

3. Supreme Court on Hate Speech – Polity

The Supreme Court stated that hate speech and rumour-mongering stem from an "us versus them" mindset, corrupting fraternity in diverse societies, while declining to mandate separate laws for hate crimes.

Background

India's diversity across religion, caste, language, ethnicity, and region has historically been both a source of civilizational richness and potential social conflict. While the Constitution enshrined equality, secularism, and fraternity as foundational values, implementation has faced persistent challenges from communal tensions, caste violence, and identity-based hatred. Pre-independence communal riots demonstrated how inflammatory speech could rapidly escalate into mass violence, leading framers to include reasonable restrictions on free speech under Article 19(2). However, laws enacted in the 1860s and incrementally amended thereafter struggled to address modern forms of hatred amplified through digital platforms reaching millions instantly. Social media transformed hate speech from localized inflammatory rhetoric into viral content triggering nationwide tensions within hours. Petitioners approached the Supreme Court seeking separate comprehensive legislation specifically addressing hate speech and hate crimes, arguing existing legal provisions designed for different eras proved inadequate for contemporary challenges.

The Court's response reflects judicial restraint regarding legislative functions—while acknowledging hate speech's corrosive impact on constitutional values, it declined directing Parliament to enact specific laws, instead emphasizing effective enforcement of existing provisions. This judgment raises fundamental questions about whether India's legal framework adequately addresses twenty-first-century hate phenomena or whether legislative intervention remains necessary despite judicial reluctance to mandate it.

Understanding Hate Crimes

Conceptual Definition

1. Hate crimes are criminal acts targeted at individuals or groups motivated by hostility or prejudice toward their disability, race, ethnicity, religion, belief, sexual orientation, or gender identity.
2. The criminal act itself may be assault, vandalism, arson, or other offenses, but bias motivation distinguishes hate crimes from ordinary crimes.
3. Hate crimes send messages of intimidation to entire communities, creating fear and insecurity beyond the immediate victim.

Legal Status in India

1. Indian law does not separately define or categorize "hate crimes" as a distinct legal category with specific statutory provisions.
2. Such acts are punishable under various provisions of the Indian Penal Code historically and now under the Bharatiya Nyaya Sanhita, 2023.
3. Absence of specific hate crime legislation creates definitional ambiguity and inconsistent application across different jurisdictions and circumstances.

Impact of Hate Crimes on Society

Social Fragmentation

1. Hate speech deepens divisions between communities that previously coexisted peacefully, disrupting long-standing social cohesion and neighbourly relationships.
2. Repeated hateful narratives normalize prejudice, dehumanize targeted groups, and create psychological conditions enabling violence.
3. Initial inflammatory rhetoric escalates into mob violence, communal riots, and organized targeted attacks destroying lives and property.

Constitutional Values Erosion

1. Hate crimes directly challenge constitutional principles of equality, fraternity, and dignity that form the foundation of Indian democracy.
2. Targeting individuals based on identity characteristics undermines secularism, a core pillar of India's constitutional morality and governance framework.
3. When state institutions fail to prevent or punish hate crimes effectively, public faith in constitutional protections and rule of law diminishes.

Fear and Marginalization

1. Communities subjected to repeated hate incidents experience pervasive fear affecting daily decisions about movement, expression, and participation.
2. Fear-driven self-censorship and withdrawal from public spaces reduce targeted communities' access to education, employment, and civic opportunities.
3. Marginalization becomes self-perpetuating as exclusion limits economic advancement, political representation, and social mobility across generations.

Constitutional Framework Addressing Hate

Equality Provisions

1. Article 14 guarantees equality before law and equal protection of laws to all persons regardless of identity characteristics.
2. This foundational equality principle prohibits discriminatory treatment by state institutions and provides basis for challenging biased laws and practices.

Anti-Discrimination Mandate

1. Article 15 explicitly prohibits discrimination on grounds of religion, race, caste, sex, or place of birth in access to public facilities and opportunities.
2. This provision creates affirmative constitutional duty on the state to prevent and remedy discriminatory practices in both public and private spheres.

Speech Restrictions Framework

1. Article 19(2) permits reasonable restrictions on freedom of speech and expression guaranteed under Article 19(1)(a) on specified grounds.
2. Permissible restrictions include considerations of state security, public order, decency or morality, contempt of court, defamation, and incitement to offense.
3. This framework attempts to balance free expression with preventing speech that threatens public order, communal harmony, or individual dignity.

Dignity and Liberty

1. Article 21 guarantees the right to life and personal liberty, judicially interpreted to include rights to live with dignity, safety, and security.
2. This expansive interpretation encompasses freedom from violence, threats, and intimidation based on identity characteristics.

Religious Freedom

1. Article 25 ensures freedom of conscience and free profession, practice, and propagation of religion for all individuals.
2. This protection includes security against religious persecution, forced conversion, and violence targeting religious beliefs or practices.

Existing Legal Provisions

Penal Code Provisions

1. Section 153A of IPC (now BNS) criminalizes promoting enmity between different groups on grounds of religion, race, language, residence, or caste.
2. Section 295A punishes deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

3. These sections carry imprisonment terms and fines, providing criminal sanctions for communally divisive speech and actions.

Electoral Law Protections

1. Sections 123(3) and 123(3A) of the Representation of the People Act, 1951, prohibit political speech promoting hatred or appealing to religion, caste, or community during elections.
2. These provisions classify such appeals as corrupt practices that can invalidate election results, recognizing particular dangers of communal mobilization during campaigns.

Judicial Interventions

1. In *Pravasi Bhalai Sangathan v. Union of India* (2014), the Supreme Court acknowledged the lack of specific comprehensive legislation on hate speech.
2. The Court recommended that Parliament enact dedicated law addressing hate speech comprehensively rather than relying on scattered provisions.
3. In *Amish Devgan v. Union of India* (2020), the Court addressed balancing freedom of speech under Article 19 with restrictions necessary for maintaining public order and communal harmony.

Challenges in Addressing Hate Speech

Digital Amplification

1. Social media platforms enable hate speech to spread virally reaching millions within hours without fact-checking or editorial gatekeeping.
2. Algorithms often amplify divisive content generating high engagement, inadvertently promoting hateful material for commercial reasons.
3. Encrypted messaging services like WhatsApp complicate monitoring efforts and evidence collection for law enforcement agencies.
4. Cross-border nature of digital platforms creates jurisdictional challenges as content originates or is hosted outside Indian legal reach.

Intent Proving Difficulties

1. Many hate speech offenses require proving the accused's intent to promote enmity, outrage feelings, or incite violence.
2. Establishing subjective mental state proves legally complex as defendants claim humour, political commentary, or religious discourse defences.
3. Determining direct causal link between specific speech and subsequent violence involves complex evidentiary and temporal challenges.

Definitional Ambiguity

1. India lacks precise statutory definition of hate speech and hates crimes, resulting in broad interpretation varying across courts and jurisdictions.
2. Ambiguous definitions enable both over-criminalization of legitimate expression and under-enforcement against genuinely harmful speech.
3. Inconsistent enforcement across states creates unpredictability, with identical speech prosecuted in some jurisdictions while ignored in others.

Enforcement Gaps

1. Political considerations often influence whether hate speech cases are registered and prosecuted, particularly when perpetrators have political connections.
2. Limited police capacity, training deficits, and investigative resource constraints prevent effective response to the volume of hate incidents.
3. Judicial backlog delays trial and conviction, reducing deterrent effect and prolonging victim trauma while emboldening perpetrators.

Supreme Court's Position

Refusal to Mandate Legislation

1. The Court declined petitions seeking judicial directions mandating Parliament to enact specific comprehensive hate speech and hate crime laws.
2. This position reflects separation of powers doctrine—courts interpret and apply existing laws but cannot compel legislative bodies to enact new legislation.
3. The judgment emphasized that law-making falls within the exclusive legislative domain belonging to Parliament and state assemblies.

Emphasis on Enforcement

1. Rather than new laws, the Court called for effective enforcement of existing legal provisions addressing communal enmity and religious hatred.
2. This approach suggests the judicial view that implementation gaps rather than legislative deficiencies constitute the primary problem.
3. Effective enforcement requires political will, adequate resources, professional training, and institutional accountability mechanisms.

Fraternity and Constitutional Values

1. The Court identified hate speech's roots in "us versus them" mindset that corrupts constitutional value of fraternity among diverse communities.
2. Fraternity requires recognizing common citizenship transcending religious, caste, linguistic, and regional identities.
3. Hate speech undermines this essential constitutional vision by reinforcing divisive identities and dehumanizing fellow citizens.

Way Forward

Legislative Clarity

1. India should adopt clear, comprehensive legal definitions of hate speech and hate crimes ensuring uniform, objective enforcement across jurisdictions, distinguishing genuinely harmful speech inciting violence or discrimination from legitimate criticism, satire, or political discourse that democratic societies must protect despite causing offense to some groups.

Digital Platform Accountability

1. Strengthen regulatory frameworks requiring digital platforms to swiftly remove illegal hate content while maintaining transparency about content moderation decisions, implementing effective grievance redressal mechanisms, and facing meaningful penalties for systematic failures to prevent their platforms from becoming hate speech amplifiers endangering public order and communal harmony.

Institutional Capacity Building

1. Establish independent oversight mechanisms specifically addressing online harms with technical expertise in digital platforms and hate speech jurisprudence, combined with better data collection, research, and analysis helping design evidence-based policy interventions, while training law enforcement and judicial officers in investigating and adjudicating hate speech cases sensitively and effectively.

Conclusion

The Supreme Court's refusal to mandate separate hate crime legislation while acknowledging hate speech's corrosive impact on fraternity reflects judicial restraint regarding legislative functions. While existing IPC/BNS provisions criminalize promoting enmity and outraging religious feelings, enforcement gaps persist due to political considerations, resource constraints, and digital amplification challenges. The judgment's emphasis on enforcing existing laws rather than enacting new ones places responsibility on executive and legislative branches. Addressing hate effectively requires comprehensive legal definitions, digital platform accountability, and institutional capacity building beyond merely legislative action.



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