

Is hate speech permissible?

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In [*Jafar Imam Naqvi v. Election Commission of India*](#), W.P. (C) No. 429 of 2014, a Supreme Court Bench comprising of Dipak Misra and N. V. Ramana, JJ dismissed the writ petition seeking relief against hate speech during election campaigns filed under Article 32 of the Indian Constitution.

Facts

The primary issue that the Court considered was whether the Court should exercise its jurisdiction under Article 32 of the Indian Constitution to accept the petition as public interest litigation (PIL) on the permissibility and punishment of hate speech propagated during elections by political parties and their members.

Analysis

Article 19 of the Indian Constitution gives citizens the fundamental right of free speech and expression, subject to "reasonable restrictions" for preserving "public order, decency or morality". Hate speech is a punishable offence according to certain provisions of the Indian Penal Code and the Code of Criminal Procedure. These include Section 95 of the Code of Criminal Procedure and Sections 153A and 295A of the Indian Penal Code. Thus, there is a legislative framework in place for punishment of offences termed as 'hate speeches'.

Till date, there has been no accepted definition of "hate speech" in India. It can be any speech, gesture of conduct, writing or display which is forbidden because it may incite violent or prejudicial action against or by a protected individual or group, or because it disparages or intimidates an individual or group, based on their race, ethnicity, religion, sexual orientation, or disability.¹ In the context of this petition, the term commonly refers to speeches delivered during election campaigns, often on religious lines.

The Supreme Court in the public interest litigation filed by Pravasi Bhalai Sangathan² refused to entertain the petition calling for issuing directions to the Election Commission in order to curb hate speeches. The Bench of Dr. B.S. Chauhan, M.Y. Eqbal and A.K. Sikri, JJ took the view that there are already sufficient provisions in Indian criminal and penal law to address such matters. The Law Commission had undertaken a study as to whether the Election Commission can have the power to de-recognize a political party or disqualify its members on the grounds of hate speech. In view of this study, the Bench requested the Law Commission to examine these issues thoroughly, define the term "hate speech" and

¹ Terry Kinney, "Hate Speech and Ethnopolitics", The International Encyclopedia of Communication, 2008

² *Pravasi Bhalai Sangathan v. Union of India & Ors.*, W.P. (C) No. 157 of 2013

make recommendations to the Parliament if necessary. The Bench maintained that the Court cannot interfere or issue directions when there is no vacuum of law to make rules for.

In March, 2014, the Supreme Court dismissed a similar PIL seeking intervention of the Court to direct the Election Commission to take steps against hate speeches.³ The Bench was of the view that the fundamental rights of the people cannot be curbed by the judiciary, but it is for the public to decide.

Conclusion

In the present petition, the Court rightly stated that the issue of hate speeches should be addressed in an appropriate legal forum, or when a dispute relating to the same arises under the Representation of People Act, 1951. The Bench cited two previous judgements to uphold that it would be inappropriate to exercise its jurisdiction in this matter and entertain this PIL.⁴⁵

The Court stated that the current petition could not be admitted as real public interest litigation while there are laws to take care of it.

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⁴ *Manohar Joshi v. Nitin Bhauro Patil and Anr.*, (1996) 1 SCC 169

⁵ *Prof. Ramachandra G. Kapse v. Haribansh Ramakbal Singh* (1996) 1 SCC 266