

Where does Indian law stand on Hate Speech?

Various sections of the **Indian Penal Code (IPC)** cover hate speech under its ambit like:

Sections 153A [Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony]

153B (1) (c) [Whoever, by words either spoken or written or by signs or by visible representations or otherwise - makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both]

295A [Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs]

298 [Uttering, words, etc., with deliberate intent to wound the religious feelings of any person], and

505 [Statements conducing to public mischief]

Some laws in India may not directly refer to hate speech but it is drafted to confine these provisions under the reasonable restrictions under Article 19 (2) to maintain public order and tranquillity, like the **Code of Criminal Procedure sections:**

95 [that empowers the State Government, to forfeit publications that are punishable under sections 124A, 153A, 153B, 292, 293 or 295A of the Indian Penal Code]

107 [When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond [with or without sureties,] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.]

144 [In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or

danger to human life, health or safety or a disturbance of the public tranquillity, or a riot, or an affray].

The Representation of The People Act, 1951 lays down:

Section 123 (3A) [The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the **election** of that candidate or for prejudicially affecting the election of any candidate]

Section 125 [Any person who in connection with an **election** under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable, with imprisonment for a term which may extend to three years, or with fine, or with both.]

The Religious Institutions (Prevention of Misuse) Act, 1988 provides under

Section 3(g) [prohibits religious institution or its manager to allow the use of any premises belonging to, or under the control of, the institution for promoting or attempting to promote disharmony, feelings of enmity, hatred, ill-will between different religious, racial, language or regional groups or castes or communities]

The [Law Commission of India Report 267 on Hate Speech](#), published in March 2017, quoted Lord Reid who said: “Incitement to violence cannot be the sole test for determining whether a speech amounts to hate speech or not. Even speech that does not incite violence has the potential of marginalising a certain section of the society or individual. In the age of technology, the anonymity of internet allows a miscreant to easily spread false and offensive ideas. These ideas need not always incite violence but they might perpetuate the discriminatory attitudes prevalent in the society. Thus, incitement to discrimination is also a significant factor that contributes to the identification of hate speech.”

He also said, “Hate speech has the potential of provoking individuals or society to commit acts of terrorism, genocides, ethnic cleansing etc. Such speech is considered outside the realm of protective discourse. Indisputably, offensive speech has real and devastating effects on people’s lives and risks their health and safety. It is harmful and divisive for communities and hampers social progress. If left unchecked hate speech can severely affect right to life of every individual.”

Where does International law stand on Hate Speech?

In international human rights law, hate speech and incitement is defined under Article 20 of the **International Covenant on Civil and Political Rights (ICCPR)**.

Article 20: [1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.]

Advocacy of national, racial or religious hatred that constitutes incitement to discrimination or hostility is prohibited by law. Under the common law system, such speech had been treated as 'sui generis' that is, 'outside the realm of protected discourse', according to the Law Commission Report 267.

The **International Convention on the Elimination of All Forms of Racial Discrimination**, 1966 also addresses the historical discriminatory, hostile and offending attitudes of some individuals and some small strata of the society which makes Articles 4 and 6 cover such offences.

Article 4(a): [State parties Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof]

Article 6: States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.]

European Court of Human Rights has also provided for clauses that elucidates jurisprudence on hate speech.

Article 10(2) **European Convention of Human Rights** reads : "The exercise of these freedoms (of expression), 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."

Section 2 of **Canadian Charter of Rights and Freedoms** guarantees freedom of thought, belief, opinion and expression subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.