

*Law Audience Journal, Volume 4 & Issue 1, 15th May 2022,
e-ISSN: 2581-6705, Indexed Journal, IF 5.381, Published at
<https://www.lawaudience.com/volume-4-issue-1/>, Pages: 122 to 135,*

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Cite this article as:

MR. ANKIT KUMAR SINGH, “*Hate Speech: A Critical Analysis of Case Shreya Singhal vs. U.O.I 2015*”, Vol.4 & Issue 1, Law Audience Journal (e-ISSN: 2581-6705), Pages 122 to 135 (15th May 2022), available at <https://www.lawaudience.com/hate-speech-a-critical-analysis-of-case-shreya-singhal-vs-u-o-i-2015/>.

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(E-ISSN: 2581-6705)

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I. MEANING AND DEFINITION OF HATE SPEECH:

“The plain fact is that not all free speeches are good speech which means that freedom of speech is not always a sound or just policy”

Michel Rosenfeld defines “hate speech” as speech which is designed to promote hatred on the basis of religion, race, ethnicity or national origin. According to him, the issue possesses a vexing and complex problem for contemporary¹. Since the start of the Indian battle against British Colonialism for autonomy, particularly amid the 19th century, “Freedom of Expression “or “Freedom of Press” has constantly had an essential influence. We are on the whole mindful of the job that the Indian press played to create nationalistic judgments among the general population so as to get independence. Regardless of being blue-pencilled and precluded, not once but rather a multiple time, the press figured out how to individually everywhere throughout the country which in the long run drove us to the independence.

Such is the significance of the free speech that in the Indian Constitution, freedom of speech and expression is viewed one of the Fundamental Rights. Article 19 (1) (a) guarantees everyone the privilege of Expression and Speech. It’s likewise considered as one of the basic human rights under *Article 19 of UDHR (Universal Declaration of Human Rights)*. In the present scenario, notwithstanding the fact that there has been an abuse of this freedom. It ought to be noticed that hate speech doesn’t fall under the classification of Freedom of Expression yet is fairly a particular problem to it. Deliberate attempts are being made either by the government or by the media, to control the freedom of expression. The lawmakers can be seen conveying hate speeches that plan to produce intolerance, incitement, or abuse against a specific religious network or a gathering of individuals, so as to either polarize the overall population or for electoral gains. Hate Speech can also result in shared viciousness, riots, the destruction of open property or more awful, killing of individuals. It is said that the rights are the cornerstone of the individual autonomy, they are guaranteed as limits on the state’s power². In our democratic society it is

¹ Michel Rosenfeld, Hate Speech in Constitutional Jurisprudence: A comparative Analysis (2002- 2003) 24 Cardozo Law review 1523, 1523.

² J.S. Mill, On Liberty and Utilitarianism 4 (Bantam Classic, New York, 2008).

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granted to protect from the undue influence of the state. Freedom of expression is also there under article 19 of UDHR³. Freedom of expression is considered to be one of the most significant rights of all as it allows the person to attain self fulfilment and also to strengthen the capacity to enjoy the freedom fully⁴. Many reports throughout the world have declared the year 2018 as the “year of online hate”⁵. Facebook the giant social media platform in its transparency report disclosed the alarming statistics where it landed up in taking down over 3 million hateful posts from its platform⁶. YouTube which allows free sharing of video content on its site also removed across 25,000 such hateful videos in one month alone⁷.

In its aggravated form, hate speech has led to horrific hate crimes, communal riots, series of violent clashes between the religious groups⁸ all these arising out of the inflammatory speech which is propagated by the diverse groups. Incidents of gruesome killings were widely reported wherein the hate for another group or community was seen at another level which took the shape of violence in the form of mob-lynching⁹. In all these situations, words were employed in their most dangerous form as weapon to ambush, terrorize, wound, humiliate and degrade¹⁰ the individual groups. The meaning of hate speech, in contemporary times, has travelled

³ U.N.G.A. Res. 217 A (III), 1948.

⁴ Steffen Schmidt and II Mack C. Shelley, Barbara Bardes et. al., American Government and Politics Today (Cengage Learning, USA, 2014).

⁵ Geoffrey A. Fowler, Drew Harwell et. al, “2018 was the year of online hate. Meet the people whose lives it changed”, The Washington Post, Dec. 28, 2018.

available at: <https://www.washingtonpost.com/business/technology/2018-was-the-year-of-online-hate-meet-the-people-whose-lives-it-changed/2018/12/28/95ac0558-f7dd-11e8> (last visited on January 25, 2019).

⁶ <https://transparency.facebook.com/community-standards-enforcement#hate-speech>. (last visited on January 25, 2019).

⁷ Supra note 3.

⁸ FP Staff, “Muzaffarnagar riots: The inciteful speeches that fanned rioters' fury”, First post, Sept.13, 2013.

available at: [https://www.firstpost.com/politics/muzaffarnagar-riots-the-inciteful-speeches-that-fanned-riotersfury-](https://www.firstpost.com/politics/muzaffarnagar-riots-the-inciteful-speeches-that-fanned-riotersfury-1103789.html)

1103789.html; also see <https://www.hindustantimes.com/lucknow/muzaffarnagar-riots-fir-against-politicos-for-hate-speeches/story-ymsW4fi9MUf3Ddia3fkz0M.html>. (last visited on January 25, 2019).

⁹ Alison Saldanha, “2017: A year of hate crimes in India: Number of violent incidents related to cows, religion is rising”, First Post, Dec. 28, 2017. available at: <https://www.firstpost.com/india/2017-a-year-of-hate-crimes-in-india-number-of-violent-incidents-related-to-cows-religion-is-rising-4278751.html>. (last visited on January 25, 2019).

¹⁰ Thomas J. Webb, “Verbal Poison - Criminalizing Hate Speech: A Comparative Analysis and a Proposal for the American System” 50 Washburn L.J. 445 (2011).

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beyond mere offensive speech, it includes speeches that is insulting, derogatory, discriminatory provocative or even such that it incites and encourages the use of violence or even results in the violent backlashes. It eventually results in disturbing the harmony of the society at large but to be more specific hate speeches have become particularly heinous hate crimes which cause direct physical and physiological harm to the innocent victims. It affects the victim in the intangible ways which lead to the chilling effect on the victim's right to free speech and expression which ultimately results in the exclusion from participation in the democratic process and public discourse¹¹. The term hate speech eludes a universal definition; it derives its significance from the particular context that is it operates in form through the influence of a peculiar sensibilities, identities and assessments in particular context¹².

Black's Law Dictionary defines the term hate speech as *“the speech which carries no meaning other than the expression of hatred for some group of particular races especially in the circumstances in which the communication is likely to provoke violence”*¹³ therefore it is said that the hate speech is a speech that broadly speaks derogatory of others¹⁴ most common grounds of hate speech across the countries are race, ethnicity, religion or class. India presents a peculiar case for regulation of hate speech with its rich diversity of language, caste, race, religion, culture and beliefs. The words either spoken or written, or employing signs or any kind of visual representation qualifies as 'speech'. If such speech offends the religious, ethnic, cultural, racial groups by vilification and is capable of spreading 'hatred' among the heterogeneous populace, we categorise it as 'hate speech'. In the starting of the introduction part of this article, it was emphasized that how words employed have significant detrimental

¹¹ Parliamentary Assembly, Council of Europe, Recommendation 1805 “Blasphemy, religious insults and hate speech against persons on grounds of their religion” (2007) available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17569&lang=en>. (last visited on January 25, 2019).

¹² Marcello Maneri (ed.), “#Silence Hate: Study on hate Speech Online in Belgium, Czech Republic, Germany and Italy”, BRICKS Building Respect on the Internet by Combating Hate Speech Project available at: https://www.bricks-project.eu/wp/wp-content/uploads/2016/10/relazione_bricks_eng2-1.pdf. (last visited on January 25, 2019).

¹³ Black's Law Dictionary, 9th edition, 2009.

¹⁴ Gautam Bhatia, Offend, Shock or Disturb: Free Speech Under the Indian Constitution 139 (Oxford University Press, Delhi, 1st Edn., 2016).

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impact, both, on the individual and the society at large. *Jeremy Waldron* states that “targeting a person’s “immutable characteristics, ethnic background or religious identity causes a harm¹⁵”. Therefore, to protect the individual liberty, freedom and to ensure the dignity, it is very much essential that speech that targets a person’s identity, based on ethnicity, race, religion etc., not be allowed to be propagated untrammelled. As victims of hate speech, such individuals “feel fear, maybe nervous to enter in the public spaces or participate in discourse and may change their behavior or appearance in an attempt to avoid hate speech.¹⁶ So, in this way, hate speech constructs its targets and they are not only “discriminated against but are also seen by others as undesirable target and legitimate objects of hostility¹⁷.” Such intangible effects of hate speech are the most insidious and damaging to an individual’s sense of security and right to live with dignity. There are innumerable instances where different political groups spread hatred through their speeches and remarks which have the potential to develop the communal passions¹⁸. However, most of the democracies in the world today have banned hate speech today on the capacity of such incendiary words to not only cause harm but also disrupt public order by the power of hate speech which is capable of leading to violent consequences such as hate crimes amongst other violent results. Recently, while examining the scope of hate speech laws in India, the Law Commission in its report published in 2017 recommends further introducing new provisions within the penal code that specifically punish incitement to violence in addition to the existing ones¹⁹.

Perhaps this standard of ‘incitement to violence’ is seen as being a more concrete basis for prohibiting speech by means of legislation. Incitement to violence demands a greater level of harm to be demonstrated in comparison to other forms of hate speech and therefore justifiably being the subject of censure by criminal law. As far as criminalization of speech is concerned, it remains a debatable issue with the legal scholars divided between what kind of speech should

¹⁵ Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press, United States of America, 2012).

¹⁶ Tanya D’Souza, Laura Griffin, et.al., “Harming Women with Words: The Failure of Australian Law to Prohibit Gendered Hate Speech” 41(3) *UNSW Law Journal* 943 (2018).

¹⁷ *Ibid*

¹⁸ Soli J Sorabjee, *Hate Speech “dilemma*, *fortnight*, no. 318 (June 1993) p27.

¹⁹ Law Commission of India, 267th Report on Hate Speech (March 2017)

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ideally be criminalized; should only a certain type of hate speech be banned and whether all hate speech be made punishable by criminal law or it can be dealt under civil law²⁰.

CHAPTER II: INDIAN AND INTERNATIONAL LAWS

GOVERNING THE HATE SPEECH:

II.I CONSTITUTIONAL LAW AND HATE SPEECH:

Article 19(1)(a) provides right to freedom of speech and expression which is read with Article 19(2). The right is not absolute as provided in the American Constitution. American approach is very liberal in regard to the offensive expression unlike of ours. The aforesaid right is subject to reasonable restrictions which is enumerated in Article 19(2)²¹ which empowers the state to impose reasonable restrictions over Freedom of Speech and Expression on the ground of:

- *Security of state*
- *Friendly relations with foreign states*
- *Decency and morality or*
- *In relation to contempt of court*
- *Defamation*
- *Incitement to an offence*
- *In the interest of sovereignty and integrity of India*

Therefore, Indian Constitution does not permit hate speech as an incitement to offence is one of the reasonable restrictions under article 19(2). The term reasonable is very vague in nature as what is reasonable for one person cannot be reasonable for the other person, it is therefore subject to interpretation and is interpreted in the case of A.K Gopalan²², which held and justified the reasonable restrictions. In another case of Ramji Lal Modi²³, where Supreme Court's decision was based on the jurisprudence on 'public order'. After the addition of 'public order' to Article 19(2), the Supreme Court examined the contours of 'public order' in 1957, in this

²⁰ Supra Note 15

²¹ Constitution of India.

²² AIR 1950 SC 27.

²³ Ramji Lal Modi v. State of UP, AIR 1957 SC 620 para 9

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case according to the Court, the ‘public order’ exception protects laws that regulate any activity that has a tendency to cause public disorder, irrespective of whether there is any actual breach of public order. The Court upheld the constitutionality of Section 295A by holding that only ‘aggravated forms’ of insult to religion have a tendency to disrupt public order.

In *Virendra vs. State of Punjab (Virendra)*²⁴, the Supreme Court invoked the decision of Ramji Lal Modi and created a framework for ‘public order’ standards. The Court here stated that ‘The expression “in the interest of” in Article 19(2) makes the ambit of the protection very wide, for a law may not have been designed to directly maintain the public order and yet it may have been enacted “in the interest of” the public order. In the case of *Pravasi Bhalai Sangathan vs. Union of India*²⁵, the Supreme Court analyzed the rationale for the existence of such restrictions on the hate speech. The court further identified that the objective of the restrictions on the hate speech is to reduce or eliminate the discrimination. It further more recognized the hate speech as an exercise whose aim is to marginalize individuals and reduce the social standing which is there making them vulnerable to the discrimination to ostracism, segregation and in most severe cases to genocide.

II.II CRIMINAL LAWS AND HATE SPEECH:

This Sub Chapter of the project report will throw the light on the hate speech offences in the Indian Penal Code, 1860 (IPC) Laws against hate speech are set out in three different chapters of the IPC: Chapter I which relates to ‘Of Offences Relating to Religion’, Chapter II - ‘Of Offences Against the Public Tranquility’ and Chapter III - ‘Of Criminal Intimidation, Insult and Annoyance’. The first portion of report will briefly discuss Section 153A of the IPC, which criminalizes the promotion of enmity between groups of people on grounds such as religion and race. The second part of the report will briefly discuss Section 153B of the IPC, which criminalizes imputations and assertions prejudicial to national integration. The third part of the report will briefly discuss Section 295 of the IPC, which criminalizes the destruction of places of worship or sacred objects. There is more provision of IPC which deals in criminalizing hate

²⁴ AIR 1957 SC 836

²⁵ Pravasi Bhalai Sangathan v. Union of India, (2014) 11 SCC

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speech like section 295 A, and Section 505 which will also be dealt in brief.

Section 153A talks about Promotion of Enmity Between Groups the section says that Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony;

(1) “Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or (c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

- ***Judgments related to 153 A:***

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In the case of *Balwant Singh vs. State of Punjab*²⁶, SC said that ‘intention to cause disorder or incite people to violence is the sine qua non of the offence under the section 153A IPC, further SC also said that prosecution has also to prove the existence of mens rea in order to succeed.

In the case of *Gopal Vinayak Godse*²⁷, the Bombay High Court noted that to determine whether any material violates Section 153A, the natural and probable consequences of the writing must be examined. It is also permissible to consider the class of readers for whom the material is primarily meant, as well as the state of feelings between the different classes or communities at the relevant time. It is not necessary to prove that enmity was in fact promoted by the material in question.

Section 153B talks about Imputations, assertions prejudicial to national-integration the section says (1) “Whoever, by words either spoken or written or by signs or by visible representations or otherwise, —

- (a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or*
 - (b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or*
 - (c) 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.*
- (2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any*

²⁶ (1995) 3 SCC 214, para 9.

²⁷ AIR 1971 Bom 56, (1970) 72 BOMLR 871, 1971 CriLJ 324.

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assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

- **Judgments related to section 153 B:**

In *Sikkim Social Empowerment Association vs. Anjan Upadhyaya*²⁸, the Sikkim High Court took intention into account while determining whether a provocative publication in a newspaper would fall within the contours of Section 153B. In the case of *Murzban Shroff vs. State of Maharashtra*³², it was held that Section 153B(1)(c) criminalizes statements about the racial, communal, religious, regional or caste-based obligations of a person and accordingly, this sub-part also discusses the additional ingredient under section 153B(1)(c)— it must be established that an assertion, counsel, plea or appeal was made about the obligation of any class of persons by reason of their being members of that class, and such assertion creates or is likely to create disharmony.

Section 295 talks about Injuring or defiling place of worship with intent to insult the religion of any class the section says that;

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

- **Judgments related to section 295:**

In the case of *Mallesappa vs. Sri Kumar*²⁹, the petitioner spoke at an event, where he made references to experiments carried out by another, about urinating on religious idols. A complaint under Section 295 was filed against him. The High Court of Karnataka held that the petitioner had not ‘damaged, defiled or destroyed’ any place of worship or object held sacred

²⁸ 2014 CriLJ. (Sikkim) 2534.

²⁹ ILR 2015 KAR 3734.

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In the case of *Joseph vs. State of Kerala*³⁰, a hut was used as a worship place by people of a specific religion. ‘A’ took possession by court order and took down the images of the Hindu Gods and was charged under Section 295. The High Court held that ‘A’ has the right to do whatever he has done and he had not intended to hurt the religious beliefs and holy object and hence, he was held not guilty. Religious books like the Bible, the Kuran, the Granth, the Gita etc. are held to be sacred even though they are not worshipped per se.

Section 295 A talks about Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs;

it says “Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”

• ***Judgments related to section 295 A:***

In the case of *Superintendent, Central Prison, Fatehgarh vs. Ram Manohar Lohia*³¹, the SC held that for a case to stand under 295A, there must be a proximate relation between the proscribed speech and public disorder, and not a ‘far-fetched, remote or fanciful connection’.

In the case of *Sri Baragur Ramachandrappa vs. State of Karnataka*³², the case which involved the ban of a Kannada novel which fictionalized the life of the 12th century Saint Basaveshwara.

The author had suggested that Saint Basaveshwara’s nephew was born out of the wedlock. The followers of Basaveshwara ultimately moved the State to ban the book, which was duly obliged. At the later, the SC upheld the decision after carefully going over substantial research done by Kannada scholars and local beliefs. It was concluded that the author had deliberately

³⁰ 1964 CriLJ 493.

³¹ 1960 AIR 633, 1960 SCR (2) 821.

³² 999 (1) ALD Cri 209, 1998 CriLJ 3639, ILR 1998 KAR 2342, 1998 (4) KarLJ 568.

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tried to spin and introduce a particularly 'sordid and puerile story'.

Section 505 talks about Public Mischief.

it says that (1) "Whoever makes, publishes or circulates any statement, rumor or report, - (a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community; shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Statements creating or promoting enmity, hatred or ill-will between classes
Whoever makes, publishes or circulates any statement or report containing rumor or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) Offence under sub-section (2) committed in place of worship, etc. - Whoever commits an offence specified in sub-section (2) in any place of worship or in an assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

• **Judgments related to section 505:**

In the case of Shib Nath Banerjee vs. Emperor³³, the Bombay High Court held that offences such as Section 505 'which deal with the liberty of the subject, as it has often been said rightly,

³³ (1946) 48 BOMLR 1.

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must be construed very strictly in favor of the defence’.

II.III INTERNATIONAL HUMAN RIGHTS LAW- ICCPR:

The ICCPR, which India has signed and ratified, recognizes a right to free speech under two articles namely, Article 19 and Article 20. Article 19 which is read with Article 20, and requires states to prohibit advocacy of hatred.

Article 19 of ICCPR states that: (1). *Everyone shall have the right to hold opinions without interference.*

- (2). *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
- (3). *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (order public), or of public health or morals.*

Article 20 states that:

- (1). *Any propaganda for war shall be prohibited by law and,*
- (2.) *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

In the case of **Robert Faurisson vs. France (1996)**³⁴, This case involved a professor who made continuous efforts to deny and question the truth of the events of the Holocaust. These statements betrayed his antisemitism. He contended that France’s law against antisemitism, which prohibits Holocaust denial, restricted his speech by punishing historical research. The UNHRC however found the law to be consistent with the ICCPR. Specifically, the law was found to satisfy the three conditions required for a law to restrict speech under Article 19(3) of the ICCPR, namely, that it must be prescribed by law, must be in pursuance of one of the aims of Article 19(3)(a) and (b), and that the restriction was necessary to achieve this purpose.

³⁴ Robert Faurisson v. France, Communication no. 550/1993, CCPR/C/58/D/550/1993 (UN Human Rights Committee, 1996).

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CHAPTER III: CRITICAL ANALYSIS OF SHREYA SINGHAL VS.

UNION OF INDIA (2015) 5 SCC 1:

III.I THE FACTUAL MATRIX OF THE CASE³⁵:

On the night of 17th November, 2012, one Mr. Balasaheb Thackeray who is a resident of the State and the founder of the political party, Shiv Sena, which is the most prominent political party in the State of Maharashtra, died as the result of a cardiac arrest. Mr. Thackeray was a well-reputed political leader with many followers across the demography. To honour his death, his followers called for a bandh, to pay their respects and mourn his loss. However, one Shaheen Dhada posted a status on Facebook voicing her dissatisfaction, which reads as “*With all respect, every day, thousands of people die, but still the world moves on. Just due to one politician died a natural death, everyone just goes bonkers... Respect is earned, given, and definitely not forced. Today Mumbai shuts down due to fear, not due to respect (sic)*”. This status was liked by one Renu Srinivasan of Palgarh. Subsequently, on 19th November 2012, they were arrested under S.66A of the Information Technology Act, 2002. Although they were released later, this matter attracted widespread protest from the public. The main allegation was misuse of power of the police by invoking S.66A of the Act. Human Rights Commission had awarded each with a compensation of Rs. 50,000 and directed the State Government of Maharashtra to pay the same. Aggrieved by the same, one Ms. Shreya Singhal, a young and public-spirited 2nd year student of a law college, via filing a writ petition dated 29th November 2012 before the Hon’ble Supreme Court which is highest court of India, challenged the constitutional validity of S. 66A, S.69A, S. 79(3)(b) of the Act, Rr. 3-10,14 and 16 of Information Technology (Procedure and Safeguards for Blocking for Access to Information by Public) Rules 2009, and Rr.3(2) & (4) of Information Technology (Intermediary Guidelines) Rules, 2011 and S.118(d) of the Kerala Police Act. The writ petition was accepted and clubbed with other petitions with same grievance by the Hon’ble Supreme Court, and upon an application filed by Ms. Jaya Vindhyalaya, an interim order dated 16th May 2013 was passed by the Hon’ble Supreme Court during the pendency of the final judgement. The same was for compulsory compliance of the

³⁵ Shreya Singhal v. Union of India (2015) 5 SCC 1.

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advisory issued dated 9th January 2013, by the Central Government via the Department of Electronics and Information Technology, with an immediate effect, to the State Governments and the Union Territories of India, for not making any arrest under Section 66A without approval of the senior police officer, not below the rank of Deputy Commissioner of Police or Superintendent of Police at the district level. The final hearing was made on 24th March 2015.

III.II RATIO AND RATIONALE OF THE JUDGEMENT IN RELATION TO HATE SPEECH:

the court declared section 66 A of the Information Technology Act invalid as it did not establish any proximate relationship between the restriction and the act. It was opined that:

.... *“the nexus between the message and action that may be taken based on the message is conspicuously absent – there is no ingredient in this offence of inciting anybody to do anything which a reasonable man would then say would have the tendency of being an immediate threat to public safety or tranquility. The court further in this case differentiated between discussion and advocacy from incitement and held that the first two was the essence of article 19(1). Expression could only be restricted when discussion and advocacy amounted to incitement”*

CHAPTER IV: CONCLUSION:

The relation between free speech and hate speech is quite complex, free speech plays an important role in the growth of any democracy, as free speech facilitates exchange of ideas which can help in decision making process and is also necessary in the enjoyment of the liberty but nowadays hate speech has become a tool to get publicity which in turn has posed threat to free speech. History of acquittal and conviction under Hate Speech laws reveal that people who were arrested, tried and convicted were commoners means middle class educated people who were cartoonist, authors, publishers etc. but not politicians. Our constitution guarantees equality before law under article 14 therefore, there should not be any discrimination in execution of penal laws. We hardly have witnessed conviction of any political figure for hate speech. If it would have been made possible by our prosecution, then we would have witnessed a lesser number of cases of hate speech. Such kind of non-observance or improper enforcement of laws promotes hate speeches and it also somewhere influences the young minds.