

**AMISH DEVGAN V. UNION OF INDIA & ORS., (2020) SCC ONLINE SC 994**

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**ABSTRACT**

To strike the right balance between religious sentiments and freedom of speech and expression is a tough nut to crack, especially in a country like India where religion is held in high regard. This case comment on *Amish Devgan v. Union of India & Ors.*,<sup>2</sup> attempts to expand on the contents of a Hate speech. The two-judge bench of the Supreme Court of India denied granting relief in a writ petition filed- to dismiss criminal proceedings against a renowned television journalist, Amish Devgan, who had allegedly made distasteful remarks against a revered Muslim saint. The Court examined the Indian legal framework on hate speech in-depth, as well as providing an overview of comparative jurisprudence on the subject. Throughout the decision, the Court emphasised the importance of protecting free speech while also protecting group dignity and national unity by prohibiting speech that jeopardises that dignity and unity. This case establishes a new standard for evaluating hate speeches, sparking numerous debates and controversies.

**I. Introduction**

In *Amish Devgan v. Union of India & Ors.*,<sup>3</sup> the Apex Court delved into a comprehensive analysis of what constitutes hate speech in the Indian context and the jurisprudence existing on this issue in liberal-democratic nations like the USA, UK and Canada. Next, it differentiated between freedom of speech and expression as guaranteed under Article 19(1)(a) of the Indian Constitution and the aspects of substantive and penal provisions- defining and criminalising hate speech within the Indian legal framework. The Court, however, remarked that a single definition of hate speech cannot be formulated.

The case arose in the context of a writ petition filed under Article 32 by Amish Devgan, a Television journalist (the petitioner), *inter-alia*, pleading for quashing of the seven FIRs filed against him for his alleged offensive remarks made against a venerated Sufi saint. In *Arnab Ranjan Goswami*<sup>4</sup>, a case with similar facts, the apex court refused to entertain a writ petition stating that when a remedy exists under Section 482 Cr.P.C before the High Court, there is no reason why the procedure should be bypassed. However, in the present case, taking into consideration the detailed nature of arguments on the maintainability of the petition and the

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<sup>2</sup> (2020) SCC Online SC 994.

<sup>3</sup> Ibid.

<sup>4</sup> (2020) SCC Online SC 462.



merits of FIR, the Court proceeded to answer the questions under consideration. Given the nature of the writ petition filed, the judgment does not tackle the issue of whether the statements made by the petitioner falls in the category of hate speech or not but rather explains why the FIRs filed against the petitioner cannot be annulled in the pre-investigation stage.

This case occupies a unique position in Constitutional and Criminal law as certain laudable observations<sup>5</sup> made by the Supreme Court protect the freedom of speech and expression along with a viewpoint that instantly undermines the Right to Equality. To explain this point succinctly- the test of a ‘reasonable, courageous, strong-minded person’<sup>6</sup> reiterated by the Court in ascertaining a question as to whether a person’s speech tends to create public disorder is a step forward in upholding Article 19(1)(a). However, the duty bestowed upon a ‘person of influence’ to act responsibly risks equality before the law. This test may also have far-ranging impediments on freedom of speech and expression in India as it is an ambiguous and new constitutional standard<sup>7</sup>. This observation can turn out to be a slippery slope for free speech.

## II. Description And Background Information

On June 15 2020, the petitioner, a well-known news anchor while hosting a debate on a television show on the topic related to a plea filed by a Hindu Priest organisation challenging the Places of Worship (Special Provisions) Act, 1991, allegedly passed a batch of disparaging comments against the much honoured and respected Muslim Sufi saint Moinuddin Chishti. During the debate, the petitioner described the Sufi saint as a ‘terrorist intruder’ who using intimidation and threats had coerced Hindus to embrace Islam. After this incident, seven akin FIRs got registered against him under Section 34, 153A, 295A, 505(2) of the IPC, 1860, Section 66F of Information Technology Act, 2000 and death threats were received over phone calls and on social media. On June 17, 2020, an apology was aired on the same television show by the petitioner clarifying that he had mistakenly uttered the defamatory statements. Thereby, a writ petition filed on June 22, 2020, later rectified to implead the complainants, prayed–

- issuance of the writ of certiorari for the quashing of FIR filed concerning the telecast,

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<sup>5</sup> Prachi Bhardwaj, “Freedom & rights cannot armour those who promote & incite violence| 15 notable excerpts on ‘hate speech’ from Supreme Court’s verdict in Amish Devgan case”, *The SCC Online Blog*, December 8 2020, available at <https://www.sconline.com/blog/post/2020/12/08/freedom-rights-cannot-armour-those-who-promote-incite-violence-15-notable-excerpts-on-hate-speech-from-supreme-courts-verdict-in-amish-devgan-case/> (last visited on September 9 2021).

<sup>6</sup> Ramesh.S/O Chotalal Dalal vs Union Of India, AIR 1988 SCC 775.

<sup>7</sup> Abhinav Chandrachud, “A New Constitutional Standard For Persons Of Influence?”, *Bloomberg Quint*, January 22 2021, available at <https://www.bloombergquint.com/opinion/a-new-constitutional-standard-for-persons-of-influence> (last visited on September 9, 2021).



- transferring and clubbing the FIRs with the first FIR filed or all FIRs to be clubbed and transferred to Noida (the petitioner's place of residence)
- to issue the writ of mandamus to prohibit any coercive action against him.
- ensure adequate security to the petitioner and his family members.

Three central issues for consideration before the Hon'ble Supreme Court were-

- I) Whether the multiple FIRs registered against the petitioner should be quashed? To deal with this issue, certain sub-issues deliberated were, - *First*, determining whether the cause of action surfaced in the places where the FIRs were registered. The Court made it clear that the contended FIRs did not suffer from this jurisdictional defect. *Next*, the defence undertaken by the petitioner was that if at all an offence can be attributed, it would be of trivial nature under Section 95 of IPC. This defence was rejected on the grounds that before assessing any offence it is essential for the ascertainment of the facts and evidence in a trial. *Thirdly*, an in-depth analysis of hate speech vis-à-vis foreign jurisprudence and Indian legal framework was undertaken to gather some clarity on the blurred boundaries between freedom of speech and expression and hate speech. *Fourthly*, for understanding the charges proposed a detailed analysis of statutory interpretations and decisions of the High Courts and this Court was carried out.
- II) Whether these First Information Reports were valid or not?
- III) Whether the multiple FIRs can be clubbed and transferred to the place where the first case was registered?

The two-judge bench comprising Justice Sanjiv Khanna and Justice A.M Khanwilkar delivered this judgment, resulting in procedural and operative directions. Hon'ble Justice Sanjiv Khanna authored the judgment and discussed at length what constitutes hate speech. The bench refused the prayer of quashing of the FIRs for the alleged offensive remarks against the saint. However, the petitioner was granted interim protection against arrest provided he cooperated with the investigating agency. The prayer of transferring of all pending FIRs arising out of the telecast broadcasted on June 15, 2020, to Dargah, Ajmer -the place where the first FIR was registered- was accepted by this Court. The bench also ordered the concerned states to take appropriate steps after assessing the level of threat to the security of the petitioner and his family.

### III. Case Analysis

The court reasoned its judgment upon the Indian legal and constitutional framework for hate speech, as well as its comparative jurisprudence, however, the apex court's various standards for applying hate speech principles and varied procedural techniques in cases add to the already



perplexing hate-speech jurisprudence. The court spent considerable time in its analysis of comparative jurisprudence, it looked at how the United States, Canada, Australia, South Africa, the United Kingdom, Germany, and France dealt with hate speech. The apex court also relied upon its precedents to re-examine the meaning of the term ‘hate speech’, it carefully remarked “*it remains difficult in law to draw the utmost bounds of freedom of speech and expression, the limit beyond which the right would fall foul and can be subordinated to other democratic values and public law considerations, to constitute a criminal offence.*”<sup>8</sup>

The court emphasised that the objective test for hate speech must be premised on the reasonable man standard, but that the backdrop – namely, the speaker and the audience – must be examined alongside the subjective inquiry into whether the speaker spoke in good faith. The court's consideration of what constitutes hate speech is based on the disturbing concept of "reasonableness", which is one of the most remarkable aspects of the decision.

The fundamental right to free speech and expression in India is subject to the leniency and intellect of the "reasonable" man. It is limited and assessed by the uncertain measures of public order, decency, and morality of men, their elected representatives, and judges, unlike in the West.

The framers of the Constitution have left it to the courts to determine whether an expression is art, literature, satire, insult, ridicule, or offence based on the criteria of a reasonable man. The courts have often defined a "reasonable man" as "*an ordinary man of common sense and prudence, not an out-of-the-ordinary or hypersensitive individual.*" "*The effect of the words used must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view,*" according to the case of Ramesh S/o Chhotalal Dalal v. Union of India and others.<sup>9</sup> This criterion is at the centre of the hate speech controversy, and it is one of the reasons why, despite great efforts, India's hate speech law remains mainly ambiguous. While the court instructs the ‘reasonable man’ to analyse the class of persons addressed by the speech, their historical context, and the condition of sentiments between various groups at the time, the question remains: Is this reasonable person a person who is free of religion, caste, creed, or gender? Is it a person who puts himself in the footsteps of people who are being hunted? So, when the court rules, "*Such speech should be viewed not from the standpoint of a person of privilege or a community without such a historical experience,*" it is giving some hints. However, such a viewpoint would be vulnerable to subjectivity because it would be greatly influenced by personal values and views. For citizens today, vagueness has the potential to be the most pernicious form of injustice. For many, it has become a method of sustaining oppressive and exclusionary politics.

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<sup>8</sup> Id at 1.

<sup>9</sup> Id at 5.



This court's decision stating that the persons in the position of power or 'influential people' must exercise their fundamental right to freedom of speech and expression with greater responsibility. This new "show me the man, and I'll show you the rule"<sup>10</sup> approach creates a hazardous precedent, potentially jeopardising some of the fundamental values that underpin the fundamental right to free expression. Our legal system is based on the premise that the law applies equally to all people, regardless of who they are. This new test establishes a different legal standard for those who fall in the dubious category of being influential or popular. This is a violation of Article 14<sup>11</sup> of the Indian Constitution. In *Rhea Chakraborty v. Union of India*<sup>12</sup>, the Court stated that every person is equal before the law and no influential face either enjoys any privilege or shall incur any liability<sup>13</sup>. A case is decided on its merit and not the social status of the accused.

The court's decision fails to define the criteria for determining who is "influential." The court has not established a quantitative test to identify the "social leaders of the following." This ambiguity is dangerous because it allows for error. Does it mean that Influential or people in a position do not have the freedom to speech? The court clarified the latter by deciding that "This is not to say that persons of influence like journalists do not enjoy the same freedom of speech and expression as other citizens, as this would be grossly incorrect understanding of what has been stated above. This is not to dilute satisfaction of the three elements, albeit to accept the importance of 'who' when we examine 'harm or impact element' and in a given case even 'intent' and/or 'content element'"<sup>14</sup>. However, the former question is left unanswered and is in the wrong direction. An overview of India's hate speech laws, as well as comparative jurisprudence, was given by the Court. As a result of conflicting precedents and the pre-trial nature of this decision, the law on the investigation of hate speech and its proportionate legal penalty in light of the provision for free expression needs to be clarified further. However, by deliberately choosing not to interfere in a valid criminal investigation in a case where the offence of hate speech was clear-cut established, the Court conveys that India, as a jurisdiction committed to the rule of law, does not pardon or grant impunity to those who violate the group dignity of a minority community.

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<sup>10</sup>Id at 6.

<sup>11</sup> The Constitution of India, art. 14.

<sup>12</sup> Criminal bail application (stamp) no. 2386 of 2020, India, available at : [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-382517.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-382517.pdf) (last visited on September 9,2021).

<sup>13</sup>Sonam Saigal, "Rhea Chakraborty, two others granted bail", *The Hindu*, October 7,2020, available at <https://www.thehindu.com/news/cities/mumbai/rhea-chakraborty-two-others-granted-bail/article32789455.ece> (last visited on September 8,2021).

<sup>14</sup> Id. At 1.



#### IV. Conclusion

With a rise in cases of hate speech, hate crimes in India and across the world it becomes essential to identify what hate speech is. Defining hate speech is a mysterious task<sup>15</sup> given the varying foreign jurisprudence and interpretation of statutory provisions in India by the Courts. With altering<sup>16</sup> and subjective parameters of governing hate speech cases, no standard rule can be set out for the same. The laws regulating hate speech in India can be categorised as those laws aimed at ‘*balancing social good and individual liberty*’<sup>17</sup>. In *Pravasi Bhalai Sangathan v. Union of India & Ors*,<sup>18</sup> the Supreme Court observed that the issue of hate speech required deeper deliberation and asked the Law Commission of India to make recommendations to clear the air around the controversial issue of free speech v. hate speech. The commission formulated a report<sup>19</sup> on the same but the government has not yet accepted the recommendations.

The questions before the Supreme Court in *Amish Devgan* was decided by applying the tests of content, context, intent and harm to determine whether, prima facie, an offence had been committed or not. It observed that a speech indicative of propagating homophobia, religious tolerance has been omitted from the extent of protection of free speech.<sup>20</sup> The Court refused to quash the FIRs and leave it to for the authorities to decide the course of the investigation by applying their minds. A decision is a precedent only when a question of law is decided<sup>21</sup>. Decisions of the SC on facts cannot be cited as precedents<sup>22</sup>. This case does not set any binding or persuasive precedent neither outside nor within the Indian jurisdiction.

Hate Speech encompasses expressions that sponsor hatred, violence, vilification and discrimination against a person or a class of persons on the basis of caste, religion, sexual

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<sup>15</sup> Audrey Fino, “Defining Hate Speech: A Seemingly Elusive Task” 18 *Journal of International Criminal Justice* 35 (2020).

<sup>16</sup> Suhrith Parthasarathy, “Define the contours of hate in speech”, *The Hindu*, September 21,2020, available at <https://www.thehindu.com/opinion/lead/define-the-contours-of-hate-in-speech/article32655176.ece/> (last visited on September 8,2021).

<sup>17</sup> M.K. Bhandari, “Hate Speech and Freedom of Expression : Balancing social good and Individual Liberty” AIR (2012).

<sup>18</sup> AIR 2014 SC 1591.

<sup>19</sup> Law Commission of India, “Hate Speech”5-8 (March 2017).

<sup>20</sup> Id at 1.

<sup>21</sup> *State Of Haryana And Ors vs Ch. Bhajan Lal And Ors* AIR 1992 SC 604.

<sup>22</sup> *Prakash Chandra Pathak vs State Of Uttar Pradesh* AIR 1960 SC 195.



orientation, race<sup>23</sup>. Thus, it is fair to conclude that Hate Speech is the preliminary point in the vicious circle of triggering majoritarianism and degrading the historically marginalised ethnic groups and religious communities. The state should strive to provide a multicultural, plural atmosphere by proper enforcement of laws of the country. The boundary between fair speech and hate speech is often merged due to subjective and varied interpretations of existing laws in the context of protecting the constitutionally vested right of free speech and expression and upholding individualism.

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<sup>23</sup>Kenneth D. Ward, “Free Speech and the Development of Liberal Virtues: An Examination of the Controversies Involving Flag-Burning and Hate Speech”, 52 *University of MIA Law Review* 733 (1998).