

# Hate Speech Laws in India: Balancing Free Speech and Public Order

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**Abstract :** Hate speech poses a significant challenge to democratic societies, especially in diverse nations like India where linguistic, religious, and cultural pluralism coexist. While the Indian Constitution guarantees the fundamental right to freedom of speech and expression under Article 19(1)(a), this right is subject to reasonable restrictions, including those aimed at maintaining public order, morality, and the sovereignty of the state. The regulation of hate speech involves a delicate balancing act between safeguarding free expression and preventing speech that incites violence, discrimination, or hostility against communities. This paper examines the constitutional provisions, statutory framework, and judicial interpretations concerning hate speech in India, while critically evaluating whether existing laws strike the right balance between liberty and security. It also explores challenges in enforcement, the impact of social media, and the potential need for a comprehensive hate speech law.

**Keywords:** Hate Speech, Free Speech, Article 19, Public Order, Indian Penal Code, Reasonable Restrictions, Constitution of India, Supreme Court of India, Social Media Regulation.

**Introduction** - The freedom of speech and expression, enshrined under Article 19(1)(a) of the Indian Constitution, serves as the bedrock of democratic governance, empowering citizens to articulate opinions, question authority, and engage in critical discourse. This right, however, is neither absolute nor unfettered. Recognizing that unregulated speech may sometimes threaten the delicate social fabric, Article 19(2) authorizes the state to impose reasonable restrictions in the interests of public order, decency, morality, and other constitutionally permissible grounds. Hate speech characterized by communication that disparages or discriminates against individuals or groups based on religion, race, ethnicity, caste, gender, sexual orientation, or other identity attributes falls within the ambit of these permissible restrictions when it poses a credible risk of inciting violence or disrupting communal harmony. Such speech not only undermines the dignity of targeted communities but also challenges the constitutional promise of equality, secularism, and fraternity.

India's pluralistic social structure, marked by an intricate interplay of diverse religions, languages, castes, and ethnicities, amplifies the potential dangers posed by hate speech. In a nation where identity politics often intersects with electoral strategies and policy discourse, provocative or divisive speech can quickly escalate into widespread unrest. The proliferation of digital communication platforms has further intensified this challenge. Social media, instant messaging applications, and online forums have

transformed the dynamics of speech dissemination allowing hateful content to transcend geographical boundaries, reach mass audiences within seconds, and often evade timely regulatory intervention. The virality of such content can lead to spontaneous acts of mob violence, foster mistrust among communities, and erode public faith in democratic institutions.

The legal system, therefore, faces the formidable task of navigating a constitutional paradox: how to safeguard the democratic ideal of free expression while ensuring that speech is not weaponized to erode societal cohesion. Courts in India have consistently emphasized that restrictions on speech must be proportionate, narrowly tailored, and applied without political bias. Yet, enforcement is complicated by the absence of a precise statutory definition of "hate speech," the risk of misuse of existing provisions for silencing dissent, and the difficulty of balancing subjective interpretations of offence with objective assessments of harm. This tension underscores the need for a nuanced, rights-conscious, and context-specific approach that protects both the individual's liberty to speak and the community's right to peace—a balance that lies at the heart of any meaningful regulation of hate speech in India.

## Objectives :

1. To examine the constitutional provisions related to hate speech in India.
2. To analyze statutory laws governing hate speech and

- public order.
3. To study the role of the judiciary in interpreting hate speech laws.
4. To assess the challenges in balancing free speech with societal harmony.
5. To suggest measures for improving hate speech regulation in India.

**Constitutional Framework on Free Speech and Restrictions :** The Indian Constitution guarantees freedom of speech and expression under Article 19(1)(a), recognizing it as a cornerstone of democratic governance. This provision empowers individuals to express opinions, share ideas, engage in debate, and voice criticism of government policies without fear of censorship or retaliation. Such freedom forms the bedrock of an informed citizenry and a vibrant public discourse, enabling the exchange of diverse perspectives essential for social and political progress.

However, this freedom is not absolute. Article 19(2) provides that the State may impose reasonable restrictions to protect broader societal interests. These restrictions apply in cases involving threats to public order, breaches of decency or morality, concerns regarding the sovereignty and integrity of India, matters affecting the security of the State, maintaining friendly relations with foreign states, and preventing contempt of court, defamation, or incitement to an offence. The phrase “reasonable restrictions” ensures that while the State can intervene, such measures must be proportionate, justified, and not arbitrary.

Over the years, the Supreme Court of India has been instrumental in interpreting and balancing these constitutional provisions. In *State of Uttar Pradesh v. Lalai Singh Yadav* (1976), the Court observed that speech capable of disturbing public tranquility could be restricted, highlighting the State’s legitimate interest in preserving peace. Similarly, in *Pravasi Bhalai Sangathan v. Union of India* (2014), the Court acknowledged the rising threat of hate speech and called for stronger statutory mechanisms to address it. At the same time, it cautioned against allowing such laws to become instruments of political suppression or tools for silencing dissent, an essential safeguard in a functioning democracy.

The judiciary has also recognized that the context and intent of speech are crucial in determining its legality. What may be permissible in one setting could be prohibited in another, depending on its potential to provoke violence, spread communal disharmony, or erode social cohesion. For instance, political criticism or satire-forms of speech protected in a democracy can only be restricted if they cross the threshold into incitement or hate propaganda.

By combining constitutional guarantees with judicial oversight, India aims to maintain a delicate balance where free expression is preserved, but its misuse to incite hatred, violence, or discrimination is curtailed. This balancing act remains one of the most challenging aspects of governance in a diverse, multi and multilingual society like India. The

primary task before lawmakers, courts, and civil society is to ensure that this balance does not tip excessively toward restriction, for that would risk eroding the very democratic freedoms the Constitution enshrines.

**Statutory Provisions Addressing Hate Speech :** The statutory framework for addressing hate speech in India has undergone significant changes with the enactment of the *Bharatiya Nyaya Sanhita, 2023 (BNS)*, which has replaced the *Indian Penal Code (IPC)*. Several provisions under the BNS criminalize different forms of hate speech. For instance, Section 194 of the BNS corresponds to the erstwhile Section 153A IPC and penalizes acts that promote enmity between different groups on grounds such as religion, race, language, region, caste, or community, and which disturb public tranquility. Section 196, similar to the earlier Section 295A, deals with deliberate and malicious acts intended to outrage the religious feelings of any class of citizens by words, signs, or visible representations. Likewise, Section 353(1) & (2) corresponds to the former Section 505(1) & (2) IPC and criminalizes the making, publishing, or circulating of statements, rumors, or reports that can incite public mischief or promote enmity and hatred between groups. The controversial provision of sedition under the repealed Section 124A IPC has been replaced by Section 152 of the BNS, which criminalizes acts endangering the sovereignty, unity, and integrity of India. While this section is not specifically targeted at hate speech, it has been invoked in instances where speech is perceived to threaten national integrity.

In addition to the BNS, other legislative instruments continue to regulate hate speech in specific contexts. The *Representation of the People Act, 1951* remains a key law in this regard, with Sections 123(3) and 125 prohibiting electoral candidates and political parties from appealing for votes based on religion, race, caste, community, or language, and penalizing acts that promote enmity between classes in connection with elections. The procedural aspects of investigation, arrest, and trial for hate speech offences are now governed by the *Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)*, which has replaced the *Code of Criminal Procedure (CrPC)*. The BNSS introduces updated procedural safeguards, digital evidence provisions, and timelines for investigation, which may influence how hate speech cases are prosecuted in the future.

Despite this elaborate legal framework, critics argue that the statutory provisions—both under the BNS and the *Representation of the People Act*—suffer from ambiguities in definitions and thresholds of criminality. Vague language, such as “promoting enmity” or “outraging religious feelings,” allows for subjective interpretation and potential misuse against political dissent, satire, or legitimate criticism. Moreover, the absence of a clear, universally accepted definition of “hate speech” in Indian law leaves substantial discretion to law enforcement authorities, leading to selective application. This, coupled with political influence,

can result in these laws being weaponized against opponents rather than being consistently applied to curb genuine instances of hate speech. Thus, while statutory provisions exist, their effectiveness depends heavily on impartial enforcement, judicial interpretation, and the development of a precise legal understanding of what constitutes hate speech in a democratic society.

#### **Judicial Approach to Balancing Liberty and Order:**

The Indian judiciary has consistently grappled with the challenge of balancing the constitutional guarantee of free speech under Article 19(1)(a) with the reasonable restrictions permitted under Article 19(2), particularly in the context of public order, decency, and morality. Courts have recognized that while free expression is the bedrock of democracy, it cannot be absolute, especially when such speech has the potential to incite violence, spread hatred, or disrupt social harmony. The judicial task, therefore, involves delineating the fine boundary between permissible dissent or criticism and speech that crosses over into the domain of hate speech and public disorder. This balancing act requires careful scrutiny of both the content and the context of the speech in question.

One of the most significant milestones in this judicial journey was the landmark case of *Shreya Singhal v. Union of India* (2015), where the Supreme Court struck down Section 66A of the Information Technology Act, 2000, for being vague, overbroad, and prone to misuse. The Court observed that the provision had a chilling effect on free speech because it criminalized speech merely on the grounds of it being “grossly offensive” or “annoying,” without any direct nexus to incitement or threat to public order. This judgment reaffirmed the principle that restrictions on speech must have a proximate connection to incitement, and that the threshold for such restrictions must be high to prevent arbitrary suppression of legitimate expression.

In contrast, the Supreme Court in *Amish Devgan v. Union of India* (2020) dealt with a direct case of alleged hate speech, where the petitioner was accused of making derogatory remarks against a religious figure. The Court emphasized that hate speech should not be evaluated in isolation but in the context of its potential to cause public disorder, incite violence, and harm the social fabric. It clarified that speech which promotes enmity between communities or undermines social cohesion falls squarely within the ambit of Article 19(2) restrictions. The judgment highlighted that in pluralistic societies like India, safeguarding communal harmony often necessitates curtailing certain forms of harmful expression.

Judicial pronouncements in such cases have repeatedly underscored the necessity of proportionality as a guiding principle. Restrictions must be narrowly tailored to address the specific harm sought to be and should not unnecessarily infringe upon the larger domain of free expression. This nuanced approach reflects the courts’ awareness that the suppression of speech in the name of

public order, if unchecked, could be misused to stifle political dissent and suppress minority voices. Therefore, the Indian judiciary’s stance continues to evolve, seeking to strike an equilibrium between the imperatives of liberty and the demands of social order in a complex and diverse society.

**Challenges in Enforcement :** One of the most persistent challenges in addressing hate speech in India lies in the ambiguity of its legal definition. While statutory provisions under the Indian Penal Code (IPC) and the Information Technology Act (IT Act) seek to curb inflammatory or discriminatory speech, they stop short of providing a precise and universally accepted definition. This vagueness creates interpretational gaps, leading to inconsistent application across jurisdictions. As a result, what may be classified as hate speech in one context might be dismissed as permissible expression in another, eroding legal certainty and weakening deterrence. The absence of a clear legislative definition also makes it difficult for investigative agencies, prosecutors, and courts to follow a uniform standard, further diluting the effectiveness of enforcement.

A further complication arises from the political misuse of hate speech laws. On several occasions, such provisions have been selectively invoked against political opponents, activists, or journalists critical of those in power. This selective enforcement not only undermines the credibility of the legal framework but also fosters public distrust in the impartiality of the justice system. Such misuse risks transforming laws meant to protect vulnerable communities into tools for political vendetta. The perception of bias in enforcement can embolden real perpetrators who may feel shielded by political patronage, while simultaneously discouraging genuine victims from seeking legal remedies.

The rise of social media and digital communication has compounded these enforcement difficulties. Platforms like Facebook, X (formerly Twitter), WhatsApp, and YouTube enable the rapid and widespread dissemination of inflammatory content, often crossing regional and national boundaries within minutes. This speed of transmission poses significant hurdles for law enforcement, which must navigate issues of jurisdiction, anonymity of perpetrators, encryption technologies, and the sheer volume of online content. The lag between detection and legal intervention allows harmful narratives to embed themselves in public discourse before corrective measures can be taken. Moreover, social media algorithms designed to boost engagement—often amplify provocative or polarizing content, inadvertently increasing the reach and impact of hate speech.

Another obstacle stems from the overlapping and fragmented statutory framework. Hate speech is addressed under multiple legal instruments, including Sections 153A, 295A, and 505 of the IPC, provisions of the IT Act, and other sector-specific regulations. While this multiplicity is intended to provide comprehensive coverage, it often leads to uncertainty over the appropriate legal recourse, delays

in prosecution, and conflicting interpretations among different enforcement agencies. Lack of coordination between cyber cells, police units, and judicial authorities further hampers timely and effective action.

Adding to the problem is the lack of specialized training and resources among law enforcement officers and prosecutors. Many cases involving hate speech-especially in the digital space- require an understanding of cyber forensics, content moderation systems, and the socio-political nuances of speech. Without adequate training, investigations risk being superficial, improperly documented, or procedurally flawed, resulting in acquittals or case dismissals.

Finally, societal and cultural factors present their own enforcement challenges. In deeply polarized environments, communities may be reluctant to report hate speech committed by members of their own group, leading to underreporting and selective outrage. Fear of reprisal, social stigma, or loss of political support may also deter victims and witnesses from cooperating with investigations. Unless these societal barriers are addressed alongside legal reforms, the enforcement of hate speech laws will continue to face systemic obstacles.

**The Way Forward :** A sustainable approach to addressing hate speech in India requires the enactment of comprehensive legislation specifically designed to tackle this issue. While existing provisions under the Indian Penal Code and the Information Technology Act provide partial remedies, they remain fragmented and lack a unified structure. A dedicated hate speech law with precise definitions, graded penalties based on the severity of the offence, and clear procedural guidelines would ensure consistency in enforcement. Such legislation must also take into account the evolving nature of communication, including online and hybrid platforms, to remain relevant in the digital era.

Judicial intervention has been a critical factor in shaping the contours of free speech and public order in India. However, the absence of uniform interpretation of hate speech laws has led to inconsistent rulings. Stronger judicial guidelines-possibly issued by the Supreme Court as binding precedents would help standardize legal interpretation and ensure that both lower courts and law enforcement agencies operate within well-defined boundaries. This would also minimize the scope for arbitrary application of laws and protect legitimate expression from being unnecessarily stifled.

Addressing hate speech is not merely a legal challenge but also a societal one. Public awareness and education campaigns aimed at fostering tolerance, empathy, and respect for diversity can help dismantle the socio-cultural roots of hate narratives. Integrating such programs into school curricula, public discourse, and community initiatives can build long-term resilience against divisive rhetoric. This soft-power approach is essential to complement legal

measures, ensuring that the public understands not only the legal consequences but also the social harm caused by hate speech.

Given the role of technology in amplifying hate speech, digital platforms must be held accountable for the content they host. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, already place certain due diligence obligations on intermediaries. However, enforcement must be strengthened to ensure timely removal of harmful content, improved transparency in moderation practices, and proactive monitoring of high-risk narratives. Collaboration between government agencies, civil society, and tech companies can help develop mechanisms for real-time intervention, without infringing upon legitimate online discourse.

**Conclusion :** Hate speech regulation in India stands at the intersection of two fundamental democratic imperatives - the protection of free expression and the preservation of public order. On the one hand, Article 19(1)(a) of the Constitution enshrines the right to free speech and expression as a core element of India's democratic ethos, empowering citizens to engage in debate, dissent, and advocacy. On the other hand, the same Constitution, through Article 19(2), recognizes that this right is not absolute and may be reasonably restricted to protect the sovereignty, integrity, and security of the State, as well as to prevent incitement to offences and maintain public harmony. This duality underscores the delicate balancing act required in regulating hate speech.

In practice, the challenge lies in ensuring that restrictions are neither overbroad nor underinclusive. Vague definitions and inconsistent enforcement of hate speech laws have led to selective application, raising concerns about misuse for political or ideological suppression. While statutory provisions such as Sections 153A, 295A, and 505 of the Indian Penal Code, along with the Information Technology Act, 2000, provide mechanisms for curbing inflammatory speech, these laws often lack precise parameters that distinguish legitimate criticism from unlawful incitement. Moreover, the rapid growth of digital platforms has amplified the reach and velocity of harmful narratives, making traditional enforcement mechanisms inadequate in addressing the modern forms of hate speech.

Judicial pronouncements, though valuable, have sometimes offered varying interpretations, creating ambiguity for law enforcement agencies and citizens alike. The Supreme Court's repeated emphasis on a "clear and present danger" standard offers an important safeguard against arbitrary restrictions, yet its practical application in lower courts remains inconsistent. As a result, there is a pressing need for coherent jurisprudential and legislative alignment to ensure that free speech is curtailed only in the most necessary and proportionate circumstances.

A sustainable way forward requires a multi-pronged



approach - combining legal clarity, judicial consistency, and social education. This means enacting comprehensive legislation with precise definitions of hate speech, incorporating graded penalties proportionate to the harm caused, and mandating transparent accountability mechanisms for digital intermediaries. Equally crucial is fostering a culture of dialogue, empathy, and tolerance through civic education and community engagement programs. Without societal investment in these values, legal reforms alone will remain insufficient.

Ultimately, the goal of regulating hate speech in India should not be to stifle dissent or sanitize public discourse but to draw a principled line between robust democratic debate and speech that directly endangers the fabric of pluralism. A democracy's strength lies not only in the freedoms it guarantees but also in its capacity to safeguard those freedoms from being weaponized against the very communities they are meant to protect. By ensuring that legal safeguards, technological accountability, and civic responsibility work in tandem, India can continue to uphold

both liberty and public order in an increasingly complex and polarized world.

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