

## Free Speech and Hate Speech Syndrome: Unprincipled Animate in Media

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### Abstract

Freedom of speech and expression has been recognized as one segment of right to life and personal liberty. As the same way it has acquire the significant place in such golden freedoms which are ultimately a part of Fundamental right with some reasonable restrictions. Freedom of speech is the genus and hate speech is the species of such right. Freedom of speech does not necessarily be a speech of like to all and may sometime be a part of hatred and regret due to some communal problems involves in to such social dilemma. The paper tries to examine the pro and cons of right to free speech and expression along with right not to speak and hate speech in to constitutional as well in the light of statutory provisions. specifically, in matters where the scope of right to privacy, decency, morality, security, international relations and right to reputation comes in complexity. The article goes on to critique on the “defamation of religions” allowing due respect to resolutions passed by international human rights law on freedom of expression in 2013. While highlighting some apparent tensions within relevant international and regional human rights law on anti-religious hate speech. It seeks to set out an understanding of this effect and affect of such hate speech on democracy and Law thereon in India. The facts has been examine in the light of right to speech and right not to speech along with the effect and affect of hate speech which will surely provide certain keys in order to regularize the matter in complexity and to suggest some sort of solution to such uncompromised problem for Democracy. Hence, Free Speech and Hate Speech Syndrome: Unprincipled Animate In Media!

**KEYWORDS:** Freedom of Speech-Hates Speech Syndrome - International Human Right on Freedom of Expression-Scope-Media and Indian Laws – Causes – Problems and Solution.

### Important Points:

1. Introduction
2. Essential Factor to Constitute a Hate Speech
3. Freedom of speech and Hate Speech Syndrome
4. Scope of Freedom of speech and Expression
5. Free Speech versus Hate Speech Syndrome
6. Is Hate speech legally regularized in India
7. New Dimensions of Freedom of Speech and Expression in Indian Parlance
8. Grounds for restriction of Free speech
9. Hate Speech and International community
10. Hate speech and response of Indian Laws
11. Hate Speech and Judicial Pronouncement in India
12. Comparative study on hate speech in National and International perspective
13. Conclusion.

## 1. Introduction:

*“Man as a rational being desires to do many things, but in a civil society his desires will have to be controlled with the exercise of similar desires by other individuals<sup>1</sup>”.*

Today is the era of information, freedom of speech and expression. Expressions are the personal views with regard to anything, state of thing or relation of thing capable of being perceived by senses or any mental condition of which the receiver becomes the conscious as like other material facts. The way to express oneself are numerous, either through sign, marks, speech, or any other conduct within permissible preview of Law<sup>2</sup>. It doesn't mean that, any thing which is permissible under law is necessarily required to recognize by all. In recent days, the issue of hate speech is at high reach point of evaluation and the matter of research concern for and by state and its authority. What exactly hate speech is, hardly can be answered but one cannot avoid the consequences arise due to crossing of fixed boundaries by law while using the right to free speech and the other is unreguralised practices in Media while spreading such information as a news . The result of hate speech on civilized community could easily turn in to uncivilized mob on a single knock of anti-social activist .on that basis Government ma sometime force to surrender and the violence in social dilemma is another production from such hate speech. The incidence of Gadara in Gujarat 2002 and incidence of girl molestation case in Guwahati May 2012 are the best instance which shows the intensity of results caused by hate speech.

The only reasons are the breakdown of legal boundaries while using right to free speech and expression and unguided media. In India, more than 7500 thousand newspapers are working on the line of circulation of information to its viewer. Massages through MMS and SMS are another port for distributing news. At present times, the right to ask is more important than any other right which ultimately converts in to right to express and speech something. Unless express, one can't be visualize as alive. In short, right to speech and expression involves right to life and personal liberty in to it. Man as a social being is linked to society through communication in a variety of ways. Human Society is incomplete without communication<sup>3</sup>. Systems of communication are not unique to human beings<sup>4</sup>. Due to development of human behavior and technical science, several modes of expression have been introduced as a part of freedom of speech and expression. Such right to expression can be take place through speech, news<sup>5</sup>, SMS, MMS<sup>6</sup> or any other form of speech through electronic media or actual communication. Right to free speech requires following some restriction as provided under constitution itself<sup>7</sup>. But is this hate speech is bound to follow such rules or having some other factors, involves a matter of curiosity and legal inquiry for its constitution.

## 2. Essential Factor to Constitute a Hate Speech:

To define hate speech in water jacketed formula is not stress-free task. Hate speech follow several formats and factors involves in the intention of producer. Sandra Coliver's is defines hate speech as: "*an expression which is abusive, insulting, intimidating, harassing and/or which incites to violence, hatred or discrimination*"<sup>8</sup>." From the above definition one can easily remark that. The hate speech means,

1. Any expression which insult the other, intimidating others, harassing others or
  2. Any other similar act which incites to violence, hatred or discrimination
- Accordingly, the segment of hate speech cannot remain limited only up to abusive, insulting, harassing, violent, hatred or any kinds of discrimination. But it also includes some other feature which constituting hate speech, such as
3. Any Speech or conduct that creates an intimidating, hostile, or offensive environment
  4. Any others ban behavior that intentionally inflicts emotional distress on another. For instance, shouting on the students by Lecturer without unreasonable cause which leads the students to unreasonable emotional distress.
  5. Hate speech promotes the tolerance of diversity in other ways
  6. It is a violation of right to freedom of speech.

## 3. Freedom of speech and Hate Speech Syndrome:

Right is the things which assures the feelings of Human existence. It assures to feel the life with dignified manner. As like the same these rights are originated from the birth to the end of life. These inherited rights known as rights of inheritance which probably known as human rights. History is the evidence of such hate speeches due to which large number of manslaughters has been caused and the rights of Human came in to complexity. The most famous campaign of such hate speech could be found in the Hitler's campaign that used the printed media at that time for instigate the people to cause manslaughter of Jewish people on the basis of their cried of res.<sup>9</sup> Since the inception of civilization, several riots, cross complex phenomena, and anti-National and social events are produced, as an evil result of hate speech.

## 4. Scope Freedom of speech and Expression:

From the site of international perspectives, freedom of speech and expression had been a part of international humanitarian Law and was define as, helping instrument to attaining the individuals self-fulfillment, which assist in discovering of truth in order to strengthen the participation of individual for decision making to maintain a reasonable balance between stability and social change formed by their belief and for freely communicable.

1. It helps an individual to attain self-fulfillment<sup>10</sup>.
2. It assists in the discovery of truth<sup>11</sup>.
3. It strengthens the capacity of an individual in participating in decision-making.

4. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.
5. All members of society would be able to form their own beliefs and communicate them freely to others.

The freedom of speech is one of the recognized and honored right by international community as a part of Human right. The basic aim of recognizing this right is to highly attainment of human fulfillment of human existence as a component of society. It got recognized not because of spreading the falsity but for finding a truth. Not for deteriorate the individual decision making power but was for the strengthen the participation of individual to influence the strong decision for establishing a balance between moral stability and for positive social change. But what actually happening in the great field of Human rights, the communication is caused affected due to personal interest that may be economic, political, and social or other distinct phenomena. The unnecessary interference by the outsider is nothing but a part of that action which intervene the sovereignty of Nation and become a part of hate speech. At international level it may include, anti- national, anti-linguistic, anti-ethnic, and decent related speech or expression. It could also include causing hatred due to any expression including speech on anti- sovereignty, anti- outraging religious feelings. Even though, the scope of law on freedom of speech and expression has widening day by day, still the issue of hate speech is also become an issue of disturbances in communal peace of Nation, international Relation , internal and external security of Nation. Still what is the exact scope of hate speech is in need of consideration. In one American Judgment, the expression hate speech has been used and been describe by J. Murfy as, “words those which by their very utterance inflict injury or tend to incite an immediate breach of peace and such utterance has no essential part of any exposition of any idea and are of such slight social values as a steps to truth that, any benefit may derived from them is clearly out weighted by a social interesting order and morality.” Hate speech could be recognizing as a mean of false and malicious misrepresentation of the words or actions of others, calculated to injure their reputation libelous detraction, slander. While hate speech often uses the device of inflammatory falsehoods and misrepresentations to persuade and galvanize its audience, the use of such tools is not necessary to a finding that the expression exposes its targeted group to hatred<sup>12</sup>.According to chief Justice Murfy, hate speech may constitute by the following factors.

1. These are the words which by their very utterance inflict injury to someone else.
2. It tend to incite an immediate breach of peace and
3. Is a mean of false and malicious misrepresentation of the words and
4. This is an action of others, calculated to injure their reputation libelous detraction or slander.
5. It often uses as a device of inflammatory falsehoods and
6. Is a misrepresentations to persuade and galvanize its audience and
7. The use of such tools is not necessary to a finding that the expression exposes its targeted group to hatred.

So the causing injury to someone either through libel or slander in order to incite the immediate breach of peace and use as a means of hatred among the social

components by words or any other activity which cause inflammatory falsehood and misrepresentation are some of the constituent elements of hate speech as propounded by Murphy. Analyzing the above view, the spread thought and psychic philosophy of terrorist for the sake of Jihad is a part of hate speech and expression. Hence it must be ban, must be regularized. So total compilation of free speech and hate speech, it creates legal points of debate and creates a situation of free speech Vs. Hate speech. It could be summaries as follow.

**5. Free Speech versus Hate Speech Syndrome:**

**FREE SPEECH VERSUS HATE SPEECH SYNDROME**

01	Free of speech helps an individual to attain self-fulfillment, transference and better communication.	Hate speech inflict an injury to targeted individual or community by the utterance of hatred, abusive or other feelings touching statement which dehumanized the individual.
02	Free Speech assists in the discovery of truth	Hate speech is a means of false and malicious misrepresentation of by words.
03	Free speech strengthens the capacity of an individual in participating in decision-making for the benefit of society.	Hate speech tend to incite an immediate breach of peace through violation of religious feelings or by any other ways.
04	Free speech creates a mechanism to establish a reasonable balance between stability and social change.	Hate speech often uses as a device of inflammatory falsehoods on the basis of which social change want to achieve.
05	Free speech is for members of society which would be able to form their own beliefs and communicate them freely to others.	Hate speech uses such tools which is not necessary to a finding of that expression which exposes its targeted group to hatred and cause social disturbances.
06	The example of free speech is the ethnic and religious preaching of all religion leads the society on common platforms of common brother hood.	The example of hate speech is use of religion for causing terrorism on the name of Jihad is an activity which causes hatred about such thoughts of dehumanization among individuals.

**6. Is Hate speech legally regularized in India?**

In any democratic country like India the right to freedom of speech and expression has a core value principle which must have to be assured under the constitutional mechanism of the country. Not because of philosophy but because of right to free speech involves right to life and dignity. No one can claim his right in silence. Hence, right to life and liberty considered the mother<sup>13</sup> of all right including freedoms. It is the things which assure the feelings of Human existence. As in international Law right to free speech is a part of Human right whereas at domestic level it construed as a part of Fundamental right. It no longer an issue that, all Human

rights may not be a fundamental rights but whatever the fundamental rights are is the part of Human rights. The basic difference between the fundamental and human right is that all fundamental rights are the part of basic or inherited from fundamental right but may not be vice versa always.

The Indian constitution contains a chapter on fundamental rights. Part III (Art. 12-35) contains fundamental rights of Indian citizens as well as non-citizen. The fundamental rights are called fundamental because they are basic to the development of human personality through state. The most significant part is that, these are subject to enforce against the state<sup>14</sup>. In *State of West Bengal V. Subodh Gopal Bose*<sup>15</sup>, the Supreme Court observed that the object of Part –III is to provide protection to the rights and freedoms guaranteed under this part by the invasion of ‘State’.

No right in the world is absolute. There are some reasonable restrictions that have been itself imposed by Law. Like right to freedom of speech and expression. The constitutional significance of the freedom of speech consists in the Preamble of Constitution and is transformed as a part of both fundamental and human right in Article 19(1) (a) as “freedom of speech and expression”. In fact, the freedom of speech and expression can be easily comprehend by the element of the preamble of Indian constitution itself which ensures to all citizens inter alia, liberty of thought, expression, belief, faith and worship. Explaining the scope of freedom of speech and expression, the Supreme Court<sup>16</sup> has said that the words "freedom of speech and expression" must be broadly constructed to include the freedom to circulate one's views by words of mouth or in writing or through audiovisual instrumentalities. Freedom of Speech and expression means the right to express one's own contentions and opinions freely by words of mouth, writing, printing, pictures or any other mode.

It thus includes the expression of one's idea through any communicable medium or visible representation, such as gesture, signs, and the like. Moreover, it is important to note that liberty of one must not offend the liberty of others. Patanjali Shastri, J. in *A.K. Gopalan case*<sup>17</sup>, observed that, “*man as a rational being desires to do many things, but in a civil society his desires will have to be controlled with the exercise of similar desires by other individuals*<sup>18</sup>”. It therefore includes the right to propagate one's views through the print media or through any other communication through radio and television or any other dimension of media.

As speaking about various dimension of free speech, the scope of right to speak and expression is on high peak. Considering the above aspect, the apex court of India invents some dimensions of free speech and expression which could be marked as follow.

### **7. New Dimensions of Freedom of Speech and Expression in Indian Parlance:**

The right to free speech is the right which is on the development. The Indian Judiciary with a sort of initiative taken a lot of positive steps in order to develop and

enlarge the scope of right to free speech. The targeted and developed are in the field of free speech syndrome are as follow.

**1. The Government Has No Monopoly on Electronic Media:** Electronic media include television, radio, MMS, SMS, and other object of transmitting the message or communication. Recently the Supreme Court of India held up on the opinion that the Government has no right to monopolies the electronic media sector but it has only right to regularized the mechanism dealing with the electronic media.

**2. Commercial Advertisements:** The court held that commercial speech (advertisement) is a part of the freedom of speech and expression. Advertisement and "Commercial Speech" now enjoys the protection of Art. 19(1) (a) of the Constitution. Art. 19(1) (a) of the constitution not only guaranteed freedom of speech and expression, it also protects the right of an individual to listen, read, and receive the said speech. Freedom of speech goes to hart of natural rights to acquire and impart the information about the common interest .Advertisement is consider being the cornerstone of our economic system. Apart from the lifeline of the free economy in a democratic country, advertisement can viewed as a life blood of free media. Low prizes for consumer are dependent on mass production, mass production is dependent upon volume sale, and volume sale is depending upon advertising. Since it become an essential part of the democracy to develop the economic growth of the commercial market.

**3. Telephone Tapping:** Telephonic communication is also an invasion for transmitting the message from one to another. But this telephonic communication has been tried to protect. Telephone tapping is also a part of right to privacy. Hence Supreme Court in Peoples union for civil liberties Vs Union of India<sup>19</sup> held that, telephone tapping is serious invasion of an individual's right to privacy which is part of the right to life and personal liberty enshrined under Art.21 of the Constitution. It should not resort to by the state unless there is public emergency or interest of public safety requires <sup>20</sup>.Recently the news flash that, Gujarat Police has obtained nearly 90,000 telephone call data records (CDRs) of people and entities in three months beginning January this year, raising eyebrows in central intelligence agencies. This again creates the question on right to privacy .This case again open the issue of right to privacy and problems of hate speech. The case may take any terns no one can predict due to political involvement in to tapping by internal security agencies as ultimately it's a part of Restrictions imposed by Supreme Court.

#### **8. Grounds for restriction of Free speech:**

No right can be absolute. The guarantee of each of the above right is, therefore, restricted by the Constitution in the larger interest of the community. The right to freedom of speech and expression is subject to limitations imposed under Article 19(2)<sup>21</sup>. The reasonable grounds of limitation or restriction on freedom of speech and expression can be site as bellow.

1. Security of state<sup>22</sup>
2. Friendly relation with foreign state<sup>23</sup>
3. Public order<sup>24</sup>
4. Decency and morality<sup>25</sup>
5. Contempt of courts<sup>26</sup>
6. Defamation<sup>27</sup>
7. Incitement of commit any offence<sup>28</sup>
8. Sovereignty and integrity<sup>29</sup>.

In India, the subject of hate speech has added implication in recent few years. In fact hate speech directly not found place in Art. 19(2) to (6) of Constitution of India anywhere. Hence it could not deem as a part of restriction to the freedom of speech and expression under Art. 19(1) (a) of India Constitution. But it doesn't mean that there will never be a place of hate speech in anywhere under the part of restriction. For that, it must have to be read in the light of Art. 19(2) follow from 'sovereignty and integrity of India', 'Security of State', defamation and incitement of offence. India consumed several laws in order to follow such restrictions which could be nearsighted after some sides. But before that, what exactly law of US and UK articulated to hate speech are the issue of concern. There is need to highlight the area of hate speech by recording a response by International community. In order to comparative study of hate speech at international level, one can follow the following international instrument recognized by International community.

#### **9. Hate Speech and International community:**

There have been numerous academic attempts to has been made to distinguish hate speech from merely offensive speech. The foundational idea in human rights is to promoting substantive equality among human beings reflected in the very first article of the Universal Declaration on Human Rights and adopted by UN General Assembly in 1948<sup>30</sup>.

The right to freedom of expression is a fundamental human right which finds protection in all major human rights systems, as well as in National constitutions. At the same time, it is not an absolute right, and it may be limited to protect overriding public and private interests, including equality and public order. International law contains a number of provisions which provide a framework for balancing freedom of expression against these other interests in the particular context of hate speech<sup>31</sup>. The first international treaty to deal directly with the issue of hate speech was the International

Convention on the Elimination of all Forms of Racial Discrimination (CERD), adopted by the UN General Assembly in 1965<sup>32</sup>.

**International Convention on the Elimination of all Forms of Racial: Discrimination (CERD) 1965:** Four different kinds of obligation been provided by the foremost and first document of international law on hate speech. It is probably useful to distinguish four different aspects of the hate speech obligations provided for in CERD, found in its Article 4 (a):

1. Dissemination of ideas based on racial superiority;
2. Dissemination of ideas based on racial hatred;
3. Incitement to racial discrimination; and
4. Incitement to acts of racially motivated violence

The Committee on the Elimination of Racial Discrimination (CERD), after receiving "evidence of organized violence based on ethnic origin and the political exploitation of ethnic difference, reaffirmed that the provisions of Article 4 are mandatory and States Parties to the Convention must " not only . . . enact appropriate legislation but also . . . ensure that it is effectively enforced at domestic levels<sup>33</sup>. The United States Supreme Court in its the well-known decision<sup>34</sup> declare that, state legislation permitting tougher sentencing for offense motivated by racial or religious hatred are constitutional.<sup>35</sup>

#### **International Covenant on Civil and Political Rights (ICCPR):**

International Covenant on Civil and Political Rights (ICCPR) also makes some provisions in order to guarantee the right to freedom of speech and expression<sup>36</sup>. Simultaneously, Article 19 (3) and 20<sup>37</sup> of the ICCPR permits limited restrictions on freedom of expression where these are

- a) provided by law;
- b) for the protection of one of the legitimate interests listed; and
- c) necessary to protect that interest<sup>38</sup>.

#### **European Convention on Human Rights (ECHR)<sup>39</sup>:**

European Convention of Human Rights tries to protect free speech under Art. 10<sup>40</sup>. On the one hand, hate speech is becoming a crucial social and political problem

in many member States which can no longer be ignored. Ignorance and indifference foster hate speech. It reflects a fundamental intolerance to being different (ethnically, religiously, racially, sexually, politically, etc.). As a matter of fact, those who use hate speech want to strengthen their identity against other identities. Here the danger is that hate speech turns into hate deeds and violence. On the other hand, Internet is a “turbo accelerator” of hate speech, not only because of its obvious wide access but also because of its anonymity which permits freedom without responsibility<sup>41</sup>.

### **10. Hate speech and response of Indian Laws:**

Hate speech in Indian parlance, has many varieties of 'hate speech.' That is, speech that makes you hates or despises or provokes action against the object of the speech. These may sometimes leads the situation beyond the control of state authorities and may sometime has to face the unwarranted consequences to innocent component of society. It may feel sometime a part of mockery of situation where wife or husband while instigating to one another, says some grievous statements which may create a conflict between two families ultimately between two different part of social components due to some grievous statement produced by husband or wife as the case may be!. The simple logic behind the example is, can personal quarrel between two families on the basis of hatred statements could be a part of hate speech? The obvious answer is God Knows! The whole segment is generated to clarify the essential factor to constitute hate speech. Hate speech law in India is influence by three main concerns. The unsecular practices and religious hate speech is one facet the other is cast base discrimination and third is degradation of social cultural and ethnic value of woman. The issue of woman is sensitive problem with Indian perspectives. The feminist movement against the practices of communal attack on the status of woman in real as well as in internet world create a revolutionary trained in Law. Several laws been created in order to protect the third facet of hate speech. Hate speech laws in India tried to prohibit all three types of speeches and try to regularize via shifting a group liability and other penal provisions. These categories seem to cover the concept of "inflammatory political speech. Group Liability: Harassment: Incitement Inflammatory political speech. The collective responses of Indian laws to hate speech are can be gathered from following Laws.

#### **1. Indian Penal Code.**

The offences relating to hate speech includes anti-national such as offences against the state in the form of sedition , anti-communal, racial, linguistic, ethnic and descent related, anti-sovereignty.<sup>42</sup> .Instead of the above code, there are some special Laws has been created in order to prevent the hate speech and almost all forms have been tried to curb in to it. These Laws are as follow.

2. Code of criminal procedure 1973

3. Scheduled Castes and Scheduled Tribes: (SC and ST Act 1989):

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4. Protection of Human Rights Act 1993:
5. Young Persons Harmful Publications Act 1956: hate speech
6. Information Technology Act.2000:
7. Unlawful Activities Act:
8. Cable Television Act:
9. Protection of children from sexual offences Act, 2012
10. Criminal Law amendment Act, 2013:
11. Press Council Act
12. The Cinematograph Act 1952

### **11. Hate Speeches and Judicial Pronouncement in India:**

While administering justice on the theme of hate speech, the Supreme Court time to time determine and declare certain act as an offensive. Even though there is no direct censes of word 'Hate speech' in any particular observation but ultimately it is a part of hate speech directly or indirectly.

In Baburao Patel Vs state of Delhi administration, the supreme court tried to surrounded by extending the boundaries of Section 153 and was hold that, section 153 –A is not only limited to promotion of feeling of enmity on the ground of religion alone but on the other ground as well such as race, place of birth, residence, caste, religion and community.

In another case of Gopal Vinayak Godse Vs Union of India<sup>43</sup> where the point of consideration started from the written Book on the assassination of Gandhi entitled "Gandhi Hatyaani me" and was forfeited on the ground mention under section 195-A of I.P.C and for the sake of forfeitures, section 99 A of Cr.P.C had been used and the notification of such forfeiture was issued by the Delhi Administration on the ground that, the book contain matter which promote the feelings of enmity and hatred between Hindus and Muslims in India and the publication is punishable under section 153 –A of Indian Penal Code. On the other hand the state of Maharashtra had also issue a same notification on the same line with the same contention against the same book under its name a special Bench of Bombay High Court held that, A state Government is competent to pass an order of forfeiture under section 99 A even if the objectionable matter is printed or published outside its area, the matter has comparatively little or no circulation within its area. In other word the place of printing and circulation is quite inconsequential. Further it was held that, an order passed by the state Government under section 99 A can be challenged under section 99- B only in that High Court which has jurisdiction in relation to the territories of that state . Even the challenge under such order is also maintainable under Art. Of Indian constitution with such High Court exercising the jurisdiction to deals under such territories. Thus, even though the order of forfeiture has been passed by the

Delhi Government, it could be challenge under Art. 226 in the Bombay High Court as the copies of the book has been seized in the latter's jurisdiction. It's an unavoidable condition which had been observed that, although there was no provision which required that, the writer or publisher should be heard before passing of such order of forfeiture<sup>44</sup>.

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both<sup>45</sup>. The approach of the Indian judiciary towards issues of 'hate speech' (as they intersect with questions of 'public order') has been exemplified, and in many senses established, by the cases of Ramji Lal Modi Vs State of U.P<sup>46</sup>. Supreme Court of India upheld the constitutionality of section 295A of Indian Penal Code as a 'reasonable' restriction upon free speech 'in the interests of' public order. The court rejected the nexus between acts possessing 'a tendency to cause public disorder' and the actual occurrence of such public disorder.<sup>18</sup> Furthermore, the Court noted the relatively limited scope of section 295A. Such intentional insults, as distinct from 'insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention', possess a clear 'calculated tendency' to 'disrupt the public order'<sup>47</sup>. It is pointed out that, section 295 A has been included in penal code which deals with offences relating to religion and not in chapter 8 which deals with offences against tranquility and consequently a law creating an offence relating to religion and imposing restrictions on the light to freedom of speech and expression cannot claim protection of (2) of Art.19.A of Indian constitution which will show that the argument is utterly untenable. Article 19 and Art. 25 of Indian Constitution in terms contemplate that the restriction may be imposed on the rights guaranteed by them in the interest of public order<sup>48</sup>.

Again the issue rose in in another case of State of U.P. Vs Lalai Singh Yadav<sup>49</sup> the case was filed by challenging the language of section 99 A code of criminal procedure, 1898. Basically it was come with the issue of the language of book "Ramadan: A true Reading under section 99 A of code of criminal procedure and was confiscated with the results that "deliberately and maliciously intended to outrage the religious feelings of a class of citizen of India." Due to only obvious thing involved was that, the Hindus religious feelings was deliberately had been tried to violated. But ultimately it expects to follow the mandates of Government's opinion irrespective of offence punishable under section 295 –A of Indian Penal code<sup>50</sup>.

Since, the scope of free speech and hate speech is the issue of investigation of legal factuality. On the basis of observation made earlier, the following distinction can

be draw accordingly between Hate Speech in international and National Perspectives which can be remarketed as bellow.

## 12 . Comparative study on hate speech in National and International perspective:

### Comparative study on hate speech in National and International perspective

01	<b>International instrument recognize the speech as a hate speech in following circumstances.</b>	<b>Domestic Indian law recognizes the speech as a hate speech in following circumstances.</b>
02	If it disseminate the ideas based on racial superiority	If it cause Sedition and any statement violating the sovereignty of Nation.
03	If it dissemination any other ideas based on racial hatred	If it is a statement conducing the public mischief
04	If it is a incitement of racial discrimination; and	If it deliberately wound to the religious feelings
05	If it cause the Incitement of acts of racially motivated violence against community.	If the statement or act disturbing the peace of public assembly or
06	If it is provided by law to restrict necessary to protect that interest which has been motivated intentionally for causing violence. The instance of illegal encroachment on the land of another and delivering a speech on the basis of which the hatred can be initiated among the member of some group, community or individuals either on the basis of res or creed.	If anyone trespassing the burial places in order to commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies.
07	When it is necessary for the protection of one of the legitimate interests listed by international community.	If it cause imputations, assertions prejudicial to National Integration or Promoting Enmity between Different Groups On Grounds Of Religion, Race, Place of Birth, Residence, Language and doing Acts Prejudicial to Maintaining the Harmony.

### 14. Conclusion:

Thus, the area of hate speech is unguided in the sense that, there is no distinction been made between offence as an act and speech offence. Verbal abuse cannot be criminalized in a democracy. Since it is a question of criminalizing acts and not speech, it is necessary to underline the determinative nature of the concept of direct incitement to violence in to domestic laws. Regularising hate speech is a multidimensional task. Since there is a differentiation in hate speech, there is a need for a differentiation of responses through general laws and must be gather in to segment of single act known as hate speech. The criminalisation of hate speech should be envisaged where there is direct incitement to violence. The role of media is also

potential one in the sense that, media also have a responsibility in fighting against hate speech. The media community should develop a system of collective self-regulation based on an agreed code of ethics and a mechanism to receive and respond to complaints. Social media platforms such as Twitter and Face book have an enormous potential for dissemination. Internet is a space for citizenship. Therefore the issue of anonymous hate speech should be addressed. Democracy must protect itself before it becomes too late. This is the basis of the argument of those who accept the need to restrict the freedoms of speech and association in those extreme cases when democracy, the rights or the good names of others, and public order are threatened by irresponsible individuals who could not care less about the rule of law and basic freedoms.

### References:

<sup>2</sup>By J. PatanjaliShastri while presiding on the Bench of A.K.Gopalan Vs State of Madras 1950 AIR 27, 1950 SCR 88, the first case on freedom of speech and expression in the legal History of India.

<sup>3</sup>Hear law refers to law of land. In India the constitution is consider to be the law of land to which other normative laws has to follow. If there is any conflict of constitution with existing laws or any provision thereof then it would amount to subject matter of challenge and cancellation or struck down. For more details refer Art. 13 (1) and (2) of Indian Constitution.

<sup>4</sup> Message from the Patron Veer Singh on the occasion of Media Law Review, on MLR 2010, in Volume No.1, at p.7.

<sup>5</sup>Human and animal system of communication on <http://web.mesacc.edu/dept/d10/asb/language/what8.html>

<sup>6</sup>News including by way of paper or through TV channels

<sup>7</sup> SMS stand for Short Messaging Service MMS - Multimedia Messaging Service as the name suggests SMS is a facility where in a person can send only short text message. in general the number of characters are 160 that can be used & send in one SMS as the name suggest MMS one send text messages along with pictures sound and graphics.

<sup>8</sup>For more details see Art 19 (2) of Indian Constitution.

<sup>9</sup>Coliver' Sundra, "Striking a Balance: Hate Speech, Freedom of Expression and Non-Discrimination"

<sup>10</sup>The most infamous of all propaganda of all hate speech derived from Hitler's anti-Semitic talk in Nazi Germany in 1930's. He systematically use to whip up the hatred in favour of Nazis through his appointed minister of public Enlightenment named as Josef Goebbels who was genius in orchestrating through media. During that time newspaper actively participated in the hate campaigns against Jew. In the name of people they had to call the stern measure by the Government against the Jews. Several inflammable stories had been prepared by printed media and ultimately led toward riots. While in this whole segment Joseph Goebbels role was active one who used to act on the direction of Hitler. For more details see Ward Rutherford: Hitler's Propaganda machine, 1978.

<sup>11</sup> Free speech as an aspect of self- fulfillment and development "freedom of speech is an integral aspect of each individual right to self-development and self-fulfillment. Restriction on what we are allowed to say and write or to hear and read will hamper our personality and its growth. It helps an individual to attain self-fulfillment - See

more at: <http://sciencgod.com/blog/can-freedom-of-speech-be-absolute/#sthash.NsbczdKh.dpuf> visited on 26/11/2013.

<sup>12</sup>According to it restrictions on speech shall prevent the ascertainment and publication of accurate facts and valuable opinion. Therefore freedom of speech is essential for social well-being - See more at: <http://sciencgod.com/blog/can-freedom-of-speech-be-absolute/#sthash.t7qOREVw.dpuf> visited on 26/11/2013.

<sup>13</sup>Joseph Bren 'the power of hate: A legal primer on this week's Supreme Court ruling against William Whatcott', for more details see <http://fullcomment.nationalpost.com/2013/03/02/rex-murphy-choosing-self-esteem-over-freedom-of-speech/visited> on 12/11/2013

<sup>14</sup>For more details The State Trading Corporation Of ... vs The Commercial Tax Officer, AIR 1811, 1964 SCR (4) .

<sup>15</sup> 1954 AIR 92, 1954 SCR 587.

<sup>16</sup>Supreme Court refers to Indian Supreme Court which decision is consider as a landmark law for nation and is binding in lower judiciary under Art.141 of Indian Constitution.

<sup>17</sup> A.K. Gopalan Vs Union of India 1950 AIR 27 1950 SCR 88

<sup>18</sup>Foe more details see [www.indialawjournal.com/volume3/issue.../article\\_by\\_dheerajendra](http://www.indialawjournal.com/volume3/issue.../article_by_dheerajendra). Visited on 26/11/2013.

<sup>19</sup>AIR 1997 SC 560

<sup>20</sup>Pandey J.N "constitutional Law of India "central Law agency , 46<sup>th</sup>ed 2009 at P.180 para 1st.

<sup>21</sup>Reasonable restrictions are necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some restrictions on this freedom for the maintenance of social order, because no freedom can be absolute or completely unrestricted. Accordingly, under Article 19(2) of the Constitution of India, the State may make a law imposing "reasonable restrictions" on the exercise of the right to freedom of speech and expression "in the interest of" the public and state both.

<sup>22</sup> The term "security of state" refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray. Thus speeches or expression on the part of an individual, which incite to or encourage the commission of violent crimes, such as, murder are matters, which would undermine the security of State for more details see [http://www.indialawjournal.com/volume3/issue\\_4/article\\_by\\_dheerajendra.html](http://www.indialawjournal.com/volume3/issue_4/article_by_dheerajendra.html).

<sup>23</sup>This ground was added by the constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propoganda against a foreign friendly state, which may jeopardize the maintenance of good relations between India, and that state.

<sup>24</sup> This ground was added by the constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propoganda against a foreign friendly state, which may jeopardize the maintenance of good relations between India, and that state.

<sup>25</sup> Indian constitution cared of this view and inserted decency and morality as a ground. In fact what is moral to one person may be very vague to define but it could be understood in the sense provided by Indian Penal code. Sections 292 to 294 of the Indian Penal Code provide instances of restrictions on the freedom of speech and

expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places. No fix standard is laid down till now as to what is moral and indecent. The standard of morality varies from time to time and from place to place

<sup>26</sup> According to the Section 2 'Contempt of court' may be either 'civil contempt' or 'criminal contempt.' But now, Indian contempt law was amended in 2006 to make "truth" a defense. However, even after such amendment a person can be punished for the statement unless they were made in public interest. Again in Indirect Tax Practitioners Assn. vs R.K.Jain, it was held by court that, "Truth based on the facts should be allowed as a valid defense if courts are asked to decide contempt proceedings relating to contempt proceeding relating to a speech or an editorial or article". The qualification is that such defense should not cover-up to escape from the consequences of a deliberate effort to scandalize the court. For more details see [http://www.indialawjournal.com/volume3/issue\\_4/article\\_by\\_dheerajendra.html](http://www.indialawjournal.com/volume3/issue_4/article_by_dheerajendra.html).

<sup>27</sup> Defamation consists in exposing a man to hatred, ridicule, or contempt. The civil law in relating to defamation is still uncodified in India and subject to certain exceptions and legal justification such as fare comment, privilege, consent, apology etc.

<sup>28</sup> This ground was also added by the constitution (First Amendment) Act, 1951. Obviously, freedom of speech and expression cannot confer a right to incite people to commit offence. The word 'offence' is defined as any act or omission been made punishable by Law.

<sup>29</sup> Article 19(2) show that they are all concerned with the national interest or in the interest of the society. The first set of grounds i.e. the sovereignty and integrity of India, the security of the State, friendly relations with foreign States and public order are all grounds referable to national interest, whereas, the second set of grounds i.e. decency, morality, contempt of court, defamation and incitement to an offence are all concerned with the interest of the society. For more details see [http://www.indialawjournal.com/volume3/issue\\_4/article\\_by\\_dheerajendra.html](http://www.indialawjournal.com/volume3/issue_4/article_by_dheerajendra.html).

<sup>30</sup> For more details refer General Assembly Resolution 217A (III), 10 December 1948.

<sup>31</sup> Toby Mendel Executive Director  
Centre for Law and Democracy while writing on  
Hate Speech Rules Under International Law in February 2010 for more details  
see [www.law-democracy.org/wp.../10.02.hate-speech.Macedonia-book.pdf](http://www.law-democracy.org/wp.../10.02.hate-speech.Macedonia-book.pdf).

<sup>32</sup> Ibid. For more details refer general Assembly Resolution 2106A (XX), 21 December 1965, entered into force 4 January 1969. There were 173 Parties and six additional signatories to CERD as of 11 February 2010.

<sup>33</sup> Committee reiterated that the prohibition on the dissemination of ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression, as embodied in Article 19 of the Universal Declaration of Human Rights. It also drew attention to Article 20 of the Covenant, which restricts advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. In 1983, the Human Rights Committee, the implementing body of the Covenant, had already declared the prohibitions incorporated in Article 20 as "fully compatible with the right to freedom of expression contained in Article 19 for more details see <http://www.wcl.american.edu/hrbrief/v3i2/lerner32.htm> visited on 28/11/2013.

<sup>34</sup> Wisconsin v. Mitchell 1993.

<sup>35</sup> Ibid foot note 37

36

Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR),

adopted by the UN General Assembly in 1966,<sup>6</sup> guarantees the right to freedom of expression as follows:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice”.

<sup>37</sup>

The ICCPR places an obligation on States Parties to prohibit hate speech in rather different terms than CERD. Article 20(2) provides:

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

<sup>38</sup>Supra 28

<sup>39</sup> Adopted 4 November 1950, entered into force 3 September 1953 for more details refer *ibid*

<sup>40</sup> Article 10 – Freedom of expression consist of the following expression and restrictions simultaneously. Which could be read as follow,

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. For more details see <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm> .

<sup>41</sup> Refer ECtHR, *Delfi AS v. Estonia* judgment of 10 October 2013. For more details find out Report of the council of Europe conference on “the hate factor in political speech – where do responsibilities lie?” held on 18-19 September.

<sup>42</sup> Sedition, Promoting Enmity between Different Groups On Grounds Of Religion, Race, Place of Birth, Residence, Language, etc., and doing Acts Prejudicial to Maintenance of Harmony, Disturbing religious assembly, Trespassing On Burial Places, Etc ,Uttering words, etc., with deliberate intent to wound religious feelings, Offence committed in place of worship, etc, Imputations, Assertions Prejudicial To National Integration, Injuring or defiling place of worship with intent to insult the religion of any class, Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs, Statements Conducing To Public Mischief.

<sup>43</sup> AIR 1971 Bom.56 LR 871

<sup>44</sup>Divan Madhavi, 'Facet of Media Law' Eastern Book Company, ed.2<sup>nd</sup> 2013 P 411 Para 1-3

<sup>45</sup> Section 295-A of Indian Penal Code 1860

<sup>46</sup>Ramji LalModi Vs State of Uttar Pradesh AIR 1957 SC 620. For more details refer supra note 53.

<sup>47</sup> Justice Das while presided over on Ramji Lal Vs State of Uttar Pradesh AIR 1957 at P.867.

<sup>48</sup>*Ibid* SCC 662, Paras 7 and 8 P. 662.

<sup>49</sup>1976 4 SCC 995 (1962) 2 Cri.LJ 103.

<sup>50</sup>For more details see Harman Das Vs State of U.P AIR 1961 SC 1662SCR 487.