was eventually tasked with "examining 'whether it thinks proper' to define the word hate speech" and recommending to Parliament that the EC be strengthened "to remedy the menace of hate speeches irrespective of whenever made." But according to the EC, the Law Commission report "neither made any recommendations to Parliament to strengthen the EC to curb the menace, nor made any recommendations with regard to the specific query whether the Election Commission of India should be conferred with the power to derecognize a political party, disqualifying it or its member for the offence of hate speech."

**HATE SPEECHES DELIVERED BY POLITICAL & RELIGIOUS LEADERS BULLDOZE CONSTITUTIONAL ETHOS, WARRANT STRINGENT PEREMPTORY ACTION: DELHI HIGH COURT<sup>18</sup>:**

According to the Delhi High Court, hate speech, particularly that given by elected officials and religious and political leaders, on the basis of caste, religion, region, or ethnicity, weakens the idea of fraternity, violates Articles 14, 15, 19, 21 and 38 of the Indian Constitution, and destroys the constitutional ethos. Judge Chandra Dhari Singh added that the Central and State Governments should take strict preventative action because it is an explicit infraction of the fundamental duties outlined in the Constitution. The ruling opened off by citing a shloka from the Bhagwat Gita that says that when a leader does anything, ordinary people follow in his footsteps and his followers obey the standards he sets.

*"The persons who are mass leaders and occupy high offices must conduct themselves with utmost integrity and responsibility. Leaders elected in a democracy like that of India, owe their responsibility not only towards the electorate in their own constituency, but also towards the society/nation as a whole and ultimately to the Constitution. It is they who are the role models for the ordinary masses. Thus, it does not befit or behove the leaders to indulge in acts or speeches that cause rifts amongst communities, create tensions, and disrupt the social fabric in the society,"* the Court observed.

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<sup>17</sup> AIR 2014 SC 1591

<sup>18</sup> Brinda Karat And Anr. Vs. State Of NCT Of Delhi And Anr.

*"Hate speeches are almost invariably targeted towards a community to impart a psychological impact on their psyche, creating fear in the process. Hate speeches are the beginning point of attacks against the targeted community that can range from discrimination to ostracism, ghettoization, deportation, and, even to genocide,"*

Threatening Speech through by portraying Muslims as invaders, the accused speech incited hatred against them and threatened protestors at Shaheen Bagh. Based on the fact and circumstances the Election Commission made an action against MP Parvesh Verma and Union Minister have been accused for uttering provocative statements. Citing possible harm to communal harmony and infractions of the Model Code of Conduct, the Election Commission sent out notices. Similarly, the court mentioned that because prior government approval was required under old Criminal law CrPC sections 195 and 196, the Trial Court denied a plea seeking a FIR for hate speech under multiple IPC provisions. The petitioners contended that at this point, no sanction was required. Important fact of the Observations of the Court is the court highlighted that the right to free speech guaranteed by Article 19 of the Constitution is not unqualified and may be curtailed for moral and public order factors to consider. It issued a warning about how hate speech can incite violence and undermine the unity of society.

### **CONCLUSION:**

In different judgements hon'ble court highlighted the situation which was in the freedom of speech and expression and hate speech in recent days. To handle the hate speech, some important recommendation was given by the 267<sup>th</sup> Law Commission report also it was regulated by the apex court in India. The colonial draconian law Indian Penal Code provided that Section 124 A seditious against a state or Sovereignty of the country. Further state that the person should not violate his liberty and democracy against India beyond his limit. Simultaneously, the Supreme Court make a beautiful observation to eradicate the Section 124 A of Indian penal code. At the same time the sedition law which use against the innocent citizens, social workers, social activist, writers, political leaders of opposition party by the ruling party. Unwantedly without any evidence the rulers arrested and remanded the innocents and put into a judicial custody nearly more than 5 to 10 years. It was condemned by the Supreme Court of India. A researcher has an opinion in freedom of speech and expression was guaranteed by the constitution of India. Dr. Babasaheb Ambedkar mentioned every person in India should participate and Express their opinion in public issues, they have to highlight their grievance to the state. In now a day in our country ruling party, whether it may be a union

government or state government they are misusing the sedition laws against the Advocates, social activist, social welfare interested person and arrested put into remanded. The view of state they point out the issues in same scale whether a person to highlights his grievance to the state and a person speak hate speech against the group of people's minorities, race, religion, linguistic and Customs and practice. which was provided under the article 15 of Indian Constitution. the state or Union should not make a same scale view of handling the two cases not reasonableness. Sudha Bharadwaj, Nawlanka, Anand Teltumbde, Stan Swami they are social activist in India where are arrested in the sedition laws and remanded 2 years back and till now they are not released under the bail. the draconian law which imposed on these social activist and writer at the same time a ruling party spokesperson Nupur Sharma till now not arrested under the sedition law Section 124 of Indian penal code to make a hate speech against Prophet. Muhammad and Islamic religion and believe. In few months back hate speech was made by the spokesperson union government and The Innocent activist was arrested under sedition laws these two things is not reasonableness under constitution in researcher view a person has a right to express his opinion by way of movie, mouth, writings slogans anything but it should not misused by the rulers against the weaker sections and minorities. Most importantly as said by Babasaheb Ambedkar every man in India should be guaranteed his right which should not be hindered for any reasons but if it is hindered then I would say that this constitution will become dysfunctional all laws should help each and every person in the society politically, economically and socially, except the people who comment. We know that rights given by Constitution are the Fundamental Rights and rights given by other law are Legal Rights. The restriction mentioned are defamation, contempt of the court, decency or morality, security of the state, friendly relationship between India with other country, incitement for an offence, public order and maintenance of the sovereignty and integrity of India.

It becomes extremely challenging to differentiate hate speech from constructive communication because it is regarded as a component of Article 19 Freedom of Speech and Expression. Because hate speech can be turned in a variety of ways, it is hard to criminalize it under the old Criminal law IPC and New Bharatya Nayaya Sanhita laws restrictions. As a result, it is challenging to pursue hate speech allegations in court. It is necessary to update and strengthen the current rules and update the penalties for hate speech after examining all facets of hate speech and freedom of speech and expression. Due to the prevalent availability of the internet to all, hate speech has become a widespread issue in modern times. A transparent

system is essential for ensure that it does not have an impact on society or harm or degrade anyone's reputation or concepts. Speech that encourages violence and discrimination on the basis of multiple factors may face consequences. Since combating hate speech is a battle that cannot be won by one person alone, we need a larger forum where everything can be discussed openly and results can be obtained.

### **SUGGESTIONS AND RECOMMENDATIONS:**

The balance between freedom of speech and expression and hate speech can be regulate within the jurisdiction with reasonable restriction. In now a days it can be misused by the rulers in India. Some of the irresponsible leaders make hate speech against the minority peoples and vulnerable groups in recent days. An authorities should not treat a individuals like haters because common man has the right to make their grievance to state. Regulation of hate speech in contemporary situation by old Criminal Laws like Indian Penal Code, Cr.PC, Peoples Representation Act and New Criminal Laws of BNS,BNSS.

The following are some of the suggestions and recommendations that the researcher hasmade after conducting extensive research on the research topic:

- I. To eradicate the sedition law (Section 124A) in the Old Indian Penal Code and Make sure in the New Criminal Law BNS.
- II. Every coin has two sides. The practical application of the balance between freedom of speech and expression and regulation of hate speech hasboth positive and negative facets. The positive aspects are multiple, for example, as a citizen of India peoples can share their opinion, press etc. The only negative view in the constitution specified law is not available for hate speech in India.
- III. State can ensure the liberty of individual can expose their views in the social issues.
- IV. The arrest of innocents and make them into Illegal detention must be avoid in the handling of state bureaucrats.
- V. Election Commission should make stringhed condition while making a state election campaign.
- VI. Freedom of press and expression must be ensured by the authorities.
- VII. Freedom of press and expression in international instruments like UDHR, ICCPR, ICSECR etc. it must be implemented in India widely throughout the country.
- VIII. The hate speech by the political party members need to arrest in cognizance offensive

laws like GOONDAS, UAPA etc.,

- IX. A state or union government need make scientific method of approach to handle a people while arrest in case of people who speaks about their grievance against the state.
- X. Necessary awareness must be provide by the governments, NGO in the country about the freedom of expression which was guaranteed by the constitution of India.

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