

# The Constitutional Contours of Free Speech and Hate Speech: An Indian Perspective

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## I. INTRODUCTION

Freedom of speech and expression lies at the heart of democracy. A free citizenry, capable of expressing dissent, debating ideas, criticizing government, and advocating reforms, is indispensable for participatory governance. The Constitution of India guarantees this freedom under Article 19 (1)(a). At the same time, the framers recognized and subsequent jurisprudence has confirmed that absolute freedom may clash with other social values: peace, public order, dignity, equality. Hence, Article 19(2) permits “reasonable restrictions” on speech in the interests of sovereignty and integrity of India, security of the State, public order, morality, defamation, incitement to an offence, and more. In a diverse, pluralistic society such as India, speech that targets religious, caste, ethnic, linguistic or other identity-based groups often termed “hate speech” can have profoundly destabilizing effects. Bigoted rhetoric can marginalize communities, create social disharmony, incite discrimination, or even trigger violence. Thus arises a constitutional conundrum: how to protect the right to free expression while preventing the misuse of that right to propagate hatred and undermine the dignity, equality, and safety of vulnerable groups. Yet, unlike some jurisdictions, India does not (as of now) have a standalone, comprehensive statute categorically defining “hate speech.” Instead, a patchwork of penal provisions mostly in the former Indian Penal Code (IPC) and, until recently, under the Information Technology Act, 2000 (IT Act) — along with judicial precedents and constitutional doctrine have attempted to strike this balance. This paper examines: (a) the constitutional framework of free speech and its permissible

restrictions; (b) the statutory provisions employed against hate speech; (c) how the judiciary especially the Supreme Court of India has interpreted and shaped these contours; (d) doctrinal and practical challenges; and (e) suggestions for reform.

## II. CONSTITUTIONAL FRAMEWORK: FREE SPEECH AND ITS LIMITS

A. Article 19: Right and Restrictions- The Constitution of India grants to “all citizens” the right to freedom of speech and expression under Article 19(1)(a). The ambit of this right is broad and capacious: it extends to the freedom of press, the freedom to propagate ideas through various media (spoken word, print, electronic, pictorial). The right includes the ability to receive and impart information, engage in political discourse, critique public policy, express dissent, and foster public debate. Yet, the founders were mindful that unbridled speech could threaten societal order. Accordingly, Article 19(2) permits “reasonable restrictions” on this freedom, for limited and specified grounds: sovereignty and integrity of India; security of the State; friendly relations with foreign states; public order; decency or morality; contempt of court; defamation; incitement to an offence. The interplay between Article 19(1)(a) and Article 19(2) thus forms the core constitutional framework: free speech as principle, restriction as exception.

B. Judicial Guidance on Restrictions - Since the early years after independence, the judiciary has played a pivotal role in interpreting the scope of Article 19. In *Romesh Thapar v. State of Madras*<sup>1</sup>, the SC held that “freedom of speech and expression is at the foundation

<sup>1</sup> *Romesh Thapar v. State of Madras* AIR 1950 SC 124.

of all democratic organizations.” Subsequent jurisprudence refined the test for when restrictions would be permissible. In *S. Rangarajan v. Jagjivan Ram*<sup>2</sup> the Court introduced the “proximate and direct connection” test: restrictions on speech are valid only if there is a close and direct link between the speech and a real and imminent threat to public order. Mere apprehension, possibility, or remote consequences cannot justify suppression. Similarly, in cases involving morality or obscenity - such as *Ranjit D. Udeshi v. State of Maharashtra*<sup>3</sup> the Court upheld reasonable restrictions under Article 19(2), recognizing the State’s interest in preserving public morality. These pronouncements reflect a balancing act: recognizing the vital role of free speech in a democracy while allowing the State to act when speech threatens broader societal interests.

### III. STATUTORY REGULATION: THE ABSENCE OF A DEDICATED HATE SPEECH LAW

Unlike some countries with specific hate-speech statutes, India lacks a standalone “hate speech law.”

- A. Instead, the penal framework draws on various provisions in the IPC Section 153A, 295A, 505 now BNS Section 196, 299, and 353 and address hate speech and related offences. These provisions have been deployed in various cases where speech is alleged to have crossed the line into hatred, religious insult, or incitement to discord.
- B. The IT Act and Online Regulation- The rise of digital communication posed new challenges. The IT Act 2000 attempted to regulate electronic speech, including through the now famous Section 66A, which penalised “offensive” online messages. However, in *Shreya Singhal v. Union of India*<sup>4</sup>, the SC struck down Section 66A as unconstitutional. The Court held that the provision was vague and overbroad, failing the test of “reasonable restriction” under Article 19 (2). Following the strike down, regulators still

retained certain controls but the absence of precise, narrowly tailored statutory provisions for hate speech remains a lacuna.

- C. Legislative Vacuum and the Call for a Dedicated Hate Speech Law- In the absence of a dedicated statute, the SC in *Pravasi Bhalai Sangathan v. Union of India*<sup>5</sup> acknowledged the need for legislative clarity. It asked the government (through the Law Commission of India) to consider defining hate speech and proposing a comprehensive law. In response, the Law Commission submitted Report No. 267 in 2017, recommending specific punishments for incitement to hatred and for acts causing fear or provocation of violence. However, as of now, no dedicated hate speech statute has been enacted.

### IV. JUDICIAL INTERPRETATION AND THE EVOLVING CONTOURS OF HATE SPEECH

Because of the constitutional freedom, gaps in the law, and lack of a clear legal definition, the courts, especially the Supreme Court, have had to decide what counts as free speech and what counts as hate speech or speech that should be punished. This conflict is shown by a number of important judgments.

- A. In this case, a writ petition asked for broad instructions, such as defining hate speech, saying that hate or derogatory speeches by political or religious leaders based on religion, caste, region, etc. are against Articles 14, 15, 19, and 21; ordering mandatory FIRs, gag orders, quick trials, electoral penalties, de-recognition of parties, and more. The Court did not want to make broad rules or take on the role of “super legislator.” Instead, it said that existing criminal laws, such as Sections 153A, 295A, and 505 IPC, might be used. The Court asked the Law Commission to ask the legislature to think about a certain hate speech law. The Court also established a working definition of “hate speech”: a “effort to marginalize individuals based on their membership in a group,” which lowers

<sup>2</sup> *S. Rangarajan v. Jagjivan Ram* 1989 2 SCC 574

<sup>3</sup> *Ranjit D. Udeshi v. State of Maharashtra* AIR 1965 SC 281

<sup>4</sup> *Shreya Singhal v. Union of India* (2015) 5 SCC 1.

<sup>5</sup> *Pravasi Bhalai v. Union of India* (2014) 11 SCC 477.

their social standing and acceptance in society and makes it harder for them to fully engage in democracy. This was a watershed moment: for the first time, the SC explicitly acknowledged "hate speech" as a separate idea from just "offensive speech," and it stressed how it could hurt society.<sup>6</sup>

B. Shreya Singhal is important for free speech law, especially in the online world, even if it isn't a "hate speech" issue. The Supreme Court maintained that limits on speech must be clear, specific, and not too broad to avoid the chilling effect when it struck down Section 66A of the IT Act. The Court said that the public order exception in Article 19(2) only applies to communication that causes or is likely to cause public disorder, not only "advocacy" or "discussion," no matter how offensive or unpopular they are. This statement has become a standard for judging legislation and rules that affect free speech, the media, journalism, and dissent online.<sup>7</sup>

C. Amish Devgan v. Union of India<sup>8</sup>- The Court recently made a very important decision about hate speech. It dealt with criminal cases against a TV journalist (Amish Devgan) who used offensive language against a respected Muslim saint in a show. This led to many FIRs under Sections 153A, 295A, and 505 IPC. The SC (two judge bench) did not throw out the FIRs, which means that these criminal laws are still in effect. The Court said that hate speech had "no valid or redeeming motive other than hostility for a specific group." The bench merely granted temporary protection and told the parties to continue with the case. The Court made it clear again that freedom of speech does not mean you may encourage hate, denigrate religious beliefs, or attack weak groups while pretending to be "commentary" or "analysis." The ruling stressed the importance of a balanced approach, where restrictions are only put in place where they are needed to defend group dignity, social peace, and constitutional values.

D. New Trends: Digital Speech, Intermediary Liability, and Rules for social media -The growth of social media and digital platforms has made things a lot more complicated. Even while Shreya

Singhal struck down broad laws like Section 66A, governments have tried out various ways to regulate things. For example, changes to intermediary standards in 2023 tried to set up a government-run "fact checking" unit to detect or take down content that was thought to be "misleading" or "anti-government." The Bombay High Court ruled in *Kunal Kamra v. Union of India* (2024) that the new restrictions were unclear and unfair, and a third judge concurred with the court's decision. This was based on the idea of the "chilling effect" from Shreya Singhal. This tendency shows that there is still tension between the State's aim to stop hate speech and false information and its constitutional duty to protect free speech. It also shows how important it is to use the right words, follow the right procedures, and keep an eye on the courts.

## V. DOCTRINAL AND PRACTICAL CHALLENGES

Even with these court rulings, regulating hate speech in India is still very hard because of doctrinal, legal, and practical issues.

### A. Lack of a Clear Definition and Too Many Statutes -

One major issue is that there is no legal definition of "hate speech." Sections 153A, 295A, and 505 IPC are old and not very clear. They were written in a generic way before modern ideas about hate speech. The Bharatiya Nyaya Sanhita (BNS) of 2023 renumbered these crimes as Sections 196, 299, and 353. The phrasing is sometimes unclear (for example, "promoting enmity" or "outraging religious feelings"), which gives investigators, arresters, and prosecutors a lot of leeway. This lack of clarity and too broad of a definition have practical effects: arbitrary or selective enforcement, misuse against dissenters, journalists, artists, minority or marginalized groups, and the possibility of stifling free speech. Some academic commentary has pointed out that many people think that hate speech alone, unless it leads to physical harm, discrimination, or violence, may not always be considered "harm" in a legal sense. However, current jurisprudence,

<sup>6</sup> *ibid*

<sup>7</sup> *ibid*

<sup>8</sup> *Amish Devgan v. Union of India* (2021) 1 SCC 1.

particularly from Pravasi Bhalai Sangathan and Amish Devgan, has progressed towards acknowledging psychological, social, and dignity-based harms, extending beyond mere instigation to violence.

B. Chilling Effect and Self-Censorship- The possibility of unclear rules and inconsistent enforcement can stop people from speaking their minds. People, like journalists, artists, scholars, and activists, may filter themselves to avoid breaking the law. Shreya Singhal made a good point when she said that the "chilling effect" of too-broad limitations is a serious threat. In a varied country like India, where religion, caste, and identity are often at the center of concerns, and where strong debate is necessary for social change, self-censorship can be very harmful to democratic discourse.

C. Selective Enforcement and Misuse - Another big worry is selective enforcement. Because investigations and prosecutions are up to the police, there is a chance that the law is used not to stop real hate but to muzzle dissent, go after minorities, or settle political scores. Additionally, many FIRs may be filed for the same speech act, sometimes in separate jurisdictions. This can lead to harassment, long court cases, and a strain on the courts' resources. This is exactly what Amish Devgan was worried about, but the Supreme Court refused to throw out the FIRs.

D. Gaps in Jurisdiction and Procedure - India doesn't have a specific law against hate speech, therefore there isn't a consistent way to handle it. Various states, police stations, and prosecutors have various rules. There is no one place to go for help, no clear rules on when to file FIRs, and no legal limit on "when enough is enough." Also, even though Shreya Singhal gave some rules for the digital world, the rules are still weak. New rules governing intermediary liability, "fact checking" units, and takedown procedures all make people wonder about openness, responsibility, and fairness in the process (notice, right to reply, appeal). The lawsuits over changes to IT rules in

2023 (like the Kunal Kamra case) show that these worries are real.

E. Constitutional and Normative Ambiguities: Dignity vs. Liberty - There is a conflict between two basic objectives of the Indian Constitution on a more abstract level: freedom (free expression) and equality/dignity (non-discrimination, social harmony). To maintain the dignity of groups, especially those that have been historically excluded, it may be necessary to limit individual freedom. But too many rules could hurt the democratic spirit of free speech, debate, dissent, and change. Those who are against strict hate speech laws say that hate speech should not be made illegal unless it plainly causes harm, such as discrimination, exclusion, or violence. They say that making hate speech illegal leads to paternalism and stifles criticism. Advocates contend that in a pluralistic society, speech that marginalizes groups—regardless of the absence of immediate violence—erodes equality, dignity, and the ability of those groups to engage fully in civic life. The conflict between these perspectives persists at the legislative level; the judiciary's interpretation provides merely case-specific instruction rather than a holistic doctrine.

## VI. COMPARATIVE CONSIDERATIONS AND INTERNATIONAL NORMS

This study mostly talks on Indian law, but it's interesting to note that many democracies have passed hate speech laws that include definitions, thresholds (such incitement, threat, and harassment), and procedural protections (like notice, appeal, and procedural fairness). For example, some European countries make it a crime to publicly promote hatred or violence against protected groups, while others hold people liable in civil court for hate speech that is discriminatory. The Supreme Court used rulings from Canada and other places as examples of comparative jurisprudence in its decision in Pravasi Bhalai Sangathan to show how important and complicated it is to regulate hate speech. India's lack of a clear, specific, and democratically passed hate speech law, even though the constitution says it should be looked into, is different from what happens in many other

countries. The Law Commission's 2017 report was a start toward closing this gap.

## VII. IMPLICATIONS FOR DEMOCRACY, PLURALISM AND SOCIAL JUSTICE

The constitutional framework and statutory judicial governance of free speech and hate speech significantly impact India's democracy, pluralism, and social justice.

**Safety and dignity for vulnerable groups** – In a society with many religions, castes, and ethnicities, hate speech that isn't stopped hurts marginalized groups more than others. With the right protections, making hate speech a crime can defend their dignity, equality, and right to speak out in public.

**Maintaining social harmony and public order** - Hate speech may not necessarily result in immediate violence, but historical evidence indicates it frequently establishes the foundation for discrimination, social exclusion, and communal discord. When hate speech is limited, it strengthens the pluralistic fabric of a society. **Freedom with responsibility**: Free speech is important, but in a democracy with many different groups, individual freedom must be balanced with the good of the whole. Article 19(2) of the Constitution strikes this balance.

**Risk of going too far and becoming too authoritarian** - Laws that are too broad, unclear, and not enforced can be misused, stop dissent, and make people afraid to speak up. This hurts the freedom of speech, critical journalism, artistic expression, and social change. India needs a carefully crafted legal framework for hate speech that includes clear definitions, clear thresholds (for incitement, threats, and targeted harassment), punishments that fit the crime, procedural safeguards (like notice, the right to an explanation, and the right to appeal), guidance for law enforcement, and respect for free speech values. **Role of the judiciary and civil society**: The courts and civil society must stay on guard to stop overreach, selective enforcement, and the silencing of criticism until the law catches up. Judicial interpretation must uphold principles, maintain consistency, and reflect constitutional ideals.

## VIII. CONCLUSION

The discussion in India about free speech and hate speech is not just an academic one; it gets to the heart of what type of democracy and society we want to be. One side is the important value of free speech, which is necessary for disagreement, change, creativity, and being a part of a democracy. On the other hand, there is the duty to protect weak groups, keep peace in society, uphold dignity and equality, and stop violence or discrimination based on hate. Article 19(1)(a) and (2) of the Indian Constitution already give us a way to deal with this tension. The judiciary, lead by the Supreme Court, has carefully looked at these rules. This is shown in the cases of Romesh Thappar, S. Rangarajan, Shreya Singhal, Pravasi Bhalai Sangathan, and Amish Devgan. But these interpretations are still reactive and case-by-case, and they can't take the place of a clear, democratically enacted set of laws. Without a specific prohibition against hate speech, we have broad criminal laws, enforcement that is up to the police, and legal uncertainty. All of these things can make it harder for people to speak their minds or, on the other hand, let hate speech grow. This is not possible because India's society is so diverse and heterogeneous. So, it's time for Parliament to pass a full hate speech law that is based on constitutional values, balances freedom and dignity, is clear, can be enforced, and is reviewed every so often. Until then, the courts and the public must be on guard. Citizens who are knowledgeable, responsible, and brave must make sure that free speech does not become a tool for hate, but stays a source of democratic plurality, equal citizenship, and social justice.

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