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The Role of the Judiciary in Interpreting Hate Speech Laws in India

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ABSTRACT

Hate speech has emerged as a serious challenge to the democratic and constitutional framework of India, particularly in the digital age, where information spreads rapidly. While the Indian Constitution guarantees the freedom of speech and expression under Article 19(1)(a), it also imposes certain reasonable restrictions under Article 19(2) to maintain public order, decency, and social harmony. Although legal provisions exist under the Bharatiya Nyaya Sanhita and other statutes, the enforcement of hate speech regulations remains inconsistent and often ineffective. This article examines the gap between the legal framework and its actual application, focusing on the role of constitutional governance in ensuring effective enforcement. It analyses important judicial pronouncements, including Shreya Singhal v. Union of India, which illustrate the judiciary's approach to striking a balance between free speech and necessary limits. The article also explores challenges such as vague legal definitions, the misuse of laws for political purposes, selective enforcement, and the growing influence of social media platforms. Through a doctrinal and analytical approach, it argues that effective enforcement requires not only strong laws but also accountable institutions, clear guidelines, and coordinated efforts among the legislature, executive, and judiciary. It concludes by suggesting reforms aimed at strengthening constitutional governance, ensuring that free expression is protected while preventing speech that incites hatred and threatens social harmony.

Keywords: Hate speech, Judiciary, Interpretation, Rule of law.

I. INTRODUCTION

One of the most significant liberties granted to citizens in a democratic nation like India is the freedom of speech. The Constitution guarantees this right under Article 19(1)(a),¹ which allows every individual to present their thoughts, opinions, and ideas without unnecessary interference.² This freedom plays an important role in shaping public opinion, encouraging debate, and strengthening democracy. However, this freedom is not unqualified. The Constitution itself recognises that unrestricted speech can sometimes harm society. Reasonable

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¹ INDIA CONST. art. 19(1)(a).

² LAW COMM'N OF INDIA, REPORT NO. 267: HATE SPEECH (2017).

restrictions are therefore provided under Article 19(2),³ which permit the limiting of speech in the interest of public order, morality, decency, and national security. This balance between freedom and restriction becomes especially important when dealing with hate speech.

In recent years, hate speech has become a growing concern in India. Words may now spread more quickly than ever before, reaching a broad audience within seconds, owing to the growth of social media and digital communication platforms. While this development has many benefits, it also increases the risk of misuse. Statements that promote hatred, violence, or discrimination against individuals or communities on the basis of their caste, gender, religion, or ethnicity can create serious social tensions.⁴ The problem lies not only in the existence of hate speech, but also in the difficulty of controlling and regulating it effectively. India has laws, such as the provisions of the Bharatiya Nyaya Sanhita, 2023, that aim to punish acts which disturb communal harmony or incite hatred.⁵ Despite these laws, however, enforcement remains inconsistent. Authorities sometimes act too slowly, and in other instances laws may be misused for political or personal reasons. The judiciary has also played an important role in addressing this issue. In cases such as *Shreya Singhal v. Union of India*,⁶ the Supreme Court emphasised the significance of protecting free speech while ensuring that harmful speech does not go unchecked. Such judgments highlight the ongoing struggle to strike the right balance between liberty and control.

This article focuses on understanding how hate speech laws are enforced in India and whether constitutional governance is effective in dealing with this challenge. It examines the gap between the legal provisions and their actual implementation. It also explores how institutions such as the legislature, executive, and judiciary can work together to ensure that laws are applied fairly and effectively. In simple terms, the core issue is this: how can India safeguard the freedom of expression while also prohibiting harmful speech that injures others and disturbs social harmony? Finding the answer to this question is essential for maintaining both democracy and peace in society.

II. CONCEPT OF HATE SPEECH

Hate speech is a term that is widely used but not always clearly understood. In simple terms, hate speech refers to any form of expression, whether spoken, written, or symbolic, that spreads

³ INDIA CONST. art. 19(2).

⁴ LAW COMM'N OF INDIA, REPORT NO. 267: HATE SPEECH (2017).

⁵ The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023, ss. 196, 299, 353 (India).

⁶ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

hatred, discrimination, or violence against a person or a group of people.⁷ This hatred is usually based on characteristics such as religion, caste, race, gender, language, or nationality. Unlike ordinary speech, hate speech does not merely express an opinion; it often aims to hurt, insult, or provoke others.⁸ It can create fear among targeted communities and disturb social harmony. For example, speeches that encourage violence against a particular religious group or messages that insult a community's identity may be considered hate speech. One of the most difficult aspects of comprehending hate speech is distinguishing it from free speech. In a democracy, people have the right to express their opinions, even if those views are unpopular or critical.⁹ However, this right does not include the freedom to spread hatred or incite violence. The line between these two can sometimes be very thin and difficult to identify.

Another important aspect of hate speech is its impact. Words have power, and when used irresponsibly, they can lead to serious consequences. Hate speech can promote discrimination, increase social divisions, and even lead to violence or riots.¹⁰ In a diverse country like India, where people from different religions, cultures, and backgrounds live together, such speech can be particularly dangerous. At present, Indian law does not provide a definition of what constitutes hate speech. Instead, different laws address different forms of harmful speech. For example, the provisions of the Bharatiya Nyaya Sanhita deal with actions that incite animosity between communities or disparage religious convictions. While these laws are helpful, the lack of a clear and uniform definition often creates confusion and inconsistency in enforcement.

Internationally, there have been efforts to define and regulate hate speech more clearly. Many countries and organisations recognise that, while the freedom of expression is important, it must be limited when it endangers the rights and dignity of others.¹¹ This idea reflects a broader principle: one person's freedom should not harm another person's safety or respect. In the current digital era, the nature of hate speech has also changed. Social media platforms allow users to share messages instantly with a wide audience. This makes it easier for hate speech to spread quickly and widely. At the same time, it becomes more difficult for authorities to monitor and control such content. This has made the problem more complicated.

⁷ U.N. STRATEGY & PLAN OF ACTION ON HATE SPEECH (2019).

⁸ JEREMY WALDRON, THE HARM IN HATE SPEECH 78 (2012).

⁹ INDIA CONST. art. 19(1)(a).

¹⁰ LAW COMM'N OF INDIA, REPORT NO. 267: HATE SPEECH (2017).

¹¹ U.N. HUMAN RIGHTS COUNCIL, RABAT PLAN OF ACTION (2012).

III. HATE SPEECH LAWS IN INDIA

Hate speech is frequently addressed by a number of provisions of the Bharatiya Nyaya Sanhita, 2023, namely Section 196 (promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, and the like, and doing acts prejudicial to the maintenance of harmony), Section 197 (imputations and assertions prejudicial to national integration), Section 299 (deliberate and malicious acts intended to outrage the religious feelings of any class by insulting its religion or religious beliefs), Section 302 (uttering words with deliberate intent to wound the religious feelings of any person), Section 353 (statements conducing to public mischief), and Section 354 (acts caused by inducing a person to believe that he will be rendered an object of divine displeasure). The Information Technology Act, 2000, not only addresses matters relating to online speech but also seeks to curb hate speech in electoral contexts. Critics have pointed out that these provisions tend to be vague and broad in scope, leaving considerable room for interpretation by authorities; as a result, decisions may be made on the basis of subjective judgment rather than the strict letter of the law. From these criticisms emerges a pattern in which selective enforcement and political misuse coexist with the suppression of dissenting ideas under the guise of regulating hate speech. Conversely, there have been cases where genuinely harmful expression has slipped through the legal cracks, pointing to a lack of uniformity in application. Such cases raise significant questions about equality before the law. The interpretation and evolution of India's legal framework concerning hate speech and the freedom of expression have been primarily shaped by judicial decisions.¹²

A. Constitutional provisions

India's approach to this concept is deeply rooted in its constitutional values, which seek to balance personal freedom with social harmony. The Constitution guarantees the right to freedom of speech and expression under Article 19(1)(a).¹³ This right allows every citizen to express their ideas, opinions, and beliefs freely. It is considered essential to the functioning of democracy, as it encourages open discussion, criticism, and the exchange of ideas.

However, this liberty is not unlimited. The Constitution itself places certain boundaries through Article 19(2).¹⁴ These limitations give the State the power to regulate speech where it could endanger morality, decency, public order, or the sovereignty and integrity of the nation. In simple terms, while people are free to speak, they cannot use this freedom to spread hatred, incite violence, or disturb peace in society. This balance between rights and restrictions reflects

¹² RATANLAL & DHIRAJLAL, *THE BHARATIYA NYAYA SANHITA* 215 (LexisNexis 1st ed. 2024).

¹³ INDIA CONST. art. 19(1)(a).

¹⁴ INDIA CONST. art. 19(2).

the idea of constitutional governance.¹⁵ It implies that the Constitution must serve as the foundation for all State operations, guaranteeing justice, accountability, and the rule of law. In the context of hate speech, constitutional governance plays an important role in ensuring that laws are not only present but also properly applied. It ensures that authorities do not misuse laws to suppress genuine criticism, while also taking strict action against speech that threatens social harmony.

IV. ROLE OF THE JUDICIARY IN INTERPRETATION

The Indian judiciary has had a significant impact on how hate speech is understood and regulated. Given that Indian law lacks a precise definition of hate speech, courts have stepped in to interpret its meaning and set limits on free speech.¹⁶

The Supreme Court has addressed hate speech in greater detail in recent rulings. In *Pravasi Bhalai Sangathan v. Union of India*,¹⁷ the Court stressed the need for current legislation and legislative action while acknowledging the detrimental effects of hate speech, but declined to provide specific recommendations. In *Shreya Singhal v. Union of India*,¹⁸ 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*,¹⁹ observing that communication which undermines the dignity of a community and possesses the potential to incite hatred may fall outside constitutional protection.²⁰

Notwithstanding these judicial interventions, the Indian legal framework concerning hate speech remains ambiguous and fragmented. The absence of a reliable legal definition is evident in shifting judicial verdicts that have relied on divergent standards and grounds. The lack of a clear and uniform judicial definition of hate speech has further complicated implementation efforts. Considerable debate therefore persists about the appropriate balance between protecting the freedom of speech and preventing harm. Beyond Article 19, the regulation of hate speech also draws on a number of other constitutional provisions. Article 15, for instance, prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. By encouraging exclusion, discrimination, and social stigma against particular groups, hate speech directly

¹⁵ M.P. JAIN, INDIAN CONSTITUTIONAL LAW 67 (LexisNexis 8th ed. 2018).

¹⁶ LAW COMM'N OF INDIA, REPORT NO. 267: HATE SPEECH (2017).

¹⁷ *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477 (India).

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

¹⁹ *Amish Devgan v. Union of India*, (2021) 1 SCC 1 (India).

²⁰ M.P. JAIN, INDIAN CONSTITUTIONAL LAW 412 (LexisNexis 8th ed. 2018).

violates these principles. In addition, the Preamble to the Constitution places strong emphasis on fraternity, assuring both the unity and integrity of the nation and the dignity of the individual. This constitutional ideal stands directly at odds with hate speech. The emergence of digital and social media platforms is another critical factor affecting the regulation of hate speech. The nature, scope, and influence of speech have all changed as a result of the growth of online communication. Large audiences can quickly access content on digital channels, often without editorial control. While this has improved access to information and political engagement, it has also made it easier for hate speech, inflammatory content, and misinformation to proliferate. Owing to its anonymity, virality, and cross-jurisdictional reach, online hate speech presents distinct problems. The legal response to hate speech on the internet raises complex questions concerning the freedom of expression, intermediary liability, privacy, and State control. The regulation of hate speech may be better understood by reference to international human rights law.²¹

The freedom of expression is recognised as a fundamental right through instruments such as the International Covenant on Civil and Political Rights, 1966,²² and the Universal Declaration of Human Rights, 1948,²³ although speech that incites violence, hatred, or discrimination may be restricted. Differing levels of tolerance and restriction are reflected in comparative constitutional approaches, which are influenced by constitutional ideologies and historical experiences. With a view to securing community harmony and human dignity, some jurisdictions impose greater limits, while others adopt a strongly speech-protective stance. India's constitutional framework reflects its considered commitment to both community fairness and individual liberty. The present study further focuses on examining the relationship between hate speech and free expression in India by closely analysing judicial decisions and constitutional requirements. The principal aim of this article is to assess how hate speech is understood and regulated under Indian law, whether the existing legal structures provide sufficient safeguards against exploitation and abuse, and how judicial interpretation has shaped the balance between individual interests and group rights. Particular attention is given to matters involving the so-called complexity paradox and constitutional comparison.²⁴

The continuous sociopolitical change in India, accompanied by rapid political exchanges and increased use of mass and new media, has intensified the socio-legal tensions of the hate speech

²¹ GAUTAM BHATIA, OFFEND, SHOCK, OR DISTURB: FREE SPEECH UNDER THE INDIAN CONSTITUTION 142 (2016).

²² International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI).

²³ Universal Declaration of Human Rights, G.A. Res. 217 (III) A (Dec. 10, 1948).

²⁴ JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT 112 (1999).

debate. Speech, in the fullest sense of the term, is now circulated and propagated through televised confrontation, social media platforms, and digital media generally, in ways that far exceed older means of transmission such as print media and public meetings. In contrast to the editorial oversight and conventions of civil discourse, automated and algorithmic distribution multiplies the reach and immediacy of such transmissions. Given the heightened risk of hate speech causing physical and psychological harm, there is a need to revisit the existing legal and regulatory rules. Hate speech rules are among the most contentious and complex in contemporary legislation, and their complexity is heightened by the subjective evaluation of speech as antagonistic.²⁵

Difficult as it may be, unkind or unpopular speech is not always hate speech, and drawing the line between different types of speech, and between what is acceptable and what is prohibited, remains difficult. Imposing too few or too many restrictions can sound the death knell for free speech in a republic that values opposition and plurality. On the other hand, the absence of adequate restraints on speech that degrades and provokes hatred against the burdened and the disadvantaged represents a concession to partiality and an erosion of republican values. This reflects the need for an approach to hate speech legislation that recognises both the dangers of vagueness and the requirement for a consistent and lawful foundation. In addition, hate speech magnifies existing communal inequality and dominance by disproportionately affecting the most marginalised and historically burdened groups within the community. Hate speech undermines the substantive equality secured by the constitutional framework and further hinders the fair participation of already informally excluded groups in civic life. Hate speech, therefore, far from being merely a matter of appearance, bears upon social justice, human dignity, and the right to inclusive citizenship. It is significant to examine hate speech in its composite forms in order to comprehend and confront pervasive bias. Another complex matter is State control in regulating speech. The State is lawfully authorised to uphold order and protect the honour and integrity of persons. However, where the relevant powers are exercised subjectively or irresponsibly, protective standards may be transformed into instruments of suppression.²⁶

Ultimately, the task is to ensure that hate speech laws are enforced within frameworks that satisfy legal doctrine. This requires precise formulation in the law, careful restraint in the judiciary, and a sensible approach to enforcement. In addition, the developing body of hate speech law is also testing the relevance of existing doctrinal standards that were evolved

²⁵ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 412 (LexisNexis 8th ed. 2018).

²⁶ ALEX BROWN, *HATE SPEECH LAW: A PHILOSOPHICAL EXAMINATION* 234 (2017).

primarily in connection with conventional media. When attention is given to current situations, in which speech on online platforms may rapidly reach vast audiences, tests such as public order, provocation, and proximity of harm need to be reassessed. While adhering to established legal principles, the law must adapt to reflect these evolving circumstances. A full scholarly inquiry into the provisions governing hate speech becomes critical in this broader context. This inquiry must adopt a combined approach that takes into account legal perspective, legislative intent and judicial interpretation, and sociological reality, rather than emphasising only precise statutory regulation or case law analysis. This article also hopes that, by analysing hate speech in relation to the broader context of equality, the freedom of speech, and respect for human dignity, it will offer a more precise and equitable understanding of this complex subject. Equally, the study aims to straddle a number of fields: media, criminal, and constitutional law, as well as human rights discourse. Its principal concern is whether the Indian legal system is adequately addressing the harmful effects of hate speech so as to protect democratic freedoms on the one hand while not obstructing expressive activity on the other. Through doctrinal scrutiny and critical evaluation, this article seeks to offer insight to legislatures, courts, and scholars to assist India in its endeavour to prohibit hate speech in a manner consistent with constitutional standards and democratic principles.²⁷

V. CHALLENGES IN ENFORCEMENT

Despite the existence of laws and judicial guidelines, the enforcement of hate speech regulations in India faces several challenges. One major issue is the lack of a clear and uniform definition of hate speech.²⁸ This creates confusion and leads to inconsistent interpretation by authorities. The misuse of the law for private or political gain is another issue, where action is sometimes taken selectively against certain individuals while others are ignored. Selective enforcement by authorities further weakens the effectiveness of these laws.²⁹ In many cases, action depends on political pressure or public attention rather than legal merit. Furthermore, the growth of social media and digital platforms has facilitated the quick and widespread dissemination of hate speech. Monitoring such content is difficult, and harmful messages often circulate before any action can be taken. Delay in judicial processes is another significant challenge. Cases related to hate speech often take a long time to be resolved, reducing the impact of legal action.³⁰ By

²⁷ CHRIS DEMASKE, FREE SPEECH AND HATE SPEECH IN THE UNITED STATES: THE LIMITS OF TOLERATION 121 (2021).

²⁸ LAW COMM'N OF INDIA, REPORT NO. 267: HATE SPEECH (2017).

²⁹ GAUTAM BHATIA, OFFEND, SHOCK, OR DISTURB: FREE SPEECH UNDER THE INDIAN CONSTITUTION 98 (2016).

³⁰ Marc Galanter & Jayanth K. Krishnan, *Bread for the Poor: Access to Justice and the Rights of the Needy in India*, 55 HASTINGS L.J. 789 (2004).

the time a decision is made, the damage may already have been done. These challenges show that having laws is not enough; effective implementation, clear guidelines, and institutional accountability are equally important.

In essence, constitutional governance means that the actions of the government must follow the rules, ideals, and guidelines specified in the Constitution. It ensures that power is not used arbitrarily and that the rights of citizens are protected at all times. Constitutional governance is crucial in preserving a balance between defending the freedom of expression and prohibiting speech that could undermine social peace when it comes to hate speech. The Constitution is not merely a legal document; it embodies the ideals of justice, equality, and dignity.³¹ When it comes to hate speech, constitutional governance ensures that these ideals are respected. It shields people from prejudice and animosity while also preventing the abuse of free expression. In simple terms, it acts as a guiding framework that directs the State to act fairly and responsibly.

Different institutions play key roles in ensuring constitutional governance. The judiciary acts as the guardian of the Constitution.³² It interprets laws and ensures that they do not violate fundamental rights. Through various judgments, courts have clarified the limits of free speech and have attempted to define what constitutes hate speech. The judiciary also ensures that any restriction on speech is reasonable and not excessive. The legislature is responsible for making laws. It has a duty to create clear, precise, and effective laws to deal with hate speech. However, the lack of a single, all-encompassing rule defining hate speech is one of the problems in India. This makes applying the law consistently challenging. The legislature must therefore work towards creating clearer guidelines and updating existing laws to address modern challenges, especially those arising from digital platforms. The executive, which includes the police and administrative authorities, is responsible for implementing these laws.³³

Its role is crucial, because even the best laws are ineffective if they are not properly enforced. The executive must act impartially and promptly in cases of hate speech. It should not be influenced by political or social pressure. Proper training and awareness among officials can help improve enforcement. Another important aspect of constitutional governance is the rule of law.³⁴ According to this idea, no one is above the law and everyone is equal before it. With regard to hate speech, the rule of law ensures that action is taken on the basis of legal principles rather than personal or political bias. It also builds trust among citizens that justice will be

³¹ GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 234 (1966).

³² M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 234 (LexisNexis 8th ed. 2018).

³³ UPENDRA BAXI, *THE CRISIS OF THE INDIAN LEGAL SYSTEM* 345 (Vikas Publishing 1982).

³⁴ A.V. DICEY, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* 431 (Macmillan 10th ed. 1959).

delivered fairly. Accountability is equally important. Institutions must be answerable for their actions. There should be procedures in place to hold authorities responsible if they disregard laws against hate speech. This can be achieved through judicial review, transparency, and public awareness.

VI. CONCLUSION

This study shows that, although India has a robust legal and constitutional framework to combat hate speech, there are major gaps in its implementation. The harmony between reasonable limitations under Article 19(2) and the freedom of speech under Article 19(1)(a) remains a complex but essential aspect of constitutional governance. Maintaining this balance is important for protecting both individual liberty and social harmony. Unrestricted speech can lead to division and conflict, while excessive restrictions can harm democracy. A careful and balanced approach is therefore necessary. Strengthening constitutional governance is the key to addressing hate speech effectively. This requires clear laws, responsible institutions, and active participation from society. By working together, India can guarantee the preservation of the freedom of expression while simultaneously safeguarding the dignity and solidarity of its citizens.

VII. SUGGESTIONS

To effectively deal with hate speech in India, it is important to move beyond merely having laws and to focus on improving their clarity and implementation. One of the most urgent needs is to develop a clear and uniform definition of hate speech. At present, different laws address different aspects, which often leads to confusion and inconsistent application. A well-defined concept will help authorities, courts, and citizens better understand what is acceptable and what is not. Another important step is to strengthen enforcement mechanisms. Laws are effective only when they are applied fairly and promptly. Authorities must act without delay and without bias, ensuring that all cases are treated equally. This will deter the abuse of free speech and boost public confidence in the justice system. Law enforcement agencies must also receive training. To recognise hate speech, police officers and administrative officials need to receive appropriate training, understand the relevant legal provisions, and handle such cases sensitively. This will help in avoiding both overreaction and negligence. In today's digital age, regulating online platforms has become crucial. Although the Information Technology Act, 2000, offers a framework, more efficient oversight and closer collaboration with social media companies are required. Platforms should be encouraged to take responsibility for the content they host and to act quickly against harmful material.

Education and public awareness are also important. People should be made aware of the impact of hate speech and the importance of respecting diversity. Educational institutions, the media, and civil society can contribute by promoting the values of tolerance, equality, and responsible expression.
