

## **Part II**

### **Brief Analysis on Law and Judgements : INDIA**

#### **HATE SPEECH AND WRITING**

##### **WHAT IS HATE SPEECH?**

Hate speech is a term for speech intended to degrade person or group of people based on their race, gender, age, ethnicity, nationality, religion, sexual orientation, gender identity, disability, language ability, ideology, social class, occupation, appearance (height, weight, hair color, etc.), mental capacity, and any other distinction that might be considered by some as a liability. The speech ordinarily involves lies, deceptions, misdirection, logical fallacies, out of context citations or quotes, "cherry picking", denial, conspiracy theories, and derogatory terminology. It may involve true facts, but they're generally perverted to such an extent that the conclusion it derives is very different from what the facts are meant to show.

Hate speech and hate writing are two mechanisms that have been systematically used in recent times, during and after elections, to whip up anti-minority hatreds and in many cases, actual violence. The above laws relating to hate speech in India do not restrict the freedom of free speech and expression, but rather safeguard it. These laws are used against minorities and other communities in India, and it is the constitutional mandate of the government to protect the interests of such religious and social minorities. The regular application of these sections is vital to upholding the secular intent of the Constitution of India, as enshrined in its Preamble.

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

**Art. 19, COI:** The Preamble declares India to be a secular country, without a state religion. Article 19 (1) (a) of the COI gives all citizens the right of free speech and expression, however reasonable restriction on the exercise of the right for preserving inter alia public order, decency, or morality may be imposed, (Art. 19 (2)).

**Section 124A, IPC:** Sedition penalises any person who brings or attempts to bring hatred, contempt, or excites or attempts to excite dissatisfaction towards the Government established by law in India.

**Sections 153A, IPC:** Section 153A penalises the act of promoting or attempting to promote enmity by signs or otherwise between different groups on ground of religion, race, place of birth, residence, language, caste, community, or other ground and doing acts prejudicial to maintenance of harmony and disturbing public tranquility between different religions, groups, castes, communities, etc.

**Section 153B, IPC:** This section penalises any imputation regarding religious, racial, language, region, group, caste, community cannot bear true faith to the COI, or deprived as Indian citizens, or cause disharmony or feelings of enmity or hatred or ill- will between such members and other persons.

Committing an offence under the above two sections has a higher sentence, if done in a religious place, or place of worship.

**Section 292, IPC:** The selling, hiring, distribution, circulation, or possesses for the above reasons any obscene book, etc.; or imports or exports such book; or benefits from such business; is punishable. This does not apply to the books, etc. of science, learning, general concern, religious purposes, or declared by statute.

**Section 293, IPC:** The offence under s. 292, IPC carries a higher sentence if circulated to a person below twenty years of age.

**Section 295A, IPC:** Deliberate and malicious acts, words (written and spoken), signs, etc. intended to outrage religious feelings of any class by insulting its religion or religious beliefs or attempting to do the same, is punishable.

**Section 505, IPC:** Whoever makes a statement or circulates a rumour, etc. intending to cause a any officer or soldier to mutiny or to fail in his duty, or causing fear in public tranquility, or inciting one community against another, can be punished under this section.

**Section 95, CrPC:** Any document that is punishable under ss. 124A, 153A, 153B, 292, 293, 295A of the IPC may be seized and forfeited by the government.

#### **CASE ANALYSIS:**

Thus, such laws do not infringe the right to free speech, but rather safeguard it. Instances in the Indian scenario can be taken from the following cases:

<http://indiankanoon.org/doc/739480/> --- **Gopalbhai R. Prajapati vs Pratapbhai Hamirbhai Bhede And 4 ... on 9 March, 2006.** Relating to a booklet named 'Ashubh' which was supposed to contain anti-religious sentiments and defamatory statements against complainants. On carefully reading the booklet, it was found to be non-defamatory and nothing stated in the booklet is either to cause outrage of religious feelings by insulting the religion or religious belief.

<http://indiankanoon.org/doc/1609658/> ---- **Sujato Bhadra vs State Of West Bengal on 22 September, 2005** ---- **The Taslima Nasreen Case.** Reading the book it was found that though it contains harsh language against the Prophet, that there no was deliberate and malicious intention of the author to outrage the religious feelings or beliefs of the Muslim citizens of India. Besides the point of law, there is another angle to the issue to be considered. There were no reports of any communal trouble, tension or disharmony of any nature among various communities in India after the publication of the book. Therefore, 295A is wholly inapplicable.

<http://indiankanoon.org/doc/1153451/> --- **Venu Srinivasan vs Krishnamachari, Secretary Divya ... on 3 October, 2005.** Contended that shifting of Idol of Lord Shiva would attract the ingredients of Section 295 or Section 295-A. It was said that shifting wasn't done to intentionally hurt the religious sentiments of people and hence, Section 295-A wasn't attracted.

4. <http://indiankanoon.org/doc/1394374/> ---- **Sony Pictures vs The State Of Tamil Nadu on 7 July, 2006** ---- **The Da Vinci Movie case.** The exhibition of The Da Vinci Code was stalled since it was contended the movie showed anti-Christian beliefs and

tenets and showed the religion in a bad light. It was held that although it did show the Roman Catholic community in bad light, it did not claim to be a work of history. Therefore, the movie was still released.

<http://indiankanoon.org/doc/730944/> --- **Karnan @ Karunakaran vs The Union Of India on 19 August, 2008.** A writ petition against Detention under NSA evoked by Section 295 when a piglet was cut and thrown into a masjid to intentionally hurt religious sentiments.

<http://indiankanoon.org/doc/376789/> --- **State (Delhi Admn.) vs Rajpal Singh Shastri on 23 February, 2005** – The editor of a monthly journal was alleged to publish an article insulting Muslims and Sikhs. While dealing with the charge under Section 295, the trial court has held that the Article read as a whole does appear to be an attack on the Muslim religion but it attempts to expose certain Mohammedan leaders who in the name of religion exploit the Muslim masses for their selfish ends. Thus the court held was also not sufficient to attract the mischief under Section 295.

<http://indiankanoon.org/doc/1841812/> --- **Date Of Decision 09.03.2010 vs State Of Punjab on 9 December, 2002.**: The accused were charged for slaughtering cows which is prohibited under the Cow Slaughter Act, but not under the IPC.

<http://indiankanoon.org/doc/68365/> --- **Sajjan Kumar Vs. C.B.I. on 20 September, 2010.- 1984** : The 1984 Riots case.

<http://indiankanoon.org/doc/1137006/> ---- **Shri Anand Patwardhan vs The Central Board Of Film ... on 24 April, 2003.** Case against a Censor Board by a director who made a movie in which some scenes were objected by the Censor Board and alleged that they came under the ambit of Section 295. Especially a scene showing a demonstration staged by a group and other a speech by a Dalit leader. Court held that cuts suggested were not reasonable and violated the right of freedom of expression.

**The Reason Case:** India's first case of blasphemy was in 1933 when D'avoine was arrested and all copies of "Reason" were seized by the police for his article "Religion and Morality". Case under Section 295A of the IPC was registered. The court held that the author was merely expressing his views. Thus, the section would not be attracted.

In 1932, some clerics denounced a young woman physician named Rashid Jahan, and threatened her with disfigurement and death. She and three others had published a collection of Urdu short stories called *Angarey* in which they had robustly criticized obscurantist customs in their own community and the sexual hypocrisies of some feudal landowners and men of religion. Under section 295A, the authorities banned the book and confiscated all copies.