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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

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HATE SPEECH AND CONSTITUTIONAL BOUNDARIES OF FREEDOM OF EXPRESSION: A CRITICAL ANALYSIS

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ABSTRACT

The constitutional and legal framework governing hate speech in India presents a complex paradox at the heart of its democracy. This report examines the delicate balance between the fundamental right to freedom of expression, enshrined in Article 19(1)(a), and the state's power to impose "reasonable restrictions" under Article 19(2). It traces the evolution of India's unique model, shaped by its history of communal tension and its distinction from the more absolutist legal systems of the United States and the dignity-based approach of Europe. The paper argues that a fragmented statutory landscape and a lack of clear definitions for hate speech have led to inconsistent enforcement and a chilling effect on dissent. It further highlights how the proliferation of hate speech in the digital age, often used as a political tool, poses an escalating threat to social harmony. The analysis of landmark judicial rulings reveals a significant shift from a public-order-centric view to a broader dignity-based paradigm. The report concludes with a call for a hybrid approach that combines precise legislative reforms, robust judicial oversight, and comprehensive societal initiatives to effectively combat hate speech while preserving democratic freedoms.

Keywords: Hate Speech, Freedom of Expression, Indian Constitution, Article 19, Reasonable Restrictions, Comparative Law, Hate Crimes

I - Introduction

The foundation of any robust democracy rests on the principle of free expression, a right that enables open dialogue, informed dissent, and the pursuit of truth. In a nation as diverse and pluralistic as India, this right is particularly vital, serving as a bulwark against authoritarianism and a catalyst for social progress. However, the exercise of this liberty is not without its complexities. A fundamental and enduring tension exists between the individual's freedom to speak and the state's responsibility to maintain public order and protect the dignity and security of all its citizens. While freedom of speech is described as the "lifeblood of democracy," the proliferation of speech that incites hatred against communities threatens the very foundation of a pluralistic society.¹ This dilemma is particularly acute in India's contemporary landscape, where communal polarization and the widespread use of digital platforms have amplified the reach and impact of hateful rhetoric.²

This report examines India's constitutional and legal framework for regulating hate speech. It posits that this framework, shaped by a unique history and socio-political structure, adopts a distinctive "reasonable restrictions" model under Article 19(2) of the Constitution.³ This model represents a deliberate choice to balance individual liberty with the imperative of collective dignity and social harmony, a departure from the more absolutist approach seen in the United States.¹ The report will demonstrate that while this constitutional design provides the state with necessary tools to manage societal discord, its implementation has been fraught with challenges. The vagueness of statutory provisions and inconsistent enforcement have led to concerns about misuse, creating a chilling effect on legitimate dissent and contributing to a state of perpetual legal and social conflict.⁴

The ensuing chapters will provide a comprehensive analysis of this complex issue. Chapter 2 will trace the constitutional origins of free expression in India, from its historical roots in the independence struggle to the broad judicial interpretation of Article 19(1)(a). Chapter 3 will detail

¹ Hate speech regulation in India: A constitutional dilemma between free speech and public order, accessed September 21, 2025, <https://www.criminallawjournal.org/article/151/5-2-16-144.pdf>

² *Ib.*

³ *Supra* *Nt.1*

⁴ *Ib.*

the critical legislative re-balancing that occurred with the First Amendment of 1951, which codified the grounds for restricting speech. Chapter 4 will dissect the fragmented statutory landscape of hate speech in India, including key provisions of the Indian Penal Code and the significant proposals of the Hate Speech and Hate Crimes (Prevention) Bill, 2022. Chapter 5 will chronicle the evolution of judicial thought through a review of landmark cases, highlighting the shift from a public-order-centric view to a dignity-based paradigm. Chapter 6 will investigate the socio-political impact of hate speech in the digital age, using empirical data to illustrate its alarmingly strategic and systemic nature. Chapter 7 will place the Indian model in a global context through a comparative analysis with the United States and the United Kingdom. Finally, Chapter 8 will synthesize these findings to offer a set of forward-looking recommendations for creating a more nuanced and effective legal and social framework.

REVIEW OF LITERATURE

1. Samarth Mishra, A.Shukla, Balancing Freedom of Expression and Hate Speech: Case of India⁵

This study is conducted to assess the current state of freedom of expression and the dire circumstances faced by Indian journalists. It also examines the state of press freedom and the rise of hate speech in the modern era. The study seeks to analyze how the Indian government restricts freedom of expression and how Indian politicians and media outlets are responsible for hate speech by promoting biased views and fabricated news, respectively. It illustrates examples of hate speech in which a politician's statements or biased media coverage lead to public unrest, acts of violence, and mass murder. The study also shows how social media is currently being abused to spread divisive opinions among the general population. This study highlights the current misuse of hate speech and offers important insights into the deterioration of press freedom as a result of restrictions.

⁵ Samarth Mishra, Aditya Kumar Shukla (corresponding author), Balancing Freedom of Expression and Hate Speech: Case of India, Pramana Research Journal, Volume 9, Issue 6, 2019.

2. Aarush Sinha, Balancing Freedom of Speech with Hate Speech Laws in India.⁶

This article looks into the conflict between India's freedom of expression and its suppression of hate speech that incites violence or prejudice in the name of democracy. Article 19(1)(a) of the Constitution of India protects the right to freedom of speech and expression, subject to certain reasonable restrictions described under Article 19(2). While hate speech was prohibited by these restrictions on public order, morality, and national security, the legal framework is extremely fragmented, with certain sections scattered throughout the Indian Penal Code, the Representation of the People Act, the Information Technology Act, and other laws. The Article further addresses the conflict between regulating hate speech and ensuring the security of freedom of expression in a hostile context of ambiguity, overreach, and discriminatory application of the law. The two significant court rulings, *Ramji Lal Modi v. State of Uttar Pradesh*⁷ and *Shreya Singhal v. Union of India*⁸, have established an interpretation of hate speech that defines the necessity of restricting in very limited ways without actually restricting free speech. In addition to creating a stronger opposing force in terms of how to afford harm on social media, this would further polarize new digital platforms that aim to inform the public arena. Different strategies for dealing with hate speech in democracies are demonstrated by the comparative viewpoints of the US, UK, and EU.

3. Mahi Ghai, Why does the need for Reasonable Restrictions on the Freedom of Press arise?⁹

One's existence cannot exist without media and all of its facets. It is known as the fourth pillar of democracy because it also acts as a conduit between the governing and the governed. According to a number of court rulings, Article 19(1)(a)1 of the Indian Constitution grants the media the right to free expression. Such rights, influence, and authority come with obligations to the populace. By participating in media trials, failing to

⁶ Aarush Sinha, Balancing Freedom of Speech with Hate Speech Laws in India, *Journal of Constitutional Law and Jurisprudence*, 2024, [5.1 JCLJ (2024) 813].

⁷ 1959 SCC OnLine SC 77, AIR 1957 SC 620.

⁸ (2015) 5 SCC 1, AIR 2015 SC 1523

⁹ Mahi Ghai, Why does the need for Reasonable Restrictions on the Freedom of Press arise?, *Journal of Constitutional Law and Jurisprudence*, 2023, [3.3 JCLJ (2023) 162].

monitor hate speech, violating citizens' privacy by publishing their personal information to boost viewership, failing to monitor social media abuse, publishing or posting fake and sponsored news, and other practices, the media occasionally falls short of its obligations and violates the fundamental rights of other citizens. According to Article 19(2)2 of the Indian Constitution, the media and its different facets are subject to some reasonable limits in order to guarantee that the freedom of the press is maintained and not widely abused.

4. Gargi Choudhari, FIR under Section 295A - IPC: Elucidating the hydra-headed Imbroglio.¹⁰

Freedom of expression and hate speech are frequently at odds with one another. Numerous legal provisions support the assertion that India is a secular nation, which is upheld by various sections of the Indian Constitution. The penalties for defiling a place of worship with the intention of disparaging the religion of the ant class are covered in Section 295 of the Indian Penal Code, 1860. Subsection A of the same section, Section 295A, was established to maintain public order by penalizing anyone who purposefully offend adherents of different religions. In an Indian society that is heavily reliant on religion, this portion is quite serious. However, this section has been horribly abused in recent years. The purpose of this paper is to examine the legitimacy and rationality of FIRs filed under s. 295A. Using a complicated array of seminal rulings and case laws, the article aims to clarify the validity of arrests and fines under the clause by drawing a line between legitimate hate speech and reasonable blasphemy.

5. Maya Mirchandani, Fighting Hate Speech, Balancing Freedoms: A Regulatory Challenge.¹¹

Government regulation of the exchange of ideas should be minimized, especially when it involves dissent and differing points of view. To support democratic decision-making and self-expression, freedom of expression encompasses both the public's right to unrestricted

¹⁰ Gargi Choudhari, FIR under Section 295A - IPC: Elucidating the hydra-headed Imbroglio, *Journal of Constitutional Law and Jurisprudence*, 2022, [2.3 JCLJ (2022) 67].

¹¹ Maya Mirchandani, Fighting Hate Speech, Balancing Freedoms: A Regulatory Challenge, *Journal of Indian Law and Society*, 2018, [9 JILS (2018) 48].

access to information that enables informed decision-making and the right of individuals to participate in decisions that affect them. To date, the Supreme Court of India has acted cautiously to avoid judicial overreach in cases involving legal challenges to freedom of expression and the need for civil discourse, making clear that it intends to act within the limits of existing legislation and a legal interpretation of the scope of "reasonable restrictions," as defined in the Constitution of India. Social media's explosion, the lack of filters in social communication, the mainstream media's crisis of credibility, and the proliferation of fake news and propaganda have all contributed to the development of a climate in which the public, rather than the government, suppresses dissent through hate speech, personal abuse, and violent threats. Stereotypes, which can be derived from historical concepts or symbolism typically aimed at minority groups (races, castes, genders, etc.), are the foundation of hate speech. By promoting counter narratives against hatred, online platforms can guarantee sensitization and raise awareness. Another issue that needs to be addressed thoroughly is the non-proliferation of false information. In order to combat extremism by forcing them to reconsider their position, it is even more important to interact with hate organizations nowadays.

6. Agnidipto Tarafder, The Uncertain Regulation of Hate Speech by the Supreme Court¹²

This essay aims to examine the Indian Supreme Court's shifting positions on hate speech law. It focuses on how the judiciary has interpreted the words "in the interest of...public order" included in Article 19(2) of the Indian Constitution, which the State has used to justify excessive speech restrictions. In order to create consistency in judicial reasoning without which the fragmented nature of regulations makes it difficult to establish legally binding precedents it makes the case for enacting a clear legislative policy to assist the judiciary in defining the parameters of free speech, above and beyond the framework provided by the Constitution.

¹² Agnidipto Tarafder, *The Uncertain Regulation of Hate Speech by the Supreme Court*, *Comparative Constitutional Law and Administrative Law*, 2017 [3.4 CLAQ (2017) 6].

7. Swapnil Tripathi, My Curtailed Freedoms: A Jurisprudential Take on the JNU Incident¹³

A recent incident at Jawaharlal Nehru University served as a test of this, as some student slogans were deemed anti-national, reigniting the long-running argument between those who support free speech and those who oppose it due to its content. By presenting arguments from both sides and deciding which seems more appropriate and compelling, the author of this paper seeks to resolve this disagreement jurisprudentially. The existence of the right to free speech has always been a topic of discussion. a right that, on the one hand, is guaranteed by the constitutions of many nations, and, on the other, is somewhat restricted due to morality, violence, and sentiments. Such restrictions are justified by claiming that they constitute "hate speech." This restriction has always sparked discussion between those who advocate unrestricted free speech and others who support it on the grounds that the speech is hurtful and disparaging.

8. Iqbal Ali Khan and Kalpana Rani Jayas, Hate Speech and Freedom of Speech : A Legal Scrutiny¹⁴

The goal of hate speech is to discredit someone because of their affiliation with a certain group. Hate speech is the use of expression that exposes the group to hatred. The prevalence of hate speech in political elections has increased to the point that we barely hear anything meaningful that our leaders can use to inspire and impart wisdom to future generations. One of the requirements for any democratic democracy is freedom of speech. This freedom comes with a requirement that anyone who expresses themselves publicly respect the rights of others. There are countless examples of how various political parties incite hatred through their statements and speeches, which can stoke feelings of communal fervor. Two ideas appear to be problematic: hate speech, which is illegal under section 153A of the Penal Code of 1860, and freedom of expression, which is one of the fundamental rights guaranteed by article 19(1)(a). The right to free speech is subject to reasonable limitations,

¹³ Swapnil Tripathi, My Curtailed Freedoms: A Jurisprudential Take on the JNU Incident, GNLU Journal of Law, 2016, [(2016) 6 GJLDP (April) 143]

¹⁴ Iqbal Ali Khan and Kalpana Rani Jayas, Hate Speech and Freedom of Expression: A Legal Scrutiny, 2016-17, Abhidhvj Law Journal.

which are listed in article 19(2), however it is not unqualified. However, what we are witnessing is the constant use of hate speech by many political parties in the name of the right to free speech and expression. Numerous members of political groups with a religious focus are well-known for their hate rhetoric. To stop hate speech and ensure that democratic democracy develops smoothly, strict measures must be taken against them.

9. Jashanpreet Kaur, Dr. Gazala Sharif, Hate Speech vis-à-vis Freedom of Speech in Indian Democracy.¹⁵

The article offers a comprehensive analysis of hate speech, including its development, legal implications, and the right to freedom of expression in democracies. Readers can understand what constitutes hate speech and how it impacts oppressed groups by reading about court decisions like *Pravasi Bhalai Sangathan v. Union of India*¹⁶. This chapter focuses on the limitations and modifications imposed by the constitution on hate speech as an exception to the right to free speech. Some of the long-term consequences of hate crimes are examined in Potential Harm and Impact on Individuals and Communities. This section examines all of these in detail, from individual harm like psychological traumas and expenses to community-wide problems like economic setbacks and school dropout rates brought on by stress or anxiety.

While the importance of identifying subtle effects is emphasized, it is also recognized that communities can be resilient. The Indian legal system, as described in Chapter 3, examines complementary laws such as Sections 153A, 153B, and 295A of the Indian Penal Code (IPC), as well as constitutional requirements, particularly Article 19(1)(a). It also assesses the effectiveness of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989. From personal trauma to social challenges, hate speech impacts people's mental health as well as the economic and social well-being of communities. To safeguard people's rights and safety, the chapter emphasizes the importance of understanding the harm it causes, while recognizing the strength of the community.

¹⁵ Jashanpreet Kaur, Dr. Gazala Sharif, Hate Speech vis-à-vis Freedom of Speech in Indian Democracy, International Journal for Multidisciplinary Research (IJFMR), Volume 6, Issue 2, March-April 2024.

¹⁶ (2014) 11 SCC 477, AIR 2014 SC 1591.

10. Dr. Jorawar Singh Ranawat, Perversion of freedom of expression as a hate speech on social media: Condition and solution.¹⁷

All living things have an innate inclination to communicate and express their feelings and emotions in some way. He developed numerous means of expression and communication because humans also have that inclination. Following the development of information technology, dialogue and Expression became easier and more practical. Social media, which is a component of IT, provides each user with the greatest possible opportunity to express their emotions while also being easily accessible to all. It is a blessing for speech and communication on the one hand, but a curse that brings about murder and other evils worldwide on the other.

First, the current article clarifies the terminology used in the header and uses a variety of data to give a true picture of the situation in India. This essay examines several international and Indian legal provisions pertaining to hate speech on social media. Finally, the article suggests some laws and behavioral guidelines to curb hate speech on social media and improve living conditions in society.

11. Srutakirti Panda, Madhubrata Mohanty, Speech-related offences in India with special reference to Hate Speech: A Comparative Analysis.¹⁸

Article 19(1)(a) of the Constitution of India guarantees citizens the freedom to express their thoughts and ideas in the public interest. This article contrasts India's laws on hate speech, defamation, criticism, insults, and sedition in order to make the case that hate speech laws are still necessary even when sedition and defamation laws already exist. The authors emphasize how imprecise interpretations of these norms result in social problems, uneven enforcement of the law, and a weakening of the sense of legality and order. The study assesses the current state of these laws, highlights their shortcomings, and makes recommendations for improvement.

¹⁷ Dr. Jorawar Singh Ranawat, Perversion of freedom of expression as a hate speech on social media: Condition and solution, *International Journal for Political Science and Governance*, 2023; 5(1): 285-289.

¹⁸ **Srutakirti Panda, Madhubrata Mohanty, Speech-related offences in India with special reference to Hate Speech: A Comparative Analysis, Communications on Applied Nonlinear Analysis, Volume 32, No. 9s (2025).**

“How does India’s Constitutional framework balance the right to freedom of speech and expression under Article 19(1)(a) with the reasonable restrictions under Article 19(2) in the context of its unique socio-political challenge?”

CONSTITUTIONAL FOUNDATION AND FREEDOM **OF SPEECH IN INDIA**

Freedom of expression and speech in India is a basic right that is stipulated in Articles 19(1)(a) of the Constitution. Its constitutional enshrinement was made possible by the pre-independence battle against the British colonial rule that stressed on the necessity of an unobstructed circulation of ideas and dissent. The government of Britain had put in place draconian laws like the Vernacular Press Act, 1878 and the Indian Press Act, 1910 to check the nationalists and to curb the freedom of expression, a history that had a profound impact on the framers of the Indian Constitution. The provisions of free speech existed in pre-constitutional documents such as the Constitution of India Bill 1895 and the Nehru Report 1928, and thus show that there was a steady need to have the freedom of speech, albeit there was a restriction in most instances.

The Supreme Court of India has always taken the interpretation of the term, freedom of speech and expression, under Article 19(1)(a), in a broad and extended sense. The Court has deemed that the right goes much further than verbal or written expression and is applicable to any possible form of expression, which includes: writing, printing, pictures, banners, signs, and even silence. Other forms of communication are also included in this broad interpretation as they include expressive conduct. Indicatively, the case of *Union of India vs. Naveen Jindal & Anr.* has defined the right to hoist the National Flag as an example of an expression.

In the same manner, the right to engage in sports and right to political dissent have been adjudged as a means of self-expression in this article. This judicial methodology that implicitly analyzes the purpose of the state in cases of expressive conduct is a purposivist interpretation which places greater emphasis on the communicative value of an action. The judiciary has also deduced a number of other rights that are considered to be part and parcel of Article 19(1)(a) and they include

the Freedom of the Press and the Right to Information (RTI). Right to information is considered fundamental as it would be futile to have freedom of expression without access to information.

This was a calculated decision on the part of the framers to incorporate the doctrine of reasonable restrictions, which was directly related to the real-life situation in India, with its distinct and unstable social-political circumstances. In contrast to the United States, where the rights of individuals have always been one of the primary concerns, the constitutional order in India was shaped in the crucible of partition violence. The framers were highly conscious of the ethnic, religious, and caste division which was highly ingrained and could be fueled by free speech. The inherent in this constitutional structure is a decision to give precedence to collective social peace and civic order and to see them as the preconditions of a functioning, pluralistic democracy. These prohibitions were not by chance included but are designed with contextuality and precisely that aspect will draw the line between India and the U.S. legal tradition which is much more absolutist based. First Amendment. This formation of a state-centric system of content control created a system in which the negotiations between the rights of the individual and that of the common good would forever be evaluated by the courts.

How did the Constitution (First Amendment) Act, 1951, limit judicial interpretation and expand legislative power to restrict freedom of speech under Article 19 in India?

THE FIRST AMENDMENT AND SHAPING OF FREE SPEECH

JURISPRUDENCE

The Constitution (First Amendment) Act, 1951, is the landmark of the Indian constitutional law that basically re-adjusted the balance between the judicial and legislative branches of authority as to the extent of the free speech. The amendment came as a result of a chain of court decisions which cast doubt on the policies and actions of the government especially those which sought to control the press.

The Supreme Court passed two historic judgments in 1950 soon after the enactment of the Constitution that claimed superiority of free expression. In *Romesh Thappar v. The Court struck*

down a state law which had prohibited the circulation and distribution of a magazine called Cross Roads, because it was critical of the government. This ruling of the Court highlighted the free press as the most important aspect of a democratic society. Similarly, the Court decided in favor of the case of pre-censorship order.

Brij Bhushan v. State of Delhi repeating the need to protect free speech.

Such judicial rulings were extremely frustrating to the Nehru government that thought the courts had construed Article 19(1)(a) in a way that was too broad, which had the effect of granting protection to potentially criminal and violent speech. The government claimed that in other nations where there were written constitutions freedom of speech did not inhibit the state to punish or prevent its abuse. Such a legislative standpoint was, however, hugely countered in parliament, which cautioned that the suppression of free speech would turn to the misuse of authority and have devastating consequences to the democratic rights of the citizens. These concerns were ignored by majority Congress government in the end.

The First Amendment was, therefore, introduced to weaken the expansive interpretation of the judiciary regarding the free speech as well as to embody the basis of restriction. The amendment introduced three new conditions to Article 19(2), namely, friendly relations with the foreign states, public order, and incitement of an offence. This legislative move strongly limited the broad judicial interpretation that had been developed. It developed a clear statutory foundation on restricting speech that the judiciary considered to be constitutionally safeguarded, and essentially transferred the authority to determine thinking limits of free speech to the legislature. This episode is the pivotal moment in the power equilibrium in the Indian democracy that forever had a state-centered view of the restriction of free speech. The amendment also had a provision of the judicial reviewing of these restrictions where, any restriction must be reasonable, and not arbitrary.

How does India's fragmented legal framework address hate speech, and what are the challenges and implications of the proposed Hate Speech and Hate Crimes (Prevention) Bill, 2022, in balancing legal clarity with protection of free expression?

THE STATUTORY LANDSCAPE OF HATE SPEECH IN INDIA

Regulation of hate speech in India is a big challenge and this is mostly because of the fact that there has not been any legal definition of the term which is uniform across the board. The term is not directly applied in important parts of the Indian Penal Code (IPC) but is rather regulated by a piecemeal set of laws regulating particular forms of harmful speech and its consequences. This ambiguity has been an aim of criticism among many as it allows the lack of consistency and misuse.

The primary legal provisions for addressing hate speech are found in the Indian Penal Code:

- **Section 153A:** This subsection punishes the encouragement of discord, hostility, hatred or ill-will among members of different groups of individuals, grounded on religion, race, place of origin, place of residence, language, caste or community. The crime is applicable to the offense being prejudiced to the preservation of harmony and is probable to disrupt the peace of society. The penalty of such an offense may be up to three years imprisonment, fine or both.
- **Section 295A:** This section was enacted in 1927 and forbids anybody to maliciously and maliciously defame or endeavor to defame the religion or religious beliefs of any type of citizens. The malicious intent is a vital factor in this section (makes sure that the law punishes wanton vilification or assaults against other religions). The punishment will be a prison sentence of three years or less, fine, or both.
- **Section 505:** It is a section that makes it a criminal offense to create or spread statements, rumors or reports that might lead to animosity, hatred or ill-will among different groups.

Other relevant statutes also address specific forms of hate speech:

The Representation of the People Act (RPA), 1951: Through this act, persons who are found guilty of abusing freedom of speech are denied the right to vote. In addition, propagation of hatred or animosity due to race, religion, community, caste, and language in elections is considered a corrupt electoral practice.

- **The Protection of Civil Rights Act, 1955:** This is an act aimed at punishing the incitement and encouragement of untouchability by any means either verbal or in the form of visual representation.

It has been argued that there is no coherent legal system, which is why there is a need to reform legislation. The recently proposed Hate Speech and Hate Crimes (Prevention) Bill, 2022 that has been introduced in the Rajya Sabha is one of the first efforts to define these violations in writing. The bill seeks to give a better description of hate speech as an offense known to incite, justify, promote or spread discrimination, hatred, hostility, or violence or denigrates a group of people based on particular characteristics, such as religion, race, caste, gender identity, sexual orientation, and disability. There is also a provision in the bill of a good faith provision which safeguards artistic or creative expression, or an academic or scientific investigation. The maximum penalty of hate speech includes a term of three years imprisonment or a fine, depending on a variety of factors, such as the social rank of the offender and the possibility of the speech prompting a real action.¹⁶ The crime would be cognizable but not bailable and would be probed by an officer not less than an Inspector.

The existing quilt of legislation, although offering some leeway in the law, also gives the government and law enforcement wide discretion authority. This may give rise to the selective and mostly limited interpretation of the laws, which may be furthering the cause of the people in power. The proposed solution of introducing a consolidated bill attempts to correct this ambiguity but it also has the danger of having one, powerful tool of suppression in case of misuse of the provisions. The exception of good faith are vital protection, yet the understanding of such exception would be left in the hands of the judiciary who will need to make sure that the quest to seek legal clarity would not be done at the expense of the democratic freedoms.

Provision	Targeted Act	Grounds for Restriction	Proposed Punishment
IPC Section 153A	Promoting or attempting to promote enmity, hatred, or ill-will	Religion, race, place of birth, residence, language, caste, community, etc.	Imprisonment up to 3 years, fine, or both

	between different groups.		
IPC Section 295A	Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.	Religion, religious beliefs	Imprisonment up to 3 years, fine, or both
IPC Section 505	Making, publishing, or circulating statements, rumors, or reports causing public mischief and leading to enmity, hatred, or ill-will.	Religion, race, place of birth, residence, language, caste, community, etc.	Imprisonment up to 3 years, fine, or both
Rep. of People's Act, 1951	Promoting animosity or hatred based on race, religion, community, caste, or language during elections.	Corruption in electoral practice	Penalties for corrupt electoral practices; prohibition from elections
Hate Speech and Hate Crimes (Prevention) Bill, 2022 (Proposed)	Intentionally using, publishing, or distributing any speech that incites,	Religion, race, caste, sex, gender identity, sexual orientation, disability, etc.	Imprisonment up to 3 years, fine, or both. Punishment severity depends on

	promotes, or justifies discrimination, hatred, or violence, or denigrates a person or group.		context, offender's status, and audience reach.
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"How has the Indian judiciary's evolving jurisprudence shifted from a public-order focus to a dignity-based approach in regulating hate speech under constitutional free expression rights?"

LANDMARK CASES AND EVOLVING DEVELOPMENTS

The Indian judicial system and especially the Supreme Court has been playing a central role in interpreting and widening the borders of freedom of expression and the restrictions it has. This jurisprudential project also demonstrates a slow but meaningful change in the scope of a strictly speaking and public order focused approach towards the control of hate speech to a more inclusive and dignity-based framework.

As early as the jurisprudence, as in the case of *Ramji Lal Modi v. The case of State of U.P. (1957)*, defined the principle according to which speech might be limited in the case of the existence of a proximate causal connection between the speech and a disorder in the state of order. In this instance, the Supreme Court confirmed the constitutionality of the Section 295A of the IPC that criminalizes an action that may outrage religious sentiments, as such speech by its very nature may result in such a violation of peace. The Court decided that even in the absence of a threat of disorder in the streets, an act of affront of a religion could be limited provided that the motive was intentional and malicious. This decision established the regulation of the offensive speech on religion, as properly based on the restriction of Article 19(2) on the public order.

Over time, however, the judiciary over the years has changed the way that it handles the issue to include a more sensitive concept of the damage done by hate speech. This change was present in *Pravasi Bhalai Sangathan v. case. Union of India (2014)*. Although the Court has demonstrated judicial restraint in refusing to formulate new statutes, claiming that this was the mandate of the legislature, it presented a very powerful and influential definition of hate speech. The Court described hate speech as an attempt to marginalize people based on their group membership that is aimed at delegitimizing the group members in the eyes of the majority lowering their social status and acceptance in the society. This expression was a conceptual break in the direction of the external danger of social panic to the inner, social damage of delegitimization, the destruction of the dignity of the community.

This new paradigm was reinforced once again in *Amish Devgan v. Union of India (2020)*. The Court, as in the case, turned down appeals by criminal action against a television journalist who was charged with offensive speech against a respected Muslim saint. The Court made it very clear that hate speech cannot be safeguarded by the constitutional framework in case it tries to undermine dignity or provoke hostility. The case highlighted that criminalizing hate speech is meant to protect the rights of people and preserve political and social equality of people of all identities. The Court used a test involving multi-factor of substance, context, purpose as well as injury against the speech concerned which was that the harm of hate speech does not just limit to immediate violence but also the degradation of a community. This development of jurisprudence marks an Indian legal system that is coming to the realization that the evil of hate speech is psychological and social as well as well as the evil that is legal in nature, which brings it much closer to the jurisprudence of dignity prevalent in most European nations.

The redefinition of the role of the judiciary that involved the transformation of the narrow public-order-centric concept of *Ramji Lal Modi* into the wider concept of dignity and equality in *Pravasi Bhalai Sangathan* and *Amish Devgan* shows a radical shift in how the judiciary perception of its mission. The courts are currently pitting a basic right to liberty against another basic right the right to dignity and equality. Such a shift takes into account the fact that dehumanizing group speech

sabotages their democratic engagement and thus warrants regulation despite the fact that they do not engage in violence immediately.

Case	Year	Key Facts	Legal Issue	Key Ruling
Romesh Thappar v. State of Madras	1950	Madras government banned the magazine <i>Cross Roads</i> for criticizing its policies.	Whether a law banning the circulation of a publication on public safety grounds violated the freedom of the press.	Struck down the law, emphasizing the paramount importance of free speech in a democracy.
Ramji Lal Modi v. State of U.P.	1957	A publisher was convicted under IPC Section 295A for insulting religious beliefs.	Whether IPC Section 295A violated freedom of speech and expression.	Upheld the constitutional validity of Section 295A, establishing that a law could be a "reasonable restriction" if it had a "proximate causal link" to public disorder.

<p>Pravasi Bhalai Sangathan v. Union of India</p>	<p>2014</p>	<p>A public interest litigation sought to curb hate speeches by political and religious leaders.</p>	<p>Whether the Supreme Court should issue guidelines to create a new law for hate speech regulation.</p>	<p>The Court showed judicial restraint, defining hate speech as a tool to "marginalize" and "delegitimize" groups but directing the legislature to take action.</p>
<p>Amish Devgan v. Union of India</p>	<p>2020</p>	<p>A journalist was accused of using derogatory language against a revered Muslim saint.</p>	<p>Whether the criminal proceedings against the journalist should be quashed.</p>	<p>The Court refused to dismiss the charges, arguing that hate speech is not protected if it "undermines dignity or incites hostility." It applied a multi-factor test of substance, context,</p>

				purpose, and injury.
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How has the rise of digital platforms and sociopolitical dynamics in India contributed to the surge in hate speech and what challenges does the regulatory framework, including the Information Technology Rules 2021, face in addressing this issue?

HATE SPEECH IN DIGITAL ERA

The digital era has fundamentally changed the environment of free speech both posing new opportunities as well as new threats never seen before. Due to the spread of social media, online communication tools and online content, hate speech is spread more rapidly and widely than ever before, generating what the United Nations has described as a pandemic of hate. In India, social media and television channels have turned out to be the important tools of the fast and massive spread of the hate and extremist ideologies.

An objective study of the current tendencies shows a very dangerous tendency of hate speech, which is tightly connected with the socio-political processes in India. India Hate Lab (IHL) report on 2024 recorded a frightening rise of 74.4 percent in the incidents of in-person hate speech, 668 cases in 2023 and 1,165 in 2024. This was averaged at three hate speech incidents daily. 98.5 percent of these incidences were against the Muslims, and Christians were also a major target. The geographical distribution of such incidences was clear with 79.9 percent being recorded in the states controlled by Bharatiya Janata Party (BJP) or its allies. According to the report, the BJP was the organizer of the most hate speech events, which increased its role in organizing such events by 580 percent since 2023. Politicians in the limelight gave out 39.7% of the speeches, with some of the most high profiling figures of force being accused of promoting divisive speech.

Quantitative increase of hate speech is not an accident but a part of a socio-political scheme that is rooted. As mentioned in the IHL report, the highest number of incidents happened in the year 2024 in the campaign of the Indian general election, which means that the use of hate speech has

become the default method of the election. These plots were meant to create a very intense feeling of Hindus being victimized and it was a right to marginalize and discriminate against minorities. This speech has risen to the level of what is referred to as dangerous speech that entails direct invocation to violence, economic boycotting of Muslim-operated businesses, and burning of religious properties. This makes it clear that it is not only just a legal issue of individual expression but a structural crisis in which the hateful rhetoric is deployed by political forces as a strategic device to polarize society and amass power.

There has also been an issue with legal and technological challenges in the regulatory response towards online hate speech. The Information Technology Rules, 2021, require intermediaries, including social media platforms to remove or block access to content that is deemed harmful within 24-hours of receiving a notification by the government or the court. Nevertheless, this fast action requirement presents an inherent problem to the procedural and substantive due process because it may skip over the conventional judicial review. The designation of police as the authority to provide takedown notices is worrying about the possibilities of the repression of the dissenting voices or the critical opinion since police officers might lack the necessary training on the art of using the free speech exceptions based on Article 19(2). This absence of overt judicial control gives a chilling effect to the freedom of speech and destroys public confidence. To make this problem worse, social media companies have faced criticism due to their poor content moderation efforts, and it has been reported that a high proportion of hate speech is not undertaken, which means that a considerable percentage of hate speech is still present on the internet.

Data Point	2023	2024	Change
Total Incidents	668	1,165	+74.4%
Speeches Targeting Muslims	N/A	1,147 (98.5%)	N/A

Speeches Targeting Christians	N/A	115 (9.9%)	N/A
Events in BJP-ruled States	N/A	931 (79.9%)	N/A
Events Organized by BJP	50	340	+580%
Calls for Destruction of Places of Worship	N/A	274 (23.5%)	+62.1% (from 2023)
Explicit Calls to Arms	N/A	123 (10.6%)	+32.3% (from 2023)

CONCLUSION AND WAY FORWARD

The discussion of the legal and constitutional approach to hate speech in India highlights a special paradoxical issue within the democracy of this country. The structure is a fragile and vulnerable balancing act between the very right of freedom of expression and the instability of the state to maintain social order and honor, born out of the peculiarities of the pluralistic society. Though constitutional design of reasonable restrictions gives the state an essential tool-kit to handle the discord, the ambiguous character of the current statutory provisions has created a legal and social space that is easy to manipulate. The threatening quantitative influx of hate speech, which the India Hate lab has measured in real numbers, indicates that hate oratory is not a legal construct but a powerful socio-political mechanism, especially in election campaigns.

The way ahead of India is a combined system, which would be an amalgamation of the lessons learned by India itself and the best principles of a comparative global system. This involves a three pronged methodology that involves legislative, judicial and societal remodeling.

Legislative Reforms: Legislation Reforms: The initial and most significant measure is to deal with the legal confusion that is rife with the existing system. This will be possible through the enactment of hate speech laws that are inclusive in nature and are also precise and straightforward based on the suggestions of the Hate Speech and Hate Crimes (Prevention) Bill, 2022. The new law must not just be a set of the old laws but rather a well-developed and vigorous law that has a larger list of guarded traits and where the line of permissible and intolerable speech is well defined. The legislation should be designed in such a way that it does not allow the abuse of the law selectively or due to political reasons, which has been a big issue that has been consistently raised.

Judicial Accountability and Oversight: The IT Rules, 2021, and similar regulatory frameworks must be re-evaluated to ensure that the process of content removal and censorship is subject to robust judicial oversight. The practice of empowering police to issue takedown notices without a judicial mandate runs counter to the principles of due process and risks becoming a tool for suppressing dissent. The judiciary must maintain its role as the ultimate arbiter, ensuring that any restrictions on free speech are not arbitrary, disproportionate, or violative of the constitutional essence of free expression. Furthermore, social media platforms and other intermediaries must be held more accountable for their content moderation practices, with stricter enforcement of their own community guidelines and greater transparency in their operations.

Societal Responsibility: Finally, it must be recognized that legal remedies alone are insufficient to combat the deep-seated societal issues that fuel hate speech. A holistic approach is essential, one that mobilizes all sectors of society. This includes implementing widespread educational and media literacy programs to foster critical thinking and resilience against hateful narratives. Governments and civil society must facilitate open dialogue forums to bridge differences and encourage positive communication.⁴ By addressing the root causes of hatred, such as negative stereotypes and a sense of superiority, and empowering individuals to speak out against bigotry, India can begin to build a more tolerant and inclusive society.

Ultimately, the path to a more nuanced framework for hate speech regulation lies in a hybrid model that upholds the judiciary's commitment to the "dignity and equality paradigm" while supporting it with precise statutory definitions and robust checks and balances. The goal is to preserve India's pluralistic democracy not by stifling dissent, but by protecting its most vulnerable communities from the documented harms of speech that dehumanizes, marginalizes, and incites violence.