

Report for Webinar

Fake News and Hate Speech- Consequences and recourse to Legal Remedies

17.05.2020(3.00 P.M)

1, The first speaker **Adv Nasir Aziz, from Nasir Aziz &Co, Advocates and Consultants** spoke on Law to deal with hate speech and fake news.

The speaker said it is the most relevant subject of the day because of its implications on the civil society today. Every common man should be aware of the law that deals with hate speech. Unfortunately, there is no one definition of the hate speech in the entire legal spectrum. The problem with defining hate speech is that it is a sacrosanct act given by the constitution defended under Article 19(1) and (2). Any definition given to hate speech may restrict or may be inimical to the freedom of speech. That is why find any specific definition of hate speech. But there are enough laws in the statutes which deal with such a scenario. The laws and the sections are discussed individually.

Beginning with Section 153(a) of IPC which is the most encompassing and appropriate law dealing with the menace of fake speech.

153 (a) deals with promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. —We have to interpret the provisions contained in this enactment.

The speakers said there is no definition what constitutes hate speech. We have endless example in politics and media, perhaps the recently held elections in Delhi are a suitable example. In this election, political parties built a narrative that suited them and that narrative propagated a kind of polarising atmosphere in the country. One particular narrative was 'goli maro' and it actually followed thereafter. A young man barged the Jamia protests with a gun and came in conflict with law. He further added that what comprises hate speech has to be discerned from the speech itself. What can be termed as offensive to some people cannot be defined as hate speech. Hate speech as the courts have held promotes enmity between class of people between religious groups and it endangers peace and tranquility between communities. This can be brought in the provisions contained in the 153(a).

The speaker discussed **153(b), 153B**. Imputations, assertions prejudicial to national-integration. —

(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

This makes it clear as caste inclusive and print media, social media or any other visible representations.

The speaker also referred to the recommendation of law commission whereby it had recommended insertion of 153(c) in IPC and that talked of prohibiting incitement to hatred. That means the law commission was convinced that hate speech was being used electorally. Unfortunately, this recommendation has not been acted upon. In the aftermath of Tablighi instance posted fake news being floated through social media, through print media. The problem with fake news is once its promoted through social media, one cannot arrest its after effects. It is very important for government to take an action on this and take recommendations of law commission seriously. So that this may be taken care of.

Certain other sections which take care of such provisions were also discussed.

Next is **295(a)** of IPC: Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [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 4[three years], or with fine, or with both.]

This section deals with something which is deliberate, malicious and intended to outrage religion or religious beliefs. We can bring to bring perpetrators, in lot of cases media has resorted to hate speech.

Section 298 also denotes uttering words, etc., with deliberate intent to wound the religious feelings of any person. Here there is a restriction, since it deals with an individual—Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places, any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The last section discussed is **Section 505- regarding** statements conducing to public mischief.

(1)] Whoever makes, publishes or circulates any statement, rumour or report,—
(a) with intent to cause, or which is likely to cause, any officer, soldier, 3[sailor or airman] in the Army, 4[Navy or Air Force] 5[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 6[three years], or with fine, or with both.

The speaker noted that this deals with fake news also, in the beginning it uses particular words- rumour and report. .Fake news also refers to rumours and is confused with news which is not there. Fake news is news which was there at all or news which was presented as something else. Taking example of a case where particular community was doing something with utensils claiming that it is done to spread COVID19.Though the video was correct but brought at a time where it was used for something it was not intended to. Fake news is peddled as something else.

Here again the law commission also suggested about 505(a) to be inserted for causing alarm and provocation in certain cases. Certain amendments are to be made to bring in its purview hate speech and fake news.

He added that Section 8 of Representation of People Act deals with election process in the country and political parties have tried to build a narrative of polarisation before elections. In order to arrest this phenomenon the recommendations of law commission should be accepted and government must act pro-actively.

2, Speaker 2 Advocate Feroze Ghazi, Advocate-Secretary General of South Asian Minorities Lawyers Association spoke on Media(Electronic and Print)-A tool for producing hateful contents to malign the image on Indian Muslims

The speaker highlighted that Media is not performing its duty. They are violating ethos and principles of journalism. They have become tools of oppressors. Media is destroying what it is sought to protect. Civil society was responsible to convert this pandemic into opportunity. Electronic and print media were after the Muslim minorities and instigated public. Muslims were boycotted and even calls for genocide were made.

Some members of civil society took important steps also. The communalisation of pandemic was critiqued by USA , OIC etc. The forces of hate will end ultimately because wrong cannot go for long. We need a strategy to fight these anti-minority forces. We would be actually resisting for the sake of nation.

Media accused Tablighi jamaat for COVID 19, but not reports are proving quite the contrary. Keeping our faith in constitution, we should believe in Satyamev Jayte.

3, Speaker 3 Advocate Ishtiaq Ali, Co-founder Orbit Law Services spoke on Peddling fake and hatred is not freedom of speech.

Speaker noted that hatred, fake news is treated as offence and sin. It's not just problem of India. It's a problem everywhere. As far as Indian constitution is concerned, fake news is not freedom of speech. Article 19 a and 19 b create restriction also.

The speaker said that at the same time fake news and hate speech are not new phenomenon. The issue is of selling the fake news which is done by politically and economically powerful people. They are achieving their political and economic goals.

The speaker also focussed on curbing the fake issue is not an issue only in India but in lot of countries. He emphasised on how to control disinformation, misinformation whereby the whole nation is being affected. Then again there is cyber security and regulators. However what is missing is the intention to curb this menace. There was a guideline for journalists and channels brought in April 2018 which stated that licenses for channels would be cancelled if they continue to peddle fake news. However, it was rolled back.

Defamation bill also existed but was rolled back during Rajiv Gandhi's time.

Speaker insisted that the approach of filling FIR's is not all encompassing, intentions are important. Minorities have to operate within restrictions and cannot further spoil relations with the majority community. We have limitations to react within this framework.

Countries like China have set up commissions to manage, organise fake news. They take suo-moto cognitions. We should be able to build up the dialogue, get retired people from judiciary on board to form independent commissions. It is difficult to control through police authority and who will implement the court judgements.

4, Dr Farukh Khan, Advocate managing partner at Diwan Associates spoke on Hate Mongering on Social Media-Challenges and Remedies.

There exists a fine line between right to freedom of speech and right to insult, when this expression is deliberately used to demean a particular community it has to be legally dealt with. The speaker quoted Research of Rand Corporation and difference between the fake news and hate news was made. He discussed how governments create a structure of fake news.

He specifically made a point about reporting fake news/hate speech, implying that if one sees any hate/fake news one should report it to respective platforms. With the growing unemployment youth is being used to pelt hatred.

Secondly, he warned against overreacting. A person with 20 followers may choose to write something hateful on twitter, in turn people react and amplify it. The moment we stop reacting the news dies down. Giving example of Mr Kapil Mishra when he was an MLA with AAP he chose to raise a serious allegation against our prime minister in the assembly. Everywhere he marketed himself as secular. Due to some infighting he was thrown away from AAP. He wanted to get into BJP so started creating a narrative against Muslims. In reaction Muslims started making reactions and made a leader out of him. Other example could be Mr Sanjay Nirupam's behaviour when he was in Shiv Sena and when out of Shiv Sena.

The speaker said don't ignore everyone. One should ignore those who have no identity on social media (fake id's). But do not stop calling out people like journalists. Every one of us can verify fake news and thereafter file a case in their own city. One should not rush to supreme court, high court, rather cases should be filed in lower courts. If it is a good case it will get results, and sometimes trial is more testing than conviction.

The speaker also said that we must not yield to hate mongering because our opponents have a grounded structure. The government always creates a counter narrative to engage people. We must join hands across the cities and internally coordinate against the fake news/hate speech.

5, Advocate Tahir-Owner Axis Law firm spoke on Procedure and Jurisdiction in Cyber Crimes

Hate speech is creating hate against another person. The person making hate speech addresses his own community to instigate against the other. Conventionally jurisdiction in criminal cases exists. But cybercrime is not geographically specific. When a news for example is created in New Delhi and its read in Bangalore; Bangalore becomes the jurisdiction.

In criminal cases a complaint is made under section 154, in jurisdiction police station. Suppose there is no reaction, DCP level officer can be reached under section 154(3) to register a complaint. If this doesn't help the next course is appealing the PCR under sec 200. There has to be a proceeding before directly appealing the magistrate. Section 153 and 295a, section 154 and 154(3) procedure has to be complied.

Another section 153 and 295(a) are peculiar sections. There is a bar of cognizance, without the sanction of state government or appropriate government; government permission is important. Usually cases don't stand in 153(a), 295(a). The better strategy is going through section 505

Questions

Q, If someone promotes enmity across caste lines or within the caste, can it be covered by IPC?(Retd IAS)

Ans: Yes because the definition is all encompassing-clearly saying on grounds of religion,race,place of birth

Q, What actions can be taken against the atrocities committed by police? (Muhamad Muzaffar Hyderabad)

Ans: Recorded videos of police atrocities can be used to file a PIL. Previously several directions have been received where police accepted the ruthlessness and amongst many other recommendations that came up , was a direction to police for not carrying the lathi. And apart from these common laws are always there. One can approach High Court through PIL too.

Q, Tv 9 channel mobilised an image of CORONA terrorist against Maulana Saad? How can this be combatted?

Ans: There is a clear action regarding this case, as this insults a person after maligning the reality. Tahir sahib already told us about the procedure of getting complaint lodged. Secondly Saad Sahib is a respectable leader of a group and hence the emotions/sentiments of a group have been hurt. His followers have the locus standi of taking the case up both civil and criminal.

Then there are legal entities constituted by law. For example, fake news in case of Maulana Saad is violation of Press Council of India Act too. The person has violated IPC and violated Press Council of India Act too.

Q, What if the system is not ready to take a complaint?

A, Approaching Senior Super-intendent of police through 153(a). Secondly a complaint could be filed in same police station against the police under 153(a). Subsequently both cases could be taken to magistrate.

Closing Remarks-Sheeba Aslam Fehmi

The reporting may not yield reports immediately. One has to approach the independent and civil society and document the cases. The holocaust perpetrators were booked for years. We have to be hopeful