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## HATE SPEECH REGULATION IN INDIA: BALANCING FREE EXPRESSION AND CONSTITUTIONAL MORALITY

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### ABSTRACT

Hate speech has emerged as one of the most significant challenges to democratic governance and constitutional values in India. While freedom of speech and expression under Article 19(1)(a) of the Constitution guarantees citizens the right to express opinions freely, this right is not absolute and is subject to reasonable restrictions under Article 19(2). The increasing spread of communal, religious, caste-based, and gender-oriented hate speech, particularly through digital platforms and political discourse, has intensified debates surrounding constitutional morality and free expression. This paper examines the legal framework governing hate speech in India, the constitutional principles involved, judicial interpretations, and the challenges faced in regulating hate speech without undermining democratic freedoms. The study argues that a balanced approach rooted in constitutional morality, human dignity, equality, and fraternity is necessary to preserve both individual liberty and social harmony. The paper further evaluates recent judicial developments and policy concerns relating to hate speech regulation in India.

**KEYWORDS:** Hate Speech, Freedom of Expression, Constitutional Morality, Article 19(1)(a), Article 19(2), Indian Constitution, Human Dignity, Democracy.

### INTRODUCTION

India is a pluralistic democracy characterized by immense religious, linguistic, cultural, and ethnic diversity. The Constitution of India guarantees freedom of speech and expression as a fundamental right under Article 19(1)(a), recognizing it as essential for democratic participation, individual liberty, and public discourse. Freedom of expression enables citizens

to criticize government policies, participate in debates, and express personal opinions without fear of censorship. However, this freedom is not absolute. Speech that promotes hatred, violence, discrimination, or hostility against particular communities threatens social harmony and undermines constitutional values such as equality, dignity, secularism, and fraternity.<sup>1</sup>

In recent years, hate speech has emerged as a major challenge to India's democratic framework due to increasing political polarization, rapid expansion of social media platforms, and growing communal tensions. Inflammatory speeches targeting religious minorities, caste groups, women, and marginalized communities have become more visible in political campaigns, public rallies, and digital spaces. Such expressions often incite fear, hostility, and violence, thereby disturbing public order and weakening the constitutional commitment to unity in diversity.<sup>2</sup> The misuse of free speech protections to justify hateful and divisive rhetoric has therefore raised serious concerns regarding the limits of constitutional freedom.

The Indian legal system faces the difficult task of balancing two competing constitutional goals: protecting free expression while maintaining public order and safeguarding the dignity of vulnerable communities. Article 19(2) of the Constitution permits the State to impose reasonable restrictions on speech in the interests of public order, morality, decency, and the sovereignty and integrity of India.<sup>3</sup> Consequently, hate speech laws seek to prevent speech that incites violence or communal disharmony while preserving legitimate democratic dissent.

The concept of constitutional morality plays a significant role in this balance. Constitutional morality requires individuals, institutions, and public authorities to act in accordance with constitutional principles such as justice, liberty, equality, fraternity, and human dignity.<sup>4</sup> The Supreme Court of India has repeatedly emphasized that constitutional morality must guide the interpretation of fundamental rights and restrictions. Hate speech directly contradicts constitutional morality because it promotes exclusion, discrimination, and social division.

This research paper critically examines hate speech regulation in India from constitutional, legal, and judicial perspectives. It evaluates whether existing legal mechanisms adequately address hate speech while ensuring that democratic freedoms and the constitutional guarantee of free expression remain protected.

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<sup>1</sup> Constitution of India, Art. 19(1)(a).

<sup>2</sup> *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477.

<sup>3</sup> Constitution of India, Art. 19(2).

<sup>4</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

### **Statement of the Problem**

Hate speech has emerged as a serious challenge in India's democratic and multicultural society. The rapid growth of social media, political polarization, religious intolerance, and digital communication has increased incidents of hateful expression targeting communities based on religion, caste, ethnicity, gender, and language. While Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression, unrestricted hate speech threatens public order, dignity, equality, and constitutional morality. The absence of a clear and uniform legal definition of hate speech often creates conflicts between protecting civil liberties and maintaining social harmony. Therefore, regulating hate speech while preserving democratic freedom remains a significant constitutional and legal concern.

### **Objectives of the Study**

1. To examine the constitutional provisions relating to freedom of speech and expression in India.
2. To analyze the legal framework and statutory provisions governing hate speech in India.
3. To study the role of the judiciary in interpreting and regulating hate speech cases.
4. To evaluate the impact of hate speech on social harmony, democracy, and constitutional morality.
5. To suggest measures for balancing free expression with the need to control hate speech in India.

### **Meaning and Nature of Hate Speech**

Hate speech generally refers to speech that incites hatred, discrimination, hostility, or violence against individuals or groups based on religion, caste, race, ethnicity, gender, language, or other protected identities. The term has not been comprehensively defined under Indian law, resulting in interpretative ambiguity.

According to legal and international understandings, hate speech includes expressions that attack or demean persons based on their identity and are likely to disturb public order or violate human dignity. The United Nations emphasizes that restrictions on hate speech should protect equality and prevent harm while preserving freedom of expression.

In India, hate speech commonly manifests through:

- Religious and communal speeches
- Caste-based derogatory remarks

- Gendered hate and misogynistic content
- Political propaganda
- Online harassment and social media abuse
- Hate campaigns against minorities and marginalized groups

The rise of digital communication has significantly increased the spread and influence of hate speech. Studies show that online platforms often amplify targeted hostility and communal narratives.

### **Constitutional Framework Governing Hate Speech**

The Indian Constitution establishes a delicate balance between the protection of individual freedoms and the preservation of social order. Among the fundamental rights guaranteed to citizens, the right to freedom of speech and expression under Article 19(1)(a) occupies a central place in the democratic framework of India. Freedom of speech enables citizens to express opinions, criticize government policies, participate in public debates, and contribute to the democratic process. At the same time, the Constitution recognizes that unrestricted speech may sometimes threaten public order, national integrity, and the dignity of individuals or communities. Consequently, Article 19(2) authorizes the State to impose reasonable restrictions on speech under specific circumstances. The constitutional regulation of hate speech in India therefore emerges from the interaction between these two provisions and the broader doctrine of constitutional morality.

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

Article 19(1)(a) of the Constitution of India guarantees every citizen the fundamental right to freedom of speech and expression.<sup>5</sup> This right forms the cornerstone of democratic governance because democracy can function effectively only when citizens are free to express their opinions and engage in public discourse without fear of suppression. The framers of the Constitution considered freedom of expression essential for political participation, intellectual development, and social progress.

The scope of Article 19(1)(a) has been interpreted broadly by the Supreme Court of India. It includes:

- Freedom of the press
- Freedom to criticize government policies

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<sup>5</sup> Constitution of India, Art. 19(1)(a).

- Freedom of artistic and academic expression
- Right to receive information
- Political dissent and democratic participation

The Supreme Court has repeatedly emphasized that free speech is indispensable for democracy because it facilitates debate, accountability, and transparency. In *Romesh Thappar v. State of Madras*, the Court observed that freedom of speech lies at the foundation of all democratic organizations.<sup>6</sup> Similarly, in *Indian Express Newspapers v. Union of India*, the Court held that freedom of the press is crucial for maintaining democratic accountability and public awareness.<sup>7</sup>

Freedom of speech also protects unpopular opinions, criticism of authority, and peaceful dissent. In *Shreya Singhal v. Union of India*, the Supreme Court struck down Section 66A of the Information Technology Act, 2000, on the ground that vague and overbroad restrictions on online speech violated Article 19(1)(a).<sup>8</sup> The judgment reinforced the principle that free expression cannot be curtailed merely because certain speech is offensive or unpopular.

However, the right to freedom of speech is not absolute. Absolute freedom may lead to misuse through expressions that incite hatred, violence, or discrimination against vulnerable groups. Therefore, the Constitution permits reasonable restrictions under Article 19(2).

### **Article 19(2): Reasonable Restrictions**

Article 19(2) empowers the State to impose reasonable restrictions on the exercise of free speech in the interests of:

- Sovereignty and integrity of India
- Security of the State
- Friendly relations with foreign States
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence

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<sup>6</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>7</sup> *Indian Express Newspapers v. Union of India*, (1985) 1 SCC 641.

<sup>8</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

These restrictions seek to maintain a balance between individual liberty and collective societal interests. Hate speech regulation in India derives constitutional legitimacy mainly from the grounds of public order, morality, and incitement to offences. Speech that promotes communal hatred, religious intolerance, caste discrimination, or violence can disrupt social harmony and threaten national unity.

The Supreme Court has consistently maintained that restrictions on free speech must satisfy the test of reasonableness. In *Superintendent, Central Prison v. Ram Manohar Lohia*, the Court held that restrictions imposed on speech must have a proximate connection with public disorder and should not be arbitrary or excessive.<sup>9</sup> Similarly, in *S. Rangarajan v. P. Jagjivan Ram*, the Court emphasized that freedom of expression cannot be suppressed unless the situation created by the speech is dangerous to the community and threatens public interest.<sup>10</sup>

The principle of proportionality also plays an important role in determining the validity of restrictions. Any limitation on free speech must be narrowly tailored to achieve a legitimate constitutional objective. Excessive or vague restrictions may lead to censorship and suppression of dissent, thereby weakening democratic values.

In the context of hate speech, the challenge lies in distinguishing between legitimate criticism, unpopular opinions, and speech that genuinely incites hatred or violence. Democratic societies must tolerate disagreement and criticism, but they cannot permit speech that destroys the dignity and equality of citizens.

### **Constitutional Morality and Hate Speech**

The concept of constitutional morality has emerged as a significant constitutional principle in Indian jurisprudence. Constitutional morality refers to adherence to the fundamental values and ideals embodied in the Constitution. These values include:

- Equality
- Liberty
- Justice
- Fraternity
- Human dignity
- Secularism

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<sup>9</sup> *Superintendent, Central Prison v. Ram Manohar Lohia*, AIR 1960 SC 633.

<sup>10</sup> *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

The doctrine requires individuals, institutions, and public authorities to act in a manner consistent with constitutional principles rather than majoritarian prejudices or social biases. Constitutional morality ensures that constitutional governance remains rooted in respect for individual dignity and social inclusion.

The Supreme Court has increasingly relied upon constitutional morality in cases involving individual rights and social justice. In *Navtej Singh Johar v. Union of India*, the Court emphasized that constitutional morality must prevail over social morality whenever the two conflict.<sup>11</sup> Similarly, in *Government of NCT of Delhi v. Union of India*, the Court described constitutional morality as the foundation for democratic governance and institutional accountability.<sup>12</sup>

In the context of hate speech, constitutional morality requires that speech should not undermine the dignity, equality, and security of fellow citizens. Hate speech directly conflicts with constitutional morality because it promotes exclusion, discrimination, hostility, and social division. Speech targeting religious minorities, caste groups, women, or marginalized communities weakens the constitutional principle of fraternity and threatens the vision of an inclusive democracy.

The Constitution of India envisions a society based on mutual respect and coexistence. Hate speech attacks these constitutional commitments by fostering fear and hatred against vulnerable groups. It diminishes human dignity and undermines the secular character of the State.

Justice B.V. Nagarathna has observed that hate speech denies the dignity of individuals and that freedom of speech must be exercised responsibly and in harmony with the rights of others.<sup>13</sup> Such observations highlight the importance of balancing free expression with constitutional values of equality and fraternity.

At the same time, constitutional morality does not justify excessive censorship or suppression of dissenting opinions. The judiciary has consistently maintained that restrictions on speech must remain reasonable, proportionate, and constitutionally justified. A democratic society must protect both freedom of expression and the dignity of individuals.

Thus, constitutional morality serves as a guiding principle in balancing free expression with societal interests. It ensures that constitutional freedoms are exercised in a manner that strengthens democracy, protects vulnerable communities, and preserves social harmony.

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<sup>11</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>12</sup> *Government of NCT of Delhi v. Union of India*, (2018) 8 SCC 501.

<sup>13</sup> *Amish Devgan v. Union of India*, (2021) 1 SCC 1.

## **Legal Framework on Hate Speech in India**

India is a diverse democratic nation characterized by multiple religions, languages, castes, and cultures. In such a pluralistic society, hate speech poses a serious threat to constitutional values, public order, social harmony, and individual dignity. Hate speech generally refers to expressions that incite hatred, discrimination, hostility, or violence against individuals or groups based on religion, caste, race, ethnicity, language, gender, or other identities. Although the Constitution of India guarantees freedom of speech and expression under Article 19(1)(a), this freedom is not absolute and is subject to reasonable restrictions under Article 19(2). Consequently, India has developed a legal framework to regulate hate speech through constitutional provisions, statutory laws, judicial interpretations, and regulatory mechanisms.

## **Constitutional Basis for Regulating Hate Speech**

The constitutional framework governing hate speech in India is primarily rooted in the balance between freedom of expression and the protection of public order, morality, and social harmony. Article 19(1)(a) guarantees every citizen the fundamental right to freedom of speech and expression. However, 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, morality, contempt of court, defamation, incitement to an offence, and friendly relations with foreign States.<sup>14</sup>

The constitutional principle of fraternity, embodied in the Preamble, also plays a crucial role in hate speech jurisprudence. Fraternity seeks to assure the dignity of the individual and the unity and integrity of the nation. Hate speech directly undermines these constitutional goals by promoting hostility and social division.

## **Indian Penal Provisions Relating to Hate Speech**

India does not possess a single consolidated statute exclusively dealing with hate speech. Instead, various provisions under criminal law address different forms of hateful expression and communal incitement.

## **Section 153A of the Indian Penal Code**

Section 153A of the Indian Penal Code, 1860 (IPC), penalizes acts that promote enmity between different groups on grounds such as religion, race, caste, language, or place of birth

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<sup>14</sup> Constitution of India, Article 19(2).

and which are prejudicial to the maintenance of harmony.<sup>15</sup> The provision also criminalizes acts that disturb public tranquility or encourage violence between communities.

This section is frequently invoked in cases involving inflammatory speeches, communal propaganda, and provocative publications capable of disturbing social peace.

### **Section 295A of the Indian Penal Code**

Section 295A punishes deliberate and malicious acts intended to outrage the religious feelings of any class of citizens by insulting their religion or religious beliefs. The provision was introduced during the colonial period to address communal tensions arising from offensive publications and speech.

The courts have interpreted this provision narrowly, requiring deliberate and malicious intent rather than mere criticism or academic discussion of religion.

### **Section 505 of the Indian Penal Code**

Section 505 penalizes statements, rumors, or reports likely to create fear, alarm, or public mischief and those that may incite communities to commit offences against one another. The provision aims to prevent dissemination of harmful information capable of provoking communal unrest or violence.

### **Representation of the People Act, 1951**

The Representation of the People Act, 1951 seeks to maintain fairness and secularism in electoral politics. Section 123(3) prohibits candidates from soliciting votes on grounds of religion, race, caste, community, or language. Appeals to communal sentiments during elections are treated as corrupt electoral practices.

This legislation reflects the constitutional commitment to secular democracy and aims to prevent political exploitation of communal divisions.

### **Information Technology Laws and Online Hate Speech**

The rise of digital communication and social media has significantly expanded the reach and impact of hate speech. Online platforms enable rapid dissemination of inflammatory content to large audiences. Consequently, hate speech regulation increasingly involves digital governance mechanisms.

Although Section 66A of the Information Technology Act, 2000 was struck down by the Supreme Court in *Shreya Singhal v. Union of India*, intermediary obligations continue under

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<sup>15</sup> Indian Penal Code, 1860, § 153A.

the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These rules require intermediaries to remove unlawful content and exercise due diligence in preventing misuse of digital platforms.<sup>16</sup>

Social media companies may be directed to remove content that threatens public order, promotes communal hatred, or incites violence.

### **Bharatiya Nyaya Sanhita, 2023**

The Bharatiya Nyaya Sanhita (BNS), 2023, which replaces the Indian Penal Code, retains provisions similar to Sections 153A, 295A, and 505 relating to communal hatred, religious insult, and incitement.<sup>17</sup> The new framework seeks continuity in addressing hate speech while modernizing criminal law terminology and structure.

### **Judicial Interpretation of Hate Speech**

The judiciary has played a central role in interpreting hate speech laws and balancing free speech with constitutional morality.

### **Shreya Singhal v. Union of India**

In *Shreya Singhal v. Union of India* (2015), the Supreme Court struck down Section 66A of the Information Technology Act for being vague, overbroad, and unconstitutional.<sup>18</sup> The Court held that restrictions on speech must have a proximate connection with incitement to violence or public disorder.

The judgment distinguished between:

- Discussion
- Advocacy
- Incitement

According to the Court, only incitement may constitutionally be restricted. This decision significantly strengthened free speech protections in India while recognizing that harmful incitement can legitimately be regulated.

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<sup>16</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

<sup>17</sup> Bharatiya Nyaya Sanhita, 2023.

<sup>18</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

### **Pravasi Bhalai Sangathan v. Union of India**

In *Pravasi Bhalai Sangathan v. Union of India* (2014), the Supreme Court acknowledged the increasing danger posed by hate speech in society.<sup>19</sup> However, the Court refrained from issuing extensive judicial guidelines, observing that legislative intervention was more appropriate for addressing the issue comprehensively.

The judgment emphasized responsible speech by political and religious leaders and highlighted the importance of constitutional values in public discourse.

### **Amish Devgan v. Union of India**

In *Amish Devgan v. Union of India* (2020), the Supreme Court elaborated upon the concept of hate speech and observed that such speech undermines the dignity of targeted groups and threatens fraternity.<sup>20</sup> The Court stressed that free speech cannot extend to expressions that encourage discrimination, hostility, or violence.

The judgment also emphasized the need to balance:

- Freedom of expression
- Individual dignity
- Equality
- Social harmony

### **Recent Judicial Developments**

In recent years, the Supreme Court has reiterated that there is “no vacuum” in Indian laws dealing with hate speech and that legislative policy remains within Parliament’s domain. Courts have increasingly emphasized constitutional morality, responsible speech, and democratic accountability.

The judiciary has also urged authorities to act promptly against inflammatory speeches capable of provoking communal tensions and violence.

### **Challenges in Regulating Hate Speech**

#### **Absence of a Clear Definition**

One of the major challenges is the absence of a precise statutory definition of hate speech in Indian law. Different provisions target different forms of harmful expression, leading to inconsistent interpretation and selective enforcement.

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<sup>19</sup> *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477.

<sup>20</sup> *Amish Devgan v. Union of India*, (2021) 1 SCC 1.

The lack of clarity creates uncertainty regarding what constitutes permissible criticism and what amounts to unlawful incitement.

### **Misuse of Hate Speech Laws**

Critics argue that vague and broad legal provisions may be misused to suppress dissent, satire, political opposition, artistic expression, or academic debate. Excessive restrictions may have a chilling effect on democratic discourse and free expression.

There have been concerns regarding selective prosecution and politically motivated application of hate speech laws.

### **Digital and Social Media Challenges**

Social media platforms amplify the speed and reach of hate speech. Anonymous accounts, viral misinformation, and algorithmic promotion of sensational content complicate enforcement efforts.

Digital hate speech often spreads rapidly before authorities can intervene, creating risks of mob violence, communal unrest, and social polarization.

### **Political Polarization**

Political rhetoric sometimes exploits religious, caste-based, or communal identities for electoral gains. Such polarization makes neutral enforcement difficult and may weaken public trust in regulatory institutions.

The challenge lies in ensuring impartial application of the law irrespective of political affiliations.

### **Balancing Liberty and Social Harmony**

The central constitutional dilemma is distinguishing between:

- Offensive or unpopular speech
- Legitimate criticism
- Satire and dissent
- Actual incitement to hatred or violence

A democratic society must tolerate disagreement and criticism, yet cannot permit speech that destroys constitutional values of equality, dignity, and fraternity.

## **International Perspectives on Hate Speech**

International human rights law recognizes both freedom of expression and the need to restrict incitement to hatred.

### **United Nations and the Universal Declaration of Human Rights**

Article 19 of the Universal Declaration of Human Rights (UDHR) guarantees freedom of opinion and expression.<sup>21</sup> However, international law also recognizes that this freedom may be limited to protect the rights of others and maintain public order.

### **International Covenant on Civil and Political Rights (ICCPR)**

Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR) requires States to prohibit advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.<sup>13</sup>

India, as a signatory to the ICCPR, must balance free expression with protection against harmful incitement.

### **United Nations Strategy and Plan of Action on Hate Speech**

The United Nations Strategy on Hate Speech advocates:

- Education
- Counter-speech
- Social inclusion
- Public awareness
- Responsible digital governance

rather than excessive censorship.<sup>14</sup> The strategy recognizes that long-term solutions require social engagement alongside legal regulation.

### **Role of Judiciary in Upholding Constitutional Morality**

The judiciary performs a vital constitutional function by ensuring that hate speech laws are neither applied arbitrarily nor ignored in situations threatening public peace and minority rights. Courts have repeatedly emphasized:

- Proportionality in restrictions
- Protection of dissent
- Prevention of violence
- Constitutional fraternity

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<sup>21</sup> Universal Declaration of Human Rights, 1948, Article 19.

- Human dignity

Judicial balancing is essential because overregulation may suppress democratic debate, whereas underregulation may enable hatred, discrimination, and communal violence. The constitutional vision of India requires both liberty and social responsibility to coexist harmoniously.

## CONCLUSION

Hate speech regulation in India presents a complex constitutional dilemma involving the reconciliation of individual liberty with collective harmony. Freedom of speech remains indispensable to democratic governance; however, speech that incites hatred, violence, or discrimination threatens the constitutional values of equality, dignity, and fraternity.

The doctrine of constitutional morality provides an important framework for balancing these competing interests. It emphasizes that constitutional rights must operate in harmony with democratic ethics and social justice. Indian courts have increasingly recognized that hate speech undermines constitutional morality by eroding human dignity and social cohesion.

At the same time, excessive restrictions on speech may weaken democracy and suppress dissent. Therefore, the regulation of hate speech must remain narrowly tailored, proportionate, and consistent with constitutional guarantees. A balanced legal framework, judicial vigilance, digital accountability, and constitutional education are necessary to address the growing challenges posed by hate speech in India.

Ultimately, preserving both free expression and constitutional morality is essential for sustaining India's democratic and pluralistic constitutional order.