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## Original Review Article

# Hate Speech Against Disabled Persons in India: An Analysis of Legal Provisions and Judicial Interpretations

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## Abstract

**Background:** Disabled persons are subjected to harassment and hostility. Disability hate speech, often neglected, is rampant in society and it leaves terrible psycho-emotional scars on persons with disability. The objective of this paper is to analyse the Rights of Persons with Disabilities Act, 2016 and provisions of various other statutes protecting disabled persons. It examines judgments of the Hon'ble Supreme Court and other High Courts related to protecting the rights of disabled persons. It also aims to understand the concept of hate speech as it is not legally defined in Indian law. Lastly, to identify the shortcomings in the existing legal framework. **Methods:** Analysing and reviewing of research papers, articles, judgments, statistical studies, and news reports that are related to hate speech, abuse and violence against disabled persons in India. **Results:** Although exclusive law and legislations are there to protect the rights and interests of disabled persons, people with disability are not preferring litigation to get justice for less conviction rates and the delay involved. **Conclusion:** Stringent penal provisions create deterrence. Spreading awareness by governmental agencies and NGOs as well is proposed. Appropriate policy decisions are taken so that disabled persons are more integrated into society. Therefore, a sustained campaign for the protection of the rights of the disabled is essential.

## 1. Introduction

According to the Census of 2011, around 2.21% of the total population of India is disabled, which means around 2.68 crore persons are disabled.<sup>1</sup> Discrimination against disabled persons is rampant in the country. From denying

opportunities to services, from hate speech to violence, the disabled have to undergo hardship daily. Disabled persons are subjected to harassment and a range of hostile stereotypes than their nondisabled counterparts.

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The extremities of stereotyping result in hate speech and hate crime. Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability is called a disability hate crime.<sup>2</sup> There is no legal definition of hostility so we use the everyday understanding of the word which includes ill-will, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike.<sup>2</sup> The Organisation for Security and Co-operation in Europe (OSCE) is the world's largest security-oriented intergovernmental organisation with observer status at the United Nations. They have reported the widespread types of hate crimes that are motivated based on the bias across. According to their report, the majority of hate crimes are based on race, ethnicity, religion and sexual orientation. However, it is disability hate crimes with 6% of the crimes reported that is more prominent.<sup>3</sup>

Generally, disability hate speech refers to speech directed towards a person's physical or mental problems. It is a type of speech that is targeted against disabled persons for being disabled or handicapped. It is an ordinary hardship and experience for countless people with disability, leaving terrible psycho-emotional scars. Disability hate speech can take the form of unwelcome comments (written or spoken) or conduct such as verbal abuse, being shouted at, name-calling, offensive graffiti, or online posts. The lack of attention to and recognition of such crimes is alarming and is even though hate speech has the potential to cause mental distress, physical harm, insecurity, intruding an individual's privacy and dignity, and contribute to an offensive, humiliating, hostile, intimidating, and degrading environment.<sup>4</sup> Despite all these, it is calamitous that trivial attention has been given by the socio-legal system to address this contemporary issue.

## 2. Comprehending Terminologies

The United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities (CRPD) in the year 2006. To give effect to the CRPD, the Indian Parliament enacted The Rights of Persons with Disabilities Act, 2016. Section 2 (s) of the said Act defines 'person with disability' (PwD) as a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others. Another term 'person

with benchmark disability' is also stated in the 2016 Act. The said Act by stating 'person with benchmark disability' mean that particular protections and concessions in labour and employment when a disabled person is having 40% or more of a defined handicap.<sup>5</sup> Further, Section 2 (zc) of the said 2016 Act states about 'specified disability' and it attempts to define the term in the broadest possible way. Specified Disability means disabilities as specified in the Schedule of the said Act including six categories, namely, 'physical disability', 'intellectual disability', 'mental behaviour', 'disability caused due to chronological conditions or blood disorder', 'multiple disabilities' and any other category as may be notified by the Central Government.<sup>5</sup>

Coming to hate speech, Kent Greenawalt views it as an appealing term inclining towards fighting words doctrine, hostile environment harassment, and group libel.<sup>6</sup> The same stand is taken by Timothy C Shiell.<sup>7</sup> According to United Nations Strategy and Plan of Action on Hate Speech, hate speech is any kind of communication in speech, writing or behaviour, that attacks or uses pejorative discriminatory language concerning a person or a group based on who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factors.<sup>8</sup> Any other identity includes disability. Unfortunately, the term 'hate speech' has never been defined under Indian law. Commonly, hate speech is any form of expression through which speakers intend to vilify, humiliate, or incite hatred against a group or a class of persons based on race, religion, skin colour sexual identity, gender identity, ethnicity, disability, or national origin. In short, hate speech may be defined as the expression of derogatory vocabularies and personal prejudices that aim to dehumanise the target and provoke discrimination.

As the term 'hate speech' hasn't been defined, the Hon'ble Supreme Court in the case of *Pravasi Bhalai Sangathan vs. Union of India* directed the Law Commission of India to carry out a study on hate speech, define it and make recommendations to the Parliament to curb the menace associated to it.<sup>9</sup> Complying that, in the year 2017, the Law Commission of India submitted a report titled 'Hate Speech' wherein it proposed The Criminal Law (Amendment) Bill, 2017 to amend the Indian Penal Code, 1860 (IPC), and the Code of Criminal Procedure, 1973 (CrPC). The Law Commission of India proposed

the insertion of Section 153 C and Section 505A in the IPC.<sup>10</sup>

### 3. The Legal Framework

#### 3.1 Statutory Provisions Protecting Disabled Persons

The Constitution of India through its Preamble, inter-alia seeks to secure to all its citizens – Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity. Part-III of the Constitution provides for a set of six Fundamental Rights to all the citizens. These include – Right to Equality; Right to Freedom; Right against Exploitation; Right to Freedom of Religion; Cultural and Educational Rights and Right to Constitutional Remedies (11). Even though no specific mention is there in the Constitution, the said rights are also available to the Persons with Disabilities (PwDs). The Indian Constitution guarantees citizens, including the disabled, the right to justice, freedom of speech and expression, freedom of worship, and equal status and opportunity. Article 19 (2) of the Indian Constitution restricts the fundamental freedom of speech and expression. Besides, the state and government are prohibited from discriminating against any citizen of India, including handicapped individuals, based on caste, race, religion, or disability, according to Article 15 (1) and 15 (2) of the Constitution.<sup>11</sup>

Further, the Directive Principles of State Policy incorporated in Part – IV of the Constitution are principles intended to be the imperative basis of State policy. These are really like instructions issued to future legislatures and executives for their guidance. As a part of it, Article 41 of the Constitution of India provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. Additionally, Article 46 lays down an obligation on the State to promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice and all forms of exploitation.<sup>11</sup> To fulfil its commitments under the CRPD, the Indian Parliament enacted the Rights of Persons with Disabilities Act in 2016. Unlike The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 (PWD Act of 1995 hereafter), which it superseded, the 2016 Act defines disability as a dynamic and changing idea rather than

a fixed concept. As a result, rather than the charitable or societal model of disability, the 2016 Act incorporates provisions based on rights.

Terms like ‘barriers’ (Section 2 (c)), ‘discrimination’ (Section 2 (h)), ‘reasonable accommodation’ (Section 2 (y)), and ‘Special Employment Exchange’ (Section 2 (zb)) are defined in the 2016 Act. The right to equality and non-discrimination (Section 4), rights against exploitation and abuse (Section 7), access to justice (Section 12), and other rights and entitlements are addressed in Chapter II of the 2016 Act. Apart from that, women and children with impairments are specifically addressed in Section 5 of the said 2016 Act.<sup>5</sup> The Mental Health Act, 1987 is another Act that consolidates and amend the law relating to the treatment and care of mentally ill persons, to make better provision concerning their property and affairs and for matters connected therewith or incidental thereto. One of the objects of this Act is that the mentally ill persons are to be treated like any other sick persons and the environment around them should be made as normal as possible. Further, this Act regulates admission to psychiatric hospitals or psychiatric nursing homes of mentally ill persons who do not have sufficient understanding to seek treatment voluntarily and to protect the rights of such persons while being detained.<sup>12</sup>

The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 established the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities to meet the following objective: (i) To enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong; (ii) To strengthen facilities to provide support to persons with disability to live within their own families; (iii) To extend support to registered organizations to provide need based services during period of crisis in the family of persons with disability; (iv) To deal with problems of persons with disability who do not have family support; (v) To promote measures for the care and protection of persons with disability in the event of death of their parent or guardian; (vi) To evolve procedures for the appointment of guardians and trustees for persons with disability requiring such protection; (vii) To facilitate the realization of equal opportunities,

protection of rights and full participation of persons with disability, and (viii) To do any other act which is incidental to the aforesaid objects.<sup>13</sup>

### 3.2 Laws Regulating Hate Speech

Article 19 of the Indian constitution guarantees every citizen the right to freedom of speech and expression, subject to the limits of morality and decency, public safety, defamation, incitement to commit a crime and other few grounds. Article 19 (2) enables the government to impose speech limitations “in the interests of” certain groups, but it also stipulates that the restrictions must be “reasonable”.<sup>11</sup> In criminal law, IPC and CrPC have several provisions that punish and lays down the procedure to prosecute the culprits or perpetrators of hate speech. Section (s) 153A, 153B, 295A, 298, 505 of IPC are few among them that deal with the punishments for inciting offences related to hate speech (14). Whereas, Section (s) 95, 96, 144, 151, 178 and 196 of CrPC deal with the procedure to handle when hate speech offences are committed. Unfortunately, neither IPC nor CrPC has any specific provision that deals with PwDs.<sup>15</sup>

There are provisions in the Indecent Representation of Women (Prohibition) Act, 1986 that prohibits hate speech on women.<sup>16</sup> The Religious Institutions (Prevention of Misuse) Act, 1988 has few provisions for religious hate speech.<sup>17</sup> Protection of Civil Rights Act, 1955 and the Schedules Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have provisions penalising hate speech against marginalised communities but not PwDs specifically. It is the Rights of Persons with Disabilities Act, 2016 that is the only statutory salvage for disabled persons in India.

### 4. Landmark Judicial Verdicts

There are numerous cases wherein the courts have upheld the rights of disabled persons. One of the notable cases is of *U.P. Vishesh Shikshak Association v State of U.P.* wherein the Allahabad High Court acknowledged the government’s legal obligation to “give all essential support and assistance to physically challenged pupils.” The High Court further held that “the right to education and right to livelihood being the fundamental rights enshrined under Articles 21 and 21-A of the Constitution, the State Government has to make all efforts to provide necessary assistance to all disabled persons”.<sup>18</sup> In the case of *National Association for the Deaf v Union of India*, the petitioner National Association for the Deaf filed a PIL

in the Delhi High Court over the lack of sign language interpreters in government services. The petition said that there were insufficient sign language interpreters available in various public venues and requested orders against the Ministry of Social Justice and Empowerment and other agencies to provide sign language interpreter access and improved training. While the court acknowledged the paucity of sign language interpreters, it agreed with the Petitioner Association that the hearing impaired were unable to access medical, transportation, and banking services, as well as seek police assistance, owing to the lack of interpreters. The Court cited the CRPD in determining the need of ensuring the availability of interpreters and went on to hold that all of the aforementioned rights are established in Article 21 of the Indian Constitution.<sup>19</sup>

Further, the case of *Suchita Srivastava v Chandigarh Administration* is concerned about the reproductive rights of a mentally retarded lady living in a government-run welfare institution in Chandigarh who fell pregnant after being raped by an in-house employee and sought to keep the baby and take the pregnancy to term. The Chandigarh Administration petitioned the High Court for permission to terminate her pregnancy under the Medical Termination of Pregnancy Act, 1971 (MTP Act), claiming that she was incapable of continuing the pregnancy and would be unable to care for a kid. Even though the mother had stated her desire to bear her child, the High Court ordered the pregnancy to be terminated. However, the Supreme Court held that it was unable to allow her pregnancy to be terminated as the MTP Act establishes a procedure that respects the personal autonomy of mentally impaired people when it comes to reproductive choices such as continuing or terminating a pregnancy.<sup>20</sup> The right to legal competence of women with mental impairment to make independent decisions about their pregnancy was firmly recognised by the Supreme Court.

The Hon’ble Supreme Court in the case of *Union of India v National Federation of the Blind* upheld the judgment of the Delhi High Court providing reservation to the blind and low vision persons in the process of recruitment to Government posts as required by the statute.<sup>21</sup> Further, in the case of *Deaf Employees Welfare Association v Union of India*, the Hon’ble Supreme Court passed an order to provide speech and hearing-impaired people with the

same transportation benefits as blind and orthopedically challenged government employees. The court emphatically stated that even the belief that a hearing or speech impaired person suffers less than a blind person marginalizes them; as a result, they must be provided with the same advantages as blind individuals.<sup>22</sup> Similarly, in the case of *Shyam Narayan Chouksey v Union of India*, the Supreme Court held that handicapped persons are given the exception of standing on each occasion when the National Anthem is performed or sung.<sup>23</sup>

The Hon'ble Supreme Court in the case of *Pravasi Bhalai Sangathan v Union of India* referred to the Canadian Supreme Court decision in *Saskatchewan (Human Rights Commission) v Whatcott*. The judges examined the approach applied by Canadian Supreme Court in interpreting "hatred" as is used in legislative provisions prohibiting hate speech. The test devised by the Canadian judges was as follows: The first test was for the Courts to apply the hate speech prohibition objectively and in so doing, ask whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred. The second test was to restrict the interpretation of the legislative term "hatred" to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This would filter out and protect speech that might be repugnant and offensive, but did not incite the level of abhorrence, delegitimization, and rejection that risks causing discrimination or injury. The third test was for Courts to focus their analysis on the effect of the expression at issue, namely, whether it was likely to expose the targeted person or group to hatred by others. The mere repugnancy of the ideas expressed would be insufficient to constitute the crime-attracting penalty.<sup>9</sup>

### 5. Suggestions and Conclusion

After they had undergone discrimination, most of the disabled persons don't pursue litigation to get justice for it takes longer to get it or due to the expensive legal affairs involved. Surprisingly, IPC penalises any act that promotes enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony, but doesn't even mention any offence against disabled persons. The harshness of the penal provisions in The Rights of Persons with Disabilities Act, 2016 for any offence

committed against disabled persons shall be made more severe to create deterrence in the whole society. A speedy trial can raise optimism among disabled persons. Establishing a special court for hearing the grievance of only disabled persons would encourage disabled persons to pursue litigation. The prosecution machinery also shall efficiently handle such cases so that the wrongdoers of disability hate speech is convicted.

Government, as well as NGOs, need to take steps in increasing societal understanding of disability and persons with disabilities through public awareness campaigns. They should spread the message and share the tales of successful individuals with disabilities so that people with disabilities can be more integrated into society. Therefore, a sustained campaign for the protection of human rights for the disabled is the need of the hour.

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