

HATE SPEECH – A CATALYST FOR IDENTITY POLITICS

ABSTRACT

Hate Speech is a species of hate crime, designed to promote hatred on the basis of race, religion, ethnicity, or nationality. It hurts the sentiments of members of minority community, affecting their identity. ‘Cyberhate’ is the trend these days. Indulging in hate speech emboldens the minority assertion and paves way for their retaliation and violence. Thus, hate speech acts as a catalyst for further identity politics, threatening the secular fabric and democratic polity. Identity politics in India has a long chequered history. It has multiple facets based on identity in terms of caste, ethnicity, regionalism, linguistic affinity, etc. However, the identity politics based on religion in the form of Hindu nationalism is trending. Hindu fundamentalists, political leaders and right-wing activists are in a hate speech spree, escaping from the clutches of law. Law Commission of India in its report on Hate Speech has proposed overwhelming changes to be brought about in the current laws for tackling hate speech offences. A system ensuring penalization of the hate-mongers shall be at place. In the entire process, the system shall balance the right to free speech with that of restrictions on hate speech, acknowledging the identity of the individual.

Keywords: Hate Speech, Identity, Politics.

INTRODUCTION - DECONSTRUCTING HATE SPEECH

“In the social jungle of human existence, there is no feeling of being alive without a sense of identity”

– Erikson, E. H, ‘*Identity: Youth and Crisis*’¹

Hate speech, while not universally accepted in definition, can be understood as the ‘promotion, endorsement and encouragement of a vilification of others based on innate differences’. Etymologically, ‘Hate Speech’ is speech designed to promote hatred on the basis of race, religion, ethnicity, or national origin.² It is something derogatory towards

¹ Erikson, E. H., *Identity: Youth and crisis*, New York, NY: Norton 38 (1968).

² Michael Rosenfeld, *Hate Speech in Constitutional Jurisprudence: A Comparative Analysis*, Cardozo Law School Jacob Burns Institute of Advanced Legal Studies (May 2, 2017, 03:46 PM), <https://poseidon01.ssrn.com/delivery.php?ID=973027002121125081018064106105124102089064057008063030022093023101067088120062003103059098062092099000094120099031015009029040085070066005023020027067083111065017047009119009006072015110019002120102090075096082031088096086008017017121111067071&EXT=pdf>.

someone else³, that which hurts someone's sentiments, their sensibilities and their identity. As Mark Potok once asserted that 'hate speech is in the ear of the beholder'.

What is derogatory and not derogatory is an ongoing debate not only in India, but also across the globe. Although there is no uniform definition of hate speech across the globe, hate speech creates a widening divide among the public. In succinct, hateful expressions bring divisive forces into play, victimizing the identity of the vulnerable.⁴

However, where do we, after all, draw a line? What constitutes free speech and what results in hate speech? The freedom of expression is applicable not only to 'information' or 'ideas' that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.⁵ Therefore, the overwhelming dilemma is to make a distinction between how much to express and when to restrict the expressing hatred.

Gone are those times when hate propaganda was limited to rumors or letters published in parchments, pamphlets and pages. Although hate speech existed throughout ages, hate-mongers these days disseminate hatred in social media maliciously. Since spreading online hate is just a matter of a click, cyber-hate in the cyberspace has become the new opium of netizens. Online vitriol and odium in the form of trolls, on timelines and tweets that become viral in no time are the new means today to establish one's own identity over others. Victimization of minority community and marginalized men are the trend in this age of New Media.

Whether hate speech preceded identity politics or is it vice versa, is a difficult question to answer. Hatred and identity were binary components since mankind walked on this planet. Nomenclatures kept changing over the centuries and millennia. The fact remains the same that hate is as old as human beings, and so do conflict over identity and politics over it.

IDENTITY POLITICS – A THOUGHT TO POLITICIZE

In the 1980s, following the advent of globalization and implementation of neo-liberal economic policies in many countries across the world, people were uprooted on a large scale, resulting in rapid increase in unemployment and popular unrest. In such a scenario, to

³ Gautam Bhatia, *Offend, Shock, or Disturb – Free Speech under the Indian Constitution*, Oxford University Press 139 (2016).

⁴ Suvidutt M.S. & Dr. Aditya Tomer, *Hate Speech Laws in India – A Conundrum to Crack*, 3 The World Journal on Juristic Polity (May 3, 2017, 07:48 PM), <http://jurip.org/wp-content/uploads/2017/05/Suvidutt-Sundaran.pdf>.

⁵ *Handyside v. The United Kingdom*, [1976] ECHR 5 (France).

douse public fury over the upshots of globalization and to blur the ever intensifying class contradictions, a need for an ideological weapon of identity politics arose.

At the very outset, identity politics suggests a political orientation built around a (pre-existing) social identity. This seems to imply that the identity comes before the politics: we begin with identities whose shape and character are, or at least could be, pre-political and then we opt to get political about them.⁶ Identity politics is a discovery to placate one's existence, a drawing towards belonging and group feeling, reinforcing selfhood characteristics or markers like race, religion, ethnicity, gender, sexual preferences, caste stratification, cultural connection, linguistic affinity etc. The mobilization on the basis of these markers is called identity politics. It attempts to attain empowerment, demonstration and acknowledgment of social groups by asserting on self traits. It is a politics of identity based on differences rather than equality.

Some scholars differ from the traditional view of 'identities preceded politics'. For instance, Richard Thomson Ford opines that the identities don't precede the politics, they are a product of politics, social identities are inherently and irreducibly political, existence precedes essence, the personal is political, is always already political.⁷ Whatsoever, the disciples of identity politics employ the command of myths, cultural symbols and linguistic affinity to mould the feeling of shared community and afterward, politicize these facets to claim recognition of their uniqueness. They assign the primacy of certain 'essence' or a set of core features shared only by members of the collectivity and no others.

One of the unique characteristics of identity politics is that of 'physical separation which act as a dominant diacritic'⁸ and for that daily interaction 'often partake of this prejudice'⁹. Endorsing the prejudicial perspective of the populace, American political scientist, Samuel P. Huntington, asserts that in a culturally diverse nation, where everyday individuals regard each other as separate and unlike, a common other, a 'they', must appear in order for the individuals to relate to each other. 'You' and 'I' become 'we' when a 'they' appears.¹⁰

⁶ Richard Thomson Ford, *Political Identity as Identity Politics*, 1 Unbound: Harvard Journal of the Legal Left, 53 (2005).

⁷ *Id.*

⁸ Dipankar Gupta, *Caste and Politics: Identity over System*, 34 Annual Review of Anthropology, 410 (2005).

⁹ *Id.*

¹⁰ Samuel P. Huntington, *Who Are We?: America's Great Debate*, The Guardian (May 04, 2017, 10:59 PM), <https://www.theguardian.com/books/2004/jun/06/society.politics>.

Huntington even has gone to the extent of claiming in his controversial book¹¹ that the world is witnessing a clash of civilization.

In contrary, the renowned Indian Economist and Nobel Prize winner, Amartya Sen, rebukes Huntington and suggests that the people of the world can be classified with systems that have 'far reaching relevance in our lives such as nationalities, locations, classes, occupations, social status, languages, politics and many others'¹² and makes us see ourselves not as people with 'diverse diversities' but as 'federation of religions and civilizations'.¹³

FACETS OF IDENTITY POLITICS IN INDIA

There is a consensus among the academicians across the world that identity politics derives its ideological fuel from the very post-modernist stream of thought. However, identity politics in India can be traced back much beyond and has a long chequered history of its own.

During the colonial rule in India, the British gave the Brahmans extraordinary precedence by taking their advice on what was the correct custom¹⁴ and that gave Brahmans influential power over the locals. In the course of time, resentment against this growing Brahmin domination ensued in the anti-Brahman movements in Southern India and Maharashtra. Even in the North India, peasant castes tried to form association and pressed for their rights. The Kurmi Caste Association created way back in 1890 in Lucknow and the Ahir-Yadava Mahasabha began its operation in 1919 are the notable examples.

Further, the enactment of the Indian Councils Act of 1909, commonly known as Morley-Minto Reforms brought in separate electorates. It gave a fillip to non-Brahman castes in their pursuit for self-esteem. The lower castes thereafter began to organize themselves as 'Depressed Classes', which gained momentum from 1917 onwards, and various associations in the name of depressed caste were formed in different parts of India.

Even though, post-independence, Article 17 of the Constitution attempted to outlaw untouchability¹⁵, there were many elections fought on the basis of identity politics of caste

¹¹ SAMUEL P. HUNTINGTON, THE CLASH OF CIVILISATIONS AND THE REMAKING OF WORLD ORDER (New Delhi: Penguin Books 1996).

¹² AMARTYA SEN, IDENTITY AND VIOLENCE – THE ILLUSION OF DESTINY 10 (New Delhi: Penguin Books 2006).

¹³ *Id.* at 13.

¹⁴ N.B. DIRKS, CASTES OF MIND: COLONIALISM AND THE MAKING OF MODERN INDIA 10 (Princeton, NJ: Princeton Univ. Press 2002).

¹⁵ INDIA CONST. art. 17.

hierarchy and caste antagonism. Dalit politics, under the leadership of legendary Babasaheb Ambedkar through his Republic Party of India (RPI), acted as a vehicle of upward mobility for the ones belonging to Mahar caste. They resented the term 'Harijan' used by Gandhi to patronize them and prefer to be known as 'Dalits' or the oppressed.

Challenging the traditional upper caste rule, peasant castes revolted in many parts of the country and organized themselves in an aggressive political character. In northern India, Ahirs, Kurmis, Koeri, Lodh Rajputs and Jats began to dominate the political landscape, while Vanniyars and Thevars have become assertive in Tamil Nadu, and in Karnataka, the Vokkaligas and Lingayats took over. The newly ascendant peasant castes were characterized as 'bullock capitalists'¹⁶ who in fact, were small owners of land, and yet wielded considerable political power in contemporary India as can be gauged from the success of Samajwadi Party (SP) and Rashtriya Janata Dal (RJD) in Uttar Pradesh and Bihar, respectively. However, since last election in 2017, after Bhartiya Janata Party (BJP) came into power in Uttar Pradesh, the politics practiced by the SP and the Bahujan Samaj Party (BSP) has reached a cul-de-sac and requires reinvention.

The caste-based politics in both its avatars – the politics of upper castes and the Dalit politics – are in fact, a 'disjunctive synthesis'. Although they present themselves as mutually antagonistic, they share a deep-seated accord in terms of ideology and philosophy. Even after many decades of experiment with caste arithmetic in India, the tagline remained the same – caste and politics were always related, but the relationship was manifested differently at different periods of time. As leading Sociologist Andre Beteille fittingly remarks, outside the domain of the family, caste is most active at the level of politics in contemporary Indian society.¹⁷

Basing caste as fundamental, there emerged the competitive politics of reservation which is an unforgettable episode in India. From the First Backward Classes Commission under the chairmanship of Kaka Kalelkar to the recommendations of Mandal Commission was a long journey of political appeasement over the Other Backward Castes (OBC). Mobilization on the basis of OBC identity, their relative deprivation and perceived oppression continues even today in the form of sabotage protests of Jat as one of the contemporary examples.

¹⁶ RUDOLPH LI AND HOEBER S, IN PUSUIT OF LAKSHMI: THE POLITICAL ECONOMY OF THE INDIAN STATE 52 (Orient Longman 1987).

¹⁷ ANDRE BETEILLE, CASTE IN CONTEMPORARY INDIA 167 (CJ Fuller (ed.), Caste Today 1996).

Lets not forget about the ethnic identity politics which has arisen since 1980s and the best example is the agitations seen in the North East of India. Tribal communities are facing obliteration of their habitat, cultures and their way of life. Consciousness of being part of an ethnic group and the realization of their dissipation has led to affirmation of their withering identity. However, in the process of hegemony over their identities, the tribes like Dimasa, Naga, Bodo, Karbi and the like are pitted against each other in fratricidal conflicts, which is a sad reality today.

In India, identity politics is the starting point for separatism too. The demand for a separate state or secession has risen in the North East in this process of assertion of their unique tribal identity. In the State of West Bengal, the Gorkhaland agitation is based on the Nepali identity and it does not embrace any wider democratic platform. Similarly, is the demand by Bodo people for a separate state of Bodoland or by the Sikhs for Khalistan. Bifurcation into Andhra and Telangana State is a product of aggressive regional identity. However, such tendencies of identity politics are, in fact, a threat to democratic polity of India.

Among various attributes for the emergence of identity politics in India, predominantly, the Marxists see it as a capitalist conspiracy. They comprehend that the Non-Governmental Organisations, in the pretext of reformism, attempt to separate different sections of masses into disjointed identities, carrying out the treacherous task of misdirecting and disintegrating people's struggle. In fact, they believe it as a plot of benumbing the class consciousness of people by celebrating the fragments.

As an adjunct, another reason for the upsurge in the consciousness of identity politics is the global finance capital. Noted Communist leader, Prakash Karat warns that global finance capital finds convenient to deal with the people fragmented on the basis of multiple identities.¹⁸ He further adds that the advent of an aggressive finance driven capitalist globalization and the weakening of socialism set the background for the rise of identity politics¹⁹ and this applies universally. The obverse side of this is that identity politics disrupts the unity of the working class by preventing the broader mobilization against the system; by diverting the attention of the people from the rampant inequalities and exploitation under the neo-liberal regime.²⁰

¹⁸ Prakash Karat, *The Challenge of Identity Politics*, *The Marxist*, XXVII 1–2 39, 40 (2011).

¹⁹ *Id.*

²⁰ *Id.* at 47.

The onset of globalization coincided with the explosion of Hindu nationalism in India.²¹ Hindu nationalists belong to the 'Sangh Parivar' which is more or less loosely knit system of political, social, cultural and religious formations revolving around the Rashtriya Swayamsevak Sangh (RSS) which provides them with much of their ideological light and activist heat.²²

The surge of the fascist majoritarian Hindutva politics in recent years is, in fact, an expression of politics of identity itself. Any such right-wing fundamentalist politics is 'attempting to confront the process of modernization with a new articulation of Hindu values and norms'.²³ Their politics is established on a static ideal of identity and attempts in homogenizing mythology and posturing common sense through an imagined past. They believe that western world is conspiring to uproot the natives from their Indic values and traditions. Against the ongoing invasion of Indian cultural space by the so-called 'westoxication' process, the Hindu nationalists react vociferously, making saffronisation as a weapon. In fact, 'cultural nationalism' is a cover for religious identity politics.²⁴

The majoritarian assertion of Hindu revivalism has generated its own antithesis in the form of minority religious assertiveness and a resulting confrontational politics that undermines the syncretistic dimension of the civil society in India. A widening divide between the Hindus and Muslims that was there since partition is now becoming institutionalized in the form of communal ideology. 'Cow vigilantism', 'love jihad', 'GharWapsi', etc. has the potential to reformulate India's national identity along communal trajectories and may become a challenge for India's secular fabric and democratic polity.

HINDUTVA APOSTLES AND THEIR PHILIPPIC

India is the historic meeting place of two great civilizations, Hinduism and Islam.²⁵ As such, hate speech in India entered the political arena with the rise of communal streams in politics, like Muslim League on one side and Hindu Mahasabha and RSS on the other. These streams believed in the nation based on one religious community and they came from earlier rulers, landlords, Nawabs and Rajas, etc. Ram Puniyani remarks that the ideology of religion based

²¹ SUDHIRKAKAR AND KATHARINA KAKAR, *THE INDIANS – PORTRAIT OF A PEOPLE* 136 (Penguin Books 2009).

²² *Id.* at 135.

²³ *Id.* at 136.

²⁴ *Supra* note 18, at 46.

²⁵ DONALD EUGENE SMITH, *INDIA AS A SECULAR STATE* 265-291 (Princeton University Press 1967).

nationalism is narrow and it excludes 'other' from its notion of nationhood. He adds as a warning that these beliefs gradually get converted into 'hate speech'.

Ascending to power, Narendra Modi in a way gave authorization to all Hindu nationalists and affiliates of RSS to indulge in hate speech against religious minorities. They do so to consolidate communal polarization of the society on religious lines. Day in and day out, the vitriol is becoming more vicious, aggressive and acidic. Anyone indulging in hate speech and divisive politics now has a feeling that they can get away with it.

The truth is since few years, a host of Hindu zealots, political leaders and right-wing activists are on the hate speech spree, and most of them escape from the clutches of law after spitting inflammatory orations. Member of Parliament of BJP from Unnao, Sakshi Maharaj was at the centre of controversy, after having hit the headlines for his remark that Godse was a true patriot, by now stating that Hindu women must have four children each if they are to save Hinduism.²⁶ Vishwa Hindu Parishad (VHP) leader, Sadhvi Prachi kicked up another controversy by calling for a boycott of films starring Bollywood stars Shah Rukh Khan, Aamir Khan and Salman Khan and asking right-wing Hindu outfits to tear posters of their films and make a bonfire of them. Prachi also accused Nobel Laureate, Mother Teresa of proselytizing in the name of religious services.²⁷

VHP leader Praveen Togadia has in the past held the record for the maximum number of complaints and criminal cases for making objectionable and inflammatory speeches.²⁸ The Shiv Sena demagogue, Bal Thackeray was also charged for several cases for his hate speech remarks that led to riot in Mumbai in the 1990s.²⁹

Yogi Adityanath, now Chief Minister of Uttar Pradesh made brazenly communal speeches. He once said that in 'love jihad', if they take one Hindu girl, then Hindus will take at least 100 Muslim girls. He had declared on another occasion that if they kill one Hindu, then we will

²⁶ *BJP MP Sakshi Maharaj's grand plan to save Hinduism: Go forth and multiply*, First Post (Jun. 21, 2017, 06:07 PM), <http://www.firstpost.com/india/bjp-mp-sakshi-maharaj-s-grand-plan-to-save-hinduism-go-forth-and-multiply-2033753.html>.

²⁷ *Sadhvi Prachi calls for boycott of Aamir, Shah Rukh and Salman Khan films*, The Hindu (Jun. 21, 2017, 07:41 PM), <http://www.thehindu.com/news/national/sadhvi-prachi-calls-for-boycott-of-aamir-shah-rukh-and-salman-khan-films/article6951837.ece>.

²⁸ *Nayantara Narayanan, Lengthy List of cases against Togadia shows Bengaluru banned him for good reason*, Scroll.in (Jun. 21, 2017, 09:13 PM), <https://scroll.in/article/704921/lengthy-list-of-cases-against-togadia-shows-bengaluru-banned-him-for-good-reason>.

²⁹ *Hate Speech the congress Forgot About*, The Hindu (Jun. 22, 2017, 09:28 AM), <http://www.thehindu.com/opinion/lead/Hate-speech-the-Congress-forgot-about/article13370962.ece>.

kill hundred.³⁰ The propaganda around love jihad keeps simmering and various small and big leaders keep using it to divide the society. Same Yogi went on to say that Mosques should be converted into den of pigs and that Muslims should not be allowed to come to Hindu holy places.³¹

The list includes bigger sharks like the Minister of State for Micro, Small and Medium Enterprises, Giriraj Singh, who reported to have remarked that, “had Rajiv Gandhi married a Nigerian woman and had she not been of white skin, would the Congress party have accepted her as a leader?” He kicked up a huge row earlier when he said all those opposed to Narendra Modi should go to Pakistan as they have no place in India.³² Amusingly, despite such a record he was elevated to the level of minister in Modi’s government.

Putting forward arguments in favor of building Ram Temple in Ayodhya, BJP leader Subramanian Swamy said a mosque can be removed or demolished, but a temple cannot be even touched after the placing of the idol. Swamy said that its people’s misconception to believe a mosque and temple to be equal institutions. According to him, a mosque is only a convenient place for the Muslims to offer prayers.³³ His statements imply that god resides only in temples and not in mosques or churches. Against Muslims, the Member of Parliament of Shiv Sena, Sanjay Raut, who is the executive editor of the party organ Saamana, had stoked a major hullabaloo by suggesting that Muslims should be disenfranchised to stop vote bank politics.³⁴

Most of these statements are just for the sake of hurting religious sentiments of Muslims and does not carry any substance. The impact of such inflammatory statements by the right wing leaders create a sense of fear amongst religious minorities, resulting in their outrage and outburst. For example, Asaduddin Owaisi, Lok Sabha Member from Hyderabad and

³⁰Betwa Sharma, *With Boss Yogi as CM, Hindu Yuva Vahini is Hawking A Savvier Shade of Hindutva*, The Huffington Post (Jun. 21, 2017, 08:19 PM), http://www.huffingtonpost.in/2017/04/27/with-boss-yogi-as-cm-hindu-yuva-vahini-is-hawking-a-savvier-sha_a_22057575/.

³¹Ram Puniyani, *Speech as an Instrument of Hate*, The Citizen (Jun. 21, 2017, 07:01 PM), <http://www.thecitizen.in/index.php/NewsDetail/index/4/3399/Speech-as-an-Instrument-of-Hate>.

³²Faizan Ahmed, *Those opposed to Narendra Modi should go to Pakistan, BJP Leader Giriraj Singh says*, The Times of India (Jun. 22, 2017, 11:28 AM), <http://timesofindia.indiatimes.com/news/Those-opposed-to-Narendra-Modi-should-go-to-Pakistan-BJP-leader-Giriraj-Singh-says/articleshow/33971544.cms>.

³³*A Mosque can be demolished, but not temple: Subramaniam Swamy*, Deccan Chronicle (Jun. 22, 2017, 12:48 PM), <http://www.deccanchronicle.com/nation/current-affairs/270317/a-mosque-can-be-demolished-but-not-temple-subramanian-swamy.html>.

³⁴Makarand Gadgil, *Revoke Muslims’ voting rights: Shiv Sena’s Sanjay Raut*, Live Mint (Jun. 22, 2017, 01:07 PM), <http://www.livemint.com/Politics/Hw74yLeg9OYX4xWmmvTgdL/Shiv-Sena-wants-Muslims-voting-rights-to-be-revoked.html>.

Akbaruddin Owaisi, Member of Legislative Assembly, are known for their routine tirade against the Hindus.³⁵ Needless to mention the Indian firebrand televangelist and Islamic preacher, Zakir Naik, known for his almost-eidetic memory, which allows him to quote Chapter and Verse from the Koran, the Bhagavad Gita, and the Bible.³⁶ He once stated that all Muslims should be terrorists.³⁷ Such is the repercussions of Hindutva campaign. It breeds more terror.

More than terror, Hindutva tirade has become a trend. Cacophony in the name of Hindu nationalism has reached an insane level. Therefore, in order to maintain harmony, the politics and philippics of Hindutva cohorts shall be brought in control, or else the nation may wither away in discordant ideologies.

LEGAL THERAPEUTICS

Any society falls ill due to offenders and criminals who live in it. Hate-mongers spreading hatred are too considered as offenders of a lesser degree crime. The sociology of law is very much essential for addressing issues touching socio-legal aspects of human affair. Hate speech and identity politics are those issues which can be resolved with an anthropological approach. With the aid of appropriate legal therapeutics, any ills or evils in the society can be cured.

Democracy thrives on disagreements provided they do not cross the boundaries of civil discourse. Critical and dissenting voices are important for a vibrant society. However, care must be taken to prevent public discourse from becoming a tool to promote speech inimical to public order. The mode of exercise, the context and the extent of abuse of freedom are important in determining the contours of permissible restrictions.³⁸ The Constitution of India acknowledges that liberty cannot be absolute or uncontrolled and makes provisions in clauses (2) to (6) of Article 19 authorizing the State to restrict the exercise of the freedom guaranteed under Article 19 (1) within the limits specified in those clauses.

³⁵ *Owaisi hate speech: This is not the first time*, First Post (Jun. 22, 2017, 01:34 PM), <http://www.firstpost.com/politics/the-owaisi-hate-speech-this-is-not-the-first-time-577084.html>.

³⁶ *Understanding the controversy surrounding Zakir Hussain*, The Hindu (Jun. 22, 2017, 01:37 PM) <http://www.thehindu.com/news/national/Understanding-the-controversy-surrounding-Zakir-Naik/article14479835.ece>.

³⁷ Bijaya Kumar Das, *Ten controversial statements by Zakir Hussain*, India Today (Jun. 22, 2017, 01:38 PM), <http://indiatoday.intoday.in/story/ten-controversial-statements-by-zakir-naik/1/709374.html>.

³⁸ S. SIVAKUMAR, *PRESS LAW AND JOURNALISTS* 11 (Universal Law Publishing Co. 2015).

There are several laws against Hate Speech and related offences in India. For instance, Section 124A of Indian Penal Code (IPC) penalizes sedition. Section 153A of IPC penalizes 'promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony'. Further, Section 153B penalizes 'imputations, assertions prejudicial to national-integration'. Chapter XV of IPC deals with offences relating to religion. It includes, Section 295A IPC that penalizes 'deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs'. The same chapter by way of Section 298 penalizes 'uttering, words, etc., with deliberate intent to wound the religious feelings of any person'. Lastly, Section 505 (1) and (2) of IPC penalizes publication or circulation of any statement, rumor or report causing public mischief and enmity, hatred or ill-will between classes.

The Hon'ble Supreme Court of India, in the case of *Pravasi Bhalai Sangathan v. Union of India & Ors.*³⁹, observed that the issue of hate speech deserved deeper consideration by the Law Commission of India. Therefore, the Law Commission of India in its Report No.267⁴⁰ gave suggestions under the title 'Hate Speech' which enclosed The Criminal Law (Amendment) Bill, 2017. It attempted to insert a new Section 153C⁴¹ in IPC prohibiting incitement to hatred. Further, the Commission has suggested inserting new Section 505A after Section 505 in IPC. The Section 505A⁴² deals with fear, alarm, or provocation of violence in certain cases.

The Representation of People Act, 1951 provides for actual conduct of elections in India. Section 8 of the Act disqualifies a person from contesting election if he is convicted for indulging in acts amounting to illegitimate use of freedom of speech and expression. Further,

³⁹ AIR 2014 SC 1591 (India).

⁴⁰ Report No.267 titled 'Hate Speech' (March, 2017).

⁴¹ Proposed Section 153C of Indian Penal Code: "*Whoever on grounds of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe -*
(a) *uses gravely threatening words either spoken or written, signs, visible representations within the hearing or sight of a person with the intention to cause, fear or alarm; or*
(b) *advocates hatred by words either spoken or written, signs, visible representations, that causes incitement to violence shall be punishable with imprisonment of either description for a term which may extend to two years, and fine up to Rs 5000, or with both.*".

⁴² Proposed Section 505A of IPC reads as: "*Whoever in public intentionally on grounds of religion, race, caste or community, sex, gender, sexual orientation, place of birth, residence, language, disability or tribe- uses words, or displays any writing, sign, or other visible representation which is gravely threatening, or derogatory;*

(i) *within the hearing or sight of a person, causing fear or alarm, or;*

(ii) *with the intent to provoke the use of unlawful violence, against that person or another, shall be punished with imprisonment for a term which may extend to one year and/or fine up to Rs 5000, or both*".

Section 123(3A) and Section 125 prohibit promotion of enmity on grounds of religion, race, caste, community or language in connection with election as a corrupt electoral practice and prohibit it.

The Protection of Civil Rights Act, 1955 was enacted to address the issue of discrimination and oppression in Indian society that lead to the practice of untouchability. This Act prescribes punishment for the preaching and practice of untouchability. Section 7 of the Act penalizes incitement to, and encouragement of untouchability through words, either spoken or written, or by signs or by visible representations or otherwise. This provision is in tune with the constitutional provision of Article 17 that abolishes untouchability.

Besides, Section 3(g) of the Religious Institutions (Prevention of Misuse) Act, 1988 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 Indian laws on hate speech so far were a conundrum but the suggestions given by the Law Commission of India if taken seriously by the Parliament and resultantly with necessary amendments in the statutes may spell out much better socio-political landscape.⁴³ What the legal system shall do is to strike a fine balance between right to free speech and restriction to hate speeches, acknowledging the identity of individuals and to lessen the politicization of it.

CONCLUSION

Hate speech is the language of a section of people who thrive on identity politics far away from the real issues of the society. In fact, they use hate speech as a catalyst to ascertain their identity over the minority community. Human beings, as Salman Rushdie has put it, 'shape their futures by arguing and challenging and saying the unsayable; not by bowing their knee whether to gods or to men.'⁴⁴ When there is a tendency like that, then life of man undoubtedly becomes 'solitary, poor, nasty, brutish and short'.⁴⁵ Therefore, revoltingly, Amartya Sen opines that cultural captivity does not help as 'there is a great need for

⁴³ *Supra* note 4.

⁴⁴ SALMAN RUSHDIE, *IMAGINARY HOMELANDS: ESSAYS AND CRITICISM 1981-1991* 394-395 (Granta Books 1991).

⁴⁵ HOBBS, T. & GASKIN, J. C. A., *LEVIATHAN* (Oxford University Press 1998).

broadening the horizon of understanding of the other people and other group'.⁴⁶ That may free India of loathing, and in place, be full of inclusivity.

After all, a scenario of slander and mayhem cannot be allowed to be perpetuated. A strict check on inimical speech shall be brought by the legal machinery. Lacuna in the hate speech laws need to be plugged in by the Parliamentarians. A system ensuring penalization of the preachers of hate shall be at place.

In a nutshell, it can be stated that hatred and identity, both are coterminous, mutually acting as a catalyst. They don't supplant, rather supplement each other. Hate speech bolster ones identity, paving way to the politics of identity, even being brutish. Mythology and history bore witness to hatred from the biblical narrative of Cane murdering Abel, to the colonial climax of horrific two World Wars, genocides and injustice carried on every now and then. Although obliterating hate is inevitable, we can attempt to cabin, contain and to confine it, so that the littlest, least and the lost hold on to their dignified identity.

⁴⁶ AMARTYA SEN, IDENTITY AND VIOLENCE – THE ILLUSION OF DESTINY 117 (Penguin Books 2006).