

# Hate Speech Laws In India And Australia: A Comparatative Analysis

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## Introduction

### Hate Speech: Definitional Deadlock

Hate speech is a term that is disputed. In other words, there is a lack of clarity in the definition and any such attempt to elucidate the notion of hate speech will show the biasedness of the one who attempts to define it. In short, to define is to reveal your inclinations. It may sound as a negative start. Nevertheless, several efforts have been made to define the concept of hate speech; clarified and categorized it academically, legally and judiciously.

In a landmark freedom of expression decision, then Chief Justice Brian Dickenson of the Hon'ble Supreme Court of Canada held that 'hatred' connotes emotion of an intense and extreme nature that is clearly associated with vilification and detestation. He went on to hold: "Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill treatment on the basis of group affiliation."<sup>1</sup>

Broadly speaking, 'hate speech' is derogatory towards someone else.<sup>2</sup> It includes any speech which targets individuals, groups, or classes and seeks to ridicule, annoy, insult or defame such individuals, groups or classes, or portray them in a manner that lowers their reputation or self-esteem. Any hate speech may incite or may have the potential to incite abhorrence towards certain people, which could result in such individuals or groups being targeted and victimized, resulting in violence against them or other hostilities that could result in a breach of peace.<sup>3</sup> It can be stated that 'hate speech' is speech designed to promote hatred on the basis of race, religion, ethnicity, or national origin.<sup>4</sup>

In popular discourse, it is speech that articulates odious or biased views about certain groups that historically have been put to discrimination (like African American, Jews, women, and LGBT persons) or about certain particular characteristics that have been the basis of discrimination (like race, religion, gender and sexual orientation).<sup>5</sup>

Unlike the general species of hate speech encompassed within the laws relating to defamation, blasphemy, sedition, and obscenity, there is a further category of hate speech that has also engaged the attention of governance and which concerns protecting groups and classes or persons from being socially targeted and vilified. This is the area of racist, bigoted, communal and sexist speech, which not only portrays vulnerable groups in a bad light to create a tempestuous social climate such that these groups cannot live their version of the good life in a dignified way, but also targets such groups so that they become vulnerable to intimidation, coercion and victims of individual and collective violence. It is this category of hate speech which has become a contemporary concern.<sup>6</sup>

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While there is no uniform definition of hate speech across the globe, hate speech generates a widening divide among the public. The 'communal atmosphere' is created by hate speech.<sup>7</sup> It breaks social fabric more than builds; it mars communities more than mends; and the ruptures and rifts it create in individuals mind is irreparable.

## **Hate Speech In India And Australia: A Comparative Approach**

Before independence, Australia and India were both part of the British Empire. Both are members of the Commonwealth of Nations. They also share political, economic, security, lingual and sporting ties. Australian Constitution as well as Indian Constitution have several characteristic features in common.

There are two facets to the regulation of speech that are seen to go beyond the Habermasian framework of rational debate. The first is the inkling that there is a surplus of passion, ideas, emotions, which if permitted in the unregulated and irrational form is hazardous. The second is that there is a form of speech that is qualified of causing wounded, discomfort, outrage and disgust, which in itself is harmful. The Indian Penal Code (IPC) uses the language of "outrage," "disgust," and "pain" to regulate such speech<sup>8</sup> while Australian laws on hate speech uses words like "offend", "insult", "humiliate" or "intimidate". From these two categories itself one can make out the fact that although there are usual things that binds between these two nations, various things like the difference of approach between these two countries to counter hate speech also exist.

In general, Australia's hate speech laws differ by jurisdiction, and seek particularly to prevent victimization on account of race. In India, although hate speech is not defined in any law as such, but several statutes penalizes speech that are harmful and made on the basis of religion, caste, creed etc. One law is applied all across India. When it comes to racial hate speech, they are not seen much in India unlike in Australia. Religion and caste play a major role in India and therefore, religious rivalry and caste slurs are more prevalent than racial hate speech.

## **Hate Speech In Indian Laws**

Indian law certainly never had a formal legal grouping called hate speech.<sup>9</sup> India's hate speech offences are largely 'a legacy of the British'. These provisions were viewed, by the British, as a necessary expedient to maintaining security and stability in their colonial territories: 'From the point of view of the British, the purposefulness of the hate speech provisions was to avoid communal tension, irrespective of who was right or wrong'.<sup>10</sup> The importance of 'hate speech' laws in the British project of maintaining stability in India (necessary for the continuation of colonial rule), and the degree to which the British perceived Indian colonial subjects as uniquely vulnerable to religious insults, are made clear by Lord Macaulay's commentary on 'Offences Relating to Religion and Caste' within the Indian Penal Code.<sup>11</sup>

In India, having intimate proximity with hate speech is the expression 'sedition' and the roots of hate speech laws in India could be traced from it. The word 'sedition' which occurred in Article 13 (2) of the draft Constitution prepared by the Drafting Committee was deleted before the Article 19 (2) was finally passed. The Constitution acknowledges that liberty cannot be absolute or uncontrolled and makes provisions in clauses (2) to (6) of Article 19 authorizing the State to restrict the exercise of the freedom guaranteed under that Article within the limits specified in those clauses. Thus, clause (2) of Article 19, as subsequently amended by the Constitution (First Amendment) Act, 1951 and the Constitution (Sixteenth Amendment) Act, 1963, enabled the legislature to impose reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of (i) the security of the State and sovereignty and integrity of India, (ii)

friendly relations with foreign States, (iii) public order, (iv) decency or morality, or in relation to contempt of court, defamation or incitement to an offence.<sup>12</sup>

A scholar named Susan Benesch (2013) terms “dangerous speech” in the group of speech that has two possibilities—the capacity to hurt people straightly by humiliating, demeaning, terrifying or offending, and also to persuade others to think and act against the member of a group. Benesch (2013) categorizes dangerous speech as speech that has a reasonable chance of catalyzing or amplifying violence by one group against the other, taking into account the circumstances in which it is disseminated. Almost all jurisdictions across the earth attempt to exclude dangerous speech over laws that are legislated to exclude certain categories of speech, including speech that amounts to “incitement to hatred,” “extreme vilification,” “fighting words,” etc. While “dangerous speech” is not a official category in Indian law, this category of speech as understood by Benesch would definitely fall beyond of the protection of 19 (1) (a).<sup>13</sup>

The standard used for restricting Article 19 (1) (a) is at peak when imposed in the interest of security of the State. Also, a reasonable restriction under Article 19 (2) implies that the relation between restriction and public order has to be proximate and direct as opposed to a remote or fanciful connection.<sup>14</sup> The anticipated danger should not be remote, conjectural or farfetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a “spark in a powder keg”<sup>15</sup>

The Hon’ble Supreme Court of India, in the case of *Pravasi Bhalai Sangathan v. Union of India & Ors.*<sup>16</sup>, observed that the subject of hate speech deserved deeper consideration by the Law Commission of India. Therefore, the Law Commission of India after taking in view the laws and various judgments on hate speech had submitted its Report No.267 before the Government of India in March, 2017 for consideration. The Commission suggested amendments to the Indian Penal Code, 1860 by adding new provisions on ‘Prohibiting incitement to hatred’ following Section 153B of IPC and ‘causing fear, alarm, or provocation of violence in certain cases’ following Section 505 of IPC.

The Law Commission of India in its Report No.267 gave suggestions under the title ‘Hate Speech’ which annexed The Criminal Law (Amendment) Bill, 2017. It endeavored to insert a new Section 153C prohibiting incitement to hatred and read as follows:

*“153 C. Whoever on grounds of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe*

*(a) uses gravely threatening words either spoken or written, signs, visible representations within the hearing or sight of a person with the intention to cause, fear or alarm; or*

*(b) advocates hatred by words either spoken or written, signs, visible representations, that causes incitement to violence shall be punishable with imprisonment of either description for a term which may extend to two years, and fine up to Rs 5000, or with both.”.*

*Further, the Commission has suggested inserting new Section 505A after Section 505. The Section 505A deals with fear, alarm, or provocation of violence in certain cases and read as follows:*

*“505 A. Whoever in public intentionally on grounds of religion, race, caste or community, sex, gender, sexual orientation, place of birth, residence, language, disability or tribe- uses words, or displays any writing, sign, or other visible representation which is gravely threatening, or derogatory;*

- (i) *within the hearing or sight of a person, causing fear or alarm, or;*
- (ii) *with the intent to provoke the use of unlawful violence, against that person or another, shall be punished with imprisonment for a term which may extend to one year and/or fine up to Rs 5000, or both”.*

Within Indian legal doctrine, there are two distinctive strands of thought when it comes to penal provisions regulating insult to religion, hurt community sentiments, and promoting enmity between communities. The first is described by Justice Krishna Iyer in *Lalai Singh Yadav*<sup>17</sup> as “the constitutional value of ordered security”. The spectra of public disorder and the constitutional value of ordered security work in tandem, producing the strongest justification for the way the Court has ruled in these cases. Iyer identifies ordered security as a constitutional value that is to be safeguarded, implying that courts should give regard to the state if their intent is to protect safety and peace. Here the principle of ordered security is enunciated as a positive principle, without which creativity and freedom are meaningless.<sup>18</sup>

The second strand of doctrine is from Justice Bhimasankaran’s dissent in *Veerabrahmam*, a decision of the Andhra Pradesh High Court.<sup>19</sup> The majority held that freethinking does not involve freedom to make scurrilous attacks on the religion and religious beliefs of other sects with impunity. In his dissent, Justice Bhimasankaran held that the petitioners had not established malice on the part of the author, that is even if the author’s action were deliberate, there was no malicious intention. Justice Bhimasankaran’s dissent is one of the most powerful articulations of a robust, free speech-oriented approach to claims of hurt religious sentiment and is cited repeatedly in case law dealing with hate speech.<sup>20</sup> To put it crudely, the former strand puts public order over free speech, while the latter does not.<sup>21</sup>

Religious sentiment and feelings are always a crucial aspect when it comes to hate speech. In *Bal Thackeray case*,<sup>22</sup> the Hon’ble Supreme Court of India held: ‘In a secular polity, the requirement of correct behavior or propriety is that an appeal for votes should not be made on the ground of the candidate’s religion which by itself is no index of the suitability of a candidate for membership of the house.’<sup>23</sup> Further, in *Hindutva cases*<sup>24</sup>, the Hon’ble Supreme Court had made curious distinction between asking vote on ‘caste, creed and religion base’ and ‘making a Hindu state’ that is not a religion but a ‘way of life’ of the people in the sub-continent and ‘is a state of mind’. Recently in 2017, the Hon’ble Supreme Court in *Abhiram Singh v. C.D. Commachen (Dead) By Lrs. & Ors.*,<sup>25</sup> held that seeking votes in the name of religion, caste or community amounted to corrupt practice and election of a candidate who indulged in it can be set aside. The bench was interpreting word ‘his’ in Section 123 (3) of the Representation of Peoples Act, 1951 and the majority interpreted that the Parliament meant by ‘his’ a complete ban on any reference or appeal to religion, race, community, caste and language during elections. This meant the pronoun extended to the social, linguistic and religious identity of the voter also.

Statutes are unlimited in India to deal with offences relating to hate speech. For instance, Section 153A of IPC penalizes promoting of enmity between groups on grounds of religion, race, place of birth, residence, language, caste, or community or any other ground whatsoever. Section 153B penalizes somebody attributing disloyalty to the Constitution or the nation on any of these grounds. Section 295A IPC that penalizes ‘deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs’. The same chapter by way of Section 298 IPC penalizes ‘uttering, words, etc., with deliberate intent to wound the religious feelings of any person’. Lastly, Section 505 (1) and (2) of IPC penalizes publication or circulation of any statement, rumor or report causing public mischief and enmity, hatred or ill-will between classes.

There is no dearth of laws in India when it comes to countering hate speech uttered by the politicians during political campaigns. One of the potent weapons to tackle the hate speech by the persons who contest election is Section 8 of the Representation of People Act, 1951 that disqualifies a person from contesting election if he is convicted for indulging in acts amounting to illegitimate use of right of speech and expression. Further, Section 123(3A) and Section 125 prohibits promotion of enmity on grounds of religion, race, caste, community or language in connection with election as a corrupt electoral practice and prohibits it.

Since untouchability was practiced in India, it is prohibited under the Indian Constitution but Section 7 of the Protection of Civil Rights Act, 1955 penalizes incitement to, and encouragement of untouchability through words, either spoken or written, or by signs or by visible representations or otherwise. Further, Section 3 (g) of the Religious Institutions (Prevention of Misuse) Act, 1988 prohibits religious institution or its manager to allow the use of any premises belonging to, or under the control of, the institution for promoting or attempting to promote disharmony, feelings of enmity, hatred, ill-will between different religious, racial, language or regional groups or castes or communities.

Above mentioned statutory provisions empowers the state fully to deal with such speech and penalizes offenders. It is not any inadequacy in the law but absence of the political will and administrative resolve which explains why the law has remained a dead letter.<sup>26</sup>

## Hate Speech In Australian Laws

When the Whitlam Government introduced the Racial Discrimination Bill 1973, they argued it was necessary to promote multiculturalism, combat racism, and to fulfil international treaty obligations. A number of Australian States have 'hate speech' laws which make it a criminal and/or civil offence to, for example, 'incite hatred' towards, or serious contempt for, or severe ridicule of a person or group on the grounds of race and – in some states – religion.

The Academy of Social Sciences in Australia defines hate speech as: "... speech or expression which is capable of instilling or inciting hatred of, or prejudice towards, a person or group of people on a specified ground. Hate speech laws are usually directed to vilification on the grounds of race, nationality, ethnicity, country of origin, ethno-religious identity, religion or sexuality."<sup>27</sup>

When originally implemented the Anti-Discrimination Act, 1977 (ADA 1977) was designed to "render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons." The ADA 1977 also introduced the Anti-Discrimination Board of NSW to administer anti-discrimination law and handle complaints.

Section 18 C of the Australia's Racial Discrimination Act, 1975 prohibits speech that 'is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of people' and which is 'done because of the race, colour or national or ethnic origin of the other person....' The expression is applied generally to misogynistic, racist and homophobic speech acts, as well as online campaigns against minority and female actors.

Peculiar feature of the hate speech laws in Australia is about its settlement option. One can resolve hate speech cases by means of mediation as a substitute to criminal proceedings. It has done so by providing for a civil mechanism in addition to pre-existing criminal law framework banning hateful speech. Under the federal setup, Australia has both federal laws created by Parliament and laws of the various States.

Provocation by speech on grounds of race, color, descent, ethnic origins is a crime under the criminal code<sup>28</sup> amongst other laws which also include grounds such as religion, sexuality and homosexuality, disability, transgender and HIV/AIDS status as well. For example, Sections 18B-18F of The Racial Discrimination Act which is a federal law and the Section 17 of the Anti-Discrimination Act of Tasmania proclaims as unlawful conduct that “offend, insult, humiliate or intimidate another person or group of people” on any of the specified grounds. It sets up a mechanism wherein an aggrieved individual can lodge a complaint before the empowered Commission or Tribunal as per the law.

The empowered body shall then proceed to conduct enquiry into the complaint lodged before it. In case the complaint is found to be valid upon investigation, the next step is calling for a conciliation conference.<sup>29</sup> It is the goal of the pacification conference to negotiate an agreement which is aggregable to the complainant. If parties settle to a resolution by conciliation, the commission may record the terms of the agreement. In case the alleged accused is found guilty of inciting hatred, the commission is empowered to issue orders to desist from further like acts as well as order of redressal of any loss, injury or humiliation suffered by the complainant by the respondent’s act. It may also order for compensation to be paid to the injured party if it thinks appropriate in given facts and circumstances of the case. In addition, it may require for the accused to apologize to the victim and make any withdrawals that the commission may consider appropriate. Depending on the nature of the illegal act committed, this retraction may be asked to be made in public or private.

In Tasmania, former Tasmanian Anti-Discrimination Commissioner Robin Banks stated she wants racial vilification to become a criminal act after a number of racially motivated attacks on Tasmanian school children.<sup>30</sup> However, criminal vilification laws are not yet implemented or proposed, with the last attempt to amend vilification laws occurring in 2016 when the Anti-Discrimination Amendment Bill 2016 was proposed but defeated.<sup>31</sup>

In the Northern Territory, a consultation process was began in 2017 into the “Modernization of the Anti-Discrimination Act.”<sup>32</sup> The review was asked to consider: “introducing specific anti-vilification laws prohibiting offensive conduct on the basis of race, religious belief, disability, sexual orientation, gender identity and intersex status.”<sup>33</sup> The Northern Territory Anti-Discrimination Commission supports the introduction of anti-vilification laws, as it believes current protections fail to adequately protect minorities.<sup>34</sup> A spokesperson for the Northern Territory Attorney-General has confirmed that no changes thus far have been made to the Anti-Discrimination Act. However, the review process is ongoing.<sup>35</sup>

An analysis of the Australia’s civil hate speech laws concludes that though the number of cases dealt with under this mechanism is modest but it gains significance in light of the detail that the criminal hate speech laws are seldom invoked where civil remedy has been available.<sup>36</sup> The remedy of civil wrong as the prevalent and preferred form of recourse has resulted in the person’s availability and willingness as member of the targeted group to “step up” and invoke the legislation. Conviction rates are less. These civil mechanisms are attempted to influence the conduct of the hate speaker, by encouraging them to agree to abstain or to apologize or if that fails, by imposing fines. They have provided a framework for direct community advocacy.<sup>37</sup>

## Comparitive Analysis

The practice of resorting in civil remedy in Australia is in contrast to practice that is followed in India which is mostly based on criminal law. When it comes to adjudication of hate speech offences under the Indian criminal law framework, it is entangled with tedious formalities

of procedure. The criminal procedure code mandates that sanction for prosecution by the government is required.<sup>38</sup> Once the complaint is registered with the police, the guilt of the faulted can only be adjudged by the court after a full-length trial. During trial, there is a heavy burden of proof for the parties to prove that the act had been committed with the culpable state of mind directed at inciting hatred, enmity or aimed to offend any group or class of persons. This entire process is time consuming and might take years to conclude. Justice for the aggrieved parties in such cases is but an illusionary journey.

Like Australia, India stands to gain immensely from introduction of alternate means of settlement of disputes for hate speech offences. Together, it is pertinent to note that this kind of an approach needs to be suitably modified so as to function within the prevailing system in India. This could begin with court ordered mediation or conciliation between parties that could greatly contribute to unburdening of the court's case load and arrive at a comparatively early decision in the matter. Moreover, the punishment and penalties attached to the offences would also need a rethink in light of the circumstance that the existing punishments have not been a deterrent for cases arising in future and do not contribute to the restoration of the damage that hate speech inflicts at large.

## Conclusion

The desideratum is that the Indian law on hate speech needs to be reviewed. Various sections of the hate speech law relating to promoting enmity between groups and classes and disturbing the peace<sup>39</sup> and on the deliberate insult to a religion<sup>40</sup> are too subjective. Such a law is too broad. On a plain reading, it means that if peoples' feelings are upset, the law can be invoked. Even if a more objective view is taken, it is eventually the judiciary that decides whether the work would be perceived as offensive by the axiomatic reasonable man – which, in this case – is the judge himself.<sup>41</sup> The Indian laws on hate speech so far were a conundrum but the suggestions given by the Law Commission of India if taken seriously by the Parliament and resultantly with necessary amendments in the statutes may spell out much better socio-political landscape.

In Australia, the proposed changes and submissions to vilification reviews in other jurisdictions are indicative of a regularly held belief among many activists, government, and non-government organizations: that current protections for minorities against vilification are either inadequate or non-existent. Therefore, the argument progresses, greater protections are needed to ensure minorities are protected and can fully participate in society. However, as the table above shows, most jurisdictions proscribe vilifying, threatening or abusive speech. Further, if other jurisdictions want to amend their vilification laws, they should follow the approach adopted by the NSW Act. The NSW Act not only protects free speech and minorities by maintaining threats and incitement as the threshold but — as the consultation process demonstrated — the NSW Act was able to tackle the disquiets that have been raised in other jurisdictions.

## Footnotes

- <sup>1</sup> R. vs. Keegstra, [1990] 3 SCR 697.
- <sup>2</sup> Gautam Bhatia, *Offend, Shock, or Disturb – Free Speech under the Indian Constitution*, New Delhi: Oxford University Press, (2016), p.139.
- <sup>3</sup> Rajeev Dhavan *Publish and Be Damned – Censorship and Intolerance in India*, New Delhi: Tulika Books, (2008), p.223.
- <sup>4</sup> Michael Rosenfeld, 'Hate Speech in Constitutional Jurisprudence: A Comparative Analysis', 24 *Cardozo Law Review*, (2003), p.1523.
- <sup>5</sup> Nadine Strossen, *Hate – Why We Should Resist it With Free Speech, Not Censorship*, New York: Oxford University Press, (2018), p.xxiii.
- <sup>6</sup> Rajeev Dhavan *Publish and Be Damned – Censorship and Intolerance in India*, New Delhi: Tulika Books, (2008), p.224.
- <sup>7</sup> A. G. Noorani, 'Hate Speech and Free Speech', *Economic & Political Weekly*, (November 14, 1992), p.2456.
- <sup>8</sup> Siddharth Narrain, 'Hate Speech, Hurt Sentiment, and the (Im)Possibility of Free Speech', *Economic & Political Weekly*, (2016) Vol LI No.17, p.119.
- <sup>9</sup> *PravasiBhalaiSangathan v Union of India*, Writ Petition (C) No 157 of 2013, a Supreme Court litigation where the Court was asked to respond to speech used to target migrant workers.
- <sup>10</sup> Harshal Kumar and Lalit Bhushan Paswan, "Role of Hate Speech", *International Journal of Law and Legal Jurisprudence Studies* Vol.1, Issue 8.
- <sup>11</sup> *Ibid* p.6.
- <sup>12</sup> Law Commission of India Report No.267, March, 2017
- <sup>13</sup> Siddharth Narrain, 'Hate Speech, Hurt Sentiment, and the (Im)Possibility of Free Speech', *Economic & Political Weekly*, (2016) Vol LI No.17, p.124.
- <sup>14</sup> O.K. Ghosh v. E. X. Joseph, AIR 1963 SC 812; and *Supdt. Central Prison v. Dr. Ram Manohar Lohia*, AIR 1960 SC 633.
- <sup>15</sup> *Ibid*.
- <sup>16</sup> AIR 2014 SC 1591
- <sup>17</sup> *State of Uttar Pradesh v Lalai Singh Yadav*, AIR 1977 SC 202 at para 13.
- <sup>18</sup> *Ibid*.
- <sup>19</sup> *N Veerabrahmam v State of Andhra Pradesh.*, AIR 1959 AP 572.
- <sup>20</sup> Siddharth Narrain, 'Hate Speech, Hurt Sentiment, and the (Im)Possibility of Free Speech', *Economic & Political Weekly*, (2016) Vol LI No.17, p.122-123.
- <sup>21</sup> *Ibid*.
- <sup>22</sup> *Dr. Ramesh YeshwantPrabhoo v. Prabhakar Kashinath Kunte*, (1996) 1 SCC 130.
- <sup>23</sup> *Ibid*. Para 29.
- <sup>24</sup> This ground is basically alleged against Bhartiya Janta Party (BJP). See the alleged speeches of BJP leaders at an election rally in Maharashtra as cited by Supreme Court of India in *Manohar Joshi v. NithinBhaurao Patil*, (1996) 1 SCC 169. See also *Ramakant Mayekar v. Smt. Celine D'Silva*, AIR 1996 SC 826 and *Prof. Ramachandra G. Kapse v. HaribanshRamakbal Singh*, AIR 1996 SC 817.
- <sup>25</sup> *Abhiram Singh v. C.D. Commachen (Dead) By Lrs. &Ors.* (Civil Appeal No.37/ 1992) with *Narayan Singh v. Sunderlal Patwa &Ors.* (Civil Appeal No.8339 of 1995).
- <sup>26</sup> A. G. Noorani, 'Hate Speech and Free Speech', *Economic & Political Weekly*, (November 14, 1992), p.2456.
- <sup>27</sup> *The Academy of Social Sciences in Australia* (2006). *Hate Speech, Free Speech, and Human Rights in Australia*. Retrieved from: <https://www.assa.edu.au/event/hate-speech-free-speech-and-human-rights-in-Australia/>
- <sup>28</sup> *The Criminal Code*, 1913, ss.76-80H.
- <sup>29</sup> *The Anti-Discrimination Act*, 1998, s.75.
- <sup>30</sup> *Fromberg, Annah.* (2017, January 30). *Racial attacks against young migrants in Tasmania increasing, inquiry hears*. Retrieved from <https://www.abc.net.au/news/2017-01-30/racial-attacks-against-migrants-in-tasmania-increasing/8222920>
- <sup>31</sup> *Anti-Discrimination Amendment Bill 2016*. (TAS). (Austl.) Retrieved from [https://www.justice.tas.gov.au/\\_\\_data/assets/pdf\\_file/0003/354243/Anti-Discrimination\\_Amendment\\_Bill\\_2016.pdf](https://www.justice.tas.gov.au/__data/assets/pdf_file/0003/354243/Anti-Discrimination_Amendment_Bill_2016.pdf)
- <sup>32</sup> *Department of the Attorney-General and Justice.* (2017). *Discussion Paper Modernisation of the Anti-Discrimination Act September 2017*. Retrieved from: [https://justice.nt.gov.au/\\_\\_data/assets/pdf\\_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf](https://justice.nt.gov.au/__data/assets/pdf_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf)
- <sup>33</sup> *Department of the Attorney-General and Justice.* (2017). *Discussion Paper Modernisation of the Anti-Discrimination Act September 2017*. Retrieved from: [https://justice.nt.gov.au/\\_\\_data/assets/pdf\\_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf](https://justice.nt.gov.au/__data/assets/pdf_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf) pp. 5.
- <sup>34</sup> *Northern Territory Anti-Discrimination Commission.* (2017). *Annual Report 2016-2017*. Retrieved from: [https://parliament.nt.gov.au/\\_\\_data/assets/pdf\\_file/0020/452054/438-Annual-Report-2016-2017,-NT-Anti-Discrimination-Commission.pdf](https://parliament.nt.gov.au/__data/assets/pdf_file/0020/452054/438-Annual-Report-2016-2017,-NT-Anti-Discrimination-Commission.pdf)
- <sup>35</sup> *Hirst, Jordan.* (2019). *Rainbow Territory calls for urgent NT anti-discrimination reforms*. Retrieved from: <https://qnews.com.au/rainbow-territory-calls-for-urgent-nt-anti-discrimination-reforms/>
- <sup>36</sup> *Katharine Gelber, 'Reconceptualizing Counter Speech in Hate-Speech Policy (with a focus on Australia)' in Michael Herz, Peter Molnar (eds.), 'The Content and Context of Hate Speech: Rethinking Regulation and Responses', London: Cambridge University Press, (2012).*
- <sup>37</sup> *Katharine Gelber, Luke McNamara, 'The Effects of Civil Hate Speech Laws: Lessons from Australia', 49 (3) Law and Society Review 631-664 (2015).*
- <sup>38</sup> *The Code of Criminal Procedure*, 1973 (Act 2 of 1974), s.196.
- <sup>39</sup> See Section 153 A and B of IPC.
- <sup>40</sup> See Section 295A of IPC.
- <sup>41</sup> *Dhavan, Rajeev, 'Harassing Husain – Uses and Abuses of the Law of Hate Speech', Social Scientist, Vol.35/Nos 1-2 January-February, 2007, p.45.*