

Supreme Court directions on hate speech

October 28, 2022

In news- Recently, the apex court directed the police and state governments to initiate suo motu action against those accused of making hate speeches without waiting for a formal complaint.

Key directions-

- The court warned authorities that **“any hesitation to act in accordance with this direction will be viewed as contempt of court** and appropriate action shall be taken against the erring officers”.
- While **India does not have a formal legal framework for dealing with hate speech, a set of provisions of the Indian Penal Code (IPC), loosely defining hate speech, are invoked.** These are primarily laws to deal with offences against religions.
- The order even highlighted some of the specific provisions of the penal law under which hate speech offenders ought to be booked.
- These include Sections 153A (promoting enmity between different groups on the ground of religion), 153B (imputations, assertions prejudicial to national integration), 505 (public mischief), 295A (deliberate and malicious acts intended to outrage religious feelings) of the Indian Penal Code.

Legal framework dealing with hate speech in India-

- **Section 295A of the IPC defines and prescribes a punishment for deliberate and malicious acts,** intended to outrage religious feelings of any class by insulting its religion or religious beliefs.
- **The section reads that 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 [three years], or with fine, or with both.

- **Section 295A is one of the main provisions in the IPC chapter to penalise religious offences.** The chapter includes-
 - Offences to penalise damage or defilement of a place of worship with intent to **insult the religion (Section 295)**;
 - **Trespassing in a place of sepulture** (Section 297);
 - Uttering, words, etc, with deliberate intent to wound the religious feelings of any person (Section 298); and
 - Disturbing a religious assembly (Section 296).
- **The state often invokes Section 295A along with Section 153A**, which penalises promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc, and doing acts prejudicial to maintenance of harmony and **Section 505 of the IPC that punishes statements conducing to public mischief.**
- **Section 66A of the Information Technology Act**, that **punishes sending offensive messages** through communication services is added when such speech is made online.
- The broad, vague terms in the laws are often invoked in its misuse.
- Lower conviction rates for these provisions indicate that the process – where a police officer can arrest without a warrant – is often the punishment.
- **Section 295A was brought in 1927.** The antecedents of Section 295A lie in the “communally charged atmosphere

of North India in the 1920s”.

- The amendment was a fallout of an acquittal under Section 153A of the IPC by the Lahore High Court in 1927 in *Rajpaul v Emperor*, popularly known as the Rangila Rasool case.
- **Rangila Rasool was a tract – brought out by a Hindu publisher – that had made disparaging remarks about the Prophet’s private life.**
- This debate in interpretation prompted the colonial government to enact Section 295A with a wider scope to address these issues.

Similar cases in Post-Independent India-

- In 1957, the **constitutionality of Section 295A was challenged in *Ramji Lal Modi v State of Uttar Pradesh***. The **Supreme Court upheld the law** on the grounds that it was brought in to preserve “public order”.
- Public order is an exemption to the fundamental right to freedom of speech and expression and the right to religion recognised by the Constitution.
- In a 1960 ruling, in ***Baba Khalil Ahmed v State of Uttar Pradesh***, the Supreme Court said that “malicious intent” of the accused can be determined not just from the speech in question but also from external sources.
- In 1973, in ***Ramlal Puri v State of Madhya Pradesh***, the Supreme Court said the test to be applied is whether the speech in question offends the “ordinary man of common sense” and not the “hypersensitive man”. However, these determinations are made by the court and the distinction can often be vague and vary from one judge to the other.
- In ***Baragur Ramachandrappa v State of Karnataka***, a 2007 decision of the Supreme Court, “a pragmatic approach” was invoked in interpreting Section 295A.
- The state government had issued a notification banning *Dharmakaarana*, a Kannada novel written by award-winning author P V Narayana, on the ground that it was hate

speech, invoking a gamut of provisions including Section 295A. The pragmatic approach was to restore public order by “forfeiture” of a book over individual interest of free speech.