

13th July, 2023

A REVIEW OF THE CURRENT SYSTEM AND ITS FLAWS FOR LEGAL REGULATION OF HATE CRIMES IN INDIA

1. INTRODUCTION

- Freedom of speech and expression is respected everywhere. The right to freedom of speech and expression is unalienable. As a result, different discussions have shown that it is a very contentious issue to determine how much freedom of speech and expression should be allowed. Therefore, throughout time, the constitutional experts of different constitutional benches have established a line of demarcation beyond which such freedom is illegal and requires careful consideration. India is currently experiencing a rise in the number of hate crimes. Hate crimes target the social structure of society as a whole. In India, criminal offences committed by a larger group against a particular person, group, or community, typically motivated by socio-religious factors, are referred to as hate crimes. Hate crimes are frequently committed to intimidate or frighten an individual, a group, or a community. sions have shown that it is a very contentious issue to determine how much freedom of speech and expression should be allowed. Therefore, throughout time, the constitutional experts of different constitutional benches have established a line of demarcation beyond which such freedom is illegal and requires careful consideration. India is currently experiencing a rise in the number of hate crimes. Hate crimes target the social structure of society as a whole. In India, criminal offences committed by a larger group against a particular person, group, or community, typically motivated by socio-religious factors, are referred to as hate-crimes. Hate crimes are frequently committed to intimidate or frighten an individual, a group, or a community.
- In India hate crime is not a new concept. There were incidents related to such crimes since the very formation of the nation, and these were majorly based on religion. Apart from religion-based crimes, there was also the presence of caste and gender-based violence . As per the report of the National Crime Records

Bureau, majority of hate crimes in India are based upon caste and religion followed by gender – biases which is increasing at an alarming rate. Moreover hate crimes like lynching and hate speeches not only affects the victim but also alienates the entire community and thereby increasing the incidents of hate crime.

- The UN Strategy and Plan of Action on Hate Speech defines hate speech as "any kind of expression, whether in speech, writing, or conduct, that attacks or uses pejorative or offensive language with regards to an individual or group of people because of who they are, in other words, based on their religion, ethnicity, nationality, colour, descent, race, gender, or other identity factor" in order to provide a unified framework for the UN to address the issue globally. issue to determine how much freedom of speech and expression should be allowed. Therefore, throughout time
- In the well-known case of *Pravasi Bhalai Sangathan v. Union of India* AIR 2014 SC 1591, the Supreme Court observed that hate speech is not prohibited by any of India's pre-existing laws. Thus in order to avoid entering the realm of judicial overreach, the Supreme Court asked the Law Commission to handle this matter. This is the main reason the Legislature was given control of the situation.

2. BACKGROUND

- The Indian Penal Code (IPC) takes a number of laws into account, including sections 153, 295, and others. These are insufficient. Important portions of the Indian Penal Code that address hate crimes and the same includes:
 - 'Promotion of hostility between various groups on grounds of religion, race, place of birth, domicile, language, etc., and doing acts injurious to the main-



SWETA JALGAONKAR

Associate, MCO Legals
BLS LLB, ABA College of Law,
Mumbai University

Expertise:

Banking and Insolvency Law
Civil and Commercial Litigation

✉ Sweta.j@mcolegals.co.in



AHIR MITRA

Research Partner
BA LL.B(Hons)
KIIT Law School, Bhubaneswar

tenance of harmony' are both punishable under Section 153A of the IPC.

- Imputations and declarations that are harmful to national integration are punishable under Section 153B of the IPC.
- "Publication or circulation of any statement, rumour, or report causing public mischief and enmity, hatred, or ill-will between classes" is punishable under Section 505(1) and (2) of the IPC.
- "Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs" are punishable under Section 295A of the IPC.
- The constitutionality of Section 295A was questioned before the Supreme Court in the case of *Ramji Lal Modi v. State of UP* 1957 AIR 620. The Supreme Court upheld its validity on the ground that the restriction imposed on freedom of expression by the section was reasonable and was covered under the head of "Public order". The reasoning of the court was that the Section did not penalize any and every act of insult to religion or the religious belief of a class of citizen but was directed to acts perpetrated with the deliberate and malicious intention of outraging the religious feeling of a class of citizen. Hence 295A of IPC is not ultra vires as it is protected under Article 19(2) of the Constitution of India.
- In the *Sukumar v. State of Tamil Nadu case*, it was determined that the right to free speech does not shield people from hate speech on social media sites. Even if Article 19 of the Indian Constitution guarantees us the right to free speech, it also mentions reasonable limitations on that right in Article 19(2).
- "Liberty and equality are contemporary and not inimical to one another," the Law Commission of India's 267th Report concluded. The goal of having free speech is to give everyone a voice, not to ignore or silence those in society who are less powerful. The goal of equality is not to curtail this freedom but to balance it with the demands of a multicultural and pluralistic society, as long as the restriction does not unreasonably restrict the right to free speech. As a result, incitement to discrimination as well as violence has been acknowledged as a reason to restrict freedom of expression.
- The Law Commission of India moved forward with adding Sections 153C and 505A to address hate crimes specifically. These sections state that it is unlawful to use "gravely threatening words, spoken or written, signs, or visible representations with the intention of inciting fear or alarm; or advocate hatred that incites violence on the basis of religion, race, caste, or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability, or tribe." As of yet, no action has been taken to explore enacting these recommendations.
- The Bill, has been introduced by the Hon'ble member of Rajya Sabha, Prof. Manoj Kumar Jha before the house on 9. December 2022. The Bill, brought under the category of private members bill is up for discussion before the House.
- The Hon'ble member in his introductory statement to the Bill, stated that the bill, calls to empower the state Government and the Central Government to take measures to provide for the prevention and control of hate crimes and hate speech in terms of the constitution and international human rights.

3. OBJECTIVE OF THE BILL

- The Prevention and Combating of Hate Crimes and Hate Speech Bill was the first segment of legislation. The purpose of the bill was to aid those who have been the victims of hate crimes and hate

speech, as well as to address the rising incidence of prejudice-motivated incidents and hate crimes in the nation. The bill established the crimes of hate crimes and hate speech, as well as procedures to stop and punish those acts. It had a clear connection to several important goals in the National Development Plan, particularly the requirement for ongoing campaigns against sexism, racism, homophobia, and xenophobia.

- The bill's main focus is on creating awareness in society so that the fundamental rights of citizens are safeguarded. An appropriate authority will also be appointed to investigate such crimes. These crimes are non-cognizable and non-bailable offences under this bill. A hate crime had to be taken into account as an aggravating factor when determining the appropriate punishments for the base offence. The penalty for using hate speech was a fine or a maximum of three years in prison for the first crime and five years for the second and subsequent offences. There was no provision in the bill for restorative justice practices.

4. SALIENT FEATURES OF THE BILL

- Victim-centric legislation: Provisions of Bill are developed in a victim-centered manner which considers the impact of offence on the victim and prospects to secure convictions, where serious crimes are committed.
- Extensive characteristics: The Bill protects wide range of characteristics of victim such as religion, race, caste or community, sex, gender, sexual orientation, place of birth, residence, language, disability and tribe.
- Punishment: Bill proposes imprisonment for a term of maximum three years or fine to whoever commits a hate crime or constitutes hate speech or aids, abets or assists to commit hate crime or hate speech.
- Preventive powers: Bill empowers District Magistrate to issue orders on apprehension of breach of peace or creation of discord between members of different groups, caste or communities.
- Awareness, education and training: Bill provides a mechanism for promoting awareness to prohibit, prevent and combat hate crimes and hate speech.

5. CONCLUSION

- The Hate Crimes and Hate Speech (Combat, Prevention, and Punishment) Act of 2022 intends to hold those responsible for hate crimes and hate speech accountable. If hate crime and hate speech bill is enacted in India, there would likely be several effects on society and the legal system.
- The proposed 2022 bill is a crucial step for India to make public aware about the prohibition against hate crime and hate speech and punishment related to such crime.
- Therefore, the bill is not the panacea but rather must be viewed as one part of the solution to the overall issues relating to Hate Crimes and Hate speech in India.
- It's important to note that the specific consequences of hate crime and hate speech in India would depend on the wording. It's important to note that the specific consequences of hate crime and hate speech in India would depend on the wording and implementation of the legislation, as well as the response and interpretation by individuals, communities, law enforcement agencies, and the judiciary. and implementation of the legislation, as well as the response and interpretation by individuals, communities, law enforcement agencies, and the judiciary

Bill No. LXXIV of 2022

THE HATE CRIMES AND HATE SPEECH (COMBAT, PREVENTION
AND PUNISHMENT) BILL, 2022

A

BILL

to empower the State Governments and the Central Government to take measures to provide for the prevention and control of hate crimes and hate speech in terms of the Constitution and international human rights instruments concerning religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe and related intolerance, in accordance with Constitutional and international law obligations; define for the offence of hate crime and the offence of hate speech and the punishment of persons who commit those offences and rehabilitation of victims of those offences; to provide for the reporting on the implementation, application and administration of this Act; and to provide for matters connected therewith or incidental thereto.

BE it enacted by the Parliament in the Seventy-third Year of the Republic of India as follows:—

CHAPTER I

Preliminary

- 5 **1.** (1) This Act may be called the Hate Crimes and Hate Speech (Combat, Prevention and Punishment) Bill, 2022. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Definitions.

2. (1) In this Act, unless the context otherwise requires—

(a) "appropriate Government" means in the case of a State, the Government of that State and in all other cases the Central Government. 5

(b) "Code" means the Code of Criminal Procedure, 1973; 2 of 1974.

(c) "Communication" includes any—

(i) display;

(ii) written, illustrated, visual or other descriptive matter; 10

(iii) oral statement;

(iv) representation or reference; or

(v) an electronic communication, and "communicates" and "communicated" shall have a corresponding meaning;

(d) "competent authority" means such officer or authority as the appropriate Government may, by notification, appoint as the competent authority under sub-section (2) of section 9; 15

(e) "data" means electronic representations of information in any form as defined under clause (o) of sub-section (1) and section 2 of the Information Technology Act, 2000; 20 21 of 2000.

(f) "data message" means data generated, sent, received or stored by electronic means;

(g) "electronic record" means electronic record as defined under clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000; 21 of 2000.

(h) "electronic communication" means a communication by means of data messages; 25

(i) "electronic communications system" means any electronic communications infrastructure or facility used for the conveyance of data;

(j) "harm" means any emotional, psychological, physical, social or economic harm; 30

(k) "hate crime" has the meaning assigned to it in terms of sub-section (1) of section 3;

(l) "hate speech" has the meaning assigned to it in terms of sub-section (1) of section 5;

(m) "information" includes data, message, text, images, sound, voice, codes, computer programmes software and databases or microfilm or computer generated microfiche; 35

(n) "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes broadcast channels, telecom service providers, network service providers, internet service providers, web-hosting service providers, social media platforms, search engines, online payment sites, online-auction sites, online-marketplaces and cyber cafes; 40

(o) "notification" means a notification published in the Official Gazette;

(p) "prescribed" means prescribed by rules made under this Act;

(q) "victim" means a person, including a juristic person, or group of persons, against whom an offence referred to in section 3 or section 4 of this Act has been committed.

5 (2) The words and expressions used and not defined in this Act but defined in
45 of 1860. the Indian Penal Code, 1860 or the Code of Criminal Procedure, 1973 shall have meaning
2 of 1974. respectively assigned to them in those Acts.

CHAPTER II

OFFENCE OF HATE CRIMES AND HATE SPEECH

10 **3. (1)** Any person who harms or incites harm or promotes or propagates hatred bring
out of his prejudice against or intolerance towards any other person because of one or more
of the following characteristics or perceived characteristics of the victim or his or her family
member or the victim's association with, or support for, a group of persons who share
anyone or more of such characteristics: Offence of
hate crime.

- 15 (a) religion,
(b) race,
(c) caste or community,
(d) sex,
(e) gender,
20 (f) sexual orientation,
(g) place of birth,
(h) residence,
(i) language,
(j) disability, or
25 (k) tribe

shall be guilty of an offence of hate crime.

4. (1) Whoever commits a hate crime shall be punished with imprisonment for a term Punishment of
hate crime.
which may extend to three years or fine upto five thousand rupees or both.

30 (2) An offence of hate crime shall be non-cognizable and non-bailable and shall be
triable by magistrate of the first class.

5. (1) Any person:—

35 (a) who intentionally publishes, propagates or advocates anything or
communicates to one or more persons in a manner that could reasonably be construed
to demonstrate a clear intention to harm or incite harm or promote or propagate
hatred, based on one or more of the following grounds: Offence of
hate speech.

- (i) religion,
(ii) race,
(iii) caste or community,
(iv) sex,
40 (v) gender,
(vi) sexual orientation,
(vii) place of birth,

- (viii) residence,
- (ix) language,
- (x) disability, or
- (xi) tribe; or

(b) who intentionally distributes or makes available an electronic communication which that person knows constitutes hate speech as referred in clause (a) through an electronic communications system which is— 5

(i) accessible by any member of the public; or

(ii) accessible by, or directed at, a specific person who can be considered to be a victim of hate speech; or 10

(c) who intentionally, in any manner whatsoever, displays any material or makes available any material which is capable of being communicated any which that person knows constitutes hate speech as referred in clause (a), which is accessible by, or directed at, a specific person who can be considered to be a victim of hate speech, shall be guilty of an offence of hate speech. 15

(2) The provisions of sub-section (1) shall not apply in respect of anything done as referred in sub-section (1), if it is done in the course of engagement in—

(a) any *bona fide* artistic creativity, performance or other form of expression, to the extent that such creativity, performance or expression does not advocate hatred that constitutes incitement to cause harm, based on one or more of the grounds referred to in clause (a) of sub-section (1); 20

(b) any academic or scientific inquiry; fair and accurate reporting or commentary in the public interest or in the publication of information, commentary, advertisement or notice; or the *bona fide* interpretation and proselytisation or espousing of any religious tenet, belief, teaching, doctrine or writings, to the extent that such interpretation and proselytisation does not advocate hatred that constitutes incitement to cause harm, based on one or more of the grounds referred to in clause (a) of sub-section (1). 25

Punishment
for hate
speech.

6. (1) Whoever who commits hate speech shall be punished with imprisonment for a term which may extend to three years or fine up to five thousand rupees or both. 30

(2) An offence of hate crime shall be non-cognizable and non-bailable and shall be triable by magistrate of the first class.

CHAPTER III

AID, ABET OR OTHERWISE ASSISTANCE FOR COMMITTING HATE CRIME OR HATE SPEECH

Punishment
for aiding,
abetting or
assisting for
committing
hate crime or
hate speech.

7. (1) Whoever knowingly or unknowingly believes that commission or omission of any other person would be an offence under the provisions of this Act, with intent and thereby aids, abets or otherwise gives that other person any assistance for such offence, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine or both: 35

Provided that an act or omission had a substantial effect on the commission a crime is a fact based inquiry: 40

Provided further that the aider and abettor's conduct may occur in a location remote from the scene of the crime.

(2) Any intermediary who knowingly or unknowingly or due diligently believes that commission or omission of any other person would be an offence under the provisions of 45

this Act, provide their platform to commit such offence, shall be punished with imprisonment of either description for a term, which may extend to three years, and shall also be liable to fine or both.

5 (3) Whoever knowingly or unknowingly believe or has reasonable cause to believe that commission or omission of any other person would be an offence under the provisions of this Act, expends or supplies any money in furtherance or in support of an act which is an offence under this Act, shall be punished with imprisonment of either description for a term, which may extend to three years, and shall also be liable to fine or both.

CHAPTER IV

10 VICTIM IMPACT ASSESSMENT

8. The prosecution, when adducing evidence or addressing the court on sentence in respect of an offence under this Act, consider the interests of a victim of the offence and the impact of the offence on the victim and, where practicable, furnish the court with a victim impact statement: Victim impact assessment.

15 *Explanation.*—For the purposes of this section, a victim impact statement means a sworn statement or affirmation by a victim or someone authorised by a victim to make such a statement on his behalf, which contains the physical, psychological, social, economic or any other consequences of an offence under this Act for a victim and family member or associate of a victim.

20 CHAPTER V

PREVENTION OF ACTS LEADING TO HATE CRIME AND HATE SPEECH

9. (1) Notwithstanding anything contained in the Code, whenever the District Magistrate has reason to believe that in any area within his jurisdiction, a situation has arisen where there is an apprehension of breach of peace or creation of discord between Prevention of acts leading to hate crime and hate speech.
25 members of different groups, castes or communities due to commission of offence under the provisions of this Act, he may, by order in writing, prohibit any act which in his opinion is likely to cause apprehension in the minds of another community or caste or group that it is directed to intimidate, threaten or otherwise promote ill-will against that community or caste or group.

30 (2) A competent authority, appointed by the appropriate Government by notification, in any area within his jurisdiction, may by order in writing,—

(a) direct the conduct of any assembly or procession in any place or street and specify by general or special notice, if any, by which and the times at which, such procession may or may not pass;

35 (b) require, by general or special notice, on being satisfied that any person or class of persons intend to convene or collect a assembly or an procession in any place or street or to form an assembly or procession which would in his judgment, if uncontrolled, is likely to cause a breach of peace due to commission of offence under the provisions of this Act, that the person convening or collecting such assembly or
40 procession or directing or promoting such assembly or procession shall not do so without applying for and obtaining a permission to this effect; and

(c) prohibit or regulate the use of loudspeaker, music or sound amplifier or any other instrument inducing noise in any street or public place or procession, or in any private place or procession, if the use of which may cause commission of offence
45 under the provisions of this Act.

(3) An order under this section shall remain in force for such period as may be specified or thirty days, whichever is less:

Provided that if the appropriate Government, after reviewing the effect of the order, considers it necessary for the preservation of peace or harmony between different groups, castes or communities or public safety or maintenance of public order in such area, may, by notification, direct that the order issued under this section shall remain in force for such further period not exceeding sixty days from the date of the first order. 5

CHAPTER VI

AWARENESS, EDUCATION AND TRAINING

Awareness, education and training to prohibit hate crime and hate speech.

10. (1) The appropriate Government shall have the duty to promote awareness among public for the prohibition, prevention and combating of hate crimes and hate speech.

(2) In performance of the duty referred to in sub-section (1), the appropriate Government may perform such functions which shall include, but not be limited to— 10

(a) conducting education and information campaigns to inform the public about the prohibition against hate crime and hate speech, aimed at prevention and combating of such offences;

(b) ensuring that all public officials who may be involved in the investigation and prosecution of hate crimes and hate speech are educated and informed of the provisions against such offences; 15

(c) providing assistance and advice to any person who wants to lodge a complaint of a hate crime or hate speech; and

(d) training public officials on the prohibition, prevention and combating of hate crimes and hate speech, and such training shall include social context training. 20

(3) Notwithstanding anything contained in sub-sections (1) and (2), the appropriate Government may recommend to the National Human Rights Commission or the State Human Rights Commission, as the case may be, to perform the functions referred to in sub-section (2).

(4) The National Judicial Academy of India, Bhopal shall develop and implement training courses, including social context training courses for judicial officers for purposes of presiding in court proceedings, in connection with offences under this Act. 25

CHAPTER VII

MISCELLANEOUS

Protection of action done in good faith.

11. No suit, prosecution or other legal proceedings shall lie against any officer or authority of the appropriate Government for an act which is done or intended to be done in good faith under this Act or the rules made thereunder. 30

Act not in derogation of any other law.

12. Save as otherwise provided, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force except to the extent the provisions of other law are inconsistent with the provisions of this Act. 35

Power to make rules.

13. (1) The Central Government may, by notification, in the Official Gazette make rules for carrying out the provisions of this Act.

(2) Every rule made under this section.

STATEMENT OF OBJECTS AND REASONS

The Preamble of the Constitution of India, set out founding principles and values, among others, of individual and collective dignity with a sense of equality for all, which shall help the Republic in achieving unity and integrity of its people. *Samanvay* (harmony) and *Sadbhavna* (compassion for one another) are one of the oldest teachings of the Indian civilization. Nonetheless, lately, due to narrow political, social and economic prejudices and benefits, individuals or groups of people have created nuisance and intolerance on the basis of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe against each other.

The Constitution of India, under article 19 (1), gives everyone the right to freedom of expression. This right is, however, limited in that it does not extend to breach sovereignty and integrity of the country, and decency and morality based on religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe, among others. A specific legislation is required with a view to empower the State Governments and the Central Government to take effective measures to combat, prevent and punish the conduct of the person constituting hate crimes and hate speech.

Hence, this Bill.

PROF. MANOJ KUMAR JHA

FINANCIAL MEMORANDUM

Clause 10 of the Bill *inter-alia* provides that the appropriate Government shall have the duty for promoting awareness among public and also impart education and training for preventing and combating hate crimes and hate speech. Existing budgets will be used for the purpose. No additional expenditure is likely to be incurred to implement the provisions of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 13 of the Bill empowers the Central Government to make rules for carrying out the purpose of the Bill. As the rules will relate to matters of detail only, the delegation of legislation powers is of a normal character.

RAJYA SABHA

A

BILL

to empower the State Governments and the Central Government to take measures to provide for the prevention and control of hate crimes and hate speech in terms of the Constitution and international human rights instruments concerning religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe and related intolerance, in accordance with Constitutional and international law obligations; define for the offence of hate crime and the offence of hate speech and the punishment of persons who commit those offences and rehabilitation of victims of those offences; to provide for the reporting on the implementation, application and administration of this Act; and to provide for matters connected therewith or incidental thereto.

(Prof. Manoj Kumar Jha, M.P.)