



Hate Speech and Freedom of Expression in India: Constitutional Limits and Social Harmony

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ABSTRACT

Freedom of speech and expression under Article 19(1)(a) of the Constitution of India constitutes one of the foundational pillars of democratic governance. However, this freedom is not absolute and is subject to reasonable restrictions under Article 19(2) in the interests of public order, decency, morality, sovereignty and integrity of the nation. Within this constitutional framework, hate speech presents one of the most complex challenges for Indian constitutional jurisprudence. Hate speech undermines individual dignity, social harmony and constitutional values by promoting hostility, discrimination, or violence against individuals or groups based on religion, caste, ethnicity, gender, language, or other protected identities.

The existing legal framework governing hate speech in India remains fragmented across the Bharatiya Nyaya Sanhita, 2023, the Information Technology Act, 2000 and other statutory instruments. Although Indian courts have attempted to balance free expression with social stability, the absence of a precise constitutional and statutory standard has resulted in inconsistent judicial interpretation and selective

enforcement. This paper critically examines the constitutional foundations of free speech, statutory provisions relating to hate speech, judicial developments and the recommendations of the 267th Report of the Law Commission of India. The paper further undertakes a comparative analysis of hate speech jurisprudence in the United States, Canada and the European Court of Human Rights.

The study argues that a constitutionally sustainable framework for regulating hate speech in India must balance democratic dissent with the protection of dignity and equality. It proposes a regulatory model based on the principles of imminence, proportionality, dignitary harm, procedural safeguards and platform accountability.

1. Introduction

The question of where freedom of expression ends and hate speech begins has remained a persistent challenge for constitutional democracies across the world. In India, the issue assumes greater significance because of the country's immense religious, linguistic, caste-based and cultural diversity. Historical experiences of communal violence, social exclusion and identity-based conflicts have intensified the constitutional debate surrounding hate speech regulation.

At the same time, India's constitutional commitment to democratic freedom requires robust protection of dissent, criticism, artistic expression and political disagreement. Excessive state regulation of speech carries the risk of suppressing legitimate democratic participation and targeting political opposition, journalists, scholars and minority voices. Consequently, the regulation of hate speech in India requires a careful balance between liberty and social harmony.

Article 19(1)(a) of the Constitution guarantees freedom of speech and expression as a fundamental right. However, Article 19(2) authorizes the State to impose reasonable restrictions in the interests of public order, decency, morality, sovereignty, integrity and related constitutional concerns. The Supreme Court of India has repeatedly emphasized that restrictions on speech must satisfy the requirements of reasonableness, proportionality and proximity to actual harm.

Despite extensive judicial engagement, India continues to lack a coherent and principled framework for regulating hate speech. Existing provisions under the Indian Penal Code, 1860, now substantially reenacted under the Bharatiya Nyaya Sanhita, 2023, are often criticized for vagueness,

overbreadth and inconsistent enforcement. The rapid expansion of digital communication and social media platforms has further complicated the regulatory landscape.

2. Constitutional Framework of Free Expression

2.1 Article 19(1)(a) and Democratic Constitutionalism

Freedom of speech and expression under Article 19(1)(a) represents a foundational component of India's constitutional democracy. The Supreme Court has consistently interpreted the provision broadly to include the right to receive information, political criticism, artistic expression and the freedom to express unpopular or dissenting opinions.

The philosophical foundations of free speech may be traced to democratic self-governance, individual autonomy and the marketplace of ideas theory. Democratic participation requires citizens to freely exchange opinions and critique governmental policies. Similarly, individual autonomy recognizes expression as an essential aspect of human dignity and personality.

However, constitutional protection of speech cannot extend to expression that destroys the dignity, equality and security of others. Hate speech threatens constitutional fraternity by promoting exclusion, discrimination and hostility against vulnerable communities.

2.2 Reasonable Restrictions under Article 19(2)

Article 19(2) permits the State to impose reasonable restrictions on speech in the interests of public order, decency, morality, sovereignty and integrity of India. Judicial interpretation has established that such restrictions must satisfy the principles of reasonableness and proportionality.

In *Romesh Thappar v. State of Madras*, AIR 1950 SC 124 and *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129, the Supreme Court emphasized that restrictions on speech must have a proximate connection with the harm sought to be prevented. Similarly, in *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955, the Court held that speech may only be restricted when it incites violence or public disorder.

The challenge in hate speech regulation lies in determining whether speech that promotes social hostility without immediate violence may still justify constitutional restriction. This debate has become increasingly significant in the context of online platforms and algorithmic amplification.

3. Statutory Framework Governing Hate Speech in India

The statutory framework governing hate speech in India is fragmented across multiple criminal and digital legislations. Although these provisions aim to preserve public order, communal harmony and

constitutional values, they have frequently been criticized for vagueness, over breadth, selective enforcement and inadequate safeguards against misuse. The transition from the Indian Penal Code, 1860 (IPC) to the Bharatiya Nyaya Sanhita, 2023 (BNS) has largely retained the substantive structure of earlier hate speech provisions without introducing comprehensive reforms suited to the realities of contemporary digital communication.

3.1 Hate Speech Provisions under the Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 substantially reenacts the principal hate speech provisions previously contained in the Indian Penal Code. Sections 196 and 197 of the BNS correspond to Sections 153A and 153B of the IPC and criminalize acts promoting enmity between groups on grounds such as religion, race, caste, language, region, or community identity. These provisions also prohibit acts prejudicial to national integration and speech likely to disturb communal harmony.

Similarly, Section 299 of the BNS, corresponding to Section 295A IPC, penalizes deliberate and malicious acts intended to outrage religious feelings by insulting religion or religious beliefs. Section 353 BNS, corresponding to Section 505 IPC, criminalizes statements, rumours, or reports intended to incite public disorder, fear, or hostility among communities.

These provisions were originally enacted during the colonial period to maintain public order in a religiously diverse society. However, their continued operation within a constitutional democracy raises significant concerns. The statutory language employed in many provisions remains broad and indeterminate, allowing expansive interpretation by law enforcement authorities. Expressions such as “promoting enmity,” “outraging religious feelings,” or “public mischief” lack precise statutory definitions, thereby creating uncertainty regarding the boundary between protected speech and punishable expression.

Another major concern relates to the discretionary powers vested in investigative agencies. Most hate speech offences are cognizable in nature, enabling police authorities to arrest individuals without prior judicial scrutiny. In practice, these provisions have often been invoked not only against actual hate speech but also against political criticism, academic discourse, artistic expression and dissenting opinions. Consequently, the law frequently operates as an instrument of intimidation rather than a narrowly tailored mechanism for preventing communal violence.

The problem is further aggravated by inconsistent judicial interpretation regarding the requirement of mens rea or intention. Although courts have occasionally emphasized the necessity of deliberate intent to incite hostility or violence, enforcement practices frequently ignore this constitutional safeguard. As a

result, individuals are subjected to criminal prosecution even where the alleged expression merely causes offence or discomfort without any proximate connection to public disorder.

Statistical data relating to prosecution under hate speech provisions also reveal low conviction rates. This suggests that such provisions are often used for preventive detention, harassment, or political pressure rather than effective criminal adjudication. The gap between prosecution and conviction highlights structural weaknesses in both legislative drafting and procedural implementation.

3.2 The Information Technology Act, 2000 and Digital Hate Speech

The emergence of digital communication platforms has fundamentally transformed the nature, speed and reach of hate speech. Social media platforms enable rapid dissemination of inflammatory content capable of mobilizing communal hostility and misinformation on an unprecedented scale. Consequently, the regulation of online speech has become a central constitutional challenge in India.

One of the most controversial provisions in this regard was Section 66A of the Information Technology Act, 2000. The provision criminalized the transmission of information deemed “grossly offensive,” “menacing,” or causing “annoyance” and “inconvenience” through electronic communication. The vague and subjective nature of these expressions granted excessive discretionary power to law enforcement authorities and resulted in arbitrary arrests for online criticism, satire and political commentary.

In *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, the Supreme Court declared Section 66A unconstitutional on the grounds of vagueness, overbreadth and violation of Article 19(1)(a). The Court held that restrictions on speech must bear a proximate connection to public disorder or incitement and cannot be justified merely because speech causes annoyance or discomfort. The judgment remains a landmark affirmation of constitutional free speech protections in the digital age.

However, concerns regarding digital speech regulation persist even after the invalidation of Section 66A. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 introduced obligations upon social media intermediaries relating to content moderation, traceability and compliance with government takedown directions. Critics argue that these Rules effectively privatize censorship by compelling intermediaries to remove content without adequate judicial oversight or procedural safeguards.

The increasing role of algorithms, artificial intelligence and automated recommendation systems has further complicated the problem of online hate speech. Algorithmic amplification frequently promotes



sensational and polarizing content because such material generates greater engagement and visibility. Consequently, digital hate speech today operates not merely through individual expression but also through technologically mediated systems of mass dissemination.

4. Judicial Approach to Hate Speech Regulation in India

The Indian judiciary has played a significant role in shaping the constitutional understanding of hate speech and the permissible limits of free expression. Although the Constitution does not explicitly define hate speech, courts have attempted to balance the protection of freedom of speech under Article 19(1)(a) with the need to preserve public order, dignity, equality and social harmony under Article 19(2). Judicial interpretation has therefore become central to the development of India's hate speech jurisprudence.

In the early years of constitutional adjudication, the Supreme Court adopted a speech-protective approach. In *Romesh Thappar v. State of Madras*, AIR 1950 SC 124 and *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129, the Court held that restrictions on speech must have a close and proximate connection with threats to public order. These decisions established that vague or excessive limitations on expression would violate constitutional guarantees.

The Court further clarified the scope of permissible restrictions in *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955. While upholding the constitutional validity of sedition law, the Court limited its application only to speech involving incitement to violence or intention to create public disorder. The judgment emphasized that strong criticism of the government or unpopular political expression cannot be criminalized merely because it causes discomfort or disapproval.

Over time, the judiciary recognized that hate speech poses a distinct constitutional challenge because it not only threatens public order but also undermines dignity and equality. In *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477, the Supreme Court acknowledged the increasing prevalence of hate speech in political and public discourse. However, the Court refrained from directing Parliament to enact new legislation, observing that existing legal provisions could adequately address the issue if effectively implemented. The judgment reflected judicial concern regarding hate speech while simultaneously demonstrating caution against excessive judicial intervention in legislative policy.

The relationship between hate speech and communal violence became more explicit in *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501. The case concerned incidents of mob lynching fueled by rumours, misinformation and communal hostility spread through digital platforms. The Supreme Court

recognized mob lynching as a serious threat to constitutional values and directed both preventive and remedial measures to combat such violence. Importantly, the judgment imposed a positive constitutional obligation upon the State to protect vulnerable communities from hate-based violence and mass vigilantism.

A major development in India's digital free speech jurisprudence occurred in *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, where the Supreme Court struck down Section 66A of the Information Technology Act, 2000. The Court held that vague expressions such as "grossly offensive" and "annoying" lacked clear legal standards and created an unconstitutional chilling effect on free speech. The judgment established that restrictions on expression must satisfy the requirement of proximity and cannot be justified merely because speech is unpopular or offensive.

Recent judicial developments have also focused on the regulation of online platforms and intermediary liability. Courts have increasingly acknowledged that social media algorithms and digital communication technologies amplify the reach and impact of hateful content. At the same time, the judiciary has expressed concern that unchecked executive control over digital speech regulation may threaten democratic freedoms and constitutional accountability.

Despite these developments, Indian judicial approaches toward hate speech regulation continue to face several challenges. Courts have not yet evolved a consistent constitutional test distinguishing protected offensive speech from punishable hate speech. Judicial reasoning often fluctuates between public order considerations, dignity-based approaches and concerns regarding incitement to violence. This lack of doctrinal clarity creates uncertainty in enforcement and increases the possibility of selective application of speech laws.

Nevertheless, Indian constitutional jurisprudence increasingly reflects an understanding that hate speech must be evaluated not only through the lens of public disorder but also through the constitutional principles of dignity, equality, fraternity and constitutional morality. The judiciary therefore remains a central institution in determining the future balance between democratic freedom and social harmony in India.

5. The Law Commission's 267th Report: An Assessment

In March 2017, the Law Commission submitted its 267th Report on Hate Speech which included its most sustained official treatment of the subject and suggested two new provisions in the IPC, section 153C (incitement to hatred based on religion, race, caste, sex, gender identity, sexual orientation, place of



birth, residence, language, disability, or tribe) and section 505A (words, signs, or visible representations that will cause fear, alarm, or provoke violence to any person or group).

The proposals of the Report are quite valid. The fact that the IPC explicitly defines the categories of characteristics that it seeks to protect, such as gender identity and sexual orientation, a feature that was not present in the previous version of the statute, is an indication of a long-overdue modernisation of the legal framework. This suggestion, which the offence be non-cognisable and thus provides no opportunity to be arrested without a sanction by a magistrate, directly targets the pattern of misuse recorded. The lawfully established boundary for incitement to hatred which is different from minor offensive conduct establishes constitutionally valid guidelines for regulating offensive behaviour. The Report presents multiple challenges which its proposed solutions do not overcome. The definition of incitement to 'hatred' requires further explanation because hatred describes an emotional state which people experience differently while the judicial system needs to determine the limit between strong disagreement expression and prohibited incitement. The absence of an explicit imminence requirement — the distinguishing feature of the Brandenburg test in US jurisprudence — risks capturing speech that contributes to social hostility without bearing a sufficiently direct nexus to identifiable harm. And the failure to recommend a dedicated digital hate-speech framework reflects the Report's pre-social-media vintage which now stands as an important limitation because most significant current hate speech occurs online.

6. Comparative Constitutional Perspectives

A comparison of other democracies' responses to hate speech reveals a fundamental difference in constitutional philosophy between the United States, Canada and Europe. India's framework is more in line with the latter tradition while maintaining its unique national features.

According to the ruling in *Brandenburg v. Ohio*, the First Amendment in the United States permits the criminalization of incitement only in cases where the speech is "directed to producing imminent lawless action" and is "likely to produce such action." A wide range of speech, including blatant displays of racial and religious hatred that would be illegal in the majority of other democracies, is protected by the constitution under this standard, which continues to be the governing test. The US stance is based on a profound skepticism about the state's capacity to recognize and neutralize harmful ideas without also stifling lawful dissent. This skepticism has strong historical justification, but it has been criticized for failing to take into consideration the humiliation that targeted groups endure.



Canada has adopted a very different strategy. The Criminal Code's ban on public incitement of hatred against identifiable groups was upheld by the Supreme Court of Canada in *R v. Keegstra* on the grounds that it damages the targeted individuals' dignity, encourages discrimination against them and exacerbates social inequality. Citing the unique vulnerability of minority groups in Canada and the nation's international obligations, the Court acknowledged that the provision restricts freedom of expression under the Canadian Charter but held it to be a "reasonable limit" that is demonstrably justified in a free and democratic society.

The European Court of Human Rights has repeatedly affirmed that restrictions on hate speech are consistent with Article 10 of the ECHR as long as they serve an urgent social need, are mandated by law and are commensurate with the justifiable goal being pursued. In *Féret v. Belgium*, the Court upheld a politician's conviction for hate speech directed at immigrants, highlighting the fact that public leaders are more accountable for the social repercussions of their remarks. Compared to the US tradition, the European approach has a stronger constitutional endorsement of protective speech regulation because it reflects a continent deeply marked by the experience of fascist hate propaganda and its genocidal consequences.

The Canadian and European constitutional model is structurally nearer to the U.S. constitutional model than the constitutional model of the country is. Meanwhile, the context unique to India, i.e., a state with the history of communal violence and the history of abusing the laws on the speech that is discriminatory against the minority, requires a regulatory design that will care both about the harm of the hate speech and the risk of the discrimination based on the selectivity of the enforcement of the law. The dignity-harm and intersectional harm frameworks by Waldron and Matsuda respectively are valuable theoretical tools to the present design, although they need to be checked by the restrictions of the state as an institution detecting and neutralising dangerous ideas as proposed by Schauer.

7. Conclusion

Hate speech regulation remains one of the most challenging issues in Indian constitutional law. While freedom of speech and expression under Article 19(1)(a) is essential for democracy, it is not absolute and must be balanced with constitutional values such as dignity, equality, fraternity and social harmony. The existing legal framework under the *Bharatiya Nyaya Sanhita, 2023* and other laws continues to suffer from vagueness, inconsistent enforcement and the risk of misuse against legitimate dissent.



Judicial decisions have attempted to balance free expression with the need to prevent communal hostility and violence. However, India still lacks a clear and consistent constitutional standard for identifying and regulating hate speech. The rise of digital platforms and online communication has further intensified the challenge by increasing the speed and reach of hateful content.

Therefore, India requires a balanced and constitutionally sound framework that protects democratic dissent while restricting speech that incites discrimination, hostility, or violence. Effective regulation should combine clear legal standards, procedural safeguards, judicial oversight, digital platform accountability and constitutional awareness to preserve both liberty and social harmony in a plural democratic society.

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