



Criminalization of Politics

What is criminalization of Politics?

- Participation of criminals in politics
- National Election Watch and Association for Democratic Rights (ADR) survey- 40 percent of the newly elected members have declared criminal cases, while 12 percent have serious criminal cases pending against them.
- A TOTAL of 4,984 criminal cases involving legislators were pending in various courts across the country as on December 1, 2021,



NN Vohra Committee

- committee had concluded that agencies, including the CBI, IB, RAW, had unanimously expressed their opinion that the criminal network was virtually running a parallel government.
- The committee report mentioned how money power was first acquired through real estate and then used for building up contacts with bureaucrats and politicians.
- The money power is used to develop a network of muscle power which is also used by the politicians during elections.

Reasons for Criminalisation of Politics:

- Lack of Political Will:
- Muscle Power and Corruption:
- Limited Awareness
- Vested Interests
- Lack of Transparent Governance:
- Polarization Towards Caste/Religions:

Legal Jeopardy

- **Section 8** of the act, i.e., **disqualification on conviction for certain offences**,
- law does not bar individuals who have criminal cases pending against them from contesting elections.

Effects of Criminalization of Politics




Law Commission

The Law commission in its 179th report recommended an amendment to the Representation of people act 1951.

- It suggested the people with criminal backgrounds should be disqualified for five years or until acquittal.
- It also recommended that the person who wants to contest the election must furnish details regarding any pending case, with the copy of the FIR/complaint, and also furnish details of all assets. But no action was taken on the recommendation by the government due to a lack of consensus amongst the political parties.



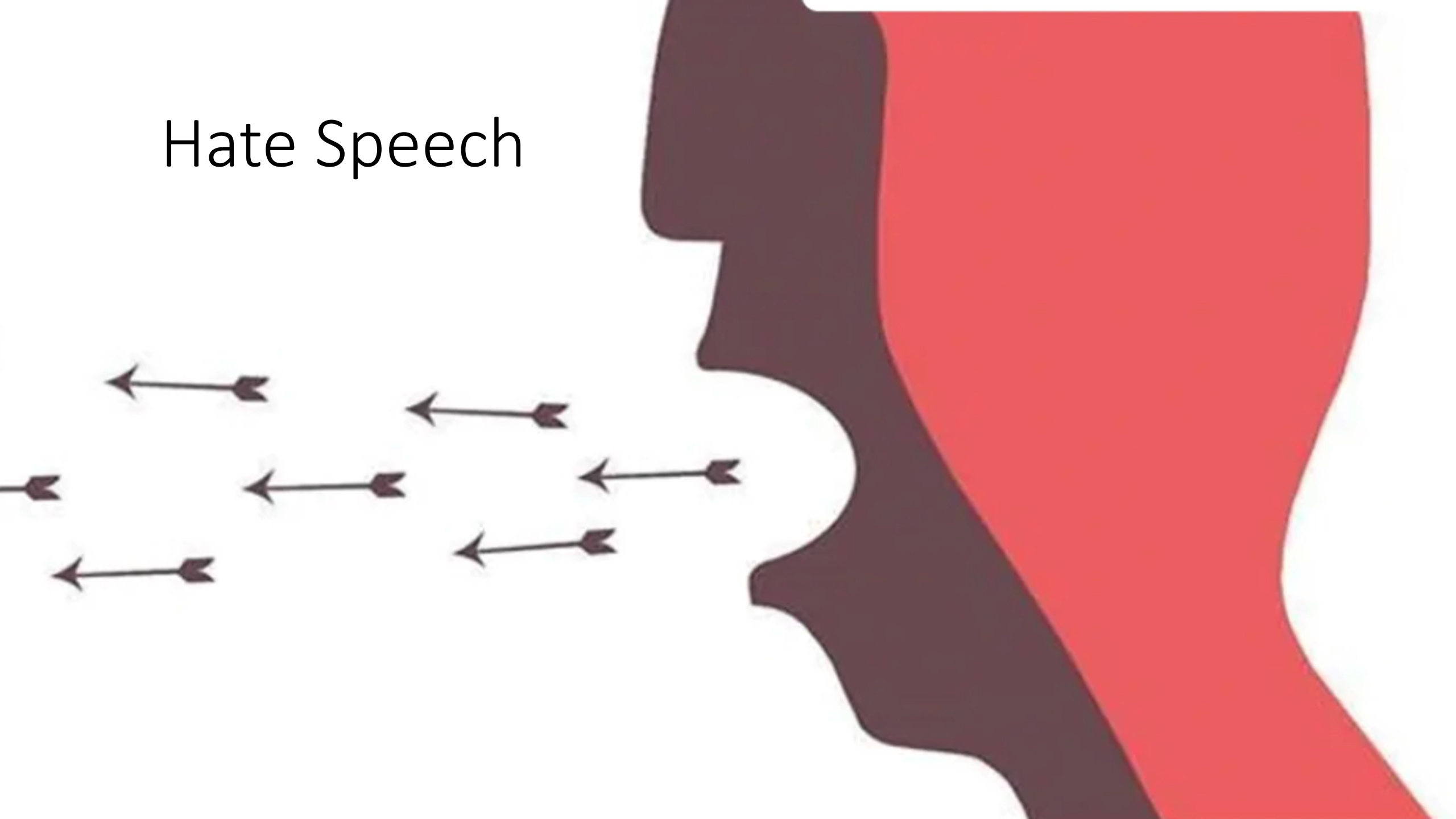
Lily Thomas v Union of India (2013)

- **convicted of crimes where they had been awarded a minimum sentence of 2 years imprisonment would cease to be members of the house to which they were elected from the date of sentencing.**
 - It further struck down the provision, which allowed convicted members a 3-month time period for appeal against the conviction and sentencing and held that those convicted would suffer immediate disqualification.
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Suggested Measures

- **State Funding of Elections**
- **Strengthening Election Commission**
- **Voters Education**
- **Judicial Scrutiny**

Hate Speech

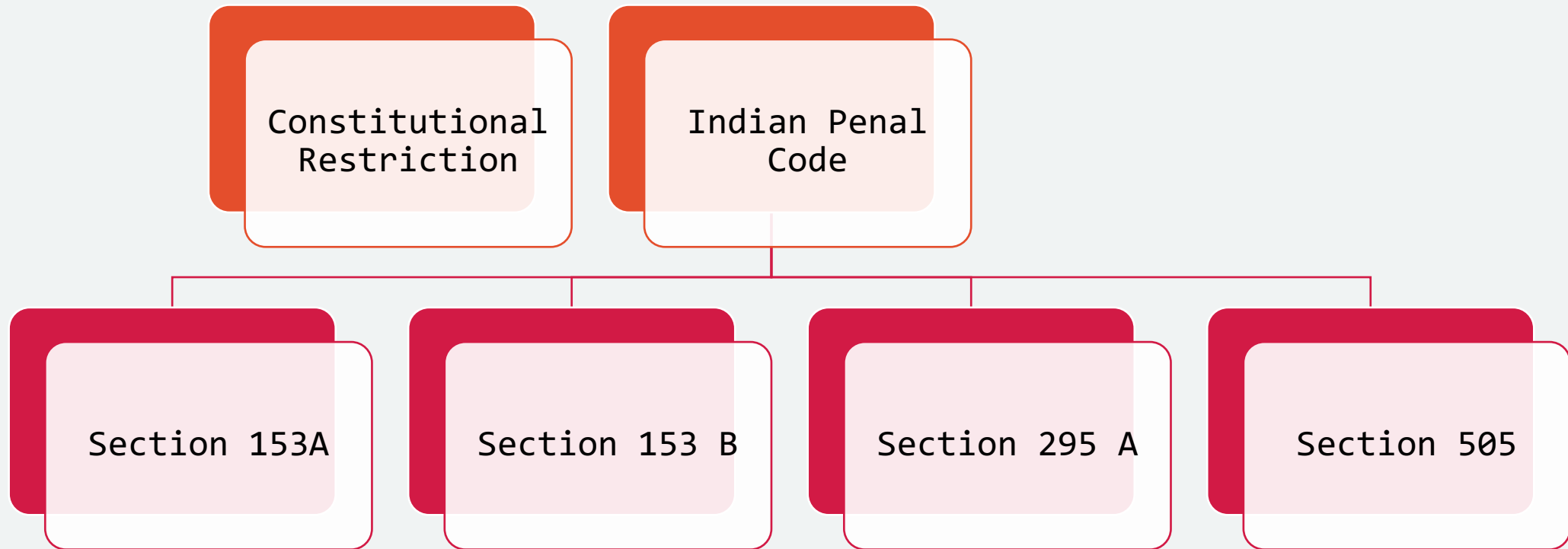


FREEDOM OF SPEECH AND EXPRESSION

- **Article 19 (1) (a)- All citizens shall have the right to freedom of speech and expression;**
- **Restriction: Article 19(2) imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of**
 - + **the sovereignty and integrity of India,**
 - + **the security of the State,**
 - + **friendly relations with foreign States,**
 - + **public order, decency or morality or in relation to contempt of court,**
 - + **defamation or**
 - + **incitement to an offence**



Laws WRT Hate Speech



153A of IPC:

Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

---shall be punished with imprisonment which may extend to three years, or with fine, or with both

--Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.



Section 153 B Of Indian Penal Code

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) **makes or publishes any imputation that any class of persons cannot**, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any **class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India**, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal **causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.**

(2) Whoever commits an offence specified in sub-section (1), **in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]**



Section 295 A

Section 295A defines and prescribes a punishment for deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

Shall be punished with imprisonment of either description for a term which may extend to [three years], or with fine, or with both



Origin and Colonial Era

Section 295A was brought in 1927.

antecedents of Section 295A lie in the “communally charged atmosphere of North India in the 1920s”

The amendment was a fallout of an acquittal under Section 153A of the IPC by the Lahore High Court in 1927 in Rajpaul v Emperor, popularly known as the Rangila Rasool case.

Conflict in the interpretation of law in prompted the colonial government to enact Section 295A with a wider scope to address these issues.



Constitutionality of 295A

In 1957, the constitutionality of Section 295A was challenged in **Ramji Lal Modi v State of Uttar Pradesh.**

The Supreme Court upheld the law on the grounds that it was brought in to preserve “public order”. Public order is an exemption to the fundamental right to freedom of speech and expression and the right to religion recognised by the Constitution.



In 1973, in **Ramlal Puri v State of Madhya Pradesh**, the Supreme Court said the test to be applied is whether the speech in question offends the “ordinary man of common sense” and not the “hypersensitive man”. However, these determinations are made by the court and the distinction can often be vague and vary from one judge to the other.



Lack of Specific Legal provisions

Election Commission has to rely on IPC and Representation of People Act

The matter was also referred to the Law Commission of India, neither made any recommendation with regard to the specific query, nor made any recommendations to Parliament to strengthen the EC to curb the menace.

Section 125 of the Representation of People Act deems that any person, in connection with the election, promoting feelings of enmity and hatred on grounds of religion and caste is punishable with imprisonment up to three years and fine or both.



Other side of the Coin: What if state abuses 295A or other hate speech laws to curb dissent?

Superintendent, Central Prison, Fatehgarh Vs Ram Manohar Lohia case (1960):

It stated that the link between the speech spoken and any public disorder caused as a result of it should have a close relationship for retrieving Section 295(A) of IPC.

Further in 2011, it concluded that only speech that amounts to "incitement to impending unlawful action" can be punished.

That is, the state must meet a very high bar before using public disturbance as a justification for suppressing expression.



Hate Speech

Vs

Blasphemy

Blasphemy is the act of insulting or showing contempt or lack of reverence for God.

Hate Speech is an abusive or threatening speech or writing that expresses prejudice against a particular group or an individual, especially on the basis of race, religion, or sexual orientation.

Insulting religion or religious figures may be disputed or condemned but it should not be legally outlawed or prosecuted.

The ambit of 295A is too wide hence necessary caution has to be used.



Changes

suggested in

Law

Viswanathan Committee 2019:

- It proposed inserting **Sections 153 C (b) and Section 505 A** in the IPC for incitement to commit an offence on grounds of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe.
- It proposed punishment of up to two years along with Rs. 5,000 fine.

Bezbaruah Committee 2014:

- It proposed amendment to **Section 153 C** of IPC (promoting or attempting to promote acts prejudicial to human dignity), punishable by five years and fine or both and **Section 509 A** IPC (word, gesture or act intended to insult member of a particular race), punishable by three years or fine or both.



Judgements

Shreya Singhal v. Union of India:

- Issues were raised about **Section 66A of the Information Technology Act, 2000** relating to the fundamental right of free speech and expression guaranteed by **Article 19(1) (a) of the Constitution**, where the Court differentiated between discussion, advocacy, and incitement and held that the first two were the essence of **Article 19(1)**.

Arup Bhuyan vs State of Assam:

- The Court held that a mere act cannot be punished unless an individual resorted to violence or inciting any other person to violence.

S. Rangarajan Etc vs P. Jagjivan Ram:

- In this case, the Court held that **freedom of expression cannot be suppressed unless the situation so created is dangerous** to the community/ public interest wherein this danger should not be remote, conjectural or far-fetched. There should be a proximate and direct nexus with the expression so used.



Way Forward

Education and Sensitization of masses

Due diligence by public authorities

Political parties should take the first step forward

Cases can be settled through ADR means



Thank You!!!

