

***Law Audience Journal, Volume 5 & Issue 6, 19th March 2025,
e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.954, Published
at <https://www.lawaudience.com/volume-5-issue-6-2/>, Pages: 302 to
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Cite this article as:

MR. PANKAJ SINGH & DR. SYED FARAZ AKHTAR, "Hate Speech in India: Regulation and Challenges" Vol.5 & Issue 6, Law Audience Journal (e-ISSN: 2581-6705), Pages 302 to 314 (19th March 2025), available at <https://www.lawaudience.com/hate-speech-in-india-regulation-and-challenges/>.

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Publisher Details:

Law Audience Journal (e-ISSN: 2581-6705),

*Sole Proprietorship of Mr. Varun Kumar, Kharar, District.
S.A.S, Nagar, Mohali, 140301,*

Phone No(s): +91-8351033361 (WhatsApp),

*Email ID(s): lawjournal@lawaudience.com,
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Website: www.lawaudience.com.

Contact Timings: 10:00 AM to 8:00 PM.

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ABSTRACT:

*“Any person to share information, emotions and feelings, with others use different modes of communication. Sometime its direct mode of communication and sometimes it may be indirect mode of communications. The direct mode of communication is like speech, either spoken or written and through offline or online mode, and indirect mode of communication is symbol, conducts, sign etc. But the most common mode of communication is speech. Therefore, at national and international level free speech has been recognised as a fundamental and human rights of every individual. Under the constitution of **India Part-III** contain the provisions of **Fundamental rights from Article 12- 35. Article 19 (1) of the Indian Constitution** contain the provisions regarding freedom of speech and expression. Freedom of opinion and expression is a fundamental human right, enshrined in article 19 of the Universal Declaration of Human Rights. The right to free speech is an inalienable right and can't be suppressed by the state, except in reasonable circumstances. Though, the freedom of speech and expression is not an absolute right in itself. Misuse of freedom of speech caused hate speech like, defamation, sedition, religious and communal hatred etc. The hate speech emerges hate crime, social disintegration, and cause harm to national integrity, lead communal violence etc. the regulation of hate speech is a difficult task to the legislature of India because the regulating laws may hamper the freedom of speech and expression”.*

Keywords: Fundamental Right, Human Right, Freedom of Speech, Hate Speech, Constitution.

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I. INTRODUCTION:

“In India, inconsistent application of free speech laws has resulted in its misuse, enabling authorities to permit hateful, provocative, and incendiary speech while simultaneously suppressing dissent, criticism, and disagreement. This selective enforcement has undermined the rule of law, weakened judicial integrity, and contributed to increasing societal polarization, intolerance, and religious extremism. This policy brief examines the Supreme Court of India’s interpretation of hate speech and sedition laws, the latter being a colonial-era provision historically used to suppress dissent against British rule. It highlights how the absence of a clear framework for these laws has given law enforcement unchecked authority in prosecuting alleged hate speech, thereby creating a chilling effect on free expression. Hate speech in India encompasses spoken, written, or symbolic forms of communication that provoke violence, discrimination, or hostility against individuals or groups based on religion, race, ethnicity, caste, gender, or other protected traits. The nature and scope of hate speech have evolved over time, influenced by societal, technological, and political developments. The extent of hate speech in India has fluctuated over time, becoming more pronounced in recent decades, especially with the advent of social media and digital platforms”.

Some key factors influencing the extent of hate speech in India include:

- **Religious and cultural Tensions:** In post-independence India, tensions between Hindu and Muslim communities have often been exacerbated by hate speech. Incidents like the 1992 Babri Masjid demolition and the subsequent riots illustrate how inflammatory rhetoric can escalate into violence.
- **Vote Polarization:** It has been observed in recent years that political leaders have repeatedly used divisive rhetoric to gain electoral advantages, thereby fuelling communal and caste-based tensions. This approach is said to have led to a rise in instances of hate speech, particularly during election periods.

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- ***Internet and social media:*** Hate speech has been defined by the United Nations Strategy and Plan of Action as “*any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender, or other identity factor.*” While the legal definitions vary across countries, the common principle is that hate speech expresses animosity against specific groups, often even calling for violence¹. ***Social media platforms— Meta (Formerly Known as Facebook), Instagram (from Meta), WhatsApp (from Meta), YouTube (from Google), Telegram, and X (formerly Twitter)—were key instruments in enabling, amplifying, and main streaming hate speech and extremist ideologies in India, as was the case globally².***

The increasing of social media platforms like *Twitter, Facebook, and WhatsApp* contributed to the rapid spread of news, information, messages, with misstatements and provocative information becoming viral in a matter of hours. The ease of anonymity online further intensifies the problems. According to Digital Data report 2024, in India approximately 462 million³ people use social media platform for the exchange of their thoughts and expressions. To control and regulate the spread of fake news or hate speech contents quite difficult as, there is not any tool which can differentiate between good content and bad content.

- ***Caste Discrimination:*** The word caste is not an Indian word, it actually comes from the Portuguese word “*castas*”, which means ‘pure’. This Portuguese word expresses one of the core values of Indian society, the idea of ritual and cultural purity. In India caste

¹ABDURAHMAN MAAROUF, NICOLAS PRÖLLOCHS, STEFAN FEUERRIEGEL “The Virality of Hate Speech on Social Media” arXiv: 2210.13770v3 [cs.SI] 25 Nov 2024.

²Mithun Das et al., “HateCheckHIn: Evaluating Hindi Hate Speech Detection Models” (arXiv, April 30, 2022), <https://doi.org/10.48550/arXiv.2205.00328>.

³<https://datareportal.com/reports/digital-2024-india>.

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system arranged in hierarchy manner, it means the rights and privileges, like education, worship, enjoyed by upper caste, is prohibited for lower caste⁴. Hate speech has also been directed at *Dalits*, tribal communities, and other marginalized groups. Incidents of caste-based violence and discrimination often have a root in hate speech propagated through political rallies, speeches, or social media.

In the word of *B.R. Ambedkar*, caste hierarchy persist in society is a deplorable one. It hinders the interest of a nation at two stages. The first one is at society level and other one at personal level. He wrote that the caste system is against the public moral and ethics also⁵. He believed that caste destroy the public spirit also, because the loyalty, responsibility of every individual shrink to their caste and community rather than society. Mahatma Gandhi had opinion that *varna* system decoyed and spoil the society. But if it confined to the profession, he advocates the “*Varna- Byawastha*”. According to Gandhi it is as wrong to destroy caste because of outcaste, as it would be to destroy a body because of an ugly growth in it or a crop because of the weeds⁶.

II. EVOLUTION OF HATE SPEECH IN INDIA:

The evolution of hate speech in India has been influenced by changes in the political, social, and technological landscape. Key milestones in the evolution of hate speech are as follows:

- ***Colonial and Post-Independence Period (1947-1980s):*** In the early years of India’s independence, hate speech was largely centred on communal tensions between Hindus and Muslims, often fuelled by political leaders or extremist groups. This

⁴Dr. Sukhdeep Singh “Caste System: B. R. Ambedkar’s Perspective” RJPP, Vol. 15, No. 3, pp. 16-22 Article No.3 (RP560).

⁵Ibid

⁶Dr. Braham Parkash “Mahatma Gandhi as a Critique of Caste System” 2018 JETIR July 2018, Volume 5, Issue 7.

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period saw incidents of violence, like the *Partition (1947)* and subsequent communal riots.

- ***1980s to 1990s:*** The 1980s and 1990s witnessed an increase in hate speech, particularly following the rise of Hindu nationalism. The ***Ayodhya dispute and the Babri Masjid demolition (1992)***, marked a significant period when inflammatory speech by religious leaders and political figures led to widespread violence and riots. The ***anti-Muslim*** rhetoric and communal tensions reached a peak during this period.
- ***2000s to 2010s:*** The internet and social media began to play a significant role in the dissemination of hate speech. The rise of online platforms made it easier for hate speech to spread rapidly, leading to communal tensions in different parts of India. For instance, the ***2012 Assam riots*** and the ***2013 Muzaffarnagar riots*** were exacerbated by online hate speech, often shared through WhatsApp and Facebook.
- ***Post-2015 Era:*** In recent years, India has witnessed a more pronounced and systemic problem of hate speech, especially during electoral campaigns and in the context of religious and political narratives. The ***2019 Delhi riots*** and numerous incidents related to the treatment of minorities (***particularly Muslims and Dalits***) have seen hate speech being used as a tool for incitement.

III. FREE SPEECH AND HATE SPEECH: CONSTITUTIONAL PERSPECTIVE:

Our constitution has given us various rights and freedom. The right to Freedom of speech and Expression is one of them. The Freedom of speech has given rights only to Indian citizens. It is mostly said about the freedom of speech and expression that it is the mother of all other liberties. The freedom of speech is guaranteed not only by the constitution or statutes of various states but also by various international conventions like the Universal Declaration of Human Rights 1948. The purpose of this freedom is to allow the individual to attain self-

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fulfilment and assist in the discovery of true strengthen the capacity of a person to make decisions and facilitate a balance between stability and social change. Freedom of speech and expression is the 1st and foremost human right. Freedom of speech and expression is a composite expression that differs from speech and the former, not the latter. Freedom of speech and expression has a well-recognized connotation which means own bens the liberty to expressionless views opinions and beliefs. Article 19 of the Constitution of India guarantees freedom of speech and expression as a fundamental right. Reasonable restrictions on freedom of speech are permissible under Article 19 in so far as such restrictions are in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Courts in India face a dilemma in applying criminal law provisions relating to hate speech, since those accused of engaging in hate speech claim that their speech does not fall within the reasonable restrictions envisaged under Article 19 and often resort to Indian jurisprudence which has tended to protect and, where necessary, expand the meaning of free speech. The lack of a unanimous definition of hate speech further exacerbates the problem. In the absence of a definition of hate speech, the Supreme Court and other Indian courts have been unable to formulate an unambiguous and comprehensive response to cases involving allegations of hate speech.⁷

The term '*hate speech*' eludes a universal definition. It derives its significance from the context it operates in formed through the influence of peculiar sensibilities, "*identities*" and "*assessments*" in particular contexts. *Black's Law Dictionary* identifies hate speech as the "speech that carries no meaning other than expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke

⁷ Supreme Court of India, Pravasi Bhalai Sangathan v. Union of India, Judgment, 12 March 2014, Writ Petition No. 157/2013, (2014) 11 SCC 477, para. 25

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violence”. Therefore, it can be said that hate speech is “*speech that is, broadly speaking, derogatory towards someone else*”⁸. Most common grounds of hate speech across countries are race, ethnicity, religion or class. India presents a peculiar case for regulation of hate speech with its rich diversity of language, caste, race, religion, culture and beliefs. The words either spoken or written or employing signs or any kind of visual representation qualifies as ‘speech’. If such speech offends the religious, ethnic, cultural, racial groups by vilification and is capable of spreading ‘hatred’ among the heterogeneous populace, we categorize it as ‘hate speech’.

IV. LEGAL PERSPECTIVE OF HATE SPEECH:

Unity in Diversity is a defining feature of India, symbolizing the coexistence of various cultures, languages, religions, and ethnic groups. Despite its vast diversity, India remains united through shared values of tolerance, respect, and cooperation. The country’s Constitution guarantees fundamental rights that protect this diversity, fostering harmony among different communities. Festivals, traditions, and languages vary across regions, yet there is a collective sense of national identity. The unity in diversity theme highlights India’s strength in embracing differences while promoting social cohesion, making it a unique and resilient society globally. Hate speech ipso facto a danger for the society and integrity of nation. The law makers codified some legal provisions which put some restriction and sanction on the accused.

Several provisions in Indian law specifically address hate speech, notably:

1. **Section 153A of the Indian Penal Code (IPC)**: This provision criminalizes acts that promote enmity between different groups on the grounds of religion, race,

⁸ <https://supremoamicus.org/wp-content/uploads/2019/11/A25vol14.pdf>.

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and place of birth, residence, language, or caste. It includes speech, writings, or acts that are likely to disturb public peace or incite violence between groups.

2. ***Section 295A of the IPC:*** This section criminalizes deliberate and malicious acts intended to outrage the religious feelings of any class by insulting its religion or religious beliefs. This law has been used to prosecute individuals whose speech or writings may be considered blasphemous or offensive to religious sentiments.
3. ***Section 505 (1) (b) of the IPC:*** This section penalizes the making or publishing of statements that cause fear or alarm to the public, or which incite others to commit an offense, particularly when such speech can provoke violence or disrupt social harmony.
4. ***Bharatiya Nyay Sanhita (BNS):*** Section 196, the law forbids using spoken or written language, as well as electronic contact, to promote or attempt to promote enmity or conflict between groups on the basis of race, religion, language or community. Further, it punishes activities that disrupt public peace or teach people how to use violence against any group, which can create a sense of unease or fear.
5. ***Information Technology Act, 2000:*** Section 66A (which was struck down by the Supreme Court in 2015) previously dealt with sending offensive messages through communication services, including hate speech. However, the government continues to regulate harmful online content through Section 69A of the IT Act, allowing authorities to block online content that may be deemed hate speech.

V. JUDICIAL INTERPRETATIONS:

Indian courts have played a noteworthy role in interpreting the legal limits of free speech, particularly in relation to hate speech. The Supreme Court of India has clarified the

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boundaries of freedom of speech and expression through various judgments, emphasizing the importance of public order and preventing harm to individuals or communities.

- ***K.K. Verma vs. Union of India⁹***: In this case, the Court upheld the restrictions on free speech, asserting that speech that promotes hatred or violence could be regulated to maintain national integrity.
- ***Shreya Singhal vs. Union of India¹⁰***: The Supreme Court struck down Section 66A of the Information Technology Act, declaring it unconstitutional as it violated the right to freedom of speech. However, the Court also emphasized that speech causing imminent harm, including hate speech, can still be restricted under other laws, especially if it incites violence or disrupts public peace.
- ***Tehseen Poonawalla vs. Union of India¹¹***: This landmark ruling by the Supreme Court highlighted the importance of curbing hate speech that can lead to violence and hatred. The Court directed the central and state governments to take strict action against hate speech, emphasizing its role in maintaining public peace and harmony.

VI. CHALLENGES AND CONTROVERSIES:

Despite the legal provisions, the regulation of hate speech in India faces several challenges:

1. ***Ambiguity and Over-breadth:*** Laws such as Section 153A and Section 295A are often criticized for their vague and broad language. This can lead to misuse, as individuals may be prosecuted for expressing legitimate opinions or criticisms of particular groups. For example, political speeches, religious sermons, or media reports may sometimes be misinterpreted as hate speech, stifling dissent.

⁹<https://supremetoday.ai/issue/K.K.-Verma-vs-Union-of-India,-AIR-1954-SC-375>

¹⁰[Indiankanoon.org/](https://indiankanoon.org/). Retrieved 3 July 2022, AIR2015sc1523.

¹¹ WRIT PETITION (CIVIL) No. 000754-000754 / 2016 (2018) 9 SCC 501

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2. **Balancing Free Speech with Protection from Harm:** One of the biggest challenges in regulating hate speech is maintaining a balance between free expression and protecting vulnerable groups from harm. The lack of clear standards often results in subjective interpretations of what constitutes "hate speech," leading to inconsistent enforcement of laws.
3. **Online Hate Speech:** The rise of social media platforms has made it difficult for authorities to control hate speech effectively. Online platforms often serve as breeding grounds for inflammatory content, and there are ongoing debates about the role of tech companies in curbing hate speech.
4. **Political and Social Factors:** In India, hate speech is often intertwined with political and religious dynamics. Political leaders and groups may use hate speech to rally support or incite violence, complicating the legal landscape and raising concerns about the politicization of legal action.

Guidelines Issued by Supreme Court to curb Misuse of Legal Provisions w.r.t. Hate Speech:

- In **Tahseen Poonawalla vs. Union of India (2018)**, the Supreme Court had issued comprehensive guidelines to the Union and State Governments regarding prevention of mob violence, lynching.
- Again, in **Kodungallur Film Society case (2018)**, directions were issued to control vandalism by protesting mobs.
- **Major guidelines include:**
 - *Fast-track trials,*
 - *Victim compensation,*
 - *Deterrent punishment,*
 - *Disciplinary action against lax law-enforcing officials,*

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- Nodal officers to be appointed to take note of hate crimes and register FIRs across the nation.

VII. CONCLUSION AND SUGGESTION:

Hate speech in India has become a significant concern in recent years, exacerbated by social and political polarization, the rise of digital platforms, and communal tensions. While the legal framework in India aims to balance the fundamental right to free speech with the need to maintain public order and harmony, the regulation of hate speech remains fraught with challenges. Despite laws such as Section 153A and 295A of the Indian Penal Code, and provisions under the Information Technology Act, there are inherent issues regarding their application, vagueness, and the potential for misuse. Hate speech, especially in the digital age, is pervasive across social media platforms, influencing societal behaviour, political discourse, and inter-group relations. This poses significant challenges for enforcement agencies, as online speech can spread rapidly and anonymously, often leading to real-world violence. Additionally, the subjective nature of what constitutes hate speech makes it difficult to create clear, enforceable boundaries without infringing upon the right to free expression.

The growing influence of political leaders and social media influencers, who sometimes use hate speech to galvanize support, further complicates the issue. This dynamic not only increases the frequency of hate speech but also politicizes its regulation, raising concerns about selective enforcement.

Suggestions for Regulation of Hate Speech in India:

1. **Clear Legal Definitions:** One of the key challenges in regulating hate speech is the lack of clear and consistent legal definitions. Laws should provide more specific criteria for what constitutes hate speech to prevent misuse and avoid the suppression of legitimate dissent. Clear guidelines would help authorities make consistent decisions when prosecuting hate speech cases.

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2. ***Strengthening Digital Platforms' Accountability:*** Social media companies and digital platforms must play a more proactive role in monitoring and controlling the spread of hate speech. Strengthening self-regulation within these platforms and ensuring adherence to robust content moderation policies is essential. The government could work with tech companies to develop more efficient mechanisms for reporting and removing hate speech.
3. ***Public Awareness Campaigns:*** The government and civil society organizations should launch public awareness campaigns about the harmful effects of hate speech on social cohesion and public order. Educating citizens on recognizing and resisting hate speech can be an important preventive tool.
4. ***Judicial Oversight:*** Courts should continue to play a crucial role in interpreting the laws related to hate speech, ensuring that they are applied fairly and consistently. The judiciary should also intervene where there are significant gaps in the legal framework or when misuse of laws threatens fundamental freedoms.
5. ***Focus on Preventing Harm:*** The emphasis of any legal intervention should be on preventing harm, rather than solely focusing on punishing offenders. Laws should address the potential for violence or discrimination stemming from hate speech, rather than being reactive after the damage has occurred.
6. ***Encouraging Dialogue and Tolerance:*** Promoting dialogue between different communities and fostering tolerance through education and cultural exchange can help address the underlying issues that lead to hate speech. Encouraging the peaceful coexistence of diverse communities can mitigate the need for inflammatory rhetoric.
7. ***Increased Enforcement and Training:*** Law enforcement agencies must be equipped with the tools, training, and awareness to handle cases of hate speech

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effectively. Specialized units could be set up to monitor hate speech both online and offline, ensuring timely action while respecting the rule of law.

The regulation of hate speech in India requires a balanced approach that respects freedom of speech while addressing the potential harm caused by inflammatory rhetoric. Strengthening legal frameworks, improving accountability of digital platforms, and promoting societal harmony through education and dialogue are key steps in curbing hate speech. The evolving nature of communication in the digital age presents new challenges, but with thoughtful and fair regulation, India can navigate the complexities of this issue while ensuring the preservation of its diverse and democratic fabric.

