

**(2014) 11 Supreme Court Cases 477 : (2014) 3 Supreme Court Cases (Cri) 400 : 2014 SCC OnLine SC 221**

**In the Supreme Court of India**

(BEFORE DR B.S. CHAUHAN, M.Y. EQBAL AND DR A.K. SIKRI, JJ.)

PRAVASI BHALAI SANGATHAN . . Petitioner;

*Versus*


UNION OF INDIA AND OTHERS . . Respondents.

Writ Petition (C) No. 157 of 2013<sup>+</sup>, decided on March 12, 2014

**A. Constitution of India — Arts. 32, 226, 51-A, 19(1)(a) & (2) and Preamble — Exercise of power by Supreme Court under Art. 32 — Issue of directions, guidelines or orders — Existence of prior law in the field/subject/situation concerned — Effect of — Hate speech — Directions sought for regulation of — Held, though Court cannot legislate a law and has power only to enforce the existing laws, but where there is absence of law to deal with a particular situation it may issue directions/guidelines to govern that situation till a proper legislation is enacted to cover that field — Furthermore, judicial power is subject to principles of judicial restraint — It should not be exercised to pass any judicially unmanageable order/direction which is incapable of enforcement/execution**

**— In present case, writ petition filed under Art. 32 seeking issuance of certain directions/guidelines by Supreme Court as remedial measures to curb the menace of hate speeches made by people's representatives or political/**

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religious leaders on basis of religion, caste, region, race, place of birth, etc. — Various statutory provisions already existing and providing sufficient and effective remedy to curb the said menace — Issuance of directions as prayed herein would tantamount to legislation — Furthermore, reliefs sought herein are also incapable of implementation — Hence, instant writ petition, held, could not be entertained — However, direction issued to all the law enforcing agencies to ensure effective regulation of “hate speeches” at all levels by enforcement of existing law in respect thereof — Penal Code, 1860 — Ss. 124-A, 153-A, 153-B, 295-A, 298, 505(1) and 505(2) — Representation of the People Act, 1951 — Ss. 8, 123(3-A) and 125 — Information Technology Act, 2000 — Ss. 66-A, 69 and 69-A — Information Technology (Intermediaries Guidelines) Rules, 2011 — Rr. 3(2)(b) and 3(2)(i) — Criminal Procedure Code, 1973 — Ss. 95, 107, 144, 151 and 160 — Unlawful

Activities (Prevention) Act, 1967 — Ss. 2(f), 10, 11 and 12 — Protection of Civil Rights Act, 1955 — S. 7(1)(c) — Religious Institutions (Prevention of Misuse) Act, 1988 — Ss. 3 and 6 — Cable Television Networks (Regulation) Act, 1995 — Ss. 5, 6, 11, 12, 16, 17, 19 and 20 — Cable Television Networks Rules, 1994 — Rr. 6 and 7 — Cinematograph Act, 1952 — Ss. 4, 5-B and 7 — International Covenant on Civil and Political Rights, 1966 — Art. 20(2) — International Convention on the Elimination of All Forms of Racial Discrimination, 1965 — Arts. 4 and 6 — Doctrines and Maxims — *Salus reipublicae suprema lex* (the safety of the state is the supreme law) — Human and Civil Rights — Right to Freedom of speech and Expression — Hate speech — Regulation of

**(Paras 20 to 28)**

*King Emperor v. Khwaja Nazir Ahmad*, (1943-44) 71 IA 203 : (1945) 58 LW 57 : AIR 1945 PC 18; *Beauharnais v. Illinois*, 96 L Ed 919 : 343 US 250 (1952); *Brandenburg v. Ohio*, 23 L Ed 2d 430 : 395 US 444 (1969); *R.A.V. v. City of St. Paul*, 120 L Ed 2d 305 : 112 S Ct 2538 : 505 US 377 (1992), *relied on*

*Aravali Golf Club v. Chander Hass*, (2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289; *Common Cause v. Union of India*, (2008) 5 SCC 511; *Nand Kishore v. State of Punjab*, (1995) 6 SCC 614 : 1996 SCC (L&S) 57 : (1995) 31 ATC 787; *State of U.P. v. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti*, (2008) 12 SCC 675 : (2009) 1 SCC (L&S) 237; *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426; *Akhilesh Yadav v. Vishwanath Chaturvedi*, (2013) 2 SCC 1 : (2013) 1 SCC (Civ) 881 : (2013) 1 SCC (Cri) 788 : (2013) 1 SCC (L&S) 371, *affirmed*

*S.P. Gupta v. Union of India*, 1981 Supp SCC 87; *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 : 1984 SCC (L&S) 389; *Union of India v. Deoki Nandan Aggarwal*, 1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219; *Supreme Court Advocates-on-Record Assn. v. Union of India*, (1993) 4 SCC 441; *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932; *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955 : (1962) 2 Cri LJ 103; *Ramji Lal Modi v. State of U.P.*, AIR 1957 SC 620 : 1957 Cri LJ 1006, *considered*

**B. Constitution of India — Arts. 324, 19 and 32 and Preamble — Election Commission of India — Powers of — Scope of — Whether Election Commission should be conferred power to derecognise a political party or disqualify its members if that party or its members commit the offence of delivering “hate speeches” on basis of religion, caste, region, race, etc. — Said matter already under consideration by Law Commission of India — In view thereof, Law Commission requested to examine the issues raised herein thoroughly and also to define the expression “hate speech” and make**

recommendations to Parliament to strengthen the Election Commission to curb the menace of "hate speeches" irrespective of whenever made — Representation of the People Act, 1951 — Ss. 29-A(5), 123(3), 8, 123(3-A) and 125

**(Para 29)**

*Public Interest Litigation v. Union of India*, WP (C) No. 536 of 2011, order dated 16-12-2013 (SC), *cited*

**C. Human and Civil Rights — Human Rights Commission — National Human Rights Commission — Powers of — Scope — Hate speeches made on basis of religion, caste, region, etc. — Initiation of suo motu proceedings against alleged authors of — Power of National Human Rights Commission in respect of — Availability — Held, is available — Criminal Procedure Code, 1973 — S. 154 — Protection of Human Rights Act, 1993, Ss. 12, 13, 14 and 29**

**(Para 28)**

**D. Words and Phrases — "Hate speech" — Meaning of — Tests to determine — Indicated — Constitution of India — Arts. 19(1)(a) & (2) and Preamble — Penal Code, 1860 — Ss. 124-A, 153-A, 153-B, 295-A, 298, 505(1) and 505(2) — Representation of the People Act, 1951 — Ss. 8, 123 (3-A) and 125 — Criminal Procedure Code, 1973 — Ss. 95, 107, 144, 151 and 160 — International Covenant on Civil and Political Rights, 1966 — Art. 20(2) — International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Arts. 4 and 6**

*Held :*

"Hate speech" is an effort to marginalise individuals based on their membership in a group. Using expression that exposes the group to hatred, hate speech seeks to delegitimise group members in the eyes of the majority, reducing their social standing and acceptance within society. Hate speech, therefore, rises beyond causing distress to individual group members. It can have a societal impact. Hate speech lays the groundwork for later, broad attacks on vulnerable that can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide. Hate speech also impacts a protected group's ability to respond to the substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy.

**(Para 8)**

The Supreme Court of Canada in *Saskatchewan*, 2013 SCC 11 (Can SC), succeeded in bringing out the human rights obligations leading to control on publication of "hate speeches" for protection of human rights defining the expression "hate speech" observing that the definition of "hatred" set out in *Canada*, (1990) 3 SCR 892 (Can SC), with some modifications, provides a workable approach to interpreting the word "hatred" as is used in legislative provisions prohibiting hate speech. Three main prescriptions must be followed. *First*,



the courts must apply the hate speech prohibition objectively. The question courts must ask is whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred. *Second*, the legislative term "hatred" or "hatred or contempt" must be interpreted as being restricted to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimation and rejection that risks causing discrimination or other harmful effects. *Third*, the tribunals must focus their analysis on the effect

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of the expression at issue, namely, whether it is likely to expose the targeted person or group to hatred by others. The repugnancy of the ideas being expressed is not sufficient to justify restricting the expression, and whether or not the author of the expression intended to incite hatred or discriminatory treatment is irrelevant. The key is to determine the likely effect of the expression on its audience, keeping in mind the legislative objectives to reduce or eliminate discrimination.

(Para 7)

*Ramesh v. Union of India*, (1988) 1 SCC 668 : 1988 SCC (Cri) 266, *affirmed*

*Saskatchewan (Human Rights Commission) v. Whatcott*, (2013) 1 SCR 467 : 2013 SCC 11 (Can SC); *Canada (Human Rights Commission) v. Taylor*, (1990) 3 SCR 892 (Can SC), *considered*

*Black's Law Dictionary*, 9th Edn., *referred to*

W-D/53038/SR

Advocates who appeared in this case:

Mohan Jain and Sidharth Luthra, Additional Solicitors General, Raj Singh Rana, Ajay Bansal, Manjit Singh, Gaurav Bhatia and Suryanarayana Singh, Additional Advocates General, Basava Prabhu Patil and B.H. Marlapalle, Senior Advocates [Ravi Chandra Prakash, Purushottam Sharma Tripathi, Ms Filza Moonis, Mukesh Kr. Singh, B. Subramanaya Prasad, L.N. Dharam Sharma, Durgadutt, Sanjeep Panigrahi, Luv Kumar, Narendra Kr. Goyal, Soumitra G. Chaudhuri, Anip Sachthey, Avijit Bhattacharjee, Gopal Singh, Ritu Raj Biswas, K.N. Madhusoodhanan, T.G. Narayanan Nair, Ms Aruna Mathur, Yusuf Khan (for M/s Arputham, Aruna & Co.), Ms Kirti Renu Mishra, Ms Apurva Upmanyu, Ms Asha Gopalan Nair, Abhishek Kr. Pandey, Jayesh Gaurav, Gopal Prasad, Ms Krishan Sarma, Navnit Kumar (for M/s Corporate Law Group), S.S. Shamsbery, Bharat Sood, Varun Punia, Sandeep Singh, Ritesh Prakash Yadav, Harshvardhan Singh Rathore, Amit Sharma, Ms Ruchi Kohli, C.D. Singh, Apoorv Kurup, Ms Sakshi Kakkar, Kuldip Singh,

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2. (2013) 1 SCR 467 : 2013 SCC 11 (Can SC), *Saskatchewan (Human Rights Commission) v. Whatcott* 484g-h
3. WP (C) No. 536 of 2011, order dated 16-12-2013 (SC), *Public Interest Litigation v. Union of India* 483g-h
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12. 120 L Ed 2d 305 : 112 S Ct 2538 : 505 US 377 (1992), *R.A.V. v. City of St. Paul* 490a
13. (1990) 3 SCR 892 (Can SC), *Canada (Human Rights Commission) v. Taylor* 485a
14. (1988) 1 SCC 668 : 1988 SCC (Cri) 266, *Ramesh v. Union of India* 485g
15. (1984) 3 SCC 161 : 1984 SCC (L&S) 389, *Bandhua Mukti Morcha v. Union of India* 488e-f
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20. 96 L Ed 919 : 343 US 250 (1952), *Beauharnais v. Illinois*

490a

21. (1943-44) 71 IA 203 : (1945) 58 LW 57 : AIR 1945 PC 18, *King Emperor v. Khwaja Nazir Ahmad*

489e-f

The Judgment of the Court was delivered by

**DR B.S. CHAUHAN, J.**— The instant writ petition has been preferred by an organisation dedicated to the welfare of inter-State migrants in the nature of public interest seeking exercise of this Court's extraordinary jurisdiction under Article 32 of the Constitution of India to remedy the concerns that have arisen because of "hate speeches" through the following prayers:

"(a) Issue appropriate writ, order, decree in the nature of mandamus declaring hate/derogatory speeches made by people representatives/political/religious leaders on religion, caste, region and ethnic lines are violative of Articles 14 (equality before law), 15 (prohibition of discrimination on grounds of religion, race, caste or place of birth), 16 (equality in matters of public employment), 19 (protection of certain rights regarding freedom of speech, etc.), 21 (protection of life and personal liberty) of fundamental rights read with Article 38 of the directive principles of State policy and fundamental duties under Articles 51-A(a), (b), (c), (e), (f), (i) and (j) of the Constitution and merit stringent pre-emptory action on part of the Central and State Governments;

(b) Issue appropriate writ, order, decree in the nature of mandamus declaring hate/derogatory speeches made on the lines of religion, caste, race and place of birth (region) to be an act against the Union of India which undermines the unity and integrity of the country and militates against non-discrimination and fraternity;

(c) Issue appropriate writ, order, decree in the nature of mandamus declaring that "fraternity" forms part of "basic structure" of the Constitution;

(d) Issue appropriate writ, order, decree in the nature of mandamus directing mandatory suo motu registration of FIR against authors of hate/



of birth (region) by the Union and State Governments, in the alternative, constitution of a committee by the Union of India in consultation with this Court for taking cognizance of hate/derogatory speeches delivered within the territory of India with the power to recommend initiation of criminal proceeding against the authors;

(e) Issue appropriate writ, order, decree in the nature of mandamus directing mandatory imposition of "gag order" restraining the author of hate/derogatory speeches made on the lines of religion, caste, race and place of birth (region) from addressing the public anywhere within the territory of India till the disposal of the criminal proceeding initiated against him as a necessary precondition for grant of bail by the Magistrate;

(f) Issue appropriate writ, order, decree in the nature of mandamus directing speedy disposal of criminal proceedings against authors of hate/derogatory speeches made on the lines of religion, caste, race and place of birth (region) within a period of 6 months;

(g) Issue appropriate writ, order, decree in the nature of mandamus directing suspension of membership of authors of hate/derogatory speeches made on the lines of religion, caste, race and place of birth (region) from the Union/State Legislature and other elected bodies till the final disposal of the criminal proceedings;

(h) Issue appropriate writ, order, decree in the nature of mandamus directing termination of membership of authors of hate/derogatory speeches made on the lines of religion, caste, race and place of birth (region) from the Union/State Legislature and other elected bodies if found guilty;

(i) Issue appropriate writ, order, decree in the nature of mandamus directing derecognition of the political party of authors of hate/derogatory speeches made on the lines of religion, caste, race and place of birth (region) by the Election Commission of India where the author is heading the political party in exercise of power vested inter alia under Article 324 of the Constitution read with Sections 29-A(5), 123(3) of the Representation of the People Act, 1951 and Section 16-A of the Election Symbols (Reservation and Allotment) Order, 1968;

(j) Issue appropriate writ, order, decree in the nature of mandamus directing the Union of India to have concurrent jurisdiction to prosecute authors of hate/derogatory speeches in addition to the States in terms of the mandate of Articles 227, 355 read with Article 38 of the Constitution which merit stringent pre-emptory action on part of the Central Government;

(k) Issue appropriate writ, order, decree in the nature of



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mandamus directing the Union of India and respective States to enforce fundamental duties under Articles 51-A(a), (b), (c), (e), (f), (i) and (j) of the

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Constitution by taking proactive steps in promoting national integration and harmony amongst the citizens of India;

(l) Issue such other appropriate writ or direction that may be deemed to be just and equitable in the facts and circumstances of the case and in the interest of justice.”

**2.** Shri Basava Prabhu S. Patil, learned Senior Counsel appearing on behalf of the petitioner, has submitted that the reliefs sought by the petitioner are in consonance with the scheme of our Constitution as the “hate speeches” delivered by elected representatives, political and religious leaders mainly based on religion, caste, region or ethnicity militate against the constitutional idea of fraternity and violates Articles 14, 15, 19, 21 read with Article 38 of the Constitution and further is in derogation of the fundamental duties under Articles 51-A(a), (b), (c), (e), (f), (i), (j) of the Constitution and therefore warrant stringent pre-emptory action on the part of the Central and State Governments. The existing law dealing with the subject-matter is not sufficient to cope with the menace of “hate speeches”. Hate/derogatory speech has not been defined under any penal law. Accolade is given to the author of such speeches and they also get political patronage. In such fact situation, this Court cannot remain merely a silent spectator, rather has to play an important role and issue guidelines/directions in exercise of its powers under Article 142 of the Constitution which are necessary for the said purpose as the existing legal framework is not sufficient to control the menace of “hate speeches”. Therefore, this Court should grant the aforesaid reliefs.

**3.** Shri Sidharth Luthra, learned ASG; Shri Rajiv Nanda; Shri Gaurav Bhatia, learned AAG for the State of U.P.; Ms Asha Gopalan Nair; Shri Gopal Singh; Ms Ruchi Kohli; Shri C.D. Singh; and all other Standing Counsel appearing on behalf of the respective States, have submitted that there are various statutory provisions dealing with the subject-matter and the issue involved herein is a question of enforcement of the said statutory provisions and any person aggrieved can put the law into motion in such eventualities.

**4.** Shri Sidharth Luthra, learned ASG, has further submitted that the issue of decriminalisation of politics as part of electoral reforms is under consideration before this Court in Writ Petition (C) No. 536 of 2011 and

in the said matter, this Court had framed certain issues and referred the matter to the Law Commission of India to study the subject with regard to the Representation of the People Act, 1951 (hereinafter referred to as "the RP Act") and may make appropriate suggestions (report) to the Government of India vide order dated 16-12-2013<sup>1</sup> and, thus, Shri Luthra has suggested that in case there is some deficiency in law, this Court should not act as super legislature, rather make a recommendation to the Law Commission to

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undertake further study and submit its report to the Government of India for its consideration/acceptance.

**5.** Ms Meenakshi Arora, learned Senior Counsel appearing on behalf of the Election Commission of India, has submitted that there are various provisions like Sections 29-A(5) and (7) of the RP Act empowering the Commission to examine the documents filed by a political party at the time of its registration and the application so filed must be accompanied by its constitution/rules which should contain a specific provision to the effect that the association/body would bear true faith and allegiance to the Constitution of India as by law established and to the principles of socialism, secularism and democracy and that they would uphold the sovereignty, integrity and unity of India. However, it has been suggested that the Election Commission does not have the power to deregister/derecognise a political party under the RP Act once it has been registered. A registered political party is entitled to recognition as a State or national party only upon fulfilling the conditions laid down in Paras 6-A or 6-B of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as "the Symbols Order"). The Election Commission in exercise of its powers under Para 16-A of the Symbols Order can take appropriate action against a political party on its failure to observe the model code of conduct or in case the party fails to observe or follow the lawful directions and instructions of the Election Commission. The model code of conduct provides certain guidelines inter alia that no party or candidate shall indulge in any activity which may aggravate existing differences or create mutual hatred or cause tension between two different castes and communities, religious or linguistic and no political party shall make an appeal on the basis of caste or communal feelings for securing votes. It further provides that no religious place shall be used as forum for election propaganda. However, the Election Commission only has power to control hate

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speeches during the subsistence of the code of conduct and not otherwise.

**6.** The Law Commission of India has prepared a consultation paper and studied the matter further on various issues including whether the existing provisions (constitutional or statutory) relating to disqualification to contest elections need to be amended? The Law Commission had earlier in its 1998 recommendations emphasised on the need to strengthen the provision relating to disqualification and in view thereof, it has been submitted by Ms Arora that it is only for the legislature to amend the law and empower the Election Commission to perform a balancing act in following the mandate of the relevant constitutional and statutory provisions.

**7.** The Supreme Court of Canada in *Saskatchewan (Human Rights Commission) v. Whatcott*<sup>2</sup>, succeeded in bringing out the "human rights" obligations leading to control on publication of "hate speeches" for protection of human rights defining the expression "hate speech" observing

that the definition of "hatred" set out in *Canada (Human Rights Commission) v. Taylor*<sup>3</sup>, with some modifications, provides a workable approach to interpreting the word "hatred" as is used in legislative provisions prohibiting hate speech. Three main prescriptions must be followed. *First*, the courts must apply the hate speech prohibition objectively. The question courts must ask is whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred. *Second*, the legislative term "hatred" or "hatred or contempt" must be interpreted as being restricted to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimation and rejection that risks causing discrimination or other harmful effects. *Third*, the tribunals must focus their analysis on the effect of the expression at issue, namely, whether it is likely to expose the targeted person or group to hatred by others. The repugnancy of the ideas being expressed is not sufficient to justify restricting the expression, and whether or not the author of the expression intended to incite hatred or discriminatory treatment is irrelevant. The key is to determine the likely effect of the expression on its audience, keeping in mind the legislative objectives to reduce or eliminate discrimination.



**8.** Hate speech is an effort to marginalise individuals based on their membership in a group. Using expression that exposes the group to hatred, hate speech seeks to delegitimise group members in the eyes of the majority, reducing their social standing and acceptance within society. Hate speech, therefore, rises beyond causing distress to individual group members. It can have a societal impact. Hate speech lays the groundwork for later, broad attacks on vulnerable that can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide. Hate speech also impacts a protected group's ability to respond to the substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy.

**9.** *Black's Law Dictionary*, 9th Edn. defines the expression "hate speech" as under:

*"hate speech.*—Speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence."

**10.** In *Ramesh v. Union of India*<sup>4</sup>, while dealing with the subject, this Court observed : (SCC p. 676, para 13)

"13. ... that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view."

**11.** Given such disastrous consequences of hate speeches, the Indian legal framework has enacted several statutory provisions dealing with the subject which are referred to as under:

<i>Sl. No.</i>	<i>Statute</i>	<i>Provisions</i>
1.	Penal Code, 1860	Sections 124-A, 153-A, 153-B, 295-A, 298, 505(1) and 505(2)
2.	Representation of the People Act, 1951	Sections 8, 123(3-A) and 125
3.	Information Technology Act, 2000 and Information Technology (Intermediaries	Sections 66-A, 69 and 69-A Rule 3(2)(b) and Rule 3(2)(i)



	Guidelines) Rules, 2011	
4.	Code of Criminal Procedure, 1973	Sections 95, 107, 144, 151 and 160
5.	Unlawful Activities (Prevention) Act, 1967	Sections 2(f), 10, 11 and 12
6.	Protection of Civil Rights Act, 1955	Section 7
7.	Religious Institutions (Prevention of Misuse) Act, 1988	Sections 3 and 6
8.	Cable Television Networks (Regulation) Act, 1995 and the Cable Television Networks Rules, 1994	Sections 5, 6, 11, 12, 16, 17, 19, 20 and Rules 6 and 7
9.	Cinematographers Act, 1952	Sections 4, 5-B and 7

**12.** In addition thereto, the Central Government has always provided support to the State Governments and Union Territory administrations in several ways to maintain communal harmony in the country and in case of need the Central Government also sends advisories in this regard from time to time. However, in such cases, as police and public order being a State subject under the Seventh Schedule of the Constitution, the responsibility of registration and prosecution of crime including those involved in hate speeches, primarily rests with the respective State Governments.

**13.** The Central Government has also issued revised guidelines to promote communal harmony to the States and Union Territories in 2008 which provide inter alia that strict action should be taken against anyone inflaming passions and stroking communal tension by intemperate and inflammatory speeches and utterances. The "*Guidelines On Communal Harmony, 2008*" issued by the Ministry of Home Affairs, Government of India seek to prevent and avoid communal disturbances/riots and in the event of such disturbances occurring, action to control the same and measures to provide assistance and relief to the affected persons are provided therein including rehabilitation. The detailed guidelines have been issued to take preventive/remedial measures and to impose responsibilities of the administration and to enforce the same. Various modalities have been formulated to deal with the issue which have been emphasised on participation of the stakeholders.

**14.** So far as the statutory provisions, as referred to hereinabove, are concerned, Section 124-A of the Penal Code, 1860 (hereinafter referred to as "IPC") makes sedition an offence punishable i.e. when any person attempts to bring into hatred or contempt or attempts to excite disaffection towards the Government established by law. (Vide *Kedar Nath Singh v. State of Bihar*<sup>5</sup>.)

**15.** Sections 153-A and 153-B IPC make any act which promotes enmity between the groups on grounds of religions and race, etc. or which are prejudicial to national integration punishable. The purpose of enactment of such a provision was to "check fissiparous communal and separatist tendencies and secure fraternity so as to ensure the dignity of the individual and the unity of the nation". Undoubtedly, religious freedom may be accompanied by liberty of expression of religious opinions together with the liberty to reasonably criticise the religious beliefs of others, but as has been held by the courts time and again, with powers come responsibility.

**16.** Section 295-A IPC deals with offences related to religion and provides for a punishment up to 3 years for speech, writings or signs which are made with deliberate and malicious intention to insult the religion or the religious beliefs of any class of citizens. This Court in *Ramji Lal Modi v. State of U.P.*<sup>6</sup>, has upheld the constitutional validity of the section. Likewise Section 298 IPC provides that any act with deliberate and malicious intention of hurting the religious feelings of any person is punishable. However, Section 295-A IPC deals with far more serious offences. Furthermore, Section 505(2) IPC provides that making statements that create or promote enmity, hatred or ill will between different classes of society is a punishable offence involving imprisonment up to three years or fine or both.

**17.** The Protection of Civil Rights Act, 1955, which was enacted to supplement the constitutional mandate of abolishing "untouchability" in India, contains provisions penalising hate speech against the historically marginalised "Dalit" communities. Section 7(1)(c) of the Act prohibits the incitement or encouragement of the practice of "untouchability" in any form (by words, either spoken or written, or by signs or by visible representations or otherwise) by any person or class of persons or the public generally. Similarly, intentional public humiliation of members of the "Scheduled Castes" and "Scheduled Tribes" is penalised under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

**18.** Section 123(3) of the RP Act, provides inter alia that no party or candidate shall appeal for vote on the ground of religion, race, caste, community, language, etc. Section 125 of the RP Act further restrains

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any political party or the candidate to create feelings of enmity or hatred between different classes of citizens of India by making such an act a punishable offence.

**19.** Article 20(2) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) restrains advocacy of national, racial or religious hatred

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that may result in incitement for discrimination, hostility or violence classifying it as prohibited by law. Similarly, Articles 4 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (LCERD) prohibits the elements of hate speech and mandates the member States to make a law prohibiting any kind of hate speech through a suitable framework of law.

**20.** Thus, it is evident that the legislature had already provided sufficient and effective remedy for prosecution of the authors who indulge in such activities. In spite of the above, the petitioner sought reliefs which tantamount to legislation. This Court has persistently held that our Constitution clearly provides for separation of powers and the court merely applies the law that it gets from the legislature. Consequently, the Anglo-Saxon legal tradition has insisted that the Judges should only reflect the law regardless of the anticipated consequences, considerations of fairness or public policy and the Judge is simply not authorised to legislate law. "If there is a law, Judges can certainly enforce it, but Judges cannot create a law and seek to enforce it." The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The very power to legislate has not been conferred on the courts. However, of lately, judicial activism of the superior courts in India has raised public eyebrows time and again. Though judicial activism is regarded as the active interpretation of an existing provision with the view of enhancing the utility of legislation for social betterment in accordance with the Constitution, the courts under its garb have actively strived to achieve the constitutional aspirations of socio-economic justice. In many cases, this Court issued various guidelines/directions to prevent fraud upon the statutes, or when it was found that certain beneficiary provisions were being misused by the undeserving persons, depriving the legitimate claims of eligible persons. (See *S.P. Gupta v. Union of India*<sup>7</sup>, *Bandhua Mukti Morcha v. Union of India*<sup>8</sup>, *Union of India v. Deoki Nandan Aggarwal*<sup>9</sup>, *Supreme Court Advocates-on-Record Assn. v. Union*



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of India<sup>10</sup>, *Vishaka v. State of Rajasthan*<sup>11</sup>, *Aravali Golf Club v. Chander Hass*<sup>12</sup> and *Common Cause v. Union of India*<sup>13</sup>.)

**21.** While explaining the scope of Article 141 of the Constitution, in *Nand Kishore v. State of Punjab*<sup>14</sup>, this Court held as under : (SCC p. 622, para 17)

"17. ... '... Their Lordships' decisions declare the existing law but do not enact any fresh law', is not in keeping with the plenary function of

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the Supreme Court under Article 141 of the Constitution, for the Court is not merely the interpreter of the law as existing, but much beyond that. The Court as a wing of the State is by itself a source of law. The law is what the Court says it is."

**22.** Be that as it may, this Court has consistently clarified that the directions have been issued by the Court only when there has been a total vacuum in law i.e. complete absence of active law to provide for the effective enforcement of a basic human right. In case there is inaction on the part of the executive for whatsoever reason, the court has stepped in, in exercise of its constitutional obligations to enforce the law. In case of vacuum of legal regime to deal with a particular situation the court may issue guidelines to provide absolution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field. Thus, direction can be issued only in a situation where the will of the elected legislature has not yet been expressed.

**23.** Further, the court should not grant a relief or pass order/direction which is not capable of implementation. This Court in *State of U.P. v. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti*<sup>15</sup> has held as under : (SCC pp. 690-91, para 48)

"48. To us, one of the considerations in such matters is whether an *order passed or direction issued is susceptible of implementation and enforcement*, and if it is not implemented whether appropriate proceedings including proceedings for wilful disobedience of the order of the Court can be initiated against the opposite party. The direction issued by the High Court falls short of this test and on that ground also, the order is vulnerable."

(emphasis supplied)

**24.** Judicial review is subject to the principles of judicial restraint and must not become unmanageable in other aspects. (Vide *King*




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*Emperor v. Khwaja Nazir Ahmad*<sup>16</sup>, *State of Haryana v. Bhajan Lal*<sup>17</sup> and *Akhilesh Yadav v. Vishwanath Chaturvedi*<sup>18</sup>.)

**25.** It is desirable to put reasonable prohibition on unwarranted actions but there may arise difficulty in confining the prohibition to some manageable standard and in doing so, it may encompass all sorts of speeches, which needs to be avoided. For a long time the US courts were content in upholding legislations curtailing "hate speech" and related issues. However, of lately, the courts have shifted gears thereby paving the way for myriad of rulings which side with individual freedom of speech and expression as

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opposed to the order of a manageable society. (See *Beauharnais v. Illinois*<sup>19</sup>, *Brandenburg v. Ohio*<sup>20</sup> and *R.A.V. v. City of St. Paul*<sup>21</sup>.)

**26.** In view of the above, the law can be summarised to the effect that if any action is taken by any person which is arbitrary, unreasonable or otherwise in contravention of any statutory provisions or penal law, the court can grant relief keeping in view the evidence before it and considering the statutory provisions involved. However, the court should not pass any judicially unmanageable order which is incapable of enforcement.

**27.** As referred to hereinabove, the statutory provisions and particularly the penal law provide sufficient remedy to curb the menace of "hate speeches". Thus, person aggrieved must resort to the remedy provided under a particular statute. The root of the problem is not the absence of laws but rather a lack of their effective execution. Therefore, the executive as well as civil society has to perform its role in enforcing the already existing legal regime. Effective regulation of "hate speeches" at all levels is required as the authors of such speeches can be booked under the existing penal law and all the law enforcing agencies must ensure that the existing law is not rendered a dead letter. Enforcement of the aforesaid provisions is required being in consonance with the proposition *salus reipublicae suprema lex* (safety of the State is the supreme law).

**28.** Thus, we should not entertain a petition calling for issuing certain directions which are incapable of enforcement/execution. The National Human Rights Commission would be well within its power if it decides to initiate suo motu proceedings against the alleged authors of hate speech.

**29.** However, in view of the fact that the Law Commission has

undertaken the study as to whether the Election Commission should be conferred the power to derecognise a political party disqualifying it or its members, if a party or its members commit the offences referred to hereinabove, we request the Law Commission to also examine the issues raised herein thoroughly and also to consider, if it deems proper, defining the expression "hate speech" and make recommendations to Parliament to strengthen the Election Commission to curb the menace of "hate speeches" irrespective of whenever made.

**30.** With these observations, the writ petition stands disposed of. A copy of the judgment be sent to the Hon'ble Chairman of the Law Commission of India.

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<sup>†</sup> Under Article 32 of the Constitution of India

<sup>1</sup> *Public Interest Litigation v. Union of India*, WP (C) No. 536 of 2011, order dated 16-12-2013 (SC)

<sup>2</sup> (2013) 1 SCR 467 : 2013 SCC 11 (Can SC)

<sup>3</sup> (1990) 3 SCR 892 (Can SC)

<sup>4</sup> (1988) 1 SCC 668 : 1988 SCC (Cri) 266 : AIR 1988 SC 775

<sup>5</sup> AIR 1962 SC 955 : (1962) 2 Cri LJ 103

<sup>6</sup> AIR 1957 SC 620 : 1957 Cri LJ 1006

<sup>7</sup> 1981 Supp SCC 87 : AIR 1982 SC 149

<sup>8</sup> (1984) 3 SCC 161 : 1984 SCC (L&S) 389

<sup>9</sup> 1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219

<sup>10</sup> (1993) 4 SCC 441 : AIR 1994 SC 268

<sup>11</sup> (1997) 6 SCC 241 : 1997 SCC (Cri) 932

<sup>12</sup> (2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289

<sup>13</sup> (2008) 5 SCC 511

<sup>14</sup> (1995) 6 SCC 614 : 1996 SCC (L&S) 57 : (1995) 31 ATC 787

<sup>15</sup> (2008) 12 SCC 675 : (2009) 1 SCC (L&S) 237

<sup>16</sup> (1943-44) 71 IA 203 : (1945) 58 LW 57 : AIR 1945 PC 18

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1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426

18 (2013) 2 SCC 1 : (2013) 1 SCC (Civ) 881 : (2013) 1 SCC (Cri) 788 : (2013) 1 SCC (L&S)  
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19 96 L Ed 919 : 343 US 250 (1952)

20 23 L Ed 2d 430 : 395 US 444 (1969)

21 120 L Ed 2d 305 : 112 S Ct 2538 : 505 US 377 (1992)

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