



Ayana Legal

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Intermediary Liability

Social media platforms act as intermediaries through which such online hate speech is expressed.

An example of intermediary liability can be seen in reference to the German Network Enforcement Act a.k.a. NetzDG law (2017). According to this law any company or social media platform with a minimum of 2 million users have an obligation upon such companies to take down hate speech within 24 hours and report it to the police. If the company fails to do so then they can be fined upto 50 million euros. Individuals who posted such hateful content can be fined a maximum of 5 million euros. Facebook was one of the first companies that was held liable under this Act and fined 2 million euros in 2019 for under reporting of hate speech.

HATE SPEECH

Article 19 of the constitution provides freedom of expression but with reasonable restrictions showing that the freedom of expression is not an absolute right. Currently hate speeches are punishable under various provisions of criminal laws, but there is no definition of what constitutes a “hate speech” in India. With the increasing use of social media and the growth of Web 2.0, the dangers of user generated content are becoming prominent. Social media, its easy access, lack of regulation and anonymity has led to a global increase in the posting of online hate speeches.

FORMS OF HATE SPEECH

Communication analysts have been studying how groups use social media platforms to instigate hateful acts or propagate hateful beliefs and values. One of the ways adopted has been termed as ‘*information laundering*’. Information laundering hate groups tend to present their hateful speeches, ideologies or beliefs and cover up the commission of hate crimes by presenting them on social media in the form of credible knowledge. Hence, the truth is hidden, facts are edited and presented as ‘knowledge’ and ‘information’. The danger becomes more prominent with the little to no fact checking on social media platforms. The second form has been famously called ‘*hate spin*’ by Cherian George a media theorist. He defined as a combination of hate speech in which a particular act or a group of people are vilified and where supporters are mobilized against the dissenters or the group vilified. Another form observed is the creation of fake pages or accounts promoting certain unlawful agendas or publishing such distorted information that is likely to cause fear across the public.

In Australia, under the Enhancing Online Safety Act, an e-safety commissioner is appointed who has the authority to demand the removal of hateful posts. They usually provide a 48 hour notice within which such post is to be removed on failure to do so they can levy a fine of upto 5 million on the company and upto 1 million Australian dollars on the individual. Under the Sharing of Abhorrent Violent Material Act (2019) sharing of violent, hateful material on their platforms can be fined and includes possible jail sentences upto a maximum of 3 year

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DEFINITION OF HATE SPEECH

Social media Platform Facebook defines hate speech as “anything that directly attacks people based on what are known as their “protected characteristics” — race, ethnicity, national origin, religious affiliation, sexual orientation, sex, gender, gender identity, or serious disability or disease.”

TESTS TO IDENTIFY HATE SPEECH

The Law Commission of India in its 267th report came up with certain criteria to determine what would constitute as a hate speech:

- The speech must cause detestation and extreme emotion.
- The speech must incite or likely to incite lawless activities for it to be prohibited.
- In *Pravasi Bhalai Sangathan v. Union of India*, (2013) Writ Petition (C) No. 157 (India), it was sought for “hate speeches” delivered by elected personalities and political leaders to be declared as unconstitutional. This petition was aimed specifically at elected representatives who were highly powerful and influential in society. This shows that even the position and status of the author of the speech is essential to decide the validity of the interference placed on right to freedom of speech.
- The status and position of the targeted person or group is also a crucial factor to impose restrictions of any speech.
- The potential impact that the speech could have on the society has to be viewed in order to find out the state of mind of the author of the speech. The Supreme Court in the case of *Ramesh Chotalal Dalal vs Union of India*, 1988 AIR 775 determined the legality of the restriction put on a movie on the basis of the potential impact that it could have on the audience.
- The context in which the author made the speech is an important factor in determining the constitutionality of the interference on the right to freedom of speech. every speech which may seem hateful doesn't necessarily have to be categorised as a hate speech.