



Legal status of hate speech in India

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Abstract

Hate speech poses a significant challenge to constitutional democracy because it creates a delicate balance between the freedom of speech and expression under Article 19(1)(a) and the need to protect public order, dignity, equality, fraternity, and communal harmony. Although Indian law does not provide a single, comprehensive statutory definition of “hate speech,” various provisions of criminal, electoral, and other laws regulate speech that promotes hatred, enmity, discrimination, or violence against individuals or groups. In particular, Section 196 BNS addresses promotion of enmity between groups and acts prejudicial to harmony, while other provisions address religious insults, prejudicial assertions, and statements or rumours capable of promoting hatred. The legal framework also interacts with constitutional limitations under Article 19(2), election laws, and regulatory mechanisms applicable to public and digital communications. This research critically examines the legal status of hate speech in India, the constitutional framework governing freedom of expression, relevant provisions of the BNS and other laws, and the evolving judicial approach. It further analyses challenges relating to definitional ambiguity, selective enforcement, political speech, social media, and the protection of vulnerable communities. The study argues for a balanced approach that safeguards freedom of expression while ensuring effective legal mechanisms against speech that threatens social harmony, dignity, equality, and public order.

Keywords: Legal status, hate speech, India

Introduction

Hate speech is one of the most complex and controversial issues confronting modern democratic societies. In a democracy, freedom of speech and expression is an essential right that enables individuals to express their opinions, criticise government policies, participate in public debate, and exchange ideas. However, this freedom is not absolute. Speech that promotes hatred, hostility, discrimination, violence, or enmity against individuals or groups may threaten social harmony, public order, equality, and the dignity of citizens. Therefore, regulating hate speech requires a careful balance between protecting freedom of expression and preventing harm to society. In India, Article 19(1)(a) of the Constitution guarantees every citizen the fundamental right to freedom of speech and expression. At the same time, Article 19(2) permits the State to impose reasonable restrictions on this freedom in the interests of sovereignty and integrity of India, security of the State, public order, decency or morality, contempt of court, defamation, and incitement to an offence. Thus, the constitutional framework recognises that freedom of expression carries corresponding responsibilities.

The Indian legal system does not contain one universally applicable statutory definition of “hate speech.” Instead, different provisions of criminal law and other legislation deal with various forms of speech that may promote enmity, disturb communal harmony, insult religious beliefs, or encourage hostility between groups. Following the introduction of the Bharatiya Nyaya Sanhita, 2023 (BNS), which came into force on 1 July 2024, several offences relating to promotion of enmity, prejudicial assertions, and acts affecting communal harmony are governed by the new criminal-law framework. The problem of hate speech has

become more complicated with the rapid expansion of social media, digital platforms, online news, and instant messaging applications. Statements that previously reached a limited audience can now be disseminated to millions of people within a short period. Political speeches, communal statements, religious controversies, misinformation, and offensive online content may create serious consequences for public order and social cohesion. At the same time, excessive regulation may have a chilling effect on legitimate criticism, political discourse, academic discussion, and artistic expression.

The Indian judiciary has therefore played a significant role in defining the limits of permissible speech and determining when expression crosses the line into punishable conduct. Courts have repeatedly emphasised the importance of constitutional values while examining restrictions on speech. The legal debate consequently involves not only criminal liability but also questions of equality, dignity, secularism, fraternity, public order, and democratic participation. Against this background, the present study examines the legal status of hate speech in India by analyzing the constitutional provisions, statutory framework, judicial approach, and emerging challenges associated with hate speech, particularly in the digital environment. It seeks to determine whether the existing legal framework provides an adequate balance between freedom of expression and protection against harmful or hateful speech, and to identify possible measures for strengthening the effectiveness, consistency, and fairness of hate-speech regulation in India.

One of the most important pillars of a democratic society is the freedom of speech and expression. Article 19(1)(a) of the Indian Constitution guarantees this freedom, which is

considered essential to the development of individual autonomy, the achievement of participatory governance, and the operation of democracy. Transparency in governance, accountability of public authorities, and informed engagement in political and social life are all made possible by people's freedom to voice their thoughts, opinions, criticism, and dissent. The writers of the Indian Constitution intentionally provided this freedom as they knew that without free speech or free expression, democracy's formal structure would be a meaningless framework, because freedom of speech has multiple functions. After this expression, it is quite easy for people to raise questions towards authority, encourage debates about public related affairs, bracing literary and cultural speech, and fostering an environment of ideas. By authorizing scrutiny of government actions and policies, it helps prevent arbitrary decisions. We are in a world where the uniqueness of thoughts, expressions, religions, languages, and cultures. This expression works as an amalgamation that promotes differences to be expressed with the help of dialogue instead of brutality. Therefore, the right to Freedom of Speech is assured by the Constitution; this is not a private advantage, but also a societal need for the firmness of democracy. Nevertheless, freedom of expression is not accepted as a fundamental right in the Constitution.

According to Article 19(2), this freedom may be reasonably restricted in the interests of India's sovereignty and integrity, national security, friendly relations with other nations, public order, decency or morality, contempt of court, defamation, and incitement to commit an offense. It is a common belief that letting people say whatever they want all the time could sometimes clash with other key parts of our society and the law. We can think of setting reasonable limits as a way to find a middle ground that respects both personal freedom and what's best for everyone. Within the framework of Indian free speech law exceptional complexity arises regarding the discussion of hate speech. Discourages hate speech that targets individuals or groups based on their religion caste race ethnicity language gender or other identifying traits Speech that harm targets also threaten the public order and social harmony and the ideals of equality dignity fraternity and secularism are at risk when this happens.

It puts every person at risk when speech intended to harm specific groups and individuals is made, as well as threatening the public peace and harmony it treads on the important constitutional values of equality, dignity, fraternity and secularism. India's society is deeply shaped by a rich mix of backgrounds and by longstanding wrongs linked to social status, faith, and belonging to specific groups. During these situations addressing events of hate speech is a crucial issue. Though throughout the years' groundbreaking interaction has played an enormous role in triggering political settle glowing caste-oriented cruelty and directing to combine clanks. During in this today's period expressions meant for holy or communal programs have instigated shared disorder and cruelty quite normal. And as cause of such political initiative in administration the judiciary and lineage campaigners now focus on tapping a last to hate speech. India, there is not one obvious and settled definition, for hate speech nevertheless how grave the issue is. Slightly, hate speech originates under the

regulations of different sections, of laws, Articles of the constitution, criminal laws and judgments given by court.

Legal Status of Hate Speech in India

Hate speech in India occupies a restricted but not absolutely prohibited legal space. The Constitution guarantees freedom of speech and expression under Article 19(1)(a), but Article 19(2) permits reasonable restrictions, particularly where speech affects public order, decency or morality, or amounts to incitement to an offence.

Importantly, Indian law does not presently provide one comprehensive statutory definition of "hate speech." Instead, different laws criminalise particular forms of expression depending upon their content, intention, consequences, and the groups or interests affected.

Constitutional Framework

The constitutional position is primarily governed by:

- **Article 19(1)(a):** Guarantees freedom of speech and expression.
- **Article 19(2):** Permits reasonable restrictions on speech on specified grounds, including public order, decency or morality, defamation and incitement to an offence.
- **Article 14:** Guarantees equality before law and equal protection of laws.
- **Article 15:** Prohibits discrimination on specified grounds such as religion, race, caste, sex and place of birth.
- **Article 21:** Protects life and personal liberty, which has been interpreted to include important aspects of dignity.

Bharatiya Nyaya Sanhita, 2023

Section 196 – Promoting enmity between groups: It covers speech, including electronic communication that promotes or attempts to promote disharmony, enmity, hatred or ill-will between religious, racial, language or regional groups, castes or communities. It also covers certain acts prejudicial to the maintenance of harmony.

Section 197-Imputations and assertions prejudicial to national integration

This provision addresses certain statements or publications concerning religious, racial, linguistic, regional, caste or community groups that may undermine constitutional allegiance, citizenship rights, or harmony.

Section 299 – Deliberate and malicious acts intended to outrage religious feelings

This provision addresses deliberate and malicious acts intended to outrage the religious feelings of a class by insulting its religion or religious beliefs.

Other BNS provisions may also become relevant depending upon the nature and consequences of the speech. The present framework therefore regulates specific harmful forms of expression rather than banning hate speech as a separately defined offence.

Hate Speech and Digital Media

The legal framework also applies to hate speech disseminated through social media and electronic communication. Section 196 expressly includes electronic communication within its scope. The Information Technology Act, 2000, and rules governing intermediaries

also form part of the broader regulatory framework for unlawful online content. Government guidance has identified provisions such as Sections 69A and 79 of the IT Act alongside relevant BNS provisions in dealing with problematic online content.

Online Hate Speech

The present legal framework applies to online as well as offline speech. Social-media posts, videos, electronic messages and other digital communications may attract criminal liability where their content satisfies the requirements of the relevant offence. Section 196 itself expressly recognises electronic communication.

The Information Technology Act, 2000 and the intermediary framework also remain relevant to unlawful online content.

Requirement of Constitutional Balance

Not every offensive, unpopular, controversial or critical statement automatically constitutes a criminal offence. The authorities must examine the content, context, intention, nature of the expression, and its potential or actual impact, while keeping constitutional freedom of speech in view.

Consequently, regulation of hate speech must avoid converting legitimate political criticism, academic discussion, satire or religious debate into criminal conduct merely because it is unpopular or offensive.

Hate speech is not a separately and comprehensively defined offence in India; however, speech that promotes enmity, hatred, disharmony, religious hostility, or prejudices national integration may be punishable under specific provisions of the BNS and other applicable laws. Such restrictions must operate within the constitutional framework protecting freedom of speech under Article 19(1)(a) and the reasonable restrictions permitted by Article 19(2).

Role of Judiciary

The Supreme Court has addressed hate speech in more detail in more recent rulings. In *Pravasi Bhalai Sangathan v. Union of India*, the Court stressed the need for current legislation and legislative action while acknowledging the detrimental effects of hate speech but declining to provide specific recommendations. In *Shreya Singhal v. Union of India*, The Court struck down Section 66A of the Information Technology Act on the grounds of vagueness and excessive scope, reaffirming that restrictions on speech must be narrowly tailored and constitutionally justified. Furthermore, the Court sought to delineate the boundaries of hate speech in *Amish Devgan v. Union of India*, noting that communication which undermines the dignity of a community and possesses the potential to incite hatred may fall outside constitutional protection.

Regardless of these judicial interventions, the Indian legal framework regarding hate speech remains ambiguous and fragmented. And also the nonexistence of reliable legal explanation is obvious in changing judicial verdicts that have trusted on divergent measures and grounds. Absence of a clear and identical judicial definition, of hate speech has extra complicated implementation hard work. Outside Article 19 the decree of hate speech also traces on a figure of other legitimate articles. Even like Article 15 prohibits “discrimination on the ground of faith, race, caste,

intercourse, or area of delivery. Through using encouraging exclusion, discrimination, and social stigma towards precise corporations, hate speech without delay violates those ideas. In addition to this the charter's Preamble places a sturdy emphasis on fraternity, ensuring both the kingdom's solidarity and integrity in addition to each person's dignity. This constitutional best is immediately at odds with hate speech. The emergence of digital and social media structures is some other critical element affecting the regulation of hate speech. the character, scope, and influence of speech have all modified as a result of the growth of on line conversation. The regulation of hate speech may be higher understood by way of consulting worldwide human rights law.

Freedom of expression is diagnosed as a fundamental proper through files like the International Covenant on Civil and Political Rights, 1966 and the Universal Declaration of Human Rights ,1948, although speech that incites violence, hatred, or discrimination may be restricted. Different levels of tolerance and restriction are shown by comparative constitutional techniques, which are influenced by constitutional ideologies and historical experiences. With respect to secure community harmony, and human respect few higher authorities or government warrant more boundaries, although others took a very speech protective attitude. Our country's draft is in line with its various legitimate promise to community fairness and liberty. In addition to this, the current investigation put extra efforts on discovering the bond between the hate speech and free expression in India by exactly examining and analyzing, court judgments, and constitutional requirements. And the basic motive of my study is to assess how hate speech is supposed and regulated by the law of India, though present legal assemblies propose enough safeguards against exploits as well as abuse, and also how jurisdictional clarification has manipulated the union between every person's interest and as well as cluster privileges. Detailed focus is given to affairs those are involving “complexity paradox, and constitutional comparable”.

The continuous sociopolitical growth in our country India with evenly quick political interchanges and increased mass and new media utilization has advanced the sociologic contradiction of the hate speech discussion in India. Speaking or speech, in the blown definition of the term, has been circulated and propagated in televised confrontation, social media platforms, and crossways digital media, in behaviors that far crossed the outdated means of transmission, such as printed media and public meetings. In evaluation to editors and heuristics of civil address, preset and algorithmic distribution multiplies the outreach and nearness of the impacts of transmission. In the grown risk of hate speech causing bodily and psychological harm, there is a requirement to reenter the current legal and lawful regulations. Hate speech rules are among the most provocative and compound in current legislation and are promoting complexity by the subjective evaluation of speech as antagonistic.

Difficult as it may be, unkind or unpopular speech is not always hate speech, and drawing the line between the different types of speech, and what is acceptable or prohibited, remains difficult. Commanding too less or too much provisions sounds like the death ring to free speech in republic that values opposition and multiplicity. On the

other hand, the absence of enough provisions on speech that degrades and provokes hatred against the burdened and the less advantaged is a proposal to partial and an attrition of the values of republic. This is an equal representation of the requirement for a method to hate speech legislation that validates the dangers of vagueness and the requirement for a constant and lawful supporting. In addition to this, hate speech also magnifies current communal disparity and domination by strangely distressing the most sidelines and historically burdened groups within community. Hate speech intimidates the practical parity secured by our lawful enshrinement and further hinders the already informally excluded groups' unfair contribution in civil life. Therefore, hate speech, away from being an appearance problem, traces upon social fairness, human respect or dignity, and the right to comprehensive nationality. This is significant to examine hate speech in its composite methods in order to comprehend and confrontation universal biasness. And the other compound matter is state control in adjusting speech. It is lawfully authorized for the State to uphold order and secure the honor and integrity of persons. Though, in the prevalence of subjective and/or irresponsible use of consultant, the defensive standards may be transformed to suppression.

Conclusion

Hate speech presents a serious challenge to the constitutional and democratic framework of India. While freedom of speech and expression under Article 19(1)(a) is fundamental to democracy, it cannot be treated as an unrestricted right when speech promotes hatred, enmity, violence, discrimination, or threatens communal harmony. Article 19(2) provides the constitutional basis for imposing reasonable restrictions in appropriate circumstances. The present legal framework, particularly the Bharatiya Nyaya Sanhita, 2023, provides several provisions to deal with speech promoting enmity between groups, prejudicial assertions affecting national integration, and deliberate acts intended to outrage religious feelings. These provisions, together with the Information Technology Act, election laws, and other regulatory mechanisms, provide legal remedies against different forms of hate speech. However, the absence of a clear and comprehensive statutory definition of hate speech remains a significant concern. Ambiguity may result in inconsistent interpretation, selective enforcement, or unnecessary restrictions on legitimate criticism and democratic debate. The rapid growth of social media has further increased the complexity of the problem because hateful content can be created and circulated rapidly and reach a very large audience. Therefore, India requires a balanced approach based on constitutional values, clarity in law, impartial enforcement, judicial oversight, digital responsibility, and protection of legitimate freedom of expression. Regulation should target genuinely harmful speech rather than unpopular opinions or legitimate criticism. At the same time, authorities must respond effectively to speech that threatens equality, dignity, public order, communal harmony, and national integration. In the objective of hate-speech regulation should not be to silence dissent but to preserve the constitutional balance between liberty and social harmony. A clear legal framework, consistent enforcement, responsible use of digital platforms, and greater public

awareness can contribute towards creating an environment where freedom of expression and the dignity and security of all citizens are protected.

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