

**School of Law, Governance and Citizenship**

**Ambedkar University, Delhi**

**Course Outline: Speech, Crime and Law**

**Course Code:** SLGC2LP208

**Title:** Speech, Crime and Law

**Cohort for which it is compulsory:** None

**Cohort for which it is elective:** M.A. in Law Politics and Society

**No of Credits:** 4

**Semester and Year Offered:** 3rd Semester course for M.A 2<sup>nd</sup> year students (Monsoon Sem 2018)

**Course Coordinator and Team:** Anushka Singh

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**Pre-requisites:** None

**Course Aim:**

Political philosophy in its quest for theorizing human existence has often dwelled upon the idea of political which is assumed to be intrinsic to human beings. This immanence of political within human beings is more often than not, attributed to the fact that human beings possess speech hence are capable of deliberation and decision making which forms the core of the activity of politics. Speech, therefore, emerges both as a constitutive and an enabling right. One of the central concerns of the rights discourse in liberal-democratic societies has been the issue of free speech. The concern however, more often than not, takes form of the binary debate between right to and restrictions on freedom of expression. This course, while keeping the centrality of this debate intact, aims to engage with the question of speech and harm. The course explores the critical location of speech within human society and politics by placing it within the discourse of restriction on and criminalization of speech.

**A brief description of the Course:**

The course offers to explore the criticality of speech while juxtaposing the idea of speech as a right with the notion of speech as harm to identify and conceptualize those forms of expressions that are criminalized in a society. This juxtaposition is explored in the analysis of laws against speech crimes, jurisprudence norms and the ground narratives related to the understanding of offences related to speech. The focus of the course is on the aspect of state criminality in identifying speech crimes as opposed to societal persecution/censorship etc. which also equally impact the criminalization of speech forms. The course is comparative in frame borrowing legally and conceptually from across jurisdictions though it specifically aims to understand the speech crime discourse in context of India. The overwhelming influence of the US Supreme Court on the Indian free speech jurisprudence explains the vast amount of US court literature in the course along with references from European and other jurisdictions that have functioning liberal democracies.

<b>Course Aims and Objectives</b>
<ul style="list-style-type: none"> <li>• To critically engage with the notion of free speech and its centrality within liberal societies and politics</li> <li>• To juxtapose the notion of speech as a right with speech as harm</li> <li>• To study and analyze the free speech jurisprudence as well as speech regulating laws and their politics</li> <li>• To use speech crimes as a lens to probe the state of the right to freedom of expression particularly within the liberal democracy of India</li> </ul>
<b>Syllabus with List of Readings</b>

<p><b>Module 1: Theorizing speech</b></p> <p><b>(2 weeks)</b></p> <p><b>Week 1 and 2:</b></p>	<p>This module introduces the contours of the course- speech/expression as human and speech as political, the notion of speech as action and the counter position. The module proceeds further by conceptually engaging with the theories of free speech linking it back to the question of centrality of right to freedom of expression in liberal democracies. It tries to also briefly introduce students to the legacy of the anti-colonial movement tracing the evolution of the free speech discourse in India.</p>
<p><b>Topics to be Covered:</b></p> <ul style="list-style-type: none"> <li>• The meaning of speech</li> <li>• Expression/speech as human</li> <li>• Speech as political</li> <li>• Value of free speech: theoretical defenses</li> </ul>	<p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Arendt H, The Public and the Private Realm, in <i>The Human Condition</i>, University of Chicago press, 1958</li> <li>2. Barendt, E., Why Protect Free Speech, in <i>Freedom of Speech</i>, Oxford: Clarendon Press, 1985.</li> <li>3. Scanlon T, A Theory of Freedom of Expression, <i>Philosophy and Public Affairs</i>, Vol. 1, No. 2. (Winter, 1972)</li> <li>4. Thiruvengadam, A, The Evolution of the Constitutional Right to Free Speech in India (1800-1950): The Interplay of Universal and Particular Rationales, <i>Centre for Asian Legal Studies, National University of Singapore, Working Paper Series</i>, 2013</li> </ol> <p><b>Additional readings:</b></p> <ol style="list-style-type: none"> <li>a) Justice AP Shah, Free Speech, Nationalism And Sedition, M.N.Roy Memorial Lecture, [Video+Text] available at <a href="http://www.livelaw.in/free-speech-nationalism-sedition-justice-ap-shah-m-n-roy-memorial-lecture/">http://www.livelaw.in/free-speech-nationalism-sedition-justice-ap-shah-m-n-roy-memorial-lecture/</a></li> <li>b) Mill, J.S, Chapter 2, in <i>On Liberty</i> (edited by Edward, A.), Canada: Broadview Literary Texts, 1999 (reprint).</li> <li>c) Warburton N, <i>Free Speech: An Introduction with Readings</i>, Routledge, 2000.</li> </ol>
	<p>Following up from the previous module while critically engaging with the</p>

<p><b>Module 2:</b></p> <p><b>From Free speech to extreme speech: conceptual engagement (2 weeks)</b></p> <p><b>Weeks 3 &amp; 4:</b></p>	<p>theories of free speech, this module traces the origin of the category of ‘extreme speech’ within the debates on freedom of expression. It introduces students to the juxtaposition of free speech as a right with speech as harm. It engages with the category of extreme speech and focusses on the theoretical rationales behind restricting certain forms of expression in liberal societies while counterposing them with liberal defenses in favour of allowing the circulation of extreme speech.</p>
<p><b>Topics to be Covered:</b></p> <ul style="list-style-type: none"> <li>• Category of injurious speech/extreme speech</li> <li>• The question of threshold- legitimate and forbidden expressions</li> <li>• Speech crimes: engagement with the ambit of criminality</li> <li>• Lecture based on Austin’s theory of speech Act to help students connect to the idea of efficacy between speech and harm</li> </ul>	<p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Australia Law Reform Commission, <i>Fighting Words</i>, Commonwealth of Australia, 2006.</li> <li>2. Butler, J., ‘On Linguistic Vulnerability’ in <i>Excitable Speech, a Politics of the Performative</i>, United Kingdom, Routledge, 1997.</li> <li>3. Greenawalt, K., <i>Speech, Crimes and the Uses of Language</i>, Oxford, Oxford University Press, 1989.</li> <li>4. John Kleinig, Crime and the Concept of Harm, <i>American Philosophical Quarterly</i>, Vol. 15, No. 1, 1978</li> <li>5. Maleiha Malik, Extreme Speech and Liberalism, in Ivan Hare and James Weinstein (eds.), <i>Extreme Speech and Democracy</i>, Oxford, Oxford University Press, 2009.</li> <li>6. Sorial, S., Can Saying So, Make It So, the Relation Between speech and Harm, in <i>Sedition and the Advocacy of Violence</i>, New York, Routledge, 2012.</li> </ol> <p><b>Additional readings:</b></p> <ol style="list-style-type: none"> <li>a) Dan-Cohen M, Harmful Thoughts, <i>Law and Philosophy</i>, Vol 18, No. 4, 1999</li> <li>b) DeCew, J. K, Free Speech and Offensive Expression, <i>Social Philosophy and Policy</i>, Vol 21, No. 2, 2004.</li> </ol>

<p><b>Module 3: Libel</b></p> <p><b>(2 weeks)</b></p> <p><b>Weeks 5 and 6</b></p>	<p>This is the first specific module on speech crimes taking up an analysis of the offence of libellous expressions. The module would explore the tension between freedom of expression and privacy interests of individual. The module would also initiate discussion on freedom of press in India in the context of charges of libel against press.</p>
<p><b>Topics to be covered</b></p> <ul style="list-style-type: none"> <li>• The debate on truth and falsity of libel</li> <li>• Section 499, 500 IPC</li> <li>• Criminal defamation vs freedom of press</li> </ul>	<p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Bhatia G, Defamation, Privacy and Injunctions, in <i>Offend, Shock or Disturb</i>, New Delhi, OUP, 2016</li> <li>2. R. Rajagopal vs State Of Tamil Nadu, AIR 264, 1994 SCC (6) 632</li> <li>3. <i>Works of Honourable James Wilson Vol III</i>, (published under direction of Bird Wilson) Lorenzo Press, Philadelphia, 1804, pp. 73-75.</li> <li>4. New York Times Co. v. Sullivan, 376 U.S. 254 (1964)</li> </ol> <p><b>Additional literature to be used for classroom discussions:</b></p> <p>a) Discussion on media reporting of contemporary cases and court proceedings in them, namely- Arun Jaitly &amp; Gadgari against Arvind Kejriwal , Shah against The Wire, etc.</p>
<p><b>Module 4: Hate Speech</b></p> <p><b>(2weeks)</b></p> <p><b>Weeks: 7 and 8</b></p>	<p>This module explores the idea of harm in relation to community identities through the lens of the social offence of hate speech. Hate speech is a broad category of offence targeting social classes. It has been one of the most difficult and apprehensive categories even for those who take almost an absolutist stand in defence of free speech. The module analyzes the theoretical reflections on the category of hate speech, hate speech jurisprudence in a comparative frame with India as well as literature on how the hate speech laws in India are invoked on ground with discussions also revolving around how laws protecting vulnerable groups like Dalits are viewed within the discourse on free speech</p>
	<p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Barendt E, Hate Speech: Lecture Given At Hull, November 21, 2013</li> <li>2. Brandenburg v. Ohio, 395 U.S. 444, 1969</li> <li>3. Human Rights Watch, <i>Stifling Dissent, The Criminalization of Peaceful</i></li> </ol>

<p><b>Topics to be covered</b></p> <ul style="list-style-type: none"> <li>• Free speech and the dilemma of hate speech</li> <li>• Hate speech laws and changing ambit of criminality</li> <li>• Society's 'defense'</li> </ul>	<p><i>Expression in India</i>, 2016, pp. 62-73.</p> <ol style="list-style-type: none"> <li>4. Law Commission of India, Report No.267, Hate Speech, March 2017</li> <li>5. Leets, L. and Giles, H., 'Words as Weapons' in <i>Human Communication Research</i>, Vol. 24, No. 2, London, Sage Periodicals Press, 1997.</li> <li>6. Narrain S, Law, Language and Community Sentiment, Behind Hate Speech Doctrine in India, in <i>Meaning and Power in the Language of Law: Janny Leung and Alan Durant</i>, Cambridge University Press, 2018</li> <li>7. Waldron J, Ch1 and Ch 5, in <i>The Harm in Hate Speech</i> , Harvard: Harvard University Press, 2002</li> </ol> <p><b>Additional readings:</b></p> <ol style="list-style-type: none"> <li>a) Chandrachud A, Shouting Fire in a Crowded Theatre, in <i>Republic of Rhetoric</i>, Penguin, 2017</li> <li>b) Gelber, K., 'Freedom of Political Speech, Hate Speech and the Argument from Democracy: the Transformative Contribution of Capabilities Theory' in <i>Contemporary Political theory</i>, Vol.9, No. 3, 2010.</li> <li>c) Post, R., 'Hate Speech', in Ivan Hare and James Weinstein (eds), <i>Extreme Speech and Democracy</i>, Oxford: Oxford University Press, 2009.</li> <li>d) European Court of Human Rights Presentation by Francoise Tulkens, What to Say is to Do, 2012.</li> </ol>
<p><b>Module 5: Seditious and treasonable expressions</b></p> <p><b>(2 weeks)</b></p> <p><b>Weeks 9 and 10</b></p>	<p>This module begins by reflecting on what is termed in free speech discourse as the 'preferred position of political speech'. It discusses crimes of lower treason in relation to treasonable expressions, advocacy of violence against government and sedition through a study of Indian laws with comparative insights on how these laws have been read down in other jurisdictions. Alongside it reflects on the rationales of national security, public order, etc. and juxtaposes them with some case studies related to application of the laws in India.</p>
<p><b>Topics to be covered</b></p> <ul style="list-style-type: none"> <li>• The preferred position of political speech</li> <li>• Political speech vs national security and</li> </ul>	<p><b>Readings:</b></p> <ol style="list-style-type: none"> <li>1. Bhatia G, Subversive Speech, in <i>Offend, Shock or Disturb</i>, New Delhi, OUP, 2016.</li> <li>2. Brennan Jr., W., 1991, 'The American Experience: Free Speech and National Security' in Shimon Shetreet (ed), <i>Free Speech and National</i></li> </ol>

<p>public order</p> <ul style="list-style-type: none"> <li>• ‘Terrorist’ speech</li> <li>• Chapter VI, IPC</li> </ul>	<p><i>Security</i>, Netherland, Martinus Nijhoff Publishers, 1991.</p> <ol style="list-style-type: none"> <li>Burra A, Freedom of speech and constitutional nostalgia, <i>Seminar</i>, available at <a href="http://www.india-seminar.com/2017/697/697_arudra_burra.htm">http://www.india-seminar.com/2017/697/697_arudra_burra.htm</a></li> <li>Eichenseh, K. E., ‘Treason in the Age of Terrorism: An Explanation and Evaluation of Treason’s Return in Democratic States’ in <i>Vanderbilt Journal Of Transnational Law</i>, Vol. 42, 2009</li> <li>Kedar Nath Singh vs State Of Bihar on 20 January, 1962 AIR 955, 1962 SCR Supl. (2) 769</li> <li>Schauer F, Free Speech and the Rights of the State, in <i>Free Speech: A Philosophical Enquiry</i>, 1982</li> </ol> <p><b>Additional readings:</b></p> <ol style="list-style-type: none"> <li>Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore and Alternative Law Forum, Bangalore, <i>Sedition Laws and Death of Free Speech in India</i>, 2011</li> <li>Donohue, L K, Terrorist Speech and the Future of Free Expression, <i>Cardozo Law Review</i>, Vol 27, No. 1, 2005</li> <li>Gearty, C., ‘Democratic Freedom and National Insecurity’ in <i>Civil Liberties</i>, Oxford, Oxford University Press, 2007.</li> <li><i>Index on Censorship and English PEN</i>, The Abolition of Seditious Libel and Criminal Libel, July 2009.</li> <li>Liang, L, Free Speech and Expression, in Sujit Choudhry et al, <i>The Oxford Handbook of the Indian Constitution</i>, New Delhi: OUP, 2016</li> </ol>
<p><b>Module 6: Pornography</b> <b>(2 weeks)</b></p>	<p>This module approaches the question of speech crime through two particular entry points- first the tension between freedom of expression and ‘public morality’ and second, pornographic expressions and harm to women. It discusses the conflict between the language of law, the jurisprudence on obscenity where the primary concern has been the protection of public morality and the feminist discourse on pornography/obscenity trying to address the question of pornographic expressions primarily through the lens of gender and sexual violence. Within the feminist discourse as well the contours of debate have revolved around disagreements on whether censorship on pornography is the best way of countering violence on women.</p>
<p><b>Weeks 11 and 12</b></p>	<p><b>Readings:</b></p>

<p><b>Topics to be covered</b></p> <ul style="list-style-type: none"> <li>• Banning what: commerce versus personal consumption</li> <li>• Women and pornography, defining harm</li> <li>• Section 292 IPC</li> <li>• The ‘pro’ and ‘anti’ debate within the feminist discourse</li> </ul>	<ol style="list-style-type: none"> <li>1. Barendt, E, Obscenity in <i>Freedom of Speech</i>, Oxford, Clarendon Press, 1985</li> <li>2. Bhatia G, Obscenity and Pornography, in <i>Offend, Shock or Disturb</i>, New Delhi, OUP, 2016.</li> <li>3. Chandrachud A, Prudes and Prigs, in <i>Republic of Rhetoric</i>, Penguin, 2017</li> <li>4. Mackinnon, C., ‘From Pornography, Civil Rights and Speech’ in <i>Harvard Civil Rights/Civil Liberties Law Review</i>, Vol. 20, No. 1, 1985</li> <li>5. McLellan, Betty, Pornography and the Myth of Free Speech , 2011, available at <a href="http://radicalhub.com/2011/08/04/pornography-and-the-myth-of-freespeech/">http://radicalhub.com/2011/08/04/pornography-and-the-myth-of-freespeech/</a></li> <li>6. Ranjit Udeshi v State of Maharashtra</li> </ol> <p><b>Additional readings:</b></p> <ol style="list-style-type: none"> <li>a) Dyzenhaus D, Mill and the Harm of Pornography, <i>Ethics</i>, Vol 102, Issue 3, 1992</li> <li>b) Hidayatullah, Thoughts on Obscenity, 2 S. Ill. U. L.J. 283, 1977</li> <li>c) McGowan, M K, On Pornography, Mackinnon, Speech Acts and ‘False’ Constructions, <i>Hypatia</i>, Vol. 20, No. 3, 2005.</li> <li>d) Menon, N., ‘Indian Feminists, “India’s Daughter”, and Sexual Violence: The issues at Stake’, 2015, available at <a href="http://kafila.org/2015/03/08/indianfeminists-indias-daughter-and-sexual-violence-the-Nos-at-stake/">http://kafila.org/2015/03/08/indianfeminists-indias-daughter-and-sexual-violence-the-Nos-at-stake/</a></li> </ol>
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### Assessment Methodology:

**Critical reading and analysis of specific judgments in relation to speech crimes, examples of which are given below, would be one of the crucial assignments for students:**

- *Aveek Sarkar v. State of W.B.*, (2014) 4 SCC 257
- Balwant Singh And Anr. Vs. State Of Punjab, 1995 AIR 1785, 1995(2) SCR 411, 1995(3) SCC 214, 1995(2) Scale 148.
- Arup Bhuyan and Indra Das- 2 SC orders
- Case vs Minister of Safety and Security, South Africa, 1996
- Miller V. California, 413 U.S. 15 (1973)
- Niharendra Dutt Majumdar v. The King Emperor case (1942) and King Emperor v. Sadashiv Narayan Bhalerao case (1947)



- R v Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury [1991] 1 All ER 313.
- Ramji Lal Modivs The State Of U.P, 1957 AIR 620, 1957 SCR 860
- Roth case
- Shreya Singhal vs U.O.I on 24 March, 2015, Writ Petition (Criminal) No.167 Of 2012
- The Superintendent, Central ... vs Ram Manohar Lohia, 1960, AIR 633, 1960 SCR (2) 821

A combination of final term examination, response essays, group presentations, and class participation.

Critical reading of judgments (presentation and written submission)	30
Mid term	25
Response essay	10
End term	25
Class participation	10