

Counterspeech: An Alternative Policy to Combat Hate Speech in India

Anandita Yadav

Author Affiliation

Ph.D. Research Scholar, University
School of Law and Legal Studies,
Guru Gobind Singh Indraprastha
University, Dwarka, New Delhi -
110078, India.

Corresponding Author Anandita Yadav,

Ph.D. Research Scholar, University
School of Law and Legal Studies,
Guru Gobind Singh Indraprastha
University, Dwarka, New Delhi -
110078, India.

E-mail: ananditay@gmail.com

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Abstract

Counter-speech has emerged as a first-aid response of the civil society to the burgeoning and ever-changing forms and means of hate speech. Its appeal is enhanced by the fact that it is able to go beyond the rigours of law and legal framework to counter the harmful effects of hate speech. This paper discusses the initiation of such an approach in the Indian system in which counter speech has been very recently employed by the State authorities and other agencies to advocate for action against widespread hate. The aim is to explore and understand the ways and means in which counter-speech has been employed within either State systems or policies to the best advantage of all the actors involved in today's pluralistic and global society.

Keywords: 'Hate Speech'; 'Counter Speech'.

Introduction

The power of words is limitless. Although words can be used to inspire people and promote good, they also can be used to destroy. In the form of hate speech, words can be "used as weapons to ambush, terrorize, wound, humiliate and degrade." [1].

It is undeniable that the impact of hate speech is immense. Its consequences are deleterious in cases where the use of incendiary words is designed to insult, infuriate and in extreme situations, incite violence. In the recent past, India has witnessed a series of violent clashes between religious communities [2] that have arisen as a result of inflammatory speech propagated by divisive groups [3]. Such incidents are not only derogatory towards an individual's right to live with dignity but also disrupt the peace and order in society. This is, perhaps, one of the simplest rationales adopted to justify laws banning hate speech in India. It

would not be amiss to state that there are perhaps very few issues that so sharply divide the public discourse as does hate speech and the regulatory methods adopted to check it.

Black's Law Dictionary identifies hate speech as the "speech that carries no meaning other than expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence" [4]. In essence, to describe hate speech as "speech that is, broadly speaking, derogatory towards someone else" [5] would not be entirely misplaced. While the definition of hate speech still eludes a universal definition, its broad contours have been defined variously, depending on the context it operates in. But this is only the starting point for the challenges that hate speech posits. The failure in having a universally agreed concept has led to an understanding of hate speech that is altered variously in different contexts [6]. This manifests itself, thus, in different ideas of hate speech across jurisdictions; formed through the influence of peculiar sensibilities, "identities" and

“assessments” in particular contexts. This makes regulation of hate speech much more challenging. Dealing with hate speech, modern day jurisdictions tend to lean towards what Benoit Frydman has defined as “slippery slope” and the “fatal slope” [7]. For instance, in Europe, hate speech is banned due to its capacity to incite violence that may lead to killing of people. In order to prevent such a mishap, strict laws are imposed. This is the “fatal slope” arguments in favour of banning harmful speech. On the other hand countries like United States maintain that legal prohibitions on hate speech is a tricky endeavour when such speech is not clearly defined as a concept in the first place. Such laws would lead to an inevitable clash with its expansive First Amendment jurisprudence thus summarising the “slippery slope” argument [8]. In between such extreme approaches, legal regulation of hate speech has seen varying success. Alternatively, Keenan Malik states, “...in a sense hate speech restrictions has become a means not only of addressing specific issues about intimidation and incitement but of enforcing general social regulation” [9].

Despite its challenges, the fundamental idea behind legal regulation remains to not only ban but also eliminate hate speech. Laws can only provide limited success in this regard. In fact, scholars have argued against using penal measures like harsh prison sentences for those adjudged guilty of hateful and offensive speech merely on basis of “demonstrating theoretical harm” [10]. Certainly, this approach has not led to reduction in number of hate speech cases over the years [11]. Other approaches adopted to regulate hate speech commonly are bans, censorship or internet shutdowns. All these approaches only prohibit the speech in one form or the other. Neither of them are able to counter the harm and negativity that hate speech unleashes or help in challenging derogatory and insulting stereotypes perpetuated by such speech. Moreover, taking down offensive content posted on one platform, in this digital age when information transmission is done within seconds, does not guarantee its resurfacing at another. In such a scenario counter speech can be employed as an effective tool and an alternative policy initiative to counter hate. In fact, it is gaining currency in both offline and online realms [12] as the choice of weapon to not only combat hate speech but also heal the harm that hate speech might have caused.

This article thus proceeds to examine in detail first, the landscape of hate speech laws and how it is legally defined in India. Thereafter, the author makes a case for counter speech as a suggested

alternative remedy to effectively tackle some of the challenges that regulation of hate speech poses in the modern day.

Hate Speech and Its Legal Regulation in India

The words either spoken or written, or employing signs or any kind of visual representation qualifies as ‘speech’. If such speech offends the religious, ethnic, cultural, racial groups by vilification and is capable of spreading ‘hatred’ among the heterogeneous populace, we categorise it as ‘hate speech’. Works of literature [13], history [14], art [15] etc. have been routinely banned or censored by the State on the justification that they spread hatred amongst the masses. Such censoring by Executive action is followed in most cases by judicial affirmation and are upheld by the courts in the interest of maintaining communal peace and harmony and protecting the multi-cultural, multi-ethnic and multi-religious fabric of the country. All of this is justified under the broad regulatory clause of Article 19 (2) which allows for ‘reasonable restrictions’ in the interest of protection of sovereignty, security and integrity of India ; public order, decency, morality or even incitement to an offence [16]. As per Michel Rosenfeld, it is this aspect of hate speech regulation that presents before us “vexing and complex problems for contemporary constitutional rights to freedom of expression” [17].

Legal prohibition of hate speech becomes a dangerous endeavour because it has been documented to conclude that it may result in an infringement of freedom of expression which could have an adverse effect on: “political awareness and expression; legitimate criticisms and scholarly analysis of religion; and humour and artistic expression” [18]. All of this possibly resulting in absolute prohibition in the name of restriction; laws that are so overbroad and wide so as to result in a ‘chilling effect’ effectively discouraging the legitimate expression and exercise of the natural and legal rights of an individual by resorting to legal sanctions.

The term hate speech is not used in Indian law but it does identify different forms of what we commonly refer to as ‘hate speech’. It is within this framework that laws meant to control, curb or inhibit hate speech find place in our penal code and continue to exist under the protection given in Article 19 (2) to such restrictions on free speech. In the Indian legal framework anti-hate speech and related laws finds place under the following statutes:

- Indian Penal Code, 1860 : Section (s) 124A, 153A, 153B, 295A, 298, 505(1), 505(2)

- The Representation of People Act, 1951 : Section (s) 8, 123(3A), 125
- Information Technology Act, 2000: Section(s) 69, 69A
- Code of Criminal Procedure, 1973: Section(s) 95, 107, 144, 151, 160
- Unlawful Activities (Prevention) Act, 1967: Section (s) 2(f), 10,11,12
- Protection of Civil Rights Act, 1955 : Section 7
- Religious Institutions (Prevention of Misuse) Act, 1980: Section (s) 3 and 6
- The Cable Television Networks (Regulation) Act, 1995: Section(s) 5, 6,11,12,16,17,19,20
- The Cinematographers Act, 1952 : Section(s) 4, 5B, 7

It is opined that the myriad ways in which the Indian laws control hate speech across the length and breadth of the legal landscape, makes it difficult to organise a 'taxonomy' that may "adequately describe the many ways in which Indian law describes and regulates hate speech [19]." This becomes a preliminary question for consideration every time a study of Indian laws on the subject is commenced [20]. Consequently, there is no commonly agreed definition of hate speech in India [21]. This concern was also echoed by the Hon'ble Supreme Court of India in 2014 when a petition before it prayed for directions from the Court to the State for taking peremptory action against the hate speech speakers. It delegated the task of formulating a definition of hate speech and to make recommendations, if deemed proper, to the Law Commission of India [22].

We see that it is characterised by its potential effects - "that it promotes fear, incites violence, articulates identities as divisive, indoctrinates prejudice and promotes discrimination [23]." In India, hate speech is categorised as one that 'promotes enmity between groups on grounds of religion, race, place of birth, residence, language, etc. [24] or even 'imputations prejudicial to national integration' [25]. Any allusions to 'insult' to religion or religious beliefs and malafide acts to outrage such religious feelings are also qualified as hate speech [26]. Therefore, in the Indian context, hate speech is understood as firstly, "concentrated expression of sectarian-communal ideology" [27] and secondly as "based on politics of exclusion" [28].

Most democracies today, including India, regulate hate speech based on the logic of words having the power to hurt. It is this nexus with 'harm' that justifies

its prohibition in modern times. As Jeremy Waldron puts it, targeting a person's "immutable characteristics, ethnic background or religious identity causes a harm".

Understanding Counter-Speech

The concept of counterspeech is certainly not a novel one. Among its more famous enunciation has been by Justice Louis Brandeis of the United States Supreme Court while pronouncing his concurring opinion in *Whitney v. California* [30] where he stated, in reference to free speech under the American constitution, that "if there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence [31]."

Speech which is obscene, in form of propaganda, distasteful, provocative, uses incendiary words, calls for violence, promotes hate or harms, defames or is just plain unpopular will undoubtedly provoke a response. While some scholars have referred to the response to any kind of such speech as counterspeech, there are some that prefer to distinguish counterspeech as a specific response to extremist content [32]. This kind of counterspeech is one which "fills a purgative role, allowing a dissatisfied message recipient to ventilate his or her thoughts rather than engage in destructive content [33]" possessing the "potential to contribute to the vitality of society" [34].

Simply put, speech that is in response or a comeback can be broadly called counterspeech but when it specially provides clarification, changes narratives, deflates hate speech by stating in response opposing values, it is more appropriately categorised as counterspeech. It is a handy method that has been rightfully "invoked historically as the preferred remedy for problematic expression" [35]. Online portals and social media sites like Facebook understand counterspeech as "crowd-sourced responses to extremist or hateful content," as an attempt to "tone down the rhetoric" in cases of posts containing hate speech by way of a disagreement or agreement as posted by the users [36]. This is seen by Facebook as beneficial since it essentially retains the right of freedom of speech and expression of the parties and at the same "tackling abusive, hateful and extremist content" [37]. Suffice to conclude that counter speech enables to not only "expose hate, deceit, abuse, stereotypes" [38] but at the same instance provides "clarification, promoting counter narratives, counter-values" bringing diverse groups closer by way of shared experiences [40].

Joseph Reagle aptly summarises thus: counterspeech can be directed at the speaker, community or just even the public at large. The proponent of such speech could be the target of hate speech herself, an unknown or known witness to the incidence of hate speech that has occurred, organizations or even the government may choose to counter the tense and precarious situation created by an incidence of hate speech. Such proponent then counters the hate speech specifically (or variously) aiming at changing norms, raising awareness, a show of support to the target of hate speech; in fact it could also be utilized for educating at large, challenging facts, understanding or to just connect with others in solidarity [41].

Efficacy of Counterspeech

As discussed in this article, counterspeech presents a “faster, more flexible and responsive” [42] way of dealing with hate speech without necessarily resorting to the legal remedy at the first instance. Amongst its other advantages include that it is more direct and personal and can be employed in any language [43]. Thus, it is a universal strategy that can be adopted and is not limited by lingual and cultural barriers. Even after banning hate speech, the idea that inspired the hate is still alive. Such a conundrum can be more efficiently resolved by debates and discussions that counterspeech is able to offer [44].

However, one of the major drawbacks of counterspeech is the difficulty in gauging its efficacy. Susan Benesch points out to the limited literature available which is devoted to studying the effects of counterspeech at large to quantify empirically its stated benefits [45]. Scholars such as Mari Matsuda state that counterspeech as a response to hate speech is not sufficient and Richard Delgado declares that no amount of more speech in response can heal the harm that is the result of a hateful speech [46]. Catharine McKinnon highlights that there is inequality of speech which is dominated by status of the speaker, “some people get a lot more speech than others” and as a result “less able to be heard” [47]. Similarly, Ruth Coustick-Deal [48] argues that counterspeech cannot be equal to hate speech as there is no parity when it comes to the speaker of such counterspeech. Additionally, it is unfair to put the entire burden of a response unto the already oppressed group. She illustrates that “it is often defined by those with privilege, only legitimate if it matches a privileged definition of rebellion and resistance” by citing a study in the United States wherein an online bot on Twitter replying to

hateful comments elicited more favorable response when it posted through a white person avatar. If the same bot posted as a black person avatar, it received vicious counter-responses [49]. Another glaring drawback is that the process of participation is left ambiguous i.e. “how participation in speech might become possible” or “how people would be enabled to speak” [50] especially in the scenario where the speaker’s ability to speak out is derived from the status one enjoys in society. As a result, this would severely impair any kind of possibility of speech by automatic exclusion of certain groups. It is important to note, at this point, that the alternative responses to tackle hate speech suggested by critiques of counterspeech (like restricting, limiting or penalizing/punishing) are unable to travel beyond the idea of employing the law in a manner that would end in censoring speech in one form or the other [51]. This, Katherine Gelber concludes, does not balance the “dichotomy of free speech versus hate speech [52]” and the eternal tussle would continue.

However, despite shortcomings, the idea of counterspeech as a policy response beyond the legal rigors has demonstrated merit. Researchers undertaking pilot studies, both online and offline, found that the option of counterspeech being made available provides tools to the target to make counter arguments aimed at the speaker of hateful content to not only win the arguments but more importantly to “delegitimize extremist narratives [53]” when it comes from individuals with “credibility, authority and authenticity” [54] offering “alternative, positive, informed and transparent narratives” [55]. The versatility of counterspeech also lends credit to its recommendation as a first aid response: counterspeech can be in the form of not only scholarly checking of facts but also comedy and satire as well. It may take the form of community involvement initiatives like group discussions and awareness campaigns amongst the youth which are “centrally planned strategy with a clear goal in which medium, speaker and content are carefully tailored to the target audience” ensuring that the message reaches the audience [56].

While examining the efficacy of counterspeech in the specific context of anti-Muslim public campaigns funded by hate groups in United States aimed at demeaning the minority community of Muslims, it was found that counterspeech measures were the preferred “remedy” [57]. It emerged as an effective “non-judicial means for empowering individuals, educating communities and undermining harmful or threatening expression...” [58] in addition also serving to “redirect attention with positive

messages" [59] translating into anti-hate speech responses such as counter-ads by the local municipal corporations, online campaigns trending under "#MySubwayAd" [60] and tweets like "In NYC we speak 140 languages and hate isn't one of them" [61], "We are all the same, Keep love going. Sofia, age 4," [62] etc. amongst counter ads by advocacy groups and organizations inspired by the Qur'an: "Show forgiveness, speak for justice and avoid the ignorant" [63]. This movement was not limited to only Muslims counteracting, it involved U.S. Congressmen, and Christian and Jew community leaders as well. Such messages directly engaged and challenged the vilification of the minority community by not only "serving an educative purpose but an empowering one" [64], The campaign's success lay in eliciting mainstream media attention using counterspeech to counter extremist messages, bigotry, which the author calls "a significant lesson to carry forward" while lauding that all this was achieved by creating an "atmosphere demanding respect for all" [65].

The think tank, Demos, studied counterspeech on the social media platform Facebook to gauge its success. Their study was limited populist right wing pages from the United Kingdom, France, Hungary and Italy on Facebook that are, according to the researchers, the "places where high volume of hateful content is posted and shared" [66] whereas for determining the counterspeech pages, the criterion was narrowed to those pages which were dedicated to responding or counteracting hateful content. They monitored these pages over a period of two months and the associated interactions of users on those pages [67]. They quantified the posts on the pages as per their formats such as 'links', 'photos', 'status' and 'video' in order to conclude what kind of post has the most impact upon its audience so as to effectively engage people in the exercise. Their results, based on the 'interactions' a post received, were quite encouraging: almost as much as twenty-five thousand counterspeech comments took place on populist right wing pages only in the United Kingdom and most popular of these was what they categorized as "constructive counterspeech" with "constructive discussion" following closely on its heels [68]. Thereby underlying the popularity of counterspeech measures when employed through the right medium. However, it was found that in other jurisdictions like France and Italy such interactions were lesser and the pages produced fewer content.

Susan Benesch has researched extensively in this area and she puts forth succinctly some prerequisites for 'successful' counterspeech i.e. "speech (text or visual media) that has a favourable impact on the

original (hateful) Twitter user..." [69] and that which has "positively affect the discourse norms of the audience of a counterspeech conversation... [70]". The report states that prior intimation of the result of speaking hate speech on a public platform, both on personal level and on public at large, can result in making the user delete the offensive content [71]. Another consideration listed is "shaming and labelling" of "hateful, racist, bigoted, misogynist" etc. as such words carry a certain connotation to them and when called out, as per the researchers, those who do not identify themselves as, let's say, racists, usually make efforts to denounce such a label [72]. Other considerations include counterspeech which involves employing such a tone while responding that is able to forge a bond of "empathy and affiliation" with the speaker of hate speech so that growth of "hateful rhetoric" can be controlled [73]. Humour, be it caricature or sarcasm, has been successfully used to fuse the tension created by hateful content [74]. Use of images in various forms like "memes, graphics, photographs, animates gifs, videos" have proven to be most effective in disseminating counterspeech across platforms rather than just plain text [75]. The use of images and videos for greater impact on audience even beyond their platform has also been found to be effective by Demos report findings from Facebook as well [76].

Most importantly, the value attached to counterspeech exponentially increases in contemporary times when hateful content on the internet is rapidly spiralling out of control. Legal measures to deal with such content are limited to either criminal prosecution in extreme cases or blocking the website or deleting/taking down the hateful content [77]. Such an approach, it is argued, neither actually counters hate speech per se and in cases of blocking of content often leads to contravention of right of free speech of individuals or entities resulting in total prohibition. Counterspeech has been able to surpass both these limitations with encouraging results.

Counterspeech in India

India presents a peculiar case for regulation of hate speech: the rich diversity of language, caste, race, religion, culture and beliefs makes it imperative that any kind of response to hate speech, based on any of the grounds above, should not just punish the guilty but also work towards restoring the damage done to the secular fabric of

the nation, lest such damage lead to more disastrous consequences. While friction between different classes of people is unavoidable, a mere legal response has not been enough to create deterrence. Incidents of hate speech have seen a steady rise with the online medium serving as a fertile platform for hate speech to fester. Unverified messages, rumours, fake news [78] and deepfakes are circulated on social media [79], aimed at instigating and inciting to violence against a particular group or class.

Often, the creators of such inflammatory messages are difficult to apprehend or even detect when messages are protected by end to end encryption like on messaging services Whatsapp or their origins cannot be verified. Such cases might go unpunished but the harm their content causes is real and it may lead to serious consequences like communal clashes, riots, violence leading even to the death of individuals.

In this kind of scenario, the lack of any kind of quantifiable data that can be relied upon to identify cases of hate speech on social media and messaging service platforms like Whatsapp only exacerbates the containment of the problem [80]. While the speed of circulation of content in the online world only quickens by the minute, the law has failed to keep up. The use of counterspeech as means of regulating the effects of hate speech carries a lot of potential where law has yielded limited results. While counterspeech may not completely prevent incidents of hate speech from occurring but it certainly can galvanize groups to respond to incendiary words with positive narratives.

The Demos report [81] examined how counterspeech operates on Facebook in order to make suggestions for counterspeech to be employed more effectively as response to extremist content on social media. In case of India, when it came to type of counterspeech pages garnering most 'likes', "satirical/religious criticism" trumped. Most pages fell into the category of "positive and moderate religious campaigning" [82]. In contrast, in France and United Kingdom, which were also part of the study, pages on religious themes were few and displayed low interaction amongst users. Therefore, the report concludes that the type of counterspeech content pages were typically influenced by the location of the sample population eventually campaigning for a country-specific approach for use of counterspeech [83].

Counterspeech in action was most recently seen in 2017 in the widespread "Not In My Name" campaign in India. It is a movement aimed at

garnering citizen initiative and support to protest against violence in the name of religion, deny religious bigotry any popular support and most importantly to express solidarity with victims of mob attacks and vigilante justice in the name of religion, race, caste and class [84]. "#notinmyname" was viral on social media, news and other media platforms. It led to public protests across Indian cities against numerous cases of killings and mob lynching aimed at religious and caste minorities [85]. A data journalism site estimates that in the last eight years, 25 individuals have died and almost 139 injured just in cases of bovine-related violence not even including incidents of general violence in the name of religion [86]. Unfortunately, a lot of these incidents were mostly motivated by hateful messages and rumours circulated on messaging services and social media platforms that activated the mobs [87]. The campaign saw revival again in 2018 when incidents of gruesome rape of minors in Kathua and Unnao districts were reported as being communally motivated [88].

While there is lack of quantifiable data to gauge the success of such movement in India, a research aimed at studying patterns of hate speech on Facebook in India was conducted during these specific time frames [89]. The first-time frame selected was during the year 2016, when in a counter-terror operation, a terrorist was gunned by the Indian security forces in Kashmir valley and the resulting violent clashes between separatists in Kashmir and the army. The second time frame was in year 2017 when three incidents were reported: a teenage Muslim boy was lynched on a train by a mob (which was what sparked the 'Not In My Name' movement) in Uttar Pradesh, in Kashmir a senior police officer was lynched to death in Srinagar and attack by terrorists on the holy shrine Amarnath bound pilgrims. The researchers compiled pages on Facebook under categories like media, political organizations, religious and community organizations, opinion pages even satire and humour amongst others. Using the technique of content analysis, it concluded as follows [90]:

- Religion has emerged as the focal point of most hate speech in the year under study.
- Majority of hate speech was either a call for violence aimed at a particular community or instigation to inflict bodily harm. Videos or photos, showing the "enemy", were most provocative to the "partisan audiences" instantly spurring vitriolic hate speech.
- It was found that the response to hate speech

came mostly in form of comments or replies to the original post. Majority of the response was a call to humanity and decency in light of death of innocents in the name of religion, race, caste.

- The study concluded that counterspeech is most effective when it counters “ideas” rather than “content”. Most of such speech was only relevant so long as it addressed current events.

Activists, celebrities, public personalities and even the police have also employed counterspeech measures. The police in Mumbai, in an effort to avert violent riots and diffuse the tension between religious groups in 2015, sent out messages dispelling the rumours to curb the mischief wrought [91]. At the time this article was being written, the “#TalktoMuslim” campaign had started on social media platforms to counter the “rise of Islamophobia” in the country seeing participation by a number of celebrities [92]. While the idea of consciously engaging with a certain community is being debated as too patronising, the sides are equally divided between dissenters and campaigners. The impact of such a campaign would be an interesting future study.

Conclusion

Counterspeech has become the light at the end of a dark tunnel for not only victims of hate speech but also for other people to join in support and solidarity. It is the impetus needed to counter abusive and offensive content by responding to it in a variety of ways not limited to reporting such content or fact-checking but also innovative responses like “myth busting”, humour, satire or using “photo or video montage”. Despite lack of persuasive case studies and empirical data on its impact and efficacy in curbing hate speech, it has shown promise as a viable policy alternative that can be used in a variety of ways to tackle the multi-headed Hydra monster that hate speech is rapidly turning into. A welcome step in this direction has already been taken by Youtube and Facebook that are funding creation of such model content that specifically aims to “promote tolerance” and usher in social change [93]. Let us hope there are more such models to emulate and use in our jurisdiction.

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