

# **TABLE OF CONTENTS**

<b>S.no</b>	<b>Topic</b>	<b>Page</b>
<b>I</b>	Letter from the Executive Board	2
<b>II</b>	Committee Expectations	3
<b>III</b>	Definition of Key Terms	4
<b>IV</b>	Background of the problem	6
<b>V</b>	Statement of the problem	6
<b>VI</b>	Media censorship and Section 153(a) - Case Study	7
<b>VII</b>	Hate speech and Section 153(a)	9
<b>VIII</b>	Response from the country	10
<b>IX</b>	Legal Framework	11
<b>X</b>	Questions to be Deliberated Upon	12
<b>XI</b>	Closing Notes	12
<b>XII</b>	Links for further research	13

## **D) LETTER FROM THE EXECUTIVE BOARD**

Greetings parliamentarians!

It is in our utmost honour and pride that we welcome you to the AIPPM of IMUN 2020. Whilst testing your critical thinking and oratory skills, we look forward to seeing you setting aside your politicians' bias and working towards a unanimous and utilitarian solution. For must we remind you, the AIPPM was designed to test not only your political skills but your humane ones.

The AIPPM is one of a kind in a MUN, for it holds in itself the essence of our nation. Unlike a continuous crisis or a Press, it ensures an all-rounder development of not just a delegate, but a human. As representatives of a troublesome or vocal or even silent politician, you have to think for millions of people, empowered or oppressed, the abusers and the abused and the inhuman and human. Politicians and lawmakers were chosen/ given the throne to make decisions in the best interest of the country. However, they have abused their powers to make their hands look cleaner. It is in your hands to reverse this.

Lastly, we do understand the agenda is highly sensitive and subjective. Keeping this in mind, it is our word that we will keep our personal biases aside and entertain multiple points of view. However, like we just mentioned, since it is sensitive, we expect you to have well-researched opinions, and not sweeping generalisations. We look forward to collaborating with you! In case you want/ have feedback, or want to pose any queries, note that we are always open to retrospection and clarification.

Wishing you a fruitful conference!

**Anjana Palamand** - Co-Chairperson

**Uddeshya Pandey**- Co-Chairperson

**Shashank Shenoy**-Vice Chairperson

## **II) COMMITTEE EXPECTATIONS**

1. As much as we understand that there might be internet glitches, we expect you to keep your cameras on during the duration of the conference, and your audio on only when you are speaking. It is requested to not speak out of turn, and use the raised hand feature in case you want to speak.
2. We expect you to have an adequately charged device throughout with a stable internet connection. Please inform your Executive Board via text/ mail if you are unable to take part in the discussion because of technical errors.
3. Keeping in mind the nature and mandate of the AIPPM, we expect all delegates to discuss in a negotiative and not argumentative manner. The goal is to reach utilitarian consensus.
4. The Executive Board will be favourably looking upon a unanimous document. However, only when there is a grave conflict of interest or violation of party policy, two communiques will be entertained.
5. During a press conference(s), delegates might be questioned on controversial/ insensitive statements they might have made. We are expecting a diplomatic and sensitive answer to the same, with favourably not backing up the insensitivity and keeping in mind other delegates'/ EB's/ Secretariat's sentiments.
6. Given that the agenda is a highly debatable and sensitive one, we expect all the delegates to be politically correct at all times and avoid saying anything extreme their portfolio has stated.
7. The Executive Board will be accepting research/ statistics only from accredited websites. Wikipedia will not be considered a valid source.
8. Please note that the Executive Board's/ Secretariat's decision will be final, and not subject to question whatsoever.

### **III) DEFINITION OF KEY TERMS:**

#### **1. Section 153a of the IPC:**

(1)Whoever—

by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both. An offence committed in place of worship, etc.—(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.

#### **2. Media:**

This refers to information being passed on via the internet, books, films, music, art and maps only. This media can be categorised as being one or more of the following:

- a. Objectionable,
- b. Harmful to the maintenance of peace,
- c. Sensitive,
- d. Inconvenient,
- e. Promotes or restricts religious or political biases,
- f. Detrimental to national security,
- g. Obscene (child pornography included)
- h. Hate speech,

- i. Harms children or other vulnerable groups (sentiments included), and
- j. Defames a person(s).

### 3. Censorship:

It is the suppression of speech, public communication or any other information for the following purposes:

- a. To preserve the
- b. To preserve the
- c. integrity
- d. security
- e. sovereignty
- f. defence

of the country and to maintain friendly relations with foreign states and public order.

According to the Government, internet censorship in India is carried out by DNS filtering, educating service users and initiating court orders to remove content by content creators.

Internet companies can be asked to remove content which is either of the following:

- a. defamatory,
- b. hateful,
- c. harmful to minors, or
- d. infringes copyright.

### 4. DNS:

Abbreviated for Domain Name System, DNS refers to the hierarchical and uniquely centralised naming system for computers/ services/ other resources connected to the internet. It serves as the equivalent for an IP address and translates hostnames (a unique label/ tag assigned to a device connected to a computer/ network) into IP addresses for a computer to understand.

Using DNS, the service's location on a network can be changed easily and different users can simultaneously receive different translations for the same domain name.

For the government to censor any media (umbrella conditions stated above), they go about it by blocking the content from a specific location (here, India), and not "deleting" it. So, for an

individual to access censored content on the internet, they can do so by changing their location, which can be done by changing the IP address.

In 2019, the Government wanted to roll out its own DNS, citing no trust and reduced efficiency regarding other operators.

## 5. Hate speech:

Abusive/ threatening speech or writing that expresses prejudice (preconceived opinion without factual/ logical basis) against a particular group based on race, religion, gender, social status or sexual orientation. Given with reference to Section 153a, speech that:

- a. promotes or was intended to promote enmity or disharmony, or/ and
- b. outrages a person's religious feeling(s) or sentiment(s)

also classifies as hate speech, and is a punishable offence.

## IV) BACKGROUND OF SECTION 153A:

Much of the legal framework used to crack down on social liberalism and dissent in India harks back to the colonial era before independence when the British administration attempted to impose Victorian values. The IPC was framed and brought into force in 1860 by the British colonial administration and includes a provision to take action against threats of sedition, waging war against the state, and obscenity, among others.



INDIAN  
PENAL CODE  
1860

In 1898, the British first introduced Section 153(a) through the Indian Penal Code (Amendment) Act, 1898 to deal with those matters which are relating to the breach of public harmony and tranquillity, which were not earlier covered by original Indian Penal Code. Further, the two sections 153-A and 505 were extensively amended to expand their scope to deal with cases of communal and class tensions more effectively, on the recommendation of the National Integration Council, by Act XXV of 1969.

## V) STATEMENT OF THE PROBLEM:

With “convenience-driven censorship laws”, the Government of India is facing backlash for the vague and ambiguous controls they place on media, the definition and limit to what classifies as hate speech and laws that control the promotion of enmity as a crime (Sections 153a, 153b, 295a and 505). The press index is declining, pieces of information that are detrimental to the healthy functioning of democracy are being termed as seditious and censored media is being accessed by the public without any glitches.

Not to forget, the definition and limit of terms like “hate speech”, “enmity”, “defamatory”, “disrespectful”, are not only vague but subjective for not only a community but for a person too. The Government has set restrictions on saying anything hateful, but never mentioned what phrases/ words are supposed to trigger people, and what should not.

## **VI) MEDIA CENSORSHIP AND SECTION 153a**

With respect to media and especially books, the judiciary has tended to view the likely effect of the representation of a certain religion/race/caste/community rather than the truth. Section 153B of the IPC supplements 153A as well as 295A. This provision extends liability to publishers as well as those who reiterate the content. While intention has been an important ingredient regarding section 153A, it has not been accorded equal weightage in adjudicating cases under 153B.

## **Important Case Studies**

### **1)The Jharkhand government’s ban on *The Adivasi Will Not Dance* (Book).**

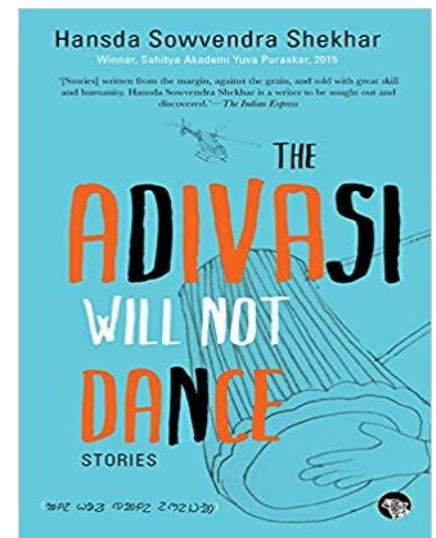
Following public protests and with lawmakers calling for a ban on the book on the accusation that it insulted Santhal women.

The State Governments gets its legal authority to do this from Section 95 of the Code of Criminal Procedure (CrPC) that authorises State governments to forfeit copies of any newspaper, book, or document that “appears” to violate certain provisions of the Indian Penal Code, such as Section 124A (sedition), Sections 153A or B (communal or class disharmony), Section 292 (obscenity), or Section 295A (insulting religious beliefs). **(The Executive Board recommends the delegates read up about the above-mentioned sections as well).**

The key element about Section 95 is, that it allows the Government to ban publications without having to prove in the court of law that a particular law is broken, all that it requires is that it should “appear” to the government that a law has been broken.

As you must have already noticed, this is dangerous as this gives the government the power to overregulate or even abuse law through passing a simple notification.

Later in 2017, the Jharkhand government said it found objectionable in the book and withdrew the ban.



## **2) Harnam Das v. State of UP**

Harnam Das was an author and had written two books which he had published in Hindi called Sikh Mat Khandan Part 1 and Bhoomika Nazam Sikh Mat Khandan which was published in April 1953. On July 30, 1953, the Government of Uttar Pradesh made an order under Section 99 of the CrPC forfeiting these books which were seized and taken away. The government said they forfeited these books because the books contain matter, the publication of which is punishable under section 153-A and 295-A of the Indian Penal Code."

It is generally the case that the no criminal offence is committed where a person does not intend to commit an offence, but Section 153A of the IPC, there is a debate regarding whether liability would only lie if an act contemplated by the Section was performed to promote enmity or disharmony in society. In this case, in 1957, the judicial decision supported the interpretation that, all that was required to establish the commission of an offence under Section 153A, IPC, was that the act had the consequence of promoting enmity or disharmony in society — the intention with which the act was performed was immaterial.

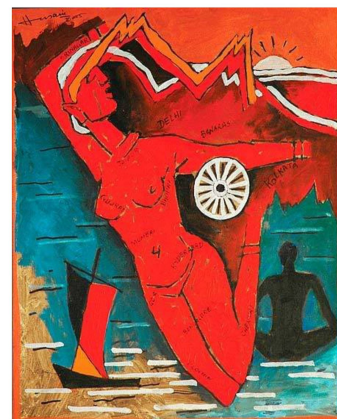
But later cases deviated from the position of law interpreted in the Harman Das case, held that 'The use of the expression "promotes or attempts to promote" in Section 153A shows that there has to be **mens rea** on the part of the accused to commit the offence of promoting disharmony amongst different religions under section 153A.'

## **3) Paintings of MF Hussain**

Multiple cases were filed against painter MF Hussain under Sections 153A and 294A, IPC for his alleged depiction of Hindu Goddesses and Bharat Mata in his paintings.

A monthly magazine in Hindi published from Bhopal reproduced Husain's depiction of the goddess Saraswati in the nude. The magazine's editor, V.S. Vajpayee, had come across it in the book Husain - Riding the Lightning by Dnyaneshwar Nadkarni. Husain had drawn this in 1970.

Maharashtra's then Minister for Culture and Shiv Sena leader Pramod Navalkar, who came across newspaper reports of the article, and then read the article, wrote to the Mumbai Police Commissioner informing him of the material referred to in the article. The Mumbai Police treated the letter as a complaint and registered a case on October 8, 1996, against Husain under Sections 153A (promoting enmity between different groups on account of religion, etc.) and 295A (deliberate and malicious acts intended to outrage religious feelings of any class) of the Indian Penal Code (IPC).





Another one of his paintings, later titled “Bharat Mata” (Mother India), depicts India in the form of a naked woman. Husain sold it to a private collector in 2004. In 2006, the painting was advertised in an online charity auction for earthquake victims. The advertisement of the painting led to protests, and private complaints were filed in various parts of India. The Supreme Court consolidated and transferred the matter to Delhi. The trial court in Delhi issued summons to the Husain for offences under section 292 of the Indian Penal Code (IPC), which punishes distribution of obscene materials, section 294 of the IPC, which punishes obscene acts and songs, and section 298 of the IPC, which punishes expression intending to hurt religious sentiments.

**NOTE:** These are case studies, to help delegates understand the different ways these laws have been used to censor media content and also to understand the different interpretations of these laws.

## **VII) HATE SPEECH AND SECTION 153a**

Hate speech prohibitions are found in numerous Indian laws. Underneath the Indian Penal Code, such modes of speech and expression are prohibited as offences relating to religion, offences relating to public tranquillity and as offences of criminal coercion, insult and annoyance.



Of the IPC provisions, Section 153A is invoked most often in cases related to hate speech. One of the earliest cases to discuss in detail the scope of this section was **Shib Sharma v. Emperor** where the Oudh High Court examined whether a book entitled ‘Chaman Islam ki Sair’ was violative of the section [as it stood then]. The author who had been convicted by the lower court contended inter alia that the book was intended to enlighten his brethren and prevent them from accepting the Mahomedan religion. The Court in determining the matter before it referred to the testimony of the prosecution witnesses who were a scholar in Arabic and Persian and a teacher in theology who stated that the passages and the book were not only hurtful and insulting to Muslims but some were also entirely wrong or distorted to change their meaning. The Court noted that what the author had done on quoting Islamic texts and scriptures was to, “have collected a number of passages which may be perfectly right and harmless in their proper setting, but when disconnected or detached may seem scurrilous, indecent and highly objectionable. Any Mahomedan who reads the passages...must feel them highly painful and excite his anger and disgust.”.

The Court determined that the main issue before it was the intention of the author and noted that, “The intention has to be judged primarily by the language of the book and the circumstances in

which the book was published. If the language is of such a nature calculated to produce or to promote feelings of enmity or hatred in my opinion the writer must be presumed to intend that which his act is likely to produce. The accused who is a missionary may be entitled to a certain latitude in respect of re-expression of religious opinions, but it cannot for a moment, in this case, be said that the book was written in a spirit of fair and honest criticism without any malicious intention of producing any hatred.”

The Court examined various judgments of the Lahore and Allahabad courts in determining the ambit of Section 153A. The Court chose to rely on the interpretation of the Allahabad High Court in **Charan Sharma v. Emperor** where the Judge held that he would look upon the matter as a common or ordinary citizen of India to see if the content of a passage or book would be hurtful or would promote enmity between persons from different religions etc. The Court accordingly held that,

“There can be no doubt that the passages...must be highly painful to the Mahomedan who reads or hears them and must excite his anger and disgust...I am of the opinion that the intention of the accused was to ridicule the Prophet and his religion and to promote feelings of enmity or hatred between Hindus and Mahomedans.”

In **Azizul Haq Kausar Naquvi and another v. The State** the Allahabad High Court held that “criminality for the offence of blasphemous libel or criminality under the section [153A] does not attach to the things said or done but to the manner in which it is said or done. If the words spoken or written are couched in temperate, dignified, and mild language, and do not have the tendency to insult the feelings or the deepest religious convictions of any section of the people, penal consequences do not follow.”

### **VIII) RESPONSE FROM THE COUNTRY**

Citizens, Politicians, activists and the Supreme Court have talked about and debated about the Hate speech laws in India.

The Supreme Court has often taken a stand against misuse and careless use of these sections. The Supreme Court limited the applicability of the penal provision to deliberate and malicious acts rather than casual observations that are not driven by malicious intent.

Some lower courts continue to issue poorly reasoned, speech-limiting decisions, but the Supreme Court has at times been inconsistent, leaving lower courts to choose which precedent to emphasize.

Subramanian Swamy challenged the constitutional validity of Section 153(a) and Section 295(a) of the Indian Penal Code (IPC). Swamy has contended that Section 153(a) and Section



295(a) of the Indian Penal Code (IPC) were vaguely worded and were prone to be misused.

In 2017, The Law Commission of India, published a report on hate speech after the Supreme Court observed that the issue of hate speech required deeper consideration. Since then, there have been many PILs filed to implement the report.

In the wake of the anti-CAA protest and the aftermath of the Delhi Riots in 2020, there was much debate about the selective use of hate speech laws and using hate speech laws as a political tool to silence dissent.

**The Executive Board encourages the delegates to read about these incidents/cases and many more in much more detail.**

### **IX) LEGAL FRAMEWORK OF THE PROBLEM**

Unlike the USA, where hate speech is legally protected free speech (under the first amendment), it is illegal and a punishable offence in India. Hate speech is carried out for either hurting the dignity of an individual or for disrupting public order. For both these reasons, the provision for legal action is different. Hurting the dignity of an individual with your speech/ expression comes under section 2 of Article 19 of the Indian Constitution and is a punishable offence, whereas, disrupting public order will classify an individual as a “terrorist” under the Unlawful Acts (Prevention) Act, which implies they can be jailed for up to 6 months without a trial. However, implementation and regulation of hate speech is far from done right, given that checking hate speech happens mainly via censorship. Even though the Government has the legal green flag to censor material that affects public order, the security of the state and morality, there are not enough clauses to define what classifies as hate speech, and what does not. Though legally, there is no definition to hate speech, there are provisions to help decide, however, very vague in nature.

By the UDHR, freedom of speech and expression is guaranteed to every citizen, and activists around the world have used this to justify how Section 153a breaches any person’s right to express their opinion freely. However, multiple legislations have passed laws on restrictions to freedom of speech and expression, keeping in mind the State’s security and public order. A good part of this happens via censorship. Though there are legal provisions that allow the Government to censor content that is detrimental to the society’s healthy functioning, there is no law against loopholes to censorship, like doxxing. There are poorly implemented laws to punish internet users changing their VPN, to find a way around censorship. Also, there are provisions for checking hate speech, however, the definition remains ambiguous.

To add, there are no laws enacted by the Election Commission to check hate speech by politicians during and in the garb of campaigns. Democracy is unable to heal the communal rhetoric in the country, and hate speech is the primary mode of communication for communal ideologies. Although the Code of Conduct of the Election Commission very strictly condemns the usage of hate speech, it has become the new normal. What started as flinging “Pappu” and “chowkidar chor hai” has now gone to communal, sexist and chauvinist remarks. It has been proven time and again that politicians who use communism have higher chances of winning. Given that elections are the essence of democracy, it is highly ironic that people are using hate speech and elections to divide the nation. However, the legal provisions to tackle this is negligible as it is these communism-employed election winners that are lawmakers.

### **X) QUESTIONS TO BE DELIBERATED ON**

Given that the committee time will be utilised in drafting a communique or press release, the Executive Board has put down a few questions which can be addressed in speeches but wish to see solutions for in the final documentation. The Executive Board urges everyone’s research to not be driven by these questions only.

1. Where can there be a legal line drawn for hate speech and restrictions to freedom of speech and expression?
2. How can censorship be carried out to not hurt the sentiments of the majority of the people, be rightly implemented and not breach basic civil rights?
3. Should governments possess the powers they currently do, like under section 95 of the CrPC?
4. What steps must be taken to reduce abuse of the provisions like Section 95 by governments?
5. What steps must be taken to combat hate speech online?

### **XI) CLOSING NOTES**

Hate speech is prevalent amongst all ages, genders and social statuses alike. It is a medium to assert or show dominance, and it goes against one of the basic aims of democracy, and that is to have everyone satisfied keeping their sentiments and beliefs in mind. Contrary to generalisations, the public must realise that Section 153a was drafted to ensure society’s safety in the first place. Pointing out loopholes in a non-constructive manner is going to abolish something that was made for public benefit.

One of the ways to check hate speech, by implementing 153a, was to carry out censorship. However, due to improper implementation and sheer negligence, material that triggers any community/ person or even breeds criminal mentality is available to the majority of the population. Hence, suggestions have to be made in a stricter, more inclusive and sensitive manner.

## **XII) LINKS FOR FURTHER REFERENCE**

The following links serve as the basis for the research and statistics provided and can be used for further reading too.

1. <http://www.latestlaws.com/wp-content/uploads/2017/10/Law-Commission-Report-No.-267-Hate-Speech.pdf>
2. <https://lawcommissionofindia.nic.in/reports/Report267.pdf>
3. <https://www.scmp.com/comment/insight-opinion/article/3009007/indian-election-campaigns-have-made-hate-speech-and>
4. <https://indiankanoon.org/doc/811548/>
5. <https://www.mondaq.com/india/broadcasting-film-tv-radio/757742/censorship-the-current-regulatory-framework-and-the-future-of-digital-content>
6. <https://www.thehindu.com/opinion/lead/the-architecture-of-censorship/article19504501.ece>
7. <https://www.indiatoday.in/magazine/society-the-arts/story/19961031-m-f-husain-20-year-old-painting-of-nude-deity-raises-questions-about-artistic-freedom-833984-1996-10-31>