Criminalisation Of Online Hate Speech in India: Balancing Free Speech and Public Order

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***Abstract*—The rapid growth of social media has heightened concerns about online hate speech and its impact on public order, social harmony, and individual rights. In India, regulating hateful online expression presents a legal challenge because it requires balancing the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution with the reasonable restrictions permitted under Article 19(2). This research examines the legal framework governing online hate speech in India, relevant judicial decisions and the challenges involved in imposing criminal liability for digital expression. It also analyses the risks of vague legal provisions, inconsistent enforcement and the suppression of legitimate dissent. The paper argues that effective regulation requires clear legal standards, proportionate punishment and consistent enforcement to address harmful expression while safeguarding constitutional freedoms.**

***Index Terms*—Online Hate Speech, Freedom of Speech, Public Order, Article 19, Criminalisation, Constitutional Law, Social Media Regulation, India.**

I. INTRODUCTION

The growth of the internet and social media has transformed the way people express their opinions, exchange information and participate in public discussions. Digital platforms have made freedom of expression more accessible, but they have also created opportunities for the rapid spread of hate speech, communal hostility and messages that may threaten public order. Unlike traditional forms of communication, online content can reach thousands of people within seconds, be repeatedly circulated and remain accessible long after its original publication. This has made the criminalisation of online hate speech an important issue in Indian constitutional and criminal law.

Freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution of India. However, this freedom is not absolute, as Article 19(2) permits reasonable restrictions on specified grounds, including public order and incitement to an offence.[1] The central legal challenge is to distinguish speech that deserves constitutional protection, such as criticism of government policies and the expression of unpopular opinions, from speech that promotes hostility against communities or creates a genuine risk of unlawful harm. Criminalising every offensive or controversial statement may restrict democratic debate, while failing to address genuinely dangerous speech may undermine social harmony and the rights of affected groups.

The Supreme Court of India has played a significant role in defining the constitutional boundaries of expression. In *Shreya Singhal v. Union of India*,[2] the Court struck down Section 66A of the Information Technology Act, 2000, because its vague and overbroad language violated the constitutional guarantee of free speech. The judgment highlighted the danger of imposing criminal liability merely because an online expression is considered offensive or objectionable. Although the case was not exclusively about hate speech, it remains central to understanding why laws regulating online communication must be precise and constitutionally justified.

The problem also requires examination of the relationship between speech, incitement and public order. In *Pravasi Bhalai Sangathan v. Union of India*,[3] the Supreme Court considered the serious concerns associated with hate speech and the existing legal framework for addressing it. The Court discussed the role of legislation and the need to address the issue through appropriate legal measures. This decision demonstrates that hate speech is not simply a question of individual expression; it also raises concerns about equality, dignity, communal peace and the protection

of vulnerable groups.

India addresses relevant forms of hateful and inflammatory expression through several legal provisions rather than one comprehensive statutory definition of online hate speech. The Bharatiya Nyaya Sanhita, 2023, contains provisions dealing with, among other matters, the promotion of enmity between groups and statements prejudicial to national integration.[4] The Information Technology Act, 2000, and the rules governing intermediaries also form part of the legal framework for addressing unlawful online content. Nevertheless, questions remain regarding the interpretation of these provisions, the consistency of their enforcement, the responsibility of digital platforms and the possibility of criminal law being misused to suppress legitimate dissent.

This debate has also received attention in contemporary legal scholarship. Rahul D. Thakkar's article, *"Legal Responses to Online Hate Speech in India: Evaluating Section 66A and the Supreme Court's Judgment in Shreya Singhal v. Union of India,"* examines the constitutional difficulties associated with regulating online expression and the continuing challenges of digital speech regulation.[5] Such scholarship reinforces the need to evaluate not only whether online hate speech should be punished, but also how criminal liability can be imposed without weakening fundamental rights.

Against this background, the present research examines the criminalisation of online hate speech in India, focusing on the constitutional protection of free speech, the preservation of public order, the relevant statutory provisions and the approach adopted by the judiciary. It seeks to assess whether the existing legal framework adequately addresses harmful online expression while protecting legitimate criticism, debate and dissent. The central argument is that effective regulation should target legally identifiable harm through clear, proportionate and consistently applied rules, rather than treating mere offensiveness as sufficient grounds for criminal punishment.

II. MEANING AND NATURE OF ONLINE HATE SPEECH

Online hate speech refers to expressions shared through digital platforms that attack, threaten, degrade or encourage hostility against individuals or groups on the basis of characteristics such as religion, caste, race, ethnicity, nationality or other group identities. It may appear in the form of social media posts, videos, comments, memes, online campaigns or messages circulated through digital communication platforms. However, not every offensive, unpopular or critical statement amounts to hate speech in the legal sense. Its nature, context, target, intention and potential consequences must be considered before determining whether it attracts criminal liability.

The nature of online communication makes this issue particularly complex. Digital content can spread rapidly across geographical boundaries, reach large audiences and be reproduced even after the original post has been deleted. An inflammatory message may therefore contribute to communal tension, discrimination or hostility beyond the audience initially intended by its creator. At the same time, online platforms provide an important space for political criticism, social reform, journalism and the discussion of controversial issues. An excessively broad understanding of hate speech may consequently discourage legitimate expression and public debate.

In India, there is no single comprehensive statutory definition that covers every form of online hate speech. Instead, legal liability depends on the specific conduct and the applicable statutory provision. For example, Section 196 of the Bharatiya Nyaya Sanhita, 2023, addresses the promotion of enmity between different groups on specified grounds, while Section 353 deals with statements conducing to public mischief. Whether a particular online statement falls within these provisions depends on its contents and the legal requirements of the relevant offence. The Information Technology Act, 2000, and the rules governing online intermediaries may also be relevant to the regulation of unlawful digital content.

The Supreme Court has emphasised the importance of protecting freedom of expression while allowing constitutionally valid restrictions. In *Shreya Singhal v. Union of India*, the Court struck down Section 66A of the Information Technology Act because its vague and overbroad language impermissibly restricted online expression.[6] The judgment demonstrates that the mere possibility of a statement causing annoyance or offence cannot automatically justify criminal punishment. Similarly, in *Pravasi Bhalai Sangathan v. Union of India*,[7] the Court examined the concerns surrounding hate speech and the role of law in

addressing its harmful effects.

Thus, online hate speech must be understood as both a social concern and a legal issue. Its regulation requires a careful distinction between legitimate disagreement and expression that satisfies the legal requirements for punishment. A balanced approach should protect individuals and communities from legally actionable hate while ensuring that criminal law is not used to silence dissent, criticism or unpopular opinions.

III. CONSTITUTIONAL FRAMEWORK: FREEDOM OF SPEECH AND REASONABLE RESTRICTIONS

The Constitution of India establishes a framework in which freedom of expression is protected while certain restrictions are permitted to safeguard the interests of society. In the context of online hate speech, this constitutional balance becomes particularly important because digital platforms allow individuals to communicate opinions rapidly and reach large audiences. The law must therefore distinguish between the expression of unpopular or controversial views and speech that falls within legally recognised grounds for restriction.

Article 19(1)(a): Freedom of Speech and Expression

Article 19(1)(a) guarantees citizens the right to freedom of speech and expression. This right enables individuals to communicate their opinions, question government policies, participate in public debate and express disagreement with prevailing social beliefs. In a democratic society, the protection of this freedom is essential because public discussion often involves criticism, disagreement and the consideration of opposing viewpoints. The constitutional protection also extends to expression through modern communication technologies, including the internet, subject to applicable legal restrictions.

In *Shreya Singhal v. Union of India* (2015), the Supreme Court struck down Section 66A of the Information Technology Act, 2000, because its vague and excessively broad terms restricted online expression in violation of Article 19(1)(a).[8] The judgment is particularly relevant to online hate speech because it demonstrates that criminal provisions regulating digital communication must be sufficiently clear and cannot impose punishment merely because an expression is offensive or unpopular.

Article 19(2): Reasonable Restrictions

Article 19(2) permits the State to impose reasonable restrictions on freedom of speech and expression on specified constitutional grounds. These include the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation and incitement to an offence. Accordingly, freedom of expression does not provide unrestricted protection to every statement made online. For the regulation of hate speech, *public order* and *incitement to an offence* are particularly significant. Nevertheless, the mere possibility that a statement may offend a person or provoke disagreement does not automatically establish a constitutional justification for criminal punishment. The restriction must fall within a ground expressly recognised by Article 19(2), and the relevant law must satisfy applicable constitutional requirements.

In *Superintendent, Central Prison v. Ram Manohar Lohia* (1960), the Supreme Court explained the importance of a proximate connection between the restriction imposed and the public-order concern relied upon to justify it.[9] This principle is relevant when determining whether a particular expression creates a sufficiently close connection with a threatened disturbance of public order.

Constitutional Balance in the Digital Environment

The constitutional challenge is to protect people from legally punishable hate speech without turning criminal law into a means of suppressing legitimate criticism. Online content must be assessed in its actual context, taking into account its wording, intended target, surrounding circumstances and the requirements of the applicable offence. The legal response should be based on evidence and statutory standards rather than assumptions that every controversial statement threatens public peace.

In *Anuradha Bhasin v. Union of India* (2020), the Supreme Court recognised the importance of freedom of speech and expression through the internet and examined the constitutional limits applicable to restrictions on internet access.[10] Although the case did not specifically concern hate speech, it reinforces the significance of constitutional scrutiny when the exercise of fundamental rights is affected by measures regulating digital communication.

Therefore, Articles 19(1)(a) and 19(2) must be read together. The former protects open discussion and democratic participation, while the latter permits restrictions only within defined constitutional limits. A balanced approach to online hate speech requires clear legislation, proportionate enforcement and judicial oversight so that the protection of public order does not become a justification for unnecessarily restricting freedom of expression.

IV. LEGAL FRAMEWORK GOVERNING ONLINE HATE SPEECH IN INDIA

India regulates online hate speech through a combination of criminal laws, constitutional restrictions and rules governing digital platforms. Instead of relying on one comprehensive law specifically defining and punishing every form of online hate speech, the legal system uses different provisions depending on the nature of the expression, its intended effect and the circumstances in which it is published. This approach provides legal remedies against certain forms of harmful expression, but it also raises questions about consistency, clarity and the protection of legitimate speech.

4.1. Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 (BNS), which came into force on 1 July 2024, contains provisions relevant to hate speech and inflammatory online communication.[11]These provisions can apply to statements circulated through social media or other electronic means when the ingredients of the relevant offence are satisfied.

Section 196 addresses the promotion of enmity between different groups on specified grounds and acts prejudicial to the maintenance of harmony. It is particularly relevant where online content promotes hostility between communities. Section 197 deals with imputations, assertions and related conduct prejudicial to national integration. Section 299 addresses deliberate and malicious acts intended to outrage the religious feelings of a class by insulting its religion or religious beliefs. Section 353 may also be relevant to certain false statements, rumours or reports that meet its statutory requirements.[12]

However, these provisions should not be treated as a general prohibition on every offensive online statement. Criminal liability depends on the specific language of the applicable provision, the necessary mental element where required, and the evidence establishing the alleged offence.

4.2. Information Technology Act, 2000

The Information Technology Act, 2000, provides a separate legal framework for electronic communication and unlawful online content. Section 69A empowers the Central Government or its authorised officers to direct the blocking of public access to specified online information, subject to the statutory grounds and prescribed procedure.[13] This mechanism may be relevant where online material threatens interests recognised under the provision, including public order.

Section 79 provides conditional protection from liability to intermediaries for third-party information, subject to the requirements of the Act and applicable rules.[14] This is important because social media companies and other intermediaries often host content created by users rather than producing it themselves. Their legal responsibilities must therefore be considered in accordance with the statutory conditions rather than assuming that every user's statement automatically creates criminal liability for the platform.

The Act does not establish a single, standalone offence covering all forms of online hate speech. Its provisions operate alongside the relevant criminal laws and content-regulation rules.

4.3. Information Technology Rules, 2021

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, prescribe due-diligence obligations for intermediaries, including social media platforms. Rule 3 requires intermediaries to observe specified obligations, including informing users about categories of information that they must not host, display, upload, publish or share. These categories include certain unlawful content and material promoting hate or violence.[15]

The Rules also establish grievance-redressal and compliance mechanisms. Their purpose is to promote accountability in the handling of online content, but their operation must remain consistent with the parent Act and applicable constitutional safeguards. A platform's decision to remove content under its policies is also distinct from a court's determination that a criminal offence has been committed.

4.4. Judicial Interpretation and Constitutional Safeguards

Judicial decisions help establish limits on the use of criminal law against online expression. In *Shreya Singhal v. Union of India*, the Supreme Court invalidated Section 66A of the Information Technology Act because its vague and overbroad restrictions violated freedom of speech and expression.[16]The decision remains an important authority against criminal provisions that fail to distinguish clearly between protected expression and punishable conduct.

In *Pravasi Bhalai Sangathan v. Union of India*, the Supreme Court considered concerns relating to hate speech and the role of law in addressing it.[17]The case is relevant to the broader debate over whether existing legal measures adequately address hateful expression and how the problem should be approached within the constitutional system.

These judgments demonstrate that the existence of a legitimate objective, such as protecting public order or preventing hostility between communities, does not remove the need for legal precision. Authorities must identify the applicable provision and establish its requirements rather than treating disagreement, criticism or offensiveness as sufficient grounds for criminal punishment.

4.5. Limitations of the Existing Framework

Despite the availability of several legal provisions, India does not have one comprehensive statutory definition that specifically covers every form of online hate speech. Different provisions address different forms of conduct, and their applicability depends on the facts of each case. This can create difficulties in identifying the correct legal provision, ensuring consistent enforcement and distinguishing genuinely dangerous expression from lawful debate.

A further challenge is the speed and scale of digital communication. Harmful content can circulate widely before effective action is taken, while overly broad enforcement may result in the removal of lawful speech or the filing of complaints against legitimate criticism. The legal framework must therefore balance the protection of individuals and communities with constitutional freedoms.

In conclusion, India's existing framework provides several routes for addressing legally punishable online hate speech, but its effectiveness depends on careful interpretation, fair enforcement and respect for fundamental rights. Clearer legal standards and transparent content-moderation procedures could help address harmful expression without unnecessarily restricting democratic participation.

V. JUDICIAL APPROACH TOWARDS ONLINE HATE SPEECH

The Indian judiciary has an important role in determining how freedom of expression should be protected while addressing speech that promotes hatred, discrimination or hostility. The challenge is particularly significant in the digital environment, where statements can reach large audiences within seconds. Although the Supreme Court has not developed its approach exclusively through cases concerning online hate speech, several of its decisions establish principles that are relevant to regulating harmful digital expression.

5.1. *Shreya Singhal v. Union of India* (2015)

In *Shreya Singhal v. Union of India*,[18] the Supreme Court struck down Section 66A of the Information Technology Act, 2000, which criminalised certain communications sent through electronic devices and communication services. The Court found that the provision was unconstitutional because its vague and overbroad language restricted freedom of speech and expression.

The judgment distinguished between discussion, advocacy and incitement, explaining that discussion and advocacy remain protected even when the expressed views are unpopular. This distinction is important for online hate speech because criminal punishment cannot be justified merely by labelling an expression offensive. The applicable law must be constitutionally valid and the alleged conduct must satisfy the requirements of a specific offence.

5.2. *Pravasi Bhalai Sangathan v. Union of India* (2014)

In *Pravasi Bhalai Sangathan v. Union of India*,[19] the Supreme Court examined concerns about hate speech, including statements targeting people on the basis of religion, caste, region and ethnicity. The Court observed that existing statutory provisions could address many such instances and emphasised the need for effective implementation of the law.

The decision highlights the importance of enforcement rather than assuming that the creation of additional offences alone will resolve the problem. In the online environment, this principle is particularly relevant because harmful content may spread rapidly while complaints, investigations and legal proceedings take time. Authorities must apply the law effectively while respecting constitutional limits.

5.3. *Amish Devgan v. Union of India* (2020)

In *Amish Devgan v. Union of India*,[20] the Supreme Court considered allegations arising from remarks made during a television broadcast. The judgment examined hate speech in relation to dignity, discrimination, freedom of expression and the wider consequences of public communication.

The Court recognised the difficulty of developing one universal definition of hate speech that adequately covers every situation. Its discussion demonstrates the importance of evaluating the context and likely impact of an expression rather than relying solely on isolated words.

These considerations are also relevant to digital platforms, where a post, video or message may be interpreted differently depending on its audience and surrounding circumstances.

5.4. *Kaushal Kishor v. State of Uttar Pradesh* (2023)

In *Kaushal Kishor v. State of Uttar Pradesh*,[21] a Constitution Bench examined constitutional questions concerning freedom of speech and the restrictions permitted under Article 19(2). The judgment is relevant to the regulation of online hate speech because it reinforces the constitutional limits within which restrictions on expression must operate.

The case also discusses hate speech and the relationship between expression, discrimination and human dignity. It supports the broader principle that the constitutional validity of a restriction cannot be determined merely by the seriousness of the concern being addressed; the restriction must also comply with the constitutional framework.

5.5. *Overall Judicial Approach*

The decisions discussed above demonstrate that the judiciary seeks to balance the protection of free expression with the need to address legally punishable hateful conduct. The courts have emphasised legal clarity, effective implementation and the importance of evaluating expression in context. They have also cautioned against restrictions that are vague or excessively broad.

Nevertheless, the digital environment creates practical challenges involving anonymous accounts, rapid circulation of content and the repeated sharing of inflammatory material. These difficulties require effective investigation and appropriate application of existing laws, rather than automatic criminalisation of every controversial statement.

In conclusion, the judicial approach supports a careful distinction between protected expression and speech that satisfies the requirements of a criminal offence. A sound legal response to online hate speech must protect individuals and communities from unlawful harm without allowing criminal law to become a tool for suppressing legitimate criticism or democratic debate.

VI. CHALLENGES IN CRIMINALISING ONLINE HATE SPEECH

The criminalisation of online hate speech in India presents several legal, technological and social challenges. Although harmful digital expression can contribute to communal hostility, discrimination and disturbances of public order, regulating it requires careful consideration of constitutional freedoms. An excessively strict approach may suppress legitimate expression, while ineffective enforcement may leave individuals and communities exposed to harmful content.

6.1. Conflict Between Free Speech and Public Order

One of the principal challenges is determining when online expression crosses the boundary between constitutionally protected speech and legally punishable conduct.

Article 19(1)(a) of the Constitution protects freedom of speech and expression, while Article 19(2) permits reasonable restrictions on specified grounds, including public order and incitement to an offence.[22] However, criticism, satire and unpopular opinions may sometimes be mistaken for hateful expression. Authorities must therefore establish a legal basis for restricting speech rather than treating every offensive statement as a criminal act.

6.2. Absence of a Single Comprehensive Definition

India does not have one comprehensive statutory definition covering every form of online hate speech. Different provisions of the Bharatiya Nyaya Sanhita, 2023, address particular forms of conduct, such as promoting enmity between groups or making specified statements prejudicial to national integration.[23] Their application depends on the facts and the requirements of the relevant offence. The absence of a single definition may create uncertainty for users, investigators and digital platforms when determining whether particular content is unlawful.

6.3. Rapid Spread and Permanent Circulation of Content

Digital platforms enable information to reach large audiences within a short period. A hateful message may be copied, reposted, edited or forwarded repeatedly, making it difficult to contain its circulation even after the original content is removed. Content shared in one location may also reach audiences in other regions and intensify existing social tensions. This creates practical difficulties for investigators seeking to identify the original source, establish responsibility and prevent further dissemination.

6.4. Anonymity and Identification of Offenders

Some individuals use anonymous profiles, false identities or multiple accounts to distribute hateful content. Identifying the person responsible may require technical investigation, preservation of electronic evidence and lawful cooperation from intermediaries. The process can become more complicated when accounts or relevant data are located outside India. At the same time, anonymity alone cannot establish criminal responsibility, and investigations must respect applicable legal procedures and privacy safeguards.

6.5. Misuse of Criminal Provisions

Criminal provisions intended to address harmful expression may also be invoked against political opponents, journalists, activists or individuals expressing unpopular opinions. Complaints based on incomplete context or exaggerated interpretations can expose individuals to investigation and legal costs even where an offence is ultimately not established. In *Shreya Singhal v. Union of India*,[24] the Supreme Court struck down Section 66A of the Information Technology Act, 2000, because its vague and overbroad language violated freedom of speech and expression. The judgment illustrates why legal provisions governing digital communication must be sufficiently precise.

6.6. Difficulties in Holding Digital Platforms Accountable

Social media intermediaries play an important role in the circulation and moderation of online content. However, determining their legal responsibility is complex because they may host enormous quantities of user-generated material. Section 79 of the Information Technology Act, 2000, provides conditional protection to intermediaries, subject to the statutory requirements.[25]The challenge is to ensure compliance with applicable law without requiring platforms to suppress lawful content indiscriminately. Transparent moderation procedures and effective grievance mechanisms are important to achieving this balance.

6.7. Evidentiary and Jurisdictional Difficulties

Online hate speech investigations may involve screenshots, videos, account records, messages and other forms of electronic evidence. Investigators must establish the authenticity, integrity and relevance of such material and connect it to the alleged offender. Content may also cross state or national boundaries, raising questions about jurisdiction and cooperation between authorities. These difficulties can delay proceedings and complicate the enforcement of criminal law.

6.8. Balancing Effective Enforcement with Constitutional Rights

The final challenge is to ensure that action against online hate speech is effective, proportionate and consistent with constitutional guarantees. Failure to address genuinely unlawful content may harm vulnerable communities and social harmony. Conversely, vague standards or excessive enforcement may discourage legitimate public discussion. A balanced approach requires clear statutory provisions, trained investigators, fair procedures and judicial oversight.

In conclusion, criminalising online hate speech requires more than imposing penalties. It demands a legal framework that distinguishes punishable conduct

from protected expression, addresses the practical realities of digital communication and prevents the misuse of criminal law. Consistent enforcement and respect for constitutional freedoms are essential to maintaining both public order and democratic debate.

VII. CONCLUSION

The criminalisation of online hate speech in India presents a continuing challenge to the constitutional balance between freedom of expression and the protection of public order. Although social media has created new opportunities for communication and democratic participation, it has also made the circulation of hateful and inflammatory content easier. Such expression may contribute to discrimination, hostility and social unrest, making effective legal regulation necessary.

India's existing legal framework, including the Bharatiya Nyaya Sanhita, 2023, the Information Technology Act, 2000, and the applicable intermediary rules, provides mechanisms to address certain forms of unlawful online expression. However, the effectiveness of these measures depends on clear legal standards, fair investigation and consistent enforcement. The judicial approach, particularly in *Shreya Singhal v. Union of India*, demonstrates that restrictions on online speech must comply with constitutional guarantees and should not rely on vague or excessively broad criminal provisions.

A balanced solution requires the law to distinguish between legitimate criticism and expression that satisfies the requirements of a criminal offence. Greater clarity in legal provisions, improved digital investigation, transparent content-moderation practices and appropriate judicial oversight can strengthen the response to online hate speech. At the same time, authorities must guard against the misuse of criminal proceedings to silence dissent or unpopular opinions.

Ultimately, the objective should not be to eliminate disagreement from public discussion, but to address legally punishable harmful expression while preserving democratic freedoms. A fair, precise and proportionate legal framework can help India protect individuals and communities, maintain public order and uphold the constitutional values on which its democracy rests.

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