

Tackling hate speech

As there are no laws on hate speech as such, India needs a political and pedagogical solution to the menace



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A speech by a Bishop belonging to the Syro-Malabar Church in Kerala has caught attention for the wrong reasons. Mar Joseph Kallarangatt, the Bishop of Pala, a small city in Kerala, coined the term 'narcotic jihad'. He accused a few Muslim groups of giving Catholic girls narcotics or wooing them with the aim of religious conversion or of taking them to terrorist camps abroad. The speech aimed at a particular religion has a divisive tone.

Understanding hate speech

This controversy has occasioned intriguing questions about hate speech regulation. It is important to consider – philosophically and morally – what justifies prohibiting hate speech. In *Chaplinsky v. New Hampshire* (1942), the U.S. Supreme Court held that their Constitution does not protect “insulting or ‘fighting’ words – those which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace.” This is the core principle behind hate speech prohibition. It is important to think why liberal democracies prohibit some types of speech on grounds that they are ‘injurious’.

An important answer is based on the dignity and equality of individuals. Every person is entitled to basic human dignity and decent treatment. Lord Bhikhu Parekh, a British academic, said: “(Hate speech) views members of the target group as an enemy within, refuses to accept them as legitimate and equal members of society, lowers their social standing, and... subverts the very basis of a shared life. It creates barriers of mistrust and hostility between individuals and groups, plants fears, obstructs normal relations..., and... exercises a corrosive influence on the conduct of collective life.”

In *Pravasi Bhalai Sangathan v. Union of India* (2014), the Supreme Court of India quoted from the Canadian Supreme Court’s decision in *Saskatchewan v. Whatcott* (2013). It said that hate speech “impacts a protected group’s ability to respond to the substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy.” This idea resonates well in India’s political context. Being a minority in an aggressively Hindu majoritarian political climate, Muslims are left defenceless against a rhetoric of hatred against them. This rhetoric has not only led to a climate of fear for

Muslims, but to cases of violence carried out solely on the basis of their identity. Relentless accusations have successfully sidelined the real concerns of the community, including social and educational backwardness.

The Indian legal position

Values of social tranquility and substantive equality justify laws such as Section 153-A of the Indian Penal Code (IPC) which prohibits “promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony”. The very genesis of the provision indicates that emphasis was given to societal integrity which the law thrives to preserve. The provision in its erstwhile form was incorporated by way of the Penal Code Amendment Act of 1898. The Select Committee rejected the proposal to add this provision along with Section 124-A of the IPC (sedition) saying that the former is more concerned with “public tranquility” than the security of the state. It said: “The offence only affects the Government or the State indirectly and the essence of the offence is that it predisposes classes of people to action, which may disturb the public tranquility.” It is this communitarian element that makes the law still relevant, while the sedition law has become dangerous and obsolete.

The law, in contemporary politics, suffers from disuse and misuse. This is an issue at the operational level, i.e., how the law is implemented and enforced. On the one hand, remarks with tendencies towards hatred and violence, especially against Muslims, are ignored. On the other, vague references against the majoritarian agenda are often charged under this provision.

The Kerala incident, unfortunately, is not an isolated one. In a national scenario where hate has become an ideology and its impact on society is fatal, we need to think about countering it with political and jurisprudential means. In India, hate speech is not defined under the Constitution or in the penal statutes. There is no specific legislation on it. It is not easy to design an accurate anti-hate speech law, due to its inherent potential for misuse. This is why we need a political and pedagogical solution to the menace. The Constitution’s ideas of equality, liberty and fraternity must be made topics of continuing public education. Whenever hate speech thrives, the state should invoke the existing law judiciously in appropriate cases. It must also take a secular stand based on the rule of law and educate the masses.

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