

**Bill No. LXXIV of 2022**

THE HATE CRIMES AND HATE SPEECH (COMBAT, PREVENTION  
AND PUNISHMENT) BILL, 2022

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BILL

*to empower the State Governments and the Central Government to take measures to provide for the prevention and control of hate crimes and hate speech in terms of the Constitution and international human rights instruments concerning religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe and related intolerance, in accordance with Constitutional and international law obligations; define for the offence of hate crime and the offence of hate speech and the punishment of persons who commit those offences and rehabilitation of victims of those offences; to provide for the reporting on the implementation, application and administration of this Act; and to provide for matters connected therewith or incidental thereto.*

BE it enacted by the Parliament in the Seventy-third Year of the Republic of India as follows:—

CHAPTER I

Preliminary

- 5        **1.** (1) This Act may be called the Hate Crimes and Hate Speech (Combat, Prevention and Punishment) Bill, 2022. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Definitions.

2. (1) In this Act, unless the context otherwise requires—

(a) "appropriate Government" means in the case of a State, the Government of that State and in all other cases the Central Government. 5

(b) "Code" means the Code of Criminal Procedure, 1973;

2 of 1974.

(c) "Communication" includes any—

(i) display;

(ii) written, illustrated, visual or other descriptive matter;

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(iii) oral statement;

(iv) representation or reference; or

(v) an electronic communication, and "communicates" and "communicated" shall have a corresponding meaning;

(d) "competent authority" means such officer or authority as the appropriate Government may, by notification, appoint as the competent authority under sub-section (2) of section 9; 15

(e) "data" means electronic representations of information in any form as defined under clause (o) of sub-section (1) and section 2 of the Information Technology Act, 2000; 20 21 of 2000.

(f) "data message" means data generated, sent, received or stored by electronic means;

(g) "electronic record" means electronic record as defined under clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000; 21 of 2000.

(h) "electronic communication" means a communication by means of data messages; 25

(i) "electronic communications system" means any electronic communications infrastructure or facility used for the conveyance of data;

(j) "harm" means any emotional, psychological, physical, social or economic harm; 30

(k) "hate crime" has the meaning assigned to it in terms of sub-section (1) of section 3;

(l) "hate speech" has the meaning assigned to it in terms of sub-section (1) of section 5;

(m) "information" includes data, message, text, images, sound, voice, codes, computer programmes software and databases or microfilm or computer generated microfiche; 35

(n) "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes broadcast channels, telecom service providers, network service providers, internet service providers, web-hosting service providers, social media platforms, search engines, online payment sites, online-auction sites, online-marketplaces and cyber cafes; 40

(o) "notification" means a notification published in the Official Gazette;

(p) "prescribed" means prescribed by rules made under this Act;

(q) "victim" means a person, including a juristic person, or group of persons, against whom an offence referred to in section 3 or section 4 of this Act has been committed.

45 of 1860.  
2 of 1974.

5 (2) The words and expressions used and not defined in this Act but defined in the Indian Penal Code, 1860 or the Code of Criminal Procedure, 1973 shall have meaning respectively assigned to them in those Acts.

## CHAPTER II

### OFFENCE OF HATE CRIMES AND HATE SPEECH

10 **3.** (1) Any person who harms or incites harm or promotes or propagates hatred bring out of his prejudice against or intolerance towards any other person because of one or more of the following characteristics or perceived characteristics of the victim or his or her family member or the victim's association with, or support for, a group of persons who share anyone or more of such characteristics: Offence of hate crime.

- 15 (a) religion,  
(b) race,  
(c) caste or community,  
(d) sex,  
(e) gender,  
20 (f) sexual orientation,  
(g) place of birth,  
(h) residence,  
(i) language,  
(j) disability, or  
25 (k) tribe

shall be guilty of an offence of hate crime.

**4.** (1) Whoever commits a hate crime shall be punished with imprisonment for a term which may extend to three years or fine upto five thousand rupees or both. Punishment of hate crime.

30 (2) An offence of hate crime shall be non-cognizable and non-bailable and shall be triable by magistrate of the first class.

**5.** (1) Any person:—

35 (a) who intentionally publishes, propagates or advocates anything or communicates to one or more persons in a manner that could reasonably be construed to demonstrate a clear intention to harm or incite harm or promote or propagate hatred, based on one or more of the following grounds: Offence of hate speech.

- 40 (i) religion,  
(ii) race,  
(iii) caste or community,  
(iv) sex,  
(v) gender,  
(vi) sexual orientation,  
(vii) place of birth,

- (viii) residence,
- (ix) language,
- (x) disability, or
- (xi) tribe; or

(b) who intentionally distributes or makes available an electronic communication which that person knows constitutes hate speech as referred in clause (a) through an electronic communications system which is— 5

(i) accessible by any member of the public; or

(ii) accessible by, or directed at, a specific person who can be considered to be a victim of hate speech; or 10

(c) who intentionally, in any manner whatsoever, displays any material or makes available any material which is capable of being communicated any which that person knows constitutes hate speech as referred in clause (a), which is accessible by, or directed at, a specific person who can be considered to be a victim of hate speech, shall be guilty of an offence of hate speech. 15

(2) The provisions of sub-section (1) shall not apply in respect of anything done as referred in sub-section (1), if it is done in the course of engagement in—

(a) any *bona fide* artistic creativity, performance or other form of expression, to the extent that such creativity, performance or expression does not advocate hatred that constitutes incitement to cause harm, based on one or more of the grounds referred to in clause (a) of sub-section (1); 20

(b) any academic or scientific inquiry; fair and accurate reporting or commentary in the public interest or in the publication of information, commentary, advertisement or notice; or the *bona fide* interpretation and proselytisation or espousing of any religious tenet, belief, teaching, doctrine or writings, to the extent that such interpretation and proselytisation does not advocate hatred that constitutes incitement to cause harm, based on one or more of the grounds referred to in clause (a) of sub-section (1). 25

Punishment for hate speech.

6. (1) Whoever who commits hate speech shall be punished with imprisonment for a term which may extend to three years or fine up to five thousand rupees or both. 30

(2) An offence of hate crime shall be non-cognizable and non-bailable and shall be triable by magistrate of the first class.

### CHAPTER III

#### AID, ABET OR OTHERWISE ASSISTANCE FOR COMMITTING HATE CRIME OR HATE SPEECH

Punishment for aiding, abetting or assisting for committing hate crime or hate speech.

7. (1) Whoever knowingly or unknowingly believes that commission or omission of any other person would be an offence under the provisions of this Act, with intent and thereby aids, abets or otherwise gives that other person any assistance for such offence, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine or both: 35

Provided that an act or omission had a substantial effect on the commission a crime is a fact based inquiry: 40

Provided further that the aider and abettor's conduct may occur in a location remote from the scene of the crime.

(2) Any intermediary who knowingly or unknowingly or due diligently believes that commission or omission of any other person would be an offence under the provisions of 45

this Act, provide their platform to commit such offence, shall be punished with imprisonment of either description for a term, which may extend to three years, and shall also be liable to fine or both.

5 (3) Whoever knowingly or unknowingly believe or has reasonable cause to believe that commission or omission of any other person would be an offence under the provisions of this Act, expends or supplies any money in furtherance or in support of an act which is an offence under this Act, shall be punished with imprisonment of either description for a term, which may extend to three years, and shall also be liable to fine or both.

#### CHAPTER IV

##### 10 VICTIM IMPACT ASSESSMENT

8. The prosecution, when adducing evidence or addressing the court on sentence in respect of an offence under this Act, consider the interests of a victim of the offence and the impact of the offence on the victim and, where practicable, furnish the court with a victim impact statement. Victim impact assessment.

15 *Explanation.*—For the purposes of this section, a victim impact statement means a sworn statement or affirmation by a victim or someone authorised by a victim to make such a statement on his behalf, which contains the physical, psychological, social, economic or any other consequences of an offence under this Act for a victim and family member or associate of a victim.

#### 20 CHAPTER V

##### PREVENTION OF ACTS LEADING TO HATE CRIME AND HATE SPEECH

9. (1) Notwithstanding anything contained in the Code, whenever the District Magistrate has reason to believe that in any area within his jurisdiction, a situation has arisen where there is an apprehension of breach of peace or creation of discord between members of different groups, castes or communities due to commission of offence under the provisions of this Act, he may, by order in writing, prohibit any act which in his opinion is likely to cause apprehension in the minds of another community or caste or group that it is directed to intimidate, threaten or otherwise promote ill-will against that community or caste or group. Prevention of acts leading to hate crime and hate speech.

30 (2) A competent authority, appointed by the appropriate Government by notification, in any area within his jurisdiction, may by order in writing,—

(a) direct the conduct of any assembly or procession in any place or street and specify by general or special notice, if any, by which and the times at which, such procession may or may not pass;

35 (b) require, by general or special notice, on being satisfied that any person or class of persons intend to convene or collect a assembly or an procession in any place or street or to form an assembly or procession which would in his judgment, if uncontrolled, is likely to cause a breach of peace due to commission of offence under the provisions of this Act, that the person convening or collecting such assembly or procession or directing or promoting such assembly or procession shall not do so without applying for and obtaining a permission to this effect; and

40 (c) prohibit or regulate the use of loudspeaker, music or sound amplifier or any other instrument inducing noise in any street or public place or procession, or in any private place or procession, if the use of which may cause commission of offence under the provisions of this Act.

45 (3) An order under this section shall remain in force for such period as may be specified or thirty days, whichever is less:

Provided that if the appropriate Government, after reviewing the effect of the order, considers it necessary for the preservation of peace or harmony between different groups, castes or communities or public safety or maintenance of public order in such area, may, by notification, direct that the order issued under this section shall remain in force for such further period not exceeding sixty days from the date of the first order. 5

## CHAPTER VI

### AWARENESS, EDUCATION AND TRAINING

Awareness, education and training to prohibit hate crime and hate speech.

**10.** (1) The appropriate Government shall have the duty to promote awareness among public for the prohibition, prevention and combating of hate crimes and hate speech.

(2) In performance of the duty referred to in sub-section (1), the appropriate Government may perform such functions which shall include, but not be limited to— 10

(a) conducting education and information campaigns to inform the public about the prohibition against hate crime and hate speech, aimed at prevention and combating of such offences;

(b) ensuring that all public officials who may be involved in the investigation and prosecution of hate crimes and hate speech are educated and informed of the provisions against such offences; 15

(c) providing assistance and advice to any person who wants to lodge a complaint of a hate crime or hate speech; and

(d) training public officials on the prohibition, prevention and combating of hate crimes and hate speech, and such training shall include social context training. 20

(3) Notwithstanding anything contained in sub-sections (1) and (2), the appropriate Government may recommend to the National Human Rights Commission or the State Human Rights Commission, as the case may be, to perform the functions referred to in sub-section (2).

(4) The National Judicial Academy of India, Bhopal shall develop and implement training courses, including social context training courses for judicial officers for purposes of presiding in court proceedings, in connection with offences under this Act. 25

## CHAPTER VII

### MISCELLANEOUS

Protection of action done in good faith.

**11.** No suit, prosecution or other legal proceedings shall lie against any officer or authority of the appropriate Government for an act which is done or intended to be done in good faith under this Act or the rules made thereunder. 30

Act not in derogation of any other law.

**12.** Save as otherwise provided, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force except to the extent the provisions of other law are inconsistent with the provisions of this Act. 35

Power to make rules.

**13.** (1) The Central Government may, by notification, in the Official Gazette make rules for carrying out the provisions of this Act.

(2) Every rule made under this section.

## STATEMENT OF OBJECTS AND REASONS

The Preamble of the Constitution of India, set out founding principles and values, among others, of individual and collective dignity with a sense of equality for all, which shall help the Republic in achieving unity and integrity of its people. *Samanvay* (harmony) and *Sadbhavna* (compassion for one another) are one of the oldest teachings of the Indian civilization. Nonetheless, lately, due to narrow political, social and economic prejudices and benefits, individuals or groups of people have created nuisance and intolerance on the basis of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe against each other.

The Constitution of India, under article 19 (1), gives everyone the right to freedom of expression. This right is, however, limited in that it does not extend to breach sovereignty and integrity of the country, and decency and morality based on religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe, among others. A specific legislation is required with a view to empower the State Governments and the Central Government to take effective measures to combat, prevent and punish the conduct of the person constituting hate crimes and hate speech.

Hence, this Bill.

PROF. MANOJ KUMAR JHA

## FINANCIAL MEMORANDUM

Clause 10 of the Bill *inter-alia* provides that the appropriate Government shall have the duty for promoting awareness among public and also impart education and training for preventing and combating hate crimes and hate speech. Existing budgets will be used for the purpose. No additional expenditure is likely to be incurred to implement the provisions of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 13 of the Bill empowers the Central Government to make rules for carrying out the purpose of the Bill. As the rules will relate to matters of detail only, the delegation of legislation powers is of a normal character.

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*(Prof. Manoj Kumar Jha, M.P.)*