

Hate Speech Regulation in India: Constitutional Limits, Digital Challenges, and the Future of Free Expression

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ABSTRACT

Hate speech regulation in India has emerged as a critical constitutional and policy challenge in the digital age. While Article 19(1) (a) (freedom of speech) guarantees freedom of speech and expression, Article 19(2) (reasonable restrictions) permits restrictions in the interests of sovereignty, public order, and morality. The absence of a unified statutory definition of hate speech has led to fragmented enforcement and inconsistent judicial interpretation. Recent legislative reforms under the Bharatiya Nyaya Sanhita, 2023, along with judicial pronouncements such as *Shreya Singhal v. Union of India* and *Amish Devgan v. Union of India*, highlight both progress and persisting gaps. The rise of digital platforms further complicates regulation, with algorithmic amplification, intermediary liability, and cross border jurisdiction posing new challenges. Comparative perspectives from the United States, European Union, and Asia reveal diverse approaches, situating India in a middle ground between free speech absolutism and dignity oriented regulation. This paper argues for a coherent framework that combines statutory clarity, proportional enforcement, and digital transparency to safeguard democracy while curbing harmful speech.

KEYWORDS

Hate Speech, Freedom of Speech, Digital Regulation, Judicial Interpretation, Comparative Law.

1. INTRODUCTION

The regulation of hate speech in India has become one of the most pressing constitutional and policy concerns in recent years. With the expansion of digital platforms and the increasing polarization of public discourse, the boundaries of free expression are being tested more than ever before. The Indian Constitution guarantees freedom of speech and expression under Article 19(1)(a) (freedom of speech), but this right is not absolute. It is subject to reasonable restrictions under Article 19(2) (reasonable restrictions), which permit limitations in the interests of sovereignty, integrity, public order, decency, and morality.

Despite these constitutional safeguards, India lacks a precise statutory definition of “hate speech.” This absence has led to fragmented enforcement, inconsistent judicial interpretation, and concerns about selective application. The enactment of the Bharatiya Nyaya Sanhita, 2023,

replacing the Indian Penal Code, marks a significant legislative development, yet challenges persist in addressing online hate speech, intermediary liability, and political misuse of laws.

Globally, jurisdictions differ in their approach: the United States prioritizes free speech even at the cost of tolerating offensive expression, while the European Union adopts stricter regulation to protect dignity and equality. India's position lies between these extremes, struggling to balance democratic freedoms with the imperative of maintaining social harmony.

Here's a Literature Review section for your review paper on Hate Speech Regulation in India. It synthesizes prior scholarship, judicial commentary, and comparative perspectives in a structured, academic style:

2. LITERATURE REVIEW

Constitutional Scholarship

Scholars have long debated the tension between Article 19(1)(a) (freedom of speech) and Article 19(2) (reasonable restrictions). Early constitutional theorists such as H.M. Seervai emphasized that restrictions must be narrowly construed to prevent state overreach. Contemporary scholarship, however, argues that hate speech undermines equality and dignity, thereby justifying stronger regulation.

Judicial Commentary

- In *Pravasi Bhalai Sangathan v. Union of India* (2014), the Supreme Court acknowledged the absence of a statutory definition of hate speech and urged Parliament to legislate comprehensively.
- In *Shreya Singhal v. Union of India* (2015), the Court struck down Section 66A of the IT Act, highlighting the dangers of vague restrictions. This case is frequently cited in academic literature as a landmark in protecting online free speech.
- Recent High Court judgments have underscored the need to balance public order with individual dignity, but inconsistencies remain.

Comparative Perspectives

- **United States:** Literature emphasizes the First Amendment's strong protection of speech, even when offensive (*Brandenburg v. Ohio*, 1969). Scholars argue that counterspeech, rather than criminalization, is the preferred remedy.
- **European Union:** Academic work highlights the EU's emphasis on dignity and equality, with instruments like the Framework Decision 2008/913/JHA criminalizing racist and xenophobic speech.
- **India:** Positioned between these extremes, Indian scholarship often critiques the lack of clarity in statutory provisions and warns against selective enforcement.

Empirical Studies

- Reports such as the India Hate Lab (2025) documented over 1,300 incidents of hate speech, showing a year-on-year increase. Scholars argue that digital platforms amplify hate speech, making regulation more complex.
- Studies on intermediary liability highlight the tension between platform responsibility and user freedoms.

Thematic Gaps in Literature

1. Absence of Unified Definition: Most scholarship notes the lack of a precise statutory definition of hate speech in India.
2. Digital Regulation: Limited literature exists on how Indian law should adapt to algorithmic amplification and AI-generated content.
3. Comparative Jurisprudence: While comparisons with the U.S. and EU are common, few studies explore Asian perspectives (e.g., Singapore, Malaysia).

STATUTORY FRAMEWORK

Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita (BNS), 2023 replaced the Indian Penal Code and introduced provisions directly addressing hate speech.

- Section 196 criminalizes acts that promote disharmony, hatred, or ill-will between groups.
- Punishment ranges from up to 3 years imprisonment, with enhanced penalties of 5 years if the offence is committed in a religious context.
- This provision reflects legislative intent to curb communal disharmony, but critics argue it remains vague and susceptible to misuse.

Information Technology Act, 2000

The Information Technology Act, 2000 regulates online speech and intermediary liability.

- Section 69A empowers the government to block online content in the interest of public order and national security.
- Intermediary Guidelines (2021) require platforms to remove unlawful content upon notice, but lack clear standards for defining hate speech.
- Judicial scrutiny in *Shreya Singhal v. Union of India* (2015) struck down Section 66A for vagueness, underscoring the need for precision in regulating online expression.

Other Relevant Provisions

- Representation of the People Act, 1951: Prohibits appeals to religion, caste, or community during elections, indirectly addressing hate speech in political campaigns.

- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: Criminalizes speech that insults or intimidates members of SC/ST communities.
- Indian Penal Code (pre-BNS): Sections 153A and 295A historically addressed hate speech, forming the basis for current provisions.

Key Observations

- Fragmentation: Multiple statutes address hate speech indirectly, but India lacks a unified statutory definition.
- Overlapping Jurisdiction: Offline and online speech often fall under different laws, creating enforcement challenges.
- Risk of Misuse: Broad language in provisions allows selective application, raising concerns about political targeting.

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- Here's a Judicial Developments section for your review paper on Hate Speech Regulation in India. It highlights landmark cases, judicial reasoning, and evolving trends:

4. JUDICIAL DEVELOPMENTS

Landmark Cases

Ram Manohar Lohia v. State of Bihar (1966): The Supreme Court emphasized that restrictions on speech must be narrowly tailored and directly linked to public order. This case laid the foundation for proportionality in free speech jurisprudence.

PravasiBhalaiSangathan v. Union of India (2014): The Court acknowledged the absence of a statutory definition of hate speech and urged Parliament to enact comprehensive legislation.

Shreya Singhal v. Union of India (2015): Struck down Section 66A of the IT Act, holding that vague and overbroad restrictions on online speech violate Article 19(1)(a). This case is pivotal in shaping digital free speech protections.

Amish Devgan v. Union of India (2020): The Court held that hate speech is not protected under free speech, stressing that speech inciting violence or hatred undermines constitutional values of fraternity and dignity.

Judicial Reasoning

Courts consistently highlight the principle of proportionality, ensuring that restrictions on speech are neither excessive nor arbitrary.

The judiciary distinguishes between mere offensive speech and speech that incites violence or communal disharmony.

Recent judgments emphasize the constitutional value of fraternity, recognizing that unchecked hate speech erodes social cohesion.

Emerging Trends

- Digital Hate Speech: Courts increasingly grapple with online content, intermediary liability, and jurisdictional challenges.
- Selective Enforcement Concerns: Judicial commentary acknowledges risks of political misuse of hate speech laws.
- Comparative Influence: Indian courts occasionally reference international jurisprudence, particularly European standards, to justify stricter regulation.

Here's a Digital Age Challenges section for your review paper on Hate Speech Regulation in India. It explores how technology, platforms, and algorithms complicate regulation:

5. DIGITAL AGE CHALLENGES

Online Amplification

The rise of social media platforms has transformed the scale and speed of hate speech dissemination. Online hate speech spreads virally, often reaching millions before authorities can intervene. Unlike traditional speech, digital content is borderless, making jurisdictional enforcement difficult.

Intermediary Liability

Under the Information Technology Act, 2000 and subsequent Intermediary Guidelines (2021), platforms are required to remove unlawful content upon notice. However:

- Ambiguity: No clear statutory definition of hate speech leads to inconsistent takedowns.

- Over compliance: Platforms often remove content preemptively to avoid liability, risking suppression of legitimate speech.
- Due Process Concerns: Users rarely have transparent mechanisms to challenge takedowns.

Algorithmic Amplification

Digital platforms use algorithms that prioritize engagement. Hate speech, being provocative, often receives disproportionate visibility. Scholars argue that this algorithmic bias exacerbates polarization and communal tensions.

Enforcement Challenges

- Cross-border Jurisdiction: Content hosted abroad complicates enforcement under Indian law.
- Selective Enforcement: Concerns persist about political misuse of takedown powers.
- Technological Complexity: AI-generated content (e.g., deepfakes) blurs the line between satire and harmful speech.

Emerging Issues

- AI-generated hate speech: Raises new evidentiary and liability questions.
- Encryption and anonymity: Platforms like WhatsApp make tracing offenders difficult.
- Global governance: India's approach must align with international standards to regulate cross-border digital speech.

6. COMPARATIVE PERSPECTIVE

US United States

- First Amendment protection: The U.S. Constitution strongly protects free speech, even when offensive.
- Case Law: In *Brandenburg v. Ohio* (1969), the Supreme Court held that speech can only be restricted if it incites "imminent lawless action."
- Scholarly View: American literature emphasizes counterspeech and civic education as remedies rather than criminalization.

EU European Union

- Framework Decision 2008/913/JHA: Criminalizes racist and xenophobic speech across member states.
- Approach: Prioritizes dignity and equality, reflecting Europe's historical experience with fascism and genocide.

- Case Law: The European Court of Human Rights (ECHR) has upheld restrictions on hate speech under Article 10 of the European Convention on Human Rights, emphasizing proportionality.

UK United Kingdom

- Public Order Act, 1986: Criminalizes threatening, abusive, or insulting words intended to stir racial hatred.
- Balance: Courts weigh free expression against community harmony, often adopting a middle path between U.S. absolutism and EU strictness.

SG Singapore & Malaysia

- Sedition Act: Criminalizes speech that promotes hostility between races or religions.
- Approach: Stronger emphasis on social harmony, reflecting multicultural societies.
- Criticism: Scholars argue these laws risk suppressing legitimate dissent.

IN India's Position

- India lies between the U.S. and EU models:
- Closer to EU in recognizing dignity and fraternity as constitutional values.
- Closer to U.S. in judicial reluctance to criminalize mere offensive speech.
- The absence of a unified statutory definition of hate speech remains India's biggest gap compared to these jurisdictions.

Lessons for India

- From the U.S.: Emphasize counterspeech and civic education to strengthen democratic resilience.
- From the EU: Adopt clearer statutory definitions to prevent vagueness and selective enforcement.
- From Asia: Balance multicultural sensitivities with democratic freedoms, avoiding over criminalization.

This comparative analysis shows that India's challenge is not unique but part of a global struggle to balance free speech with dignity and public order.

7. POLICY RECOMMENDATIONS

Unified Definition of Hate Speech

- India must adopt a precise statutory definition of hate speech to avoid vagueness and selective enforcement.

- Drawing from EU Framework Decision 2008/913/JHA, the definition should cover speech that incites violence, discrimination, or hostility against protected groups, while excluding mere offensive expression.

Proportional Enforcement

- Laws should distinguish between offensive speech and incitement to violence.
- Penalties must be proportionate, with stronger sanctions for speech that directly threatens public order or minority safety.

Digital Regulation

- Strengthen intermediary liability guidelines with clear standards for takedowns.
- Introduce transparency mechanisms requiring platforms to publish periodic reports on hate speech removals.
- Ensure due process safeguards, allowing users to contest wrongful takedowns.

Addressing Algorithmic Bias

- Mandate algorithmic audits for major platforms to identify whether engagement-driven algorithms disproportionately amplify hate speech.
- Encourage ethical AI frameworks to minimize amplification of harmful content.

Comparative Adaptation

- From the U.S., adopt counterspeech initiatives and civic education programs to strengthen democratic resilience.
- From the EU, incorporate statutory clarity and proportionality in defining hate speech.
- From Asian jurisdictions, balance multicultural sensitivities with democratic freedoms, avoiding over-criminalization.

Institutional Reforms

- Establish a specialized regulatory body to oversee hate speech cases, ensuring consistency across jurisdictions.
- Encourage judicial training on digital speech and comparative jurisprudence.
- Promote collaborative governance involving civil society, academia, and technology companies.

SUMMARY

India's current framework is fragmented and inconsistent. A unified statutory definition, proportional enforcement, and digital transparency are essential to balance free speech with

dignity and public order. Comparative lessons from the U.S., EU, and Asia can guide India toward a coherent and democratic approach to regulating hate speech.

8. CONCLUSION

Hate speech regulation in India stands at a critical juncture. The constitutional promise of freedom of speech under Article 19(1)(a) (freedom of speech) must coexist with the imperative of safeguarding dignity, fraternity, and public order under Article 19(2) (reasonable restrictions). Judicial pronouncements—from Ram Manohar Lohia to Shreya Singhal and Amish Devgan—have shaped the contours of permissible speech, yet the absence of a unified statutory definition continues to create uncertainty.

The Bharatiya Nyaya Sanhita, 2023 marks progress by codifying provisions against communal disharmony, but its broad language risks selective enforcement. Similarly, the Information Technology Act, 2000 and intermediary guidelines attempt to regulate online speech, yet struggle against algorithmic amplification, anonymity, and cross border jurisdiction.

Comparative perspectives reveal that India occupies a middle ground between the U.S. model of free speech absolutism and the EU's dignity-oriented regulation. This position reflects India's pluralistic society but also underscores the need for clarity and consistency.

Policy reforms must therefore focus on:

- Establishing a precise statutory definition of hate speech.
- Ensuring proportional enforcement that distinguishes offensive speech from incitement.
- Strengthening digital regulation with transparency and due process safeguards.
- Promoting civic education and counterspeech to build democratic resilience.

Ultimately, India's challenge is to craft a framework that protects free expression while preventing speech that corrodes social harmony. A coherent, balanced approach—grounded in constitutional morality and informed by global best practices—will ensure that hate speech regulation strengthens democracy rather than undermines it.

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