

The Threat of Hate Speech: Social Media and The Inadequacies of our Laws

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Abstract

Hate speech is a peril which has been recognized as one of the archaic issues in our country. However, pursuant to certain alarming incidents, hate speech has assumed great significance as a national issue in Bangladesh. The emergence of technology has converted hate speech into an unleashed horse. Incitement, threat, abusive comments posted on social media have the propensity to go viral in a fraction of time. Consequentially, the victim's life can be destroyed before she/he can pursue any legal action. Our obsolete legal system has failed to address the legislative lacuna concerning hate speech on social media. The absence of a specific legal definition of hate speech and the ambiguous restrictions in the constitution make the provisions related to hate speech, susceptible to misuse. We have witnessed numerous impacts of hate speech including radicalization, mental illness and gender violence. This paper endeavors to, Firstly, explore the effects of hate speech on social media. Secondly, does the existing law suffice to regulate hate speech on social media? In this context, our constitution provides for reasonable restrictions concerning freedom of speech and expression. Unfortunately, the aforesaid restrictions are not conclusive enough in terms of adequacy in regulation. This manuscript aims to highlight the existing conundrum between laws regulating hate speech and the corresponding guidelines & recommendations to prevent hate speech.

Keywords: *hate speech, technology, and social media*

'In the correct hands, fire can provide illumination but in the wrong hands, Fire can be highly destructive.'

– Dan Brown

1. Introduction

Though the word hate speech always remained on the darker side of history however it has recently become a burning issue in Bangladesh. Hate speech had been used since the very beginning of history for many purposes like political, social, psychological, etc. It's been used as a tool for crimes like Genocide. From the holocaust to the Rohingya incident in Myanmar hate speech had a role to play. Nazi government tried to spread hate against Jews by controlling the radio, theatre, cinema, arts, and churches even they intruded false information about Jews in the school curriculum. Adolph Hitler had created a ministry to centralize Nazi control of all aspects of German cultural and intellectual life.¹ Joseph Goebbels was appointed as the Reich Propaganda Minister in Germany. The consequences of such a ministry that aimed at spreading

¹ Peter Longerich, *Goebbels: A Biography*, (Random House, New York, 2015) p. 212-213.

the Nazi ideology,² are well documented in history.³ The promoters of genocide in Rwanda used toxic comments against Tutsi ethnic people to turn people against their neighbors. Lastly, in Myanmar, there are plethora of proofs that hate speech campaigns initiated through Facebook against Rohingya people.

Digitalization and the impact of social media are exposing the wildest face of this problem. The internet revolution has been redefined not solely as a means of communication also a way of living. This has become a worldwide problem but the question is do we have adequate laws and regulations to combat this emerging crime. Lawmakers in Bangladesh are facing much trouble controlling this problem because of the complexity and clash with the constitutional right to freedom of expression which will be addressed in this paper.

2. Hate Speech on social media – The Bangladesh experience

Social media has brought several new dimensions in the area of hate speech. Any comment or live broadcast can reach millions of people and can affect society as a whole. In Bangladesh in almost every district violence took place against minority religious groups because of publishing rumors on Facebook. No one can forget the Ramu incident in Cox's Bazar in 2012. The same kind of attack has been also discovered against the Hindu community in Begumganj, Gaibanda, Lalmonirhat, and then in Brahmanbaria. On November 3, 2013, A mob went on a rampage in a Hindu-dominated neighborhood in Bonogram of Pabna. In April 2014, fake news of defaming religion on Facebook triggered violent attacks over the Hindu minority in Homna Upazilla of Comilla, Bangladesh. All that violence took place because of some rumors on social media.

We have witnessed the severity of violence on Facebook during the Hefazot Islam incident. Because of this incident, many issues came to light like the right to religion, the right to freedom of expression, the right to block Facebook, and mostly hate speech and hate crime topics. Additionally, Hate speech in Bangladesh is not just confined to religious groups. It has invaded every sphere of society because social media has no boundaries. Rizwana Choudhury Bannya, a famous singer of Bangladesh faced online hatred while she was diagnosed with coronavirus. She was a victim of the attacks just because of her gender. Individuals, groups are being a victim of negative attacks every day which are creating not just individual distress but also social unrest.

2.1. Hate Speech on social media and its ability to generate negative perspectives

Social media penetration in our daily life has an enormous effect on the psychology and mental health of an individual. These multidimensional effects of social media made us wonder life would have been better without technological advances.

First of all, social media comments and posted stories are creating huge distress to individual life. Social media is providing access to outsider people to invade individual lives. People are suffering more from mental health issues because of social media. Many celebrities and public figures spoke about their mental distress because of discriminating, attacking comments. Recently we have witnessed disturbing comments when actor Chanchal Chowdhury posted a picture with his mother. We can easily find offensive comments whenever any news portal

² Roger Manvell and Heinrich Fraenkel, *Doctor Goebbels: His Life and Death* (Skyhorse, New York, 1960).

³ Law Commission of India, *Hate Speech* (Report No.267, 2017).

posts any news on religious ceremonies on Facebook. This unseen harm to our mental health is creating depression, toxicity, disturbances, anxiety, and insecurity in our personal lives. However, cyberspace laws even constitutional restrictions are failing to secure the public from these sufferings.

2.2. Social Media as an avenue for radicalization

The way of using the information shared on social media brings up significant effect on economic, social, and cultural dimensions⁴. There are some studies and researches which explored the psychological dimension to understand the connection between social media and radicalization which is relatable in Bangladesh's perspective also. Captivating research on the online hate speech area has been done by Sarah Rohlfing. In her Ph.D. research paper where she proved that online hatred can shape the negative attitudes of certain online users and make people more extreme about their prejudiced thinking⁵. She has proven how hate speech on social media can bring behavioral change. Legal philosopher Jeremy Waldron in his detailed study stated two types of message hate speech usually have. First is the dehumanizing target group and making them feel they are unwanted. The second message is to encourage others and influence some like-minded people that the target group should be excluded⁶. Researchers like, Moscovici and Zavalloni⁷ (1969) and Myers and Bishop⁸ (1970) found that, following 'like-minded' group discussions, participants became more extreme in their existing views⁹. In addition, interactions among like-minded people facilitated by social media can make them more extreme with their already extremist views¹⁰.

The internet has created more opportunities to become radicalized. Many scholarly articles ascribed a role to the internet in promoting radicalization¹¹. Gabriel Weimann's *Terror on the Internet: The New Arena, The New Challenges*, wrote his findings that by the end of 1999 that almost all terrorist groups had established an online presence¹². Different empirical studies suggest, there is a correlation between extremists' websites and online propaganda, and rapid radicalization¹³.

In this decade the traditional structure of radicalization has totally changed. If we observe the current situation, the idea of like-minded group people is targeting hate crime is changing

⁴ Murat Mengü, Seda Mengü, 'Violence and Social Media' [2015] 1(3) Athens Journal of Mass Media and Communications, p. 211-228.

⁵ Sarah Rohlfing, 'The Role of Social Networking in Shaping Hatred: An Exploration into User- Responses to and Influence and Permissibility of Online Hatred' (DPhil thesis, University of Portsmouth 2017).

⁶ Jeremy Waldron, 'The harm in hate speech' [2012] Cambridge, Mass.; London: Harvard University Press, p. 2-3.

⁷ S. Moscovici, & M. Zavalloni, 'The group as a polarizer of attitudes' [1969] Journal of Personality and Social Psychology.

⁸ D. G. Myers, & G. D. Bishop, 'Discussions effects on racial attitudes' [1970] American Psychological Association 1970, p. 778-779.

⁹ Sarah Rohlfing, 'The Role of Social Networking in Shaping Hatred: An Exploration into User- Responses to and Influence and Permissibility of Online Hatred' (DPhil thesis, University of Portsmouth 2017).

¹⁰ *Ibid*.

¹¹ Tomas Precht, *Homegrown Terrorism and Islamist Radicalization in Europe: From Conversion to Terrorism*, (Research report funded by the Danish Ministry of Justice 2007).

¹² Gabriel Weimann, *Terror on the Internet: The New Arena, The New Challenges* (Washington, DC: United States Institute of Peace Press, 2006).

¹³ Shawn Powers, Matt Armstrong, 'Visual Propaganda and Extremism in the Online Environment' (Strategic Studies Institute and U.S. Army War College Press, 2014).

through this platform. Only madrasah students or mullahs are not involved in radicalization, other people are also getting involved in radicalization, especially youth. Most influenced by online radicalization is our young generation. Apparently, young people are more active in social media than the aged. This is one of the reasons for targeting the young generation and another big reason is they are easy to manipulate.

If we see the 2016's Holy Artisan attack, 20 people were killed by the 6 Islamic militants. First, the government named it a home growing militant but instantly, ISIL (Islamic State of Iraq and Levant) posted pictures of their dead body and declared their influence behind this attack. Surprisingly, none of those attackers was a traditional 'madrasah' student or 'mollah'. They were university students and belonged to the upper-class society of the country. The involvement of that kind of youth makes it very clear how the internet, social media, and other technological instruments becoming a dangerous platform for radicalization.

Gayathry Venkiteswaran, a Malaysian scholar in her book "Let the Mob Do the Job" described the cultural change with the radical penetration of social media in our life. Her research area was specifically on online hate speech of Asian countries. She mentioned Bangladesh is under a process of making psychological refugees by turning the digital public sphere into Islamic digital public sphere. She also emphasized on the link between popular cultures and mushrooming Islamic sentiment in contemporary Bangladesh is apparent where secularism has no place¹⁴. We are losing tolerance in society which is very alarming.

3. Hate speech vis-a-vis freedom of expression

Man is born free and everywhere he is in chains. This statement by the famous philosopher Jean-Jacques Rousseau succinctly captures the instant concern. Freedom of expression is considered as one of the main pillars of a democratic society and also plays a vital role to exercise and protect other rights. It is a fundamental right of every citizen that is guaranteed in the Constitution of Bangladesh. Under article 39 of the Constitution of Bangladesh, it is clearly stated that freedom of thought and conscience is unlimited but freedom of speech and expression has some reasonable restrictions. The problem arises when hate speech is being misunderstood with the practice of freedom of speech and expression. Though some restrictions have been imposed by Constitution however line between the two ideas often crossed. Hate speech and freedom of speech have some subtle differences but they are often intertwined. Words of one's cynical, hateful, or threatening to others' free speech can be turned into hate speech which can break down a society's harmony.

The term 'hate speech' has not been explained in the law or any identified definition cannot be found. Defamation, incitement to an offence, and some other factors have been mentioned in the constitution but it does not cover the whole area of hate speech. If we take the examples of European countries, we can see that almost every country has a national definition of hate speech. They constantly reformed their law to cope up with the current situation. In recent times, a large medium of freedom of expression is social media. This means of communication put the hatred expressed in a broader and abstract space, which goes beyond the traditional application of the law. Lack of restriction makes it possible for any person to comment, post, or share which overlaps the line of freedom of expression. In Bangladesh, women and minor ethnic group is the main victim of hate speech. People often consider their opinion as to their

¹⁴ Venkiteswaran. G, "Let the mob do the job": How proponents of hatred are threatening freedom of expression and religion online in Asia [2017] APC <https://www.apc.org/sites/default/files/mobReport10-Online_0.pdf>

hate speech as free speech. There is no specific guideline or certain law that forbids that unrestricted freedom.

In Bangladesh, those problems directly affect our justice system. Sometimes, it becomes impossible to prove hate speech in court. One of the biggest lacunae in our legal system is to determine hate speech. No elements or factors have been mentioned. Our penal code is more than a hundred years old. It is failed to comply with our current situation. Mediums of freedom of expression have been changed. It is high time our legal system should be reformed and also some guidelines should be provided.

4. The legislative framework concerning hate speech in Bangladesh.

Hate speech has not been defined in any law in Bangladesh. However, some provisions in limited legislation prohibit certain forms of speech as an exception to freedom of speech. Presently other than the constitutional article on freedom of expression, some part of hate speech has been restricted in Penal Code 1860 and Digital Security Act.

4.1. Virtual hate speech and Digital Security Act, 2018

The most threatening subject of the present time which is online hate speech has been dealt with the most controversial law in Bangladesh. The inadequacy of addressing the issue in the law area is surprising. According to Adam Klein, social media has created the ideal environment for hate groups to not only spread “toxic yet effective messages of cultural intolerance, racial superiority, or fear in a given society”, most of the time it can conceal or disguise facts and represent them as truth¹⁵.

Article 28 of the Act states: “*If any person or group intentionally or knowingly with the aim of hurting religious sentiments or values or with the intention to provoke, publish or broadcast anything by means of any website or any electronic format which hurts religious sentiment or values then such activity of that person will be considered an offence.*”¹⁶

This provision is depending on vague, nebulous words. To criminalize someone under this provision prosecutor needs to prove intention which is difficult to prove. There is no scope in this law to unmask the perpetrator who is doing the crime with an anonymous profile or page on social media. In April 2012, a girl from Georgia, USA was being bullied by two students. The family of that girl filed a libel suit against them for cyberbullying their daughter on Facebook. Facebook was ordered to hand over the names of the offender.¹⁷ However, we have no regulations where we can make Facebook bound to cooperate.

This whole law is not doing any good except evil to society. It is being used for political reasons. This law is not giving any protection to the people but threatening democracy. Arbitrary arrests are being made under this act. That is no wonder that Digital Security Act is being called a draconian law.

4.2 Hate speech and its regulation under the Bangladesh Penal Code, 1860

¹⁵ Adam Klein, ‘*Slipping racism into the mainstream: A theory of information laundering. Communication Theory*’, volume 22(4) (Oxford Academic 2012) p .429.

¹⁶ Digital Security Act 2018, s 28.

¹⁷ International Legal Research Group on Online Hate Speech, Final Report, (European Law Student’s Association, ELSA).

The Code provides for certain provisions regarding restriction on some form of speeches. These include Section 153A¹⁸ (promotion of enmity between different groups), 153B¹⁹, Section 295A²⁰ (intended to outrage religious feelings), Section 298²¹ (deliberate intent to wound the religious feelings), Section 505(1) and (2)²² of the Code.

4.3. Is the Code sufficient to regulate hate speech on social media?

Most of the sections were added after some incidents in India at the time of British Colonization. Time has changed and new problems raised in the matter of hate speech. These archaic provisions depend on vague words which lost their ability to address new issues in Bangladesh. Section 153A, 295A, 298 do address some important crimes like promoting enmity among classes, outrage, wound religious feelings and insulting religion. These words are not well defined and are difficult to prove in court. The silence on the matter of mob attacks is not benefiting the situation in Bangladesh. Most of the mob attacks in different districts were took place with a conspiracy where rumors or hate speech fueled a large number of the mob. This issue needs elaborate and detailed provision where executives have to take prompt action.

There is no provision that can address the offensive speeches because of the discriminative nature of the speech. Hateful speech, even if it does not reach the threshold of “incitement to violence”, can be detrimental and reinforce the negative, biased beliefs in society²³. The UN HRC Special Rapporteur on Minority issues states that hate crimes are most likely to occur with prior stigmatization and dehumanization of targeted victims²⁴.

Additionally, any provision on the penal code does not recognize any hate speech based on gender or sexual orientation. Another point which can be raised is that all the sections are depending on the intention. However, there can be speeches or comments where we will not find intent but doing the same harm to individuals and society. Because of the complexity of the issue, it needs deeper consideration so that we can handle the problem in a better way.

The Supreme Court of India, in the case of *Pravasi Bhalai Sangathan v. Union of India & others*,²⁵ observed that the issue of hate speech deserved deeper consideration by the Law Commission of India. It stated that “we request the law commission also to consider if its deems proper defining the expression hate speech and make recommendations to the parliament to strengthened the election commission to curb the menace of hate speeches irrespective of whatever made”.²⁶ The law commission of India considered the issue of Hate Speech and the commission suggested incorporating new provisions in the penal code so that the issue can be

¹⁸ penalizes ‘promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony’.

¹⁹ prohibited ‘imputations, assertions prejudicial to national integration’.

²⁰ penalizes ‘deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs’.

²¹ penalizes ‘uttering, words, etc., with deliberate intent to wound the religious feelings of any person’.

²² penalizes publication or circulation of any statement, rumor or report causing public mischief and enmity, hatred or ill-will between classes.

²³ L. Shaw, ‘Hate Speech in Cyberspace: Bitterness without Boundaries’ [2011] Notre Dame Journal of Law, Ethics and Public Policy 25(1), 279–304, p.279.

²⁴ Rita Izsák, ‘Hate speech and incitement to hatred against minorities in the media’, Report of the Special Rapporteur on minority issues, A/HRC/28/64, 5 January 2015

²⁵ *Pravasi Bhalai Sangathan v. Union of India & others* [2014] 1591 AIR (SC).

²⁶ Law Commission of India, Hate Speech (Report No.267, 2017).

dealt with elaboration. Commission also suggested some amendments to the existing provisions.²⁷

5. Recommendations: The way forward.

(a) At first we need to draw a line and make a specific definition of hate speech but not a rigid one. The major, commonly practiced form of hate is a direct expression of negative ideas towards target groups.²⁸ We are suggesting a definition of hate speech. This definition is made in the light of "United Nations Strategy and Plan Action on Hate Speech." Any statement either in speech or writing which is discriminatory towards any person, group, or community on basis of their religious belief, gender, ethnicity, or nationality can be identified as hate speech. Behavioral communication should also be included in hate speech.

(b) Bangladesh is the fastest growing country of Facebook users. We need Facebook cooperation to bring down hate crimes. Germany passed a law in 2017 by which they can bind Facebook authority to take down hateful content. If they do not take down those contents Facebook has to pay a fine. The government of Bangladesh and BTRC need to act quickly to make Facebook cooperate with Bangladesh.

(c) Special attention should be given to the mob attacks which are destructing the social balance. Proper investigation and speedy trial are necessary to overturn the mob attacks. Perpetrators of mob violence incidents like Ramu, Nasirganj, Begumganj didn't get punished because of the lengthy process and very ineffective investigations.

(d) Proper guidelines need to be determined to make people understand a desirable behavior in the social media sector. Bangladesh is a developing country where people cannot always get the proper education. Ethical, moral, and behavioral education is not ensured even in the school curriculum. If proper education and guidelines can be ensured, then unwanted offensive behavior can be reduced to some extent.

(e) General constitutional restriction is not enough to combat the complex issue of hate speech. In Europe, the Constitutions of Austria, Germany, Hungary, Italy, alongside the provisions of the right to free speech, also prescribed reasonable restrictions for the same. These countries, further break down the constitutional provisions through other legal instruments regulating media laws, laws on equality and non-discrimination, laws to protect national, ethnic, linguistic, or religious minorities, etc.²⁹ We need to insert hate speech provisions in other laws so that we can address other dimensions of this issue.

(f) Fake Facebook account is another opportunity for spreading hate crime without revealing one's identification. Government can provide some rules prescribing that without a national id card, birth registration card, passport number, or any kind of proper identification no person will be able to create an account.

(g) Peace education can be the method for minimizing hatred in society. In school, college some programs can be organized to make young people understand not just the impact of hate

²⁷ *Ibid.*

²⁸ Teona Gelashvili, 'Hate Speech on Social Media: Implications of private regulation and governance gaps' (MPhil thesis, Lund University, 2018)

²⁹ *Ibid.*

speech in society but also what is hate speech. So that young generation grows up with respect and empathy towards other people.

(h) Online complaint booth can be introduced to fight hate speech. If any person or group is suffering threat or other can complain to the booth. Immediate action can be taken because written complaints or cases take a huge time.

6. Conclusion.

The hate speech issue is threatening the peace, equality, and unity of this country which was the essence of our great liberation war. In past, we have witnessed the road which started from hate speech led to crimes like communal violence and Genocide. Strong and prompt action needs to be taken before it's too late however we also need to ensure that right of freedom of speech should not be curtailed under the veil of restricting hate speech. The fine line should be drawn between hate speech and freedom of expression by due enactment laws so that the judiciary can ensure victims' safety and uphold the right of freedom of expression.