

Balancing Free Speech and Social Harmony - The Challenge of Hate Speech in India

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Abstract-This Research Paper looks into the sensitive correlation between free speech and hate speech in India, a country that values democracy.

Although free speech is a fundamental right and a key part of democracy, India faces challenges from hate speech driven by religious, ethnic, and political differences. Hate speech poses a big problem for social harmony and unity in a country that is diverse. The paper gives an overview of India's laws related to free speech and hate speech, focusing on important segment of the constitution and relevant laws. It also looks at the history of hate speech incidents and their effects, such as riots and violence. With the rise of digital platforms and social media, hate speech has become more widespread and impactful.

It explores the difficulties faced by law enforcement and the courts in dealing with hate speech while still respecting free speech. The paper deals with the challenge of balancing free expression with the need to stop hate speech for the sake of social unity. At the same time, unemployment and inflation are very high, and people are competing for jobs, often turning to religious activities instead. Crime has also gone up, with many unemployed people focusing on religion instead of looking for work. Based on case studies and original data, this paper identifies trends in hate speech and its effects on individuals and communities. This shows the need for strong actions to reduce the damage caused by hate speech. Finally, the paper recognizes the difficulty of the free speech versus hate speech debate in India and suggests ways for policymakers, civil society groups, and the media to handle it. It highlights the importance of finding a balance between protecting free speech and dealing with hate speech to maintain India's pluralistic and democratic values.

It shows how urgent it is to take comprehensive steps to fight hate speech and promote inclusivity in the country. Governments should also take strict actions to stop this kind of speech.

Keywords: Freedom of Speech; Hate Speech; Article 19(1)(a); Article 19(2); Constitutional Rights; Human Rights; Digital Media; Judicial Interpretation; Democratic Governance; Bharatiya Nyaya Sanhita (BNS); Online Speech Regulation; Constitutional Morality; Public Order.

I. INTRODUCTION

In modern India, the issues of free speech and hate speech are at the intersection of constitutional, socio-political, and historical discourse. While the Constitution of India provides the right of expression under Article 19 (1)(a), it is still the cornerstone of democracy and basic self-definition, dialogue, and free press. But this expression is not without limitations. Article 19 (2) provides for reasonable restrictions based on public order and the morality, sovereignty, and integrity of the country.

The Indian fabric is plural and built on divides of language, religion, and caste, and so the free speech-hate speech tussle is especially combustible. Within the order of Indian society, driven by caste, the hate speech is not just an order of social discourse; those words can incite large scale violence. Community, caste and ethnic political mobilization and violence can change the social order and the country's public harmony.² The rise of digital platforms has exacerbated these issues. Social media networks, in addition to democratizing communication, have become platforms for hate speech, disinformation, and propaganda. Internet anonymity, the algorithmic promotion of extreme content, and lax regulation all facilitate the spread of hate. In India, digital hate speech has led to mob violence, lynching, and communal riots, demonstrating the real and virtual harm interconnections.

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² Katharina Esau, "Hate speech (Hate Speech/Incivility)" 2021 *DOCA - Database Variables for Content Analysis*, <https://doi.org/10.34778/5a>.

In this context, this paper identifies the Constitution and legal framework on freedom of expression and hate speech in India, addresses the legal reasoning of Indian judges, and discusses the newly developing regulation on the digital space. It seeks to answer how India could maintain the intricate equilibrium of upholding free speech and restricting speech that compromises the democracy's pluralism and hate speech.³

II. CONSTITUTIONAL FRAMEWORK - THE BOUNDARIES OF FREE AND REGULATED SPEECH

Every citizen shall have the right to freedom of speech and expression. Article 19(1)(a) includes a variety of communicative acts, the freedom of the press, the right to information, and the right to criticize the government. The scope of this right has been expanded through judicial interpretation. For example, in *Maneka Gandhi v. Union of India*,⁴ court stated that the right to freedom of speech and expression is included in the right to personal liberty under Article 21, thus, linking it to dignity and autonomy. However, the Constitution's framers, to be prudent, recognized that speech, if left unregulated, might provoke a breach of the peace. Thus, Article 19(2) allows for reasonable restrictions in the case of sovereignty and integrity of the nation, the security of the state, relations with other countries, public order, decency or morality, contempt of court, defamation, and incitement to an offence. The term that has most often been the subject of liti-gation, and most particularly in cases with hate speech, is reasonable.

The proportionality principle explains how freedom and its restrictions interact. In *Chintaman Rao v. State of Madhya Pradesh*,⁵ the court stated how restrictions cannot be arbitrary and should be proportionate to the aim. Therefore, even when the state seeks to curb hate speech to preserve public order, that restriction must be narrowly tailored. Judicial interpretation of expression and its limits continue to evolve. The courts have declared that criticism and advocacy of unpopular positions is not punishable unless it is linked to inciting imminent lawless action. This was the reasoning in *Shreya Singhal v. Union of India*,⁶

wherein the court ruled that Section 66A was void for vagueness and overbreadth. It also stated that only speech that constitutes "incitement" as opposed to "advocacy" is capable of being restricted under Article 19(2).

In addition to the rights framework, the Directive Principles of State Policy and the Preamble provide the principles for interpretation. The Preamble's mention of "fraternity" and "unity and integrity of the nation" suggests the promotion of social harmony as a constitutional value. The framework of constitutional morality, exemplified in *Navtej Singh Johar v. Union of India*,⁷ posits that the exercise of personal liberty must be accompanied by a member of a society's obligation to pluralism, tolerance, and dignity. Therefore, the constitutional order mandates the suppression of hate speech, and that order would be incomplete if that suppression were absent. In India, the absence of a single, unified piece of legislation that defines and encompasses "hate speech" is problematic. The fragmented approach poses difficulties in enforcement, but still is indicative of the multi-faceted nature of the problem.

III. FRAMEWORK AS TO THE BHARATIYA NYAYA SANHITA (BNS)

Bharatiya Nyaya Sanhita (BNS), 2023, which replaces the IPC, retains and refines these provisions. Section 196 of the BNS incorporates offences related to statements promoting enmity or ill-will, modernizing terminology to encompass digital and electronic communications. The continuity of intent, preventing communal disharmony, illustrates the legislature's ongoing attempt to adapt colonial-era laws to a digital democracy.⁸ However, these provisions have been criticized for vagueness and misuse. The terms "enmity," "hatred," and "ill-will" are undefined, granting wide discretion to law enforcement agencies. This ambiguity risks transforming legitimate dissent into criminal liability. In politically charged environments, these sections have occasionally been weaponized to silence criticism under the guise of maintaining harmony.

Under the Representation of the People Act, Section 123(3A) states that the promotion of enmity or hatred

³ *Id.*

⁴ AIR 1978 SC 597.

⁵ AIR 1951 SC 118.

⁶ (2015) 5 SCC 1.

⁷ (2018) 10 SCC 1.

⁸ Bhikhu Parekh, "Hate Speech" 12 *Pub. Pol'y Rsch.* 213, (2006), <https://doi.org/10.1111/j.1070-3535.2005.00405.x>.

between classes for electoral purposes is deemed a 'corrupt practice.' The Election Commission of India has increasingly used this section to reprimand politicians who make inflammatory statements. However, hate speech during elections continues, largely disguised as cultural nationalism, or invoked historical grievances. The difficulty in enforcement reveals the challenges in distinguishing electoral discourse from incitement. While the IT Act provides a framework for regulating online communication, it does not include targeted provisions for hate speech. Section 69A does give the government the ability to restrict public access to information that is detrimental to public order or security. This ability is important in the fight against online incitement; however, the lack of clarity on how access is restricted and the absence of judicial oversight raise concerns for misuse of this power.⁹

The removal of Section 66A, which outlawed "grossly offensive" messages, was a win for free speech proponents in Shreya Singhal. This judgment has, however, created a regulatory vacuum, leaving authorities to depend on the old penal laws to deal with digital offenses. The 2021 IT Intermediary Guidelines and Digital Media Ethics Code Rules attempt to fill this vacuum and places some due-diligence obligations on intermediaries. However, the excessive state control critics fear may come with these rules seems to have become the preoccupation of the state. The Cable Television Networks (Regulation) Act, 1995 and the Press Council Act, 1978 provide regulatory frameworks for controlling hate content in the broadcast and print media. The Protection of Human Rights Act, 1993 and The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 also verbally abusive and discriminatory hate speech aimed at marginalized people and, therefore, added the human rights aspect to the control of hate speech.¹⁰

IV. SOCIO-POLITICAL CONTEXT AND THE EVOLUTION OF HATE SPEECH

Hate speech in India is not a new phenomenon. During the pre-Independence period, communal tensions were exacerbated by inflammatory propaganda, leading to

violent episodes such as the partition riots in 1947. Hate speech has been intertwined with episodes of mass violence even after the Independence, the anti-Sikh riots, Babri Masjid demolition, Gujarat riots, and various recent incidents involving mob lynching. Speech in the form of political discourse, pamphlets, and even modern digital communication preceded the violence in each of these instances, highlighting the performative nature of words.

The last decade has witnessed a paradigm shift. Facebook, X (Twitter), YouTube, and WhatsApp have become digital public squares where millions of people participate in discourse. While this democratization of speech provides platforms to the marginalized and the oppressed, it also creates unregulated spaces for hate and misinformation to flourish. The phenomenon of "WhatsApp lynchings," where mob violence is incited by inflammatory and false information spread on social media, is just one glaring example of the perils of unregulated digital spaces.¹¹

Automated systems and troll armies use socially polarizing algorithms for political or ideological consecutive gain. Empirical hate speech studies by the Internet Freedom Foundation and Human Rights Watch indicate the growth of gendered, communal, and caste-based hate speech. The global scope of the platforms and user anonymity makes accountability difficult. The socio-economic discontent as hate speech triggers in India is correct. Unemployment and inflation fuel anger that can be diverted toward scapegoat willing religious or ethnic minorities, especially when resources are tight. Identity and religious politics or inclusive populist rhetoric can exploit such social anger. This creates a cyclical effect in which speech- incitement fuels anger that legitimizes exclusionary ideologies.

While the legal framework is comprehensive, it suffers from operational ambiguity and uneven application. Enforcement officers' digital illiteracy and unawareness of hate speech will frame critique versus incitements. Governing political bias in the ideology of prosecutions deeply undermines intended neutrality and harmony. Courts have to juggle similar challenges; Over-criminalization has a chilling effect

⁹ India Hate Lab, "Hate Speech Events in India Report 2023" 2024 *SSRN Elec. J.*, <https://doi.org/10.2139/ssrn.4740019>.

¹⁰ *Id.*

¹¹ Jeffrey W. Howard, "Free Speech and Hate Speech" 22 *Ann. Rev. Pol. Sci.* 93, (2019), <https://doi.org/10.1146/annurev-polisci-051517-012343>.

on free expression, while under-regulation leaves harmful speech unattenuated. The default judicial stance, with its insistence on “imminent danger” as a condition of restriction, does not address the cumulative and psychological harms of hate propaganda. These harms may not provoke immediate violence, yet they normalize intolerance over time.¹²

V. JUDICIAL INTERPRETATION - BALANCING LIBERTY AND ORDER

The Indian judiciary's role in determining the parameters of free speech and hate speech has been crucial. Through the lens of laws and the constitution, the courts have tried to strike a balance between personal liberty and the security of the nation. This balance has been achieved between generous liberty and extreme caution. In the early years of the Republic, the courts faced the first challenge to laws that limited and restricted speech. In *Romesh Thappar v. State of Madras*¹³ and *Brij Bhushan v. State of Delhi*,¹⁴ court repealed pre-censorship orders on the basis that “public order,” as a restriction, was not permissible under Article 19(2) in the early years of the constitution. As a consequence of these cases, the constitutional Amendment was provided and “public order” and “incitement to an offence” were included as valid restrictions to free speech. Such an amendment cemented the notion that the freedom of speech in India would always have qualified and limited the “freedom of speech” in the constitution. The modern judicial position began with *Shreya Singhal v. Union of India*¹⁵ wherein court called for a stoppage of the IT Act's Section 66A for chilling legitimate expression. The court drew a distinction between 'advocacy' and 'incitement', stating that only 'speech' that leads to imminent lawless actions may be restricted. This 'incitement' test of the court resembled that of the U.S. in *Brandenburg v. Ohio*¹⁶ and portrays the incorporation of global free speech standards into Indian Jurisprudence. Yet, the “imminent danger” test may be inadequate for a country like India, where systemic hate propaganda may foster animosity that may be directed not at immediate violence, but at long-term hostility. The erosion of constitutional fraternity

is a cumulative impact repetitive hate speech may generate, even in the absence of direct incitement.

In the case of *Pravasi Bhalai Sangathan v. Union of India*,¹⁷ court noted the growing incidence of hate speech in the arena of politics, but chose not to issue sweeping guidelines, leaving the issue to the legislature. Likewise, in *Amish Devgan v. Union of India*,¹⁸ court stated that “hate speech strikes at the foundational values of equality and fraternity.” Contextual analysis is required, taking into account the intent of the speaker, the reaction of the audience, and the socio-political milieu. The Court also underscored, importantly, that speech which violates another person's dignity, or which violates the constitutional order, is not protected by Article 19(1)(a) of the Constitution. In the absence of a consistent definitional standard, lower courts are forced to unevenly enforce the judiciary's evolving doctrine, which aims to balance the right to free speech as a civil democratic order with the right to free speech that an individual holds.

VI. COMPARATIVE PERSPECTIVES - LEARNING FROM OTHER DEMOCRACIES

The situation in India can also be informed by the way other jurisdictions deal with the balance between free speech and hate speech. The United States operates under an absolutist model and protects hate and offensive speech under the First Amendment, unless it incites imminent lawless action. The reasoning is that the “marketplace of ideas” will sustain counter speech and bad speech will be dealt with. Critics of this model argue that it does not consider the systemic inequalities, and the damage and the psychological harm that vulnerable populations will sustain. In contrast, the European model values human dignity and social cohesion more than unqualified freedom. The ECHR under Article 10 of the European Convention on Human Rights allows states to limit speech that incites hate on the basis of religion, race, and ethnicity. *Jersild v. Denmark*¹⁹ and *Erbakan v. Turkey*²⁰ are examples of the proportionality approach where the balance of conflicting democratic values is protection of expression.

¹² *Id.*

¹³ AIR 1950 SC 124.

¹⁴ AIR 1950 SC 129.

¹⁵ (2015) 5 SCC 1.

¹⁶ 395 U.S. 444.

¹⁷ (2014) 11 SCC 477.

¹⁸ (2020) 15 SCC 396.

¹⁹ 59405/00.

²⁰ Application no. 15890/89.

The EU's Digital Services Act requires online platforms to quickly take down illegal hate content and provide clear information on how their algorithms function. This regulatory approach provides an institutional mechanism for mitigating hate online, while the preservation of rights of the users is maintained through due process. India's Constitution is more balanced relative to the extremes. While more permissive than the EU, India's Constitution does not offer the same structural safeguards as the EU. The absence of specialized hate-speech legislation and an independent digital regulator mean no policy action can be coherent, circumscribed as it is. Still, the constitutional focus on equality, fraternity, and public order is solid and allows India to develop its jurisprudence on expression in a regulated framework and a socially unique and Indian way.

VII. DIGITAL REGULATION AND THE ROLE OF INTERMEDIARIES

The phenomenon of digital hate speech and the state's reaction to it have undergone phenomenal shifts as a result of the digital transformation of speech. The potential consequences of speech in the digital world have dismantled the traditional legal constructs of publisher, distributor, and user. As articulated in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, social media intermediaries must act and remove illegal content within 36 hours, appoint grievance officers, and ensure and maintain message traceability in some contexts. While directed at unlawful hate and misinformation, the rules also invite excessive scrutiny, suspicion, and state surveillance on free expression. Traceability requirements and the absence of end-to-end encryption will negate the right to privacy as recognized in *K.S. Puttaswamy v. Union of India*.²¹ The challenge of distinguishing hate speech from valid political or religious dialogue remains. Automated moderation systems also lack nuance and may culturally inappropriately de-scope censorship for a marginalized community. There are propositions for a hybrid regulatory model within the pillars of the state, the platforms, and the civil society. Indian courts are starting to grasp the complexities of speech in a digital context. In *Faheema Shirin v. State*

of Kerala,²² the court acknowledged the right to a private educational discourse and internet access, suggesting that digital engagement is a form of participation in discourse constitutionally protected by the state. Therefore, any regulation on digital hate discourse must comply with the principles of proportionality and necessity. The Digital India Act, proposed to replace the IT Act, is expected to provide a more coherent digital governance framework. If designed with transparency and due process principles, the Act could antagonistic censorship, while allowing the state to respond to hate incitement and radicalization.

VIII. CONCLUSION & A WAY FORWARD

India's democratic experiment is about the civilizational challenge of marrying constitutional liberty, under Article 19 (1) (a), with fraternity and equality. Hate speech is the most significant threat to the dignity and security of the disproportionate group and, in effect, democracy. The contours of permissible speech are continuously refined in the judiciary and legislation, while the real challenge remains with the implementation and political will. The challenge of the digital age is to turn every citizen into a broadcaster and every message into a potential weapon of mass destruction. The same digital space offers the tools of education, empathy, and the will to resist hatred, making these tools every citizen's civic and constitutional duty. Each of these tools is indispensable. No system of censorship which is totalitarian and no system of freedom which is absolute. There is a robust democracy and it needs a democracy to dissent and it needs a democracy to protect the dignity of a man. People need to protect the ideas of a man, and they can engage or they can clash, but hatred must not be permitted to override the destruction. In this situation which is extreme there is the need for extreme order. To be extreme is to be India. India can invoke the constitution which upholds the values of pluralism, fraternity and justice, to ensure that free speech is not a means of dividing the people, but a means of liberating the people.

²¹ AIR 2017 SC 4161.

²² WP(C). NO. 19716 OF 2019 (L).