

Hate Speech Against Disabled Persons: A Forensic Analysis of Legal Framework in India and Beyond

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Abstract

Hate Speech is a social menace. Disability hate speech is nothing but hatred perpetuated against any disabled person. It is prevalent offline as well as on the virtual platform. Despite the legal provisions against hate speech, instances of hate speech are increasing rapidly.

There are many developed countries such as the US, UK or Australia that have specialized laws and machinery at place to regulate speech towards the persons with disabilities. However, India lags behind in framing policies or enacting laws, be it protecting the interest of disabled persons against hate speech or hate crime perpetuated against them.

Amidst pandemic, discrimination and untold miseries faced by disabled individuals mount day by day, in real world as well as virtual world. In these challenging times, there is a need to check as to what are the laws in India that protect people with disabilities against hate speech. There is a need to analyze in a forensic perspective the remedies available for the victimized individuals with disability. This research paper further put forth various suggestions and means to improve protection of such persons with disabilities.

Keywords: *Disability, Disabled Persons, Discrimination, Hate Crime, Hate Speech*

Introduction

“My advice to other disabled people would be, concentrate on things your disability doesn’t prevent you doing well, and don’t regret the things it interferes with. Don’t be disabled in spirit as well as physically.”

– Stephen Hawking

Any living species across the globe that we live suffers from mental or physical disabilities, in form or the other. However, intellect of human beings is capable enough to identify and protect the concerns of persons with disabilities. Apart from providing those devices, gadgets, instrumental supports and mechanical aid to cover their day-to-day activities, ambitions and passions, their disability often poses bullying, hatred and discrimination in the society.

Hatred is a universal phenomenon. Countries like US or the UK have already enacted comprehensive laws to protect persons with disabilities against hatred, bullying or discrimination. There are notable international frameworks to protect disability hate

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speech. However, India being a developing country, it lacks concrete statutory provisions to counter the menace of hate speech against disabled persons.

Materials and Method

This research paper is based on doctrinal study. The authors relied on several books and online sources, analyzing and interpreting them.

Discussion

What is Disability Hate Crime?

Article 2 of the United Nations Convention on Rights of Persons with Disabilities^[1] (CRPD) defines the term ‘discrimination on the basis of disability’ as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, or an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”.

Hate crime is defined as an offence in which the victim is targeted because of the actual or perceived race, color, religion, disability, sexual orientation, or national origin of that victim.^[2] According to Hate Crime Statistics Act 1990, hate crime is an offence that manifests evidence of prejudice based on race, religion, disability, sexual orientation or ethnicity. The European Network on Independent Living recommends Disability Hate Crime as someone commits a crime that is motivated by hostility or prejudice, because the victim is a disabled person or is perceived to be disabled.^[3]

In India, there is no legal definition for disability hate crime but it is considered as an offence in the Indian Penal Code (IPC). In a nut shell, disability hate crime is a form of hate crime involving the use of violence against people with disabilities.

Defining Hate Speech

Broadly speaking, hate speech is an offshoot of hate crimes. 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’. What is derogatory or not is an ongoing debate not only in India, but also across the globe.

The right to freedom of speech and expression doesn’t include the freedom to insult someone or disrespect a community on the basis of caste, religion, race, region, gender, disability, place of birth or language. Although there is no uniform definition of hate speech across the globe, hate speech creates a widening divide among the public.

International Legal Framework

The United Nations Convention on the Rights of Persons with Disabilities, 2006^[4] is the predominant initiative for protecting persons with disabilities from hate crimes. Article 15 of the Convention deals with freedom from torture or cruel, inhuman or degrading treatment or punishment. It gives state parties to enact legislations or administrative and judicial measures to ensure equal rights of disabled persons and protection from hatred. Further Article 16 deals with freedom from exploitation, violence and abuse. Through this Article, the convention provides for rehabilitation programmes, psychological recovery and social reintegration. It also focuses to craft child – focused and women-focused laws and policies.

Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2007^[4] is the document running on parallel to the Convention. The protocol recognizes the competence of the Committee on Rights of the Persons with Disabilities to receive and consider communications from and on behalf of individuals or groups subject to its jurisdiction who are the claimants as victims of a violation by that state party of the provisions of this Convention^[5]. The Committee shall not receive if the party is

not a signatory to the protocol. Further, Article 2 deals with admissibility of the communication and identifies anonymous communication; incompatible communication, non-exhaustion of domestic remedies, ill-founded and communication prior to the protocol are inadmissible.

The Charter of Fundamental Rights of the European Union, 2000 prohibits discrimination based on racism, xenophobia, religious intolerance or person's disability, sexual orientation or gender identity. Article 21 confirms the same. Article 26 deals with integration of persons with disabilities wherein it is stated that the European Union recognizes and respects the right of the persons with disabilities to benefits from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.^[6]

The United Kingdom the Public Order Act, 1986^[7] prohibit discrimination of class and spread of hatred based on color, sex, nationality, citizenship, disability etc. The liability for the same was inserted under Section 4A which says summary conviction to imprisonment for term not exceeding six months or fine not exceeding level five standard scale or to both.

Unfortunately, United States don't have a specific legislation regulating hate speeches. But Justice Samuel in the case of *United States v. Schwimmer* [279 U.S. 644 (1929)] held that: "Speech that demeans on the basis of ethnicity, gender, religion, age, disability is hate speech. Or any other similar ground is hateful; but the proudest boast of our hate speech jurisprudence is that we protect freedom of press "the thought that we hate"". Further, in the case of *Matal v. Tam* [582 U.S. (2017)], Justice Anthony Kennedy observed: "A law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all. The First Amendment does not entrust that power to the government's benevolence. Instead, our reliance must be on the substantial safeguards of free and open discussion in a democratic society".

When it comes to Australia, it has enacted the Tasmania's Anti-Discrimination Act, 1998^[8] which prohibits anyone from inciting hatred. Article 19 states that: "A person, by a public act, must not incite hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons on the ground of – (a) the race of the person or any member of the group; or (b) any disability of the person or any member of the group; or (c) the sexual orientation or lawful sexual activity of the person or any member of the group; or (d) the religious belief or affiliation or religious activity of the person or any member of the group." Besides, Victoria of Australia enacted Racial and Religious Tolerance Act, 2001 wherein Section 8 (1) states: "A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.

In South Africa, a similar provision has been incorporated in its penal books. Section 10 (1) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000^[9] reads: "No person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to be hurtful, be harmful or to incite harm, promote or propagate hatred. The "prohibited grounds" include race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

Indian Legal Framework

As per Census 2011, out of 121 crores total population, 2.68 crores persons are physically disabled; which means 2.21 percent of Indian Population is physically disabled.^[10] As per United Nations Disability and Development Report 2018, India is the third last country that spends on social programmes for persons with disabilities as a percentage of GDP out of 56 countries.^[10] The data

was collected in 2014 for the purpose. The percentage population of disabled persons shows the need of protection against hate speech.

One of the comprehensive legislations in India for protecting the rights and interests of disabled persons is The Rights of Persons with Disabilities Act, 2016.^[11] Section 3 of the said Act deals with equality and non-discrimination of disabled persons. Section 4 deals with the women and children with disabilities. Further, Section 6 provides for protection from cruelty and inhuman treatment to the disabled persons. In addition to it, protection from abuse, violence and exploitation is taken care in Section 7 of the said Act. It is pertinent to note that, unfortunately, the entire statute is silent about the hate speech against the disabled persons.

Hate speech is spreading of hatred against a particular individual or a class thereby causing defamation. Article 19 (2) of the Constitution ^[12] restricts the freedom of speech and expression. By virtue of the said provision, freedom is restricted where there is involvement of defamation or incitement to an offence. In addition, this Article shall be read with Article 15 of the Constitution of India that prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth.^[12] The provision states that disabled persons shall not be restricted from entering places and enjoying.

Extending the protection granted by the existing legal framework in India, the Law Commission of India in its report ^[13] titled 'Hate Speech' recommended certain changes in Section 153 of Indian Penal Code (IPC). It suggested the Criminal Law (Amendment) Act, 2017. It proposed an amendment in Section 153C which deals with prohibiting incitement to hatred on grounds of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe. The said Section protects disabled persons from hate speech and imposes punishment for committing hatred. The punishment involves imprisonment of either

description for a term which may extend to two years and fine up to ₹5000 or with both. It is recognized as cognizable and non-bailable offence and is tried before the Judicial Magistrate of First Class.

Although Section 66A of the Information Technology Act, 2000^[14] was enacted to regulate spreading offensive messages having nature of enmity, hatred, ill-will etc., this Section was held unconstitutional in the case of *Shreya Singhal v. Union of India* [(2013) 12 SCC 73] by the Hon'ble Supreme Court. Thus, in succinct, there is a legal hiatus prevailing when it comes to laws to protect disabled persons against hate speech in the cyberspace.

Suggestions

In comparison with the legal framework and the judicial interpretation of other countries, the legal framework in India is weak to protect the persons with disabilities against hate speeches. Following suggestions are drawn to protect persons with disabilities against hate speech:

- a. An exclusive legislation shall be enacted dealing the entire subject related to hate speeches against persons with disabilities.
- b. There is a great requirement of organizing awareness programmes right from school level to post graduation level, from village to metro cities, and from small work places to large corporate offices.
- c. Heavy penal sanction for propagating hatred against handicapped shall act as a reformatory measure, so that society will reform.

Conclusion

Passion and ambition never suffer from disabilities, so do the persons with disabilities. The only challenging part is their acceptance by the society, at work place or at their own house. Disability poses a hindrance only when others spread hatred and non welcoming to the person with disability and hence need comprehensive law to able others to

accept and stop hatred to the persons with disabilities. While at the international sphere, there are several laws to regulate member countries. Many countries have strong legislative framework whereas others have strong judicial interpretation. However, when it comes to India, the legal framework lacks appropriate legislation and interpretation.

As already 2.21 percent of India's total population consists of persons with disabilities and there is no proper legal framework to protect and integrate them in the real and virtual platform. It is high time to realize that the country has no specific legislation that covers entire aspect of persons with disabilities.

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