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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

HATE SPEECH AND FREE SPEECH IN INDIA: A CONSTITUTIONAL CRISIS IN THE DIGITAL AGE

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Abstract

This paper looks at hate speech from both the legal and social angles. It says that even though the Constitution allows for some limits on hate speech, these limits are often unclear. Also, the rules change depending on the platform, and they are not always applied the same way. The paper suggests ways to make things better. For example, there should be clearer rules about what is considered as hate speech. The courts should closely monitor the implementation of content removal requirements. Finally, social media platforms should be more responsible. These suggestions aim to find a good balance in India's online world. The goal is to protect and ensure individual freedom, show respect for others, and keep a diverse environment.

The paper also examines laws such as IPC Sections 153A and 295A, which criminalize hate speech, and reviews key court decisions, including the Amish Devgan case (2020), which emphasized the responsibility of public figures to refrain from using language that promotes hate. In the recent rulings given by the Supreme Court, which have confirmed that hate speech is not protected under the scope of Article 19 and can be controlled to preserve social harmony. Focusing on the digital age, this research paper evaluates the effects of the IT Rules, 2021, the responsibilities of online platforms, and the challenges faced during controversies like the Tandav incident.

It examines significant court cases such as Romesh Thappar v. State of Madras (1950), S. Rangarajan v. Jagjivan Ram (1989), and Shreya Singhal v. Union of India (2015), where the Information Technology Act of 2000's Section 66A was declared void due to its ambiguous language and propensity to restrict information that is "grossly offensive." The definition and restrictions placed on speech by courts through the above judgements are also covered in the essay.

Keywords:

Hate Speech, Freedom of Expression, Constitutional limits, Regulations on social media and constitutional provisions.

INTRODUCTION

In the recent years, hate speech has been an emerging phenomenon in India's pluralistic and democratic political environment. As per the 267th Report of the Law Commission of India, hate speech can be characterized as an persuasion to hatred against a group of individuals determined by their attributes such as race, religion, ethnicity, gender, sexual orientation, language, or belief.¹ It aims to sideline, insult, and humiliating its targets, typically at the cost of mobilizing violence, discrimination, and social split.² In a country as plural and complex as India, this kind of speech not only hurts groups and individuals but also danger to the secular and inclusive spirit incorporated in the Constitution.

Article 19(1)(a) of the Indian Constitution gives protection to the freedom of speech and expression. But it also recognizes the need to impose reasonable restrictions under Article 19(2) in public order, morality, security, and communal harmony interests. This balance within the Constitution seeks to allow a healthy exchange of ideas but prohibit those which lead to hatred or violence. Despite this framework, the line between free speech and hate speech is still unclear in practice, and enforcement has been sporadic or politically motivated.

Indian criminal law contains several provisions that address preventing hate speech. Section 153A and 153B IPC criminalize speeches that promote hatred between groups on the basis of religion, race, place of birth, residence, or language.³ Section 295A IPC criminalizes deliberate and malicious conduct to outrage religious feelings. In addition, Sections 505(1) and 505(2) address the publication of matter likely to cause ill will, fear, or hatred among groups of people. These sections are useful in governing communal disharmony and preventing incitement to violence.

¹. **Law Commission of India**, *Report No. 267: Hate Speech* (submitted to the Government of India, 23 March 2017) (available at: lawcommissionofindia.nic.in/reports/Report267.pdf, accessed 19 August 2025).

². *Law Commission asks government to fortify democracy against hate speech*, *The Hindu*, (date published not accessible) (available at: thehindu.com/news/national/law-commission-asks-govt-to-fortify-democracy-from-hate-speech/article17655039.ece, accessed 19 August 2025).

³. Indian Penal Code, § 153A (1860)

Apart from the IPC, other legislation controls hate speech in some conditions. Representation of the People Act, 1951, is an important legislation in controlling hate speech during elections. Promoting animosity or hatred among citizens on the basis of caste, religion, or community in order to win elections is forbidden by Sections 123(3A) and 125, as this would be considered corrupt.

Furthermore, Section 8 prevents an individual convicted of particular offenses, including hate speech, from standing for election. Special laws like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the Protection of Civil Rights Act, 1955, criminalize incitement or hate speech against vulnerable and marginalized communities as well.⁴

The Indian judiciary has intervened considerably with regard to the issue of hate speech. In *Shaheen Abdulla v. Union of India* (2022), the Supreme Court was in serious concern with the rising trend of hate speech and suggested unequivocally that the governments must act suo motu without waiting for formal complaints.⁵ The Court emphasized that the spirit of fraternity, being one of the core constitutional values, can never exist unless the communities with varied features live with respect for each other. Earlier, in *Pravasi Bhalai Sangathan v. Union of India* (2014), the Court did acknowledge that there is no concrete law criminalizing hate speech and requested the Law Commission to examine the issue, thus avoiding judicial overstepping.⁶ In *Shreya Singhal v. Union of India* (2015), while declaring Section 66A of the Information Technology Act, 2000 as unconstitutional, the Court explicitly stated that only speech that had gone to the extent beyond discussion or advocacy to incitement could be reasonably restricted under Article 19(2).⁷

Judicial utterances and legal enactments alone are insufficient. Hate speech is not a constitutional or legal problem alone; it is a social one. The answer is not only in punitive steps but also in creating a culture of mutual respect and tolerance. This requires a multi-faceted response: awareness-raising campaigns about the repercussions of hate speech, media literacy

⁴ **Human Rights Watch**, *Stifling Dissent: The Criminalization of Peaceful Expression in India*, 25 May 2016 (available at: hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india, accessed 19 August 2025).

⁵ *Shaheen Abdulla v. Union of India*, W.P. (CrI.) No. 214 of 2022 (SC).

⁶ *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 S.C.C. 477.

⁷ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1.

to debunk falsehoods and stereotypes, and codes of conduct for public figures, parliamentarians, and social media platforms to make them accountable. Fostering civil conversation, inter-faith dialogue, and responsible journalism is important in countering hate speech that polarizes and divides society.

Lastly, hate speech is a toxic process that destroys social cohesion, democratic norms, and human dignity. India has its own legislative framework that can be made even stronger, but the real war against hate speech is in the country's collective conscience. Law enforcers have to move fast and be unbiased, institutions have to be alert, and citizens have to adopt sufferance as a civic duty. In a multicultural democracy such as India, protecting freedom of speech while keeping its abuse from promoting hatred is not just a legal problem—it is a social and moral one.⁸

IMPORTANT PROVISIONS THAT ARE BEING USED IN REPORT FURTHER:-

Some of the provisions (SECTIONS AND ARTICLES)are:-

THE CONSTITUTION OF INDIA
Article 19

INFORMATION TECHNOLOGY ACT, 2000
66A <i>(held unconstitutional by the Supreme Court in Shreya Singhal v Union of India⁹)</i>

I.P.C. 1860 (INDIAN PENAL CODE)	B.N.S. 2023 (BHARATIYA NYAYA SANHITA)
153A	196
153B	197
295A	299
505	353

⁸.*Hate Speech*, **Drishti IAS Daily News Analysis**, *Drishti IAS*, 7 October 2023 (available at: drishtias.com/daily-updates/daily-news-analysis/hate-speech-5, accessed 20 August 2025)

⁹. AIR 2015 SC 1523

CONSTITUTIONAL AND STATUTORY BENCHMARKS

The right of free speech and expression, incorporated in the Article 19(1)(a) of the Indian Constitution, is at the core of the democratic spirit of the Republic. The liberty, however, is not unfettered. The Indian constitutional as well as legislative landscape contemplates reasonable restrictions balancing the freedom of an individual with the harmony of all and public order. This part examines the doctrinal development of free speech in terms of seminal judicial declarations, the range of limitations possible under Article 19(2), and the individual statutory enactments such as Sections 153A and 295A of the Indian Penal Code (IPC) that implement such limitations.

1. Free Speech Doctrine: *Romesh Thappar*¹⁰ and *S. Rangarajan*¹¹-- Scope and Limits

The judicial understanding of Article 19(1)(a) has changed a lot over time, mostly because of important court cases like *Romesh Thappar v. State of Madras* (1950) and *S. Rangarajan v. P. Jagjivan Ram* (1989). These cases helped define what speech is allowed under the law.

In *Romesh Thappar v. State of Madras*, the Supreme Court of India overturned a censorship rule that was stopping a left-wing magazine from being published.

The Court said that freedom of speech and the press is very important for a democracy. It stated that "freedom of speech and of the press lie at the foundation of all democratic organizations." Significantly, it averred that only such curbs which squarely fell within Article 19(2) could be considered constitutional. At the time, Article 19(2) allowed restrictions on no grounds other than "*security of the state*" and "*public order*." The case therefore set an early high watermark for protection of free speech, establishing a precedent that vague or excessive censorship would not be accepted."¹²

"Almost four decades later, in *S. Rangarajan v. P. Jagjivan Ram*, The Hon'ble Supreme Court of India reaffirmed the highest value placed on free speech, particularly in the film and the arts sector. The Hon'ble Court said that speech can only be limited if it creates a "clear and present danger" to public order. The decision stressed that freedom of expression should not be stopped just because there are threats of protests, processions, or violence. Instead, it is up to the government to ensure law and order, not to restrict people's speech.

¹⁰.1950 AIR 124

¹¹. 1989 SCR (2) 204

¹².Ibid

The two cases together show that while free speech is very important, it must be considered carefully when there is a real and immediate risk of violence or disruption to public peace. However, this is only allowed if the danger is actual and happening soon, not just imagined or likely to happen in the future.

2. Reasonable Restrictions: Article 19(2) Categories

“While Article 19(1)(a) guarantees freedom of speech, Article 19(2) allows the State to impose “reasonable restrictions” 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”¹³

Every category is an appropriate base for regulating speech but all of the prohibitions listed above must meet the rationality and proximity requirements.

Sovereignty and the Integrity of India: This aforesaid exception ensures the territorial integrity, Sovereignty and the unity of India. Speech in favour of secession, dissolution, or challenging the sovereignty of the country—like calling for independent states or endorsing separatist movements—can be limited for the sake of the national unity. some of the examples are:- KHALISTANI MOVEMENTS IN PUNJAB, AZAD KASHMIR, NAGA SEPERATION, etc. where any speech related to the abovesaid topics or any other, will fall under purview of this restriction.

Security of the State: Statements that pose a threat to national security, like calling for war, rebellion, or disclosure of secret information on defence or national policy, can be restricted. The objective is to protect the country from serious internal and external aggressions.

Friendly Relations with the Foreign States: In order to maintain the diplomatic relationships of

¹³. Article 19(2) of the Constitution of India

India, speech that would damage relations with foreign nations—e.g., hate propaganda or insulting statements against governments of foreign countries—may be curbed. This guarantees appropriate global behaviour by citizens and maintain global level or status of India. *The Public Order*: As established in “**Ram Manohar Lohia v. State of Bihar (1966)**, the Court elucidated the three-level distinction between 'law and order', 'public order', and 'security of the state'. Restrictions are only possible when speech endangers the middle or upper level-- --public order or national security. The impact should be proximate and not remote or indirect.”¹⁴

Decency or Morality: This is usually called upon in obscenity cases. In “**Aveek Sarkar v. State of West Bengal (2014)**, the Court ruled that artistic and journalistic works are shielded unless they make an appeal to prurient interest alone.”¹⁵

Contempt of Court: Speech lowering the dignity of courts, hindering judicial proceedings, or scandalising the judiciary can be restrained. It ensures public confidence in the judiciary and protectsjudicialindependence.

Defamation and Incitement to an Offence: Such grounds safeguard the dignity of an individual and avoid speech that could instigate criminal offenses. “The Constitution Bench in **Subramanian Swamy v. Union of India (2016)**, held that,the criminal defamation law as a reasonable restriction by ruling that reputation is part of the right of life under Article 21.”¹⁶

Incitement to an Offence: Freedom of expression doesn't comprise inciting crime or violence. Where anyone promotes others to indulge in crime—like rioting, arson, or assault—the State is free to impose restrictions to prevent such illegal effects of such activities.¹⁷

Importantly, the "reasonableness" of any restriction must be adjudged in light of the circumstances and must not be excessive or disproportionate. In “**Modern Dental College v. State of Madhya Pradesh (2016)**, the Supreme Court emphasized the doctrine of

¹⁴,1966 AIR 740

¹⁵,(2014) 4 SCC 257

¹⁶,(2016) 7 SCC 221

¹⁷. International Center for Not-for-Profit Law, *Anti-Riot Laws in the United States*, International Center for Not-for-Profit Law, updated 7 March 2024 (available at: icnl.org/anti-riot-laws-in-the-united-states, accessed 26 August 2025).

proportionality as central to evaluating the legitimacy of restrictions.”¹⁸

3. IPC Provisions: Sections 153A and 295A in Detail

Statutory provisions of the Indian Penal Code are tools by which Article 19(2) is applied. The two important provisions here are Sections 153A (section 196 of BNS, 2023) and 295A (section 299 of BNS, 2023) of Indian Penal Code.

Section 153A: Inciting Hatred Between Groups

Section 153A makes speech promoting hatred between various groups on the basis of religion, race, place of birth, residence, language, etc., and acts otherwise prejudicial to the maintenance of harmony criminal. The essential ingredients are:

- Inciting enmity or feeling of enmity, hatred, or ill-will between two communities.
- Achieving so by words (spoken or written), signs, or images.
- The action must be wilful and aimed to cause outrage.

“In **Bilal Ahmed Kaloo v. State of Andhra Pradesh (1997)**, the Court held that casual or careless observations with no intention of provoking disharmony cannot be punished under this section.”¹⁹

The section has been used habitually to preserve the social harmony but has also been condemned for being employed to suppress the opposition, particularly when used pre-emptively or based on inadequate evidence of in the near future danger.

Section 295A: Outraging the Religious Feelings

Section 295A criminalises a malicious act performed with the intent to outrage religious feelings of some class by insulting its religion or religious beliefs.²⁰

The offence components are:

- A malicious and intentional act.
- It must be committed with the intention of outraging spiritual feelings
- Insult to religion or religious beliefs must be present

This provision came into force in 1927 following the Rangeela Rasool scandal and was later

¹⁸.2016 Latest Caselaw 241 SC

¹⁹.AIR 1997 SUPREME COURT 3483

²⁰.

upheld by Indian courts as a reasonable restriction under Article 19(2) (public order and morality).

“In **Mahendra Singh Dhoni v. Yerraguntla Shyamsundar (2017)**, the Supreme Court dismissed a complaint under Section 295A regarding a magazine cover featuring Dhoni as Lord Vishnu, citing there was no malicious or intentional intention to offend religious feelings.”²¹ The *"deliberate and malicious intent"* requirement is the one that keeps Section 295A from becoming too broad. However, its use against artists, journalists, or social commentators because of hurtful subjective sentiments continues to raise concerns and has a chilling effect on free speech.

LANDMARK JUDGMENTS

The Indian judiciary has had a pivotal role in defining the parameters of free speech, particularly regarding hate speech and digital expression. This part examines three landmark judgments—*Shreya Singhal v. Union of India (2015)*, *Amish Devgan v. Union of India (2020)*, and *Pravasi Bhalai Sangathan v. Union of India (2014)*—which have impacted the legal interpretation of free speech, its restriction, and regulatory sufficiency of existing laws against hate speech.

1. “**Shreya Singhal v. Union of India (2015): Section 66A Declared Unconstitutional**”

Background

In the era of digital communication, Section 66A of the Information Technology Act, 2000 had emerged as a flashpoint in the controversy over online freedom of speech. Section 66A made criminal the transmission of any information through a computer or communication device that was "grossly offensive" or of "menacing character."

The petitioners, one of whom is law student Shreya Singhal, challenged the constitutionality of Section 66A following a series of instances of arbitrary arrests under the section for making comments on social media criticizing public officials.

Major Issues

Whether Section 66A infringed Article 19(1)(a) (right to free speech and expression)?

Whether the provision would be viable under Article 19(2) (reasonable restrictions)?

²¹.TRANSFER PETITION (CRIMINAL) NO.23 OF 2016

Whether the language of Section 66A's be considered as Vague and over-broadness?

Judgment

The Supreme Court declared the entire Section 66A of the IT Act unconstitutional because the terms like "grossly offensive," "annoyance," and "inconvenience" were considered unclear, open to different interpretations, and could be misused. It held that the provision was too wide, had a chilling effect on free speech, and failed to have a proximate nexus with the specified grounds for reasonable restriction under Article 19(2) like public order, decency, or morality. This seminal judgment established a major precedent for the invalidation of vague and expansive laws that encroach upon free expression, marking a turning point in digital rights jurisprudence. But even though Section 66A was struck down, it has been reported to still be invoked by lower courts, projecting deep flaws in implementation and knowledge of the law."²²

2. "Amish Devgan v. Union of India (2020): Hate Speech vs. Free Speech

Background

In the year of 2020, television anchor and journalist Amish Devgan made insulting comments on television regarding Moinuddin Chishti, a highly respected Sufi saint. This resulted into several FIRs filed across the nation against him under Sections 153A, 295A, and 505 of the IPC for spreading antagonism between groups and offending spiritual sentiments.

Devgan (petitioner) moved the Supreme Court seeking quashing of the FIRs on grounds of protection under Article 19(1)(a).

Issues

What is the major difference between the hate speech and the free speech?

What is the role of public figures and media personalities?

Were the statements protected under free speech or considered hate speech that aimed to cause unrest?

Judgment

The Supreme Court, in refusing to quash the FIRs, noted that the context of the making of the statements is determinative and must be viewed as a whole. At the stage of the preliminary,

²².AIR 2015 SUPREME COURT 1523

intent cannot be inferred. The Court also noted that those with large public followings—like journalists and politicians—have a greater duty to uphold communal harmony and must refrain from using inflammatory or provocative language. It made it clear that violent speech that dehumanizes or stigmatizes is not covered by the guarantee in Article 19(1)(a) of the Constitution.

The Court held that hate speech was not a protected mode of expression and is governed by the reasonable restrictions under Article 19(2). It emphasized that the necessity to balance the freedom of expression of individuals with the need to uphold the public order. The judgment set an important precedent on the judicial method of assessing FIRs in hate speech cases and asserted the doctrine that civilized discourse had to be preserved, particularly by individuals holding positions of power.”²³

3. “Pravasi Bhalai Sangathan v. Union of India (2014): Are Existing Laws Adequate?”

Background

The petitioner, a public-minded association, went to the Supreme Court complaining about inadequate the legal provisions to stop hate speeches by politicians and public figures, especially during election seasons. They felt that present legal provisions were not sufficient to stop provocative speeches from such individuals. The main demand was for new legislation solely focused on hate speech, along with preventive and punitive measures.

Key Issues

Whether the laws that are currently in the Indian Penal Code (Sections 153A, 153B, 295A, 505, etc.) and Representation of the People Act were adequate to tackle hate speech.

Whether the Supreme Court should promulgate guidelines or instruct the legislature to enact particular anti-hate speech legislation.

Judgment

The Supreme Court refused to promulgate new guidelines or ask the legislature to pass particular legislation, reiterating that the making of the law lies strictly in the legislative sphere and not within the purview of the judiciary. It stressed that current legal provisions, especially under the IPC and other enactments, are adequate to deal with hate speech. The actual problem,

²³.AIRONLINE 2020 SC 930

the Court observed, is the lack of effective implementation and differential application of the said laws. Any judicial intervention in this legislative activity would violate the provision of the doctrine of separation of powers. The ruling asserted the position that the issue is not the lack of provision in law, but the non-enforcement of such provisions. It pointed to the ongoing disconnect between what the law says and practice on the ground, while the Court avoided calling for immediate legislative reform, it left the door open for a possible future development of the statute—although as yet no material changes have been passed.”²⁴

RECENT DEVELOPMENTS & SOCIAL MEDIA IMPACT

1. Supreme Court reaffirmations: hate speech is not protected

The Supreme Court made these comments during a hearing on a case started by Wajahat Khan, who is challenging social media influencer Sharmistha Panoli. Khan said that Panoli's posts were causing religious hatred and communal conflict, which led to several First Information Reports (FIRs) being filed against him in states such as Assam, Delhi, Haryana, and West Bengal. Khan's lawyers wanted to combine all these FIRs because they felt the complaints were being used to harass him. The court worried about using free speech as an excuse for spreading harmful content, saying, "Trying to make everything seem okay by using free expression is dangerous." The judges also said that even though hate speech should be controlled, any action taken must still protect the right to free speech as guaranteed by the constitution. Justice Nagarathna noted, "Freedom of expression is a very important right, but when it's misused, it only makes our courts work harder." The court encouraged people to be careful about what they share, like, or promote online, stress that self-control is important to lessen the need for government steps. This directive aligns with growing global concerns about the impact of social media on societal harmony, particularly in a diverse nation like India.”²⁵

In the above statement, the Hon'ble Supreme Court of India addressed the growing tension between the two most and often conflicting topics i.e., free speech and communal harmony in the digital age, arising from a petition filed by Wajahat Khan against social media influencer Sharmistha Panoli.²⁶ Khan alleged that Panoli's online posts incited communal disharmony, leading to multiple FIRs across various states, which his legal team sought to consolidate, citing harassment. The Court was concerned about the growing abuse of free speech to promote

²⁴. Writ Petition (C) No. 157 of 2013. D/d. 12.3.2014.

²⁵. <https://indiacr.in/supreme-court-cracks-down-on-hate-speech-while-safeguarding-free-expression/>

²⁶. Ibid.

injurious and divisive materials, warning such efforts could be used to destabilize society. Justice B.V. Nagarathna noted that although the right of free expression is guaranteed by the Constitution and is a basic one, its irresponsible exercise puts unnecessary burdens on the judiciary.

2. Political Hate Speech over the Internet:

“P.C. George Case (2025),The Kerala High Court, today, orally stated that persons committing offences promoting enmity between different groups on grounds of religion must be given a mandatory jail sentence, and should not be allowed to avoid imprisonment by merely paying a fine.”²⁷

The Politician P.C. George case of once again illustrates the difficulties of regulating the political hate speech over the internet. George, who is known for making provocative remarks, was subjected to several FIRs after reportedly making insightful speeches at a religious congregation that went viral on social media websites. Refusing to quash proceedings, the court noted that politicians, with their public reach, have greater responsibility to ensure communal harmony. It also urged restraint in using internet forums to give unwanted prominence to polarising speech, particularly at politically charged times. This case highlights the increasingly fine line between political speech and hate speech, especially when content is posted over the internet where reach and scope are multiplied exponentially. The judicial decision is an indication of the need to balance democratic speech with the need to maintain social order urgently.

3. Digital Intermediaries: IT Rules, 2021; Police Takedown Notices

The enforcement of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 was a tipping point for India's digital regulatory landscape.²⁸ The rules made regulations for the social media platforms regarding the nomination of grievance officers, addressing grievances of users in time intervals, and providing traceability of illegal content creators.²⁹ Though the government framed the regulations as an enabler of

²⁷.<https://www.livelaw.in/high-court/kerala-high-court/kerala-high-court-p-c-george-anticipatory-bail-bns-mandatory-jail-sentence-284384>

²⁸.*The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*”, PRS Legislative Research. Notified on 24 February 2021, under the Information Technology Act, 2000

²⁹.Ibid

accountability, they led to broad the controversy over the censorship and the privacy.³⁰

CRITIQUES & THEORETICAL CHALLENGES

1. Vagueness and Ambiguity of Hate Speech Terminology

One of the main criticisms of Indian hate speech legislation is that they lack definite definitions, and this has resulted in arbitrary interpretation and biased enforcement. Such words as "insult," "outrage religious feelings," and "promote enmity" appearing in Sections 153A and 295A of the IPC are inherently subjective and grant broad discretion to law enforcement. Scholars contend that this ambiguity chills legitimate speech since speakers censor themselves due to the fear of prosecution (Bhatia, 2016). The Law Commission of India's 267th Report recognized such ambiguity and suggested further precise provisions to define hate speech, but legislative action is still pending.³¹

Legal philosophers like Gautam Bhatia contend that vaguely worded restrictions on speech are incompatible with constitutional morality, especially when imposed in the online space where the state can quell dissent by loosely interpreting offending content (Bhatia, 2016).³²

2. Judicial Paternalism: Moral Policing from the Bench

Indian courts have tended to be moral guardians in cases of hate speech and obscenity. In *S. Rangarajan v. Jagjivan Ram* (1989), the Supreme Court reiterates that speech is only to be restricted when there is an immediate and proximate threat to public order.³³ Recent developments, however, indicate a paternalistic judicial philosophy, where judges impose prior restraints on the grounds of social sensitivity as opposed to constitutional requirement.

For instance, during the Tandav controversy (2021), courts entertained several FIRs against the OTT show on the grounds of religious offense, even prior to the establishment of incitement with tangible facts. The critics point out that such is indicative of a soft censorship regime, where judiciary goes with popular majoritarian consensus. Aparna Chandra, a legal scholar,

³⁰.Adam Southey, *'The Online Regulation Series | India', Tech Against Terrorism*, 9 October 2020 (available at: techagainstterrorism.org/news/2020/10/09/the-online-regulation-series-india, accessed 22 August 2025)

³¹. *Unpacking the Law Commission's Hate Speech Report*, SocioLegal Review, (available at: sociolegalreview.com/post/unpacking-the-law-commission-s-hate-speech-report, accessed 24 August 2025),

³². Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* (Oxford Univ. Press 2016).

³³. *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 S.C.C. 574 (Supreme Court of India, 30 March 1989) — concerning the requirement of proximity of threat to public order under Article 19(2) of the Indian Constitution.

identifies that "judicial reasoning often lacks a proportionality analysis when fundamental rights clash with social morality" (Chandra & Robinson, 2020).³⁴

3. The "Influential Person" Doctrine: Scope for Misuse

In *Amish Devgan v. Union of India* (2020), the Supreme Court held that powerful people have a greater duty of restraint³⁵ when practicing free speech. Although the doctrine is designed to prevent the ripple effect of hate speech, it risks leading to a class-based speech regime where only certain people are held to stricter standards.

Judgment stands the danger of disproportionate application and hurts equality before the law (Article 14). Suhrith Parthasarathy, among others, cautions against opening up liability on the basis of influence, as a result of which selective prosecution in the polarized cyber space is a potential threat.

In addition, the doctrine is not based in statutory law, and opponents claim it grants courts absolute discretion in determining who is "influential," which causes inconsistent application from one case to another. This may discourage participation in public debate by intellectuals, artists, or journalists, based on apprehension of being disciplined more severely than others.

COMPARATIVE INSIGHTS

The legal treatment of hate speech differs radically among jurisdictions, and this reflects differing philosophies regarding the boundaries of free speech. Comparing India, the United States, Germany, and Canada, this analysis brings to the forefront the normative conflict between liberty, dignity, and public order.³⁶

1. United States: The "Clear and Present Danger" Test

The U.S. Constitution provides the most robust protection for free speech, and there is very

³⁴. Aparna Chandra & Nick Robinson, *Democratic Disobedience and Judicial Moralism in India*, in *Oxford Handbook of the Indian Constitution* (OUP, 2020).

³⁵. *Amish Devgan v. Union of India*, (2021) 1 S.C.C. 1 — the Supreme Court ruled that public figures bear a greater responsibility in using their expressive powers owing to their wide influence and the potential social impact of their speech.

³⁶. *Hate Speech versus Freedom of Speech*, United Nations — Understanding hate speech section, *UN.org* (available at: un.org/en/hate-speech/understanding-hate-speech/hate-speech-versus-freedom-of-speech, accessed 26 August 2025).

little scope for the regulation of hate speech.³⁷ The U.S. Supreme Court in *Brandenburg v. Ohio* (1969) ruled that speech can be restricted only if it advocates for "imminent lawless action" and can lead to such action.³⁸ This very strict requirement ensures that the majority of types of hate speech, such as offensive or racist speech, are constitutionally protected.

Scholars contend that although this serves to safeguard individual liberty, it may not curtail systemic harm or safeguard vulnerable communities. India, on the other hand, permits restriction of speech in the cause of public order, decency, and morality under Article 19(2), providing a wider margin of state interference.

2. Germany: Memory Laws and Constitutional Dignity

Germany is dignitarian in its approach, based on its post-Holocaust constitutional tradition.³⁹ The Basic Law (Grundgesetz) permits strong limits on hate speech, most notably under offenses criminalizing Holocaust denial, Nazi propaganda, and hate-incitement (§130 of the German Criminal Code).⁴⁰

The Federal Constitutional Court has decided that hate speech legislation is reconcilable with free expression as far as it safeguards human dignity (Article 1, Basic Law). This is much more speech-constrictive than the U.S. model but understandable within India's concern for communal harmony and dignity under Article 19(2).

3. Canada: Reasonable Limits and Proportionality

Canada takes a middle-of-the-road stance, allowing restrictions on hate speech under the Canadian Charter of Rights and Freedoms (Section 1), which provides for "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." In *R v. Keegstra* (1990), the Supreme Court of Canada reaffirmed criminal prohibitions on hate speech as being justifiable pursuant to Section 1 because of the harm that it does to multiculturalism and equality.

³⁷. Ibid.

³⁸. *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

³⁹. Strafgesetzbuch [StGB] [Penal Code] § 130 ("Incitement to Hatred"), translation by Prof. Dr Michael Bohlander, fully revised and regularly updated by Ute Reusch, *Gesetze im Internet* (incorporating amendments up to Article 2 of the Act of 22 November 2021) (available at: gesetze-im-internet.de/englisch_stgb/englisch_stgb.html, accessed 26 August 2025)

⁴⁰. Ibid

India's proportionality test (as defined in *Modern Dental College v. State of Madhya Pradesh*, 2016) uses the same balancing tests, although Indian jurisprudence tends to be less regular in its application of them.⁴¹

RECOMMENDATIONS ON REFORMS: INSTITUTIONAL AND LEGAL REVOLUTION OF HATE SPEECH IN INDIA

The increasing prevalence of hate speech in India, both in the offline and online arenas, has brought to the fore the failure of existing legal provisions as well as regulatory authorities in curbing the phenomenon without running counter to constitutionally guaranteed freedoms. Hate speech often comes at the intersection of freedom of expression and public order, and any regulatory mechanism needs to balance these interests. The following reform proposals aim to promote a more systematic, transparent, and constitutionally correct way of addressing hate speech and promoting state and non-state actors' accountability in cyberspace.

1. Statutorily Define Hate Speech with Precision

Among the core issues with India's current strategy on regulating hate speech is that it lacks a clear, consistent statutory definition. The Indian Penal Code provisions—Sections 124A (sedition), 153A (acts promoting enmity between groups), 295A (outraging religious feelings), and 505 (statements leading to public mischief)—are imprecise and sweeping.⁴² These laws have been interpreted differently by courts and used in some cases rather than others. This leads to confusion in the law and allows for misuse, which can stop people from expressing themselves freely, especially those from minority groups or those who disagree with the majority.

A better way would be to create a clear and carefully written law that defines hate speech. This law should clearly separate speech that is just offensive from speech that is meant to provoke violence, discrimination, or hatred. The law could take ideas from international standards, like the UN's Rabat Plan of Action, which sets out a six-part test to determine if speech is harmful. The law must also designate the characteristics (like religion, caste, gender, sexual orientation,

⁴¹. *Modern Dental College & Research Centre & Ors. v. State of Madhya Pradesh & Ors.*, Civil Appeal No. 4060 of 2009 (Supreme Court of India, judgment delivered 2 May 2016), reported in Indian Kanoon (available at: indiankanoon.org/doc/93572510/, accessed 30 August 2025).

⁴². **Indian Penal Code [IPC] § 153A**, "Promoting enmity between different groups on grounds of religion, race, caste, etc.," *Indian Kanoon* (statute text available online) (available at: indiankanoon.org/doc/345634/, accessed 30 August 2025).

ethnicity, etc.) that are to be protected and both direct and indirect incitement. This would stop law enforcement agencies from arbitrary interpretation and penalize only truly harmful speech.

2. Judicial or Quasi-Judicial Oversight for Takedowns

The absence of an independent review for takedown orders under Section 69A of the Information Technology Act, 2000 has been a major worry. These takedown notices, which are ordered by the Ministry of Electronics and Information Technology (MEIT), are usually non-transparent, have no public notification, and are not judicially reviewable. This process has been faulted for offending against the principles of natural justice since the individuals or platforms whose rights are being curtailed are usually not provided an avenue to challenge the order.

Such reform has to target the setting up of a judicial or quasi-judicial review institution to scrutinize all government orders for content takedown. An organization like this should include retired judges from High Court or Supreme Court, legal experts, and individuals from civil society who have worked to protect constitutional rights.⁴³ This group should operate in a transparent way, follow proper rules, and make decisions that are clear and explained to the public. When content is removed, it should only be done for a short time and only if it's necessary to prevent real harm.⁴⁴ In emergencies, content blocking should only happen in very specific situations, like when there's a risk of violence or threats to national security. Even then, the oversight body should review the decision within a set time. This way, things become fairer and people are better protected from unfair limits on their freedom of speech.⁴⁵

3. Due Process and Transparency under IT Rules

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 have greatly increased the government's control over online content, especially by requiring platforms to remove content based on government orders or reports from users.⁴⁶ The

⁴³. *Code of Conduct for United States Judges*, U.S. Courts (Guide to Judiciary Policy, Vol. 2A, Ch. 2, effective 12 March 2019) (available at: uscourts.gov/administration-policies/judiciary-policies/ethics-policies/code-conduct-united-states-judges, accessed 30 August 2025).

⁴⁴. *28 U.S.C. § 1446* (Procedure for removal of civil actions), *Legal Information Institute*, updated (accessed 30 August 2025).

⁴⁵. *How the New Civil Liberties Alliance Is Restoring People's Constitutional Rights, Stand Together* (available at: standtogether.org/stories/constitutionally-limited-government/how-the-new-civil-liberties-alliance-is-restoring-peoples-constitutional-rights, accessed 30 August 2025).

⁴⁶. **Ministry of Electronics and Information Technology**, *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* (updated as on 6 April 2023), Government of India (available at:

rules have nevertheless been criticized extensively for the absence of procedural protections and mechanisms of transparency.⁴⁷ There is usually no indication of the person who made the complaint, the reasons for removal, or if the concerned user was afforded an opportunity to reply. This contravenes both the dictates of natural justice as well as the right of the user to a hearing.

To rectify these shortcomings, the IT Rules shall have to be amended to entail the minimum procedural safeguards. Platforms should be made to publish transparency reports on the quantity of removal requests for content made, the specified legal grounds, the compliance rates, and appeals made. In addition, each user should also be informed when their material is taken down, along with the reasons for removal and how they can appeal against the decision. There also needs to be provision for a time-limited appeal process, either within the service or to an independent agency. This would help to ensure that the takedown of the system is not frequently invoked in order to silence the dissent or the minority opinion, and that content moderation is reasonable and fair.

4. Platform Liability and User Rights of Appeal

Online platforms are both the intermediaries and the active editors of the information. In Section 79 of the IT Act offers "safe harbour" protection to intermediaries, meaning they are not held responsible for content shared by others, as long as they do not take any action regarding it, when they have actual knowledge of illegal content. But the existing model has caused uncertainty regarding the duties and liabilities of platforms, particularly following the 2021 Rules imposed responsibilities such as traceability of messages (for the case of messaging apps) and content classification (for the case of OTT platforms).

The new method should use a co-regulatory system where platforms are legally required to create clear rules for handling content, fix problems users report, and allow users to appeal decisions. Even though platforms aren't responsible for every content that users post, they lose their protection from legal action if they repeatedly ignore complaints that involve serious

meity.gov.in/static/uploads/2024/02/Information-Technology-Intermediary-Guidelines-and-Digital-Media-Ethics-Code-Rules-2021-updated-06.04.2023-.pdf, accessed 30 August 2025).

⁴⁷. Aleksandra Urman & Mykola Makhortykh, *How Transparent Are Transparency Reports? Comparative Analysis of Transparency Reporting Across Online Platforms*, *Telecommunications Policy*, published electronically 2022 (available at: [sciencedirect.com/science/article/pii/S0308596122001793](https://www.sciencedirect.com/science/article/pii/S0308596122001793), accessed 30 August 2025).

violations. At the same time, users need to be given a clear and reasonable right of appeal of takedown notices. This can be achieved by having an independent appellate court or an ombudsman who has both the legal background and the technological tools needed to quickly review and assess the decisions made in content moderation.⁴⁸ The appeal process must also enable the user to air their side, question the legality of the takedown, and request restoration of content or grievance redressal.

CONCLUSION

Hate speech in India remains a complex issue at the intersection of constitutional liberties, democratic principles, and social cohesion, particularly in the internet age. This paper examined the Indian legal, court, and rules system to show that even though freedom of speech is a right given in the Constitution under Article 19(1) (a), it is by no means absolute. The Indian Constitution, in Article 19(2), permits reasonable restrictions in terms of the public order, morality, sovereignty, and other Constitutional values. Nevertheless, the current vagueness in interpreting hate speech, disproportionate application, and unclear legal provisions pose significant threat to both the social unity and civil liberties. The Apex Court's decision in *Romesh Thappar to Shreya Singhal, Amish Devgan, and Pravasi Bhalai Sangathan*—reflects the Apex Court's efforts to balance free expression with the requirements of national integrity and communal harmony. The court has also said that laws and how they are written are important to stop hate speech properly. The challenges of regulation are greater in the age of the Internet, where information spreads at fast speeds through social media sites, many times without context and with no responsibility, even with wrong information. Cases like the *Tandav* issue, the *PC George* case, and *Sharmistha Panoli's* case show how bad and quickly the content spreads online and makes it hard to follow legal norms.

Although the Indian Penal Code contains numerous rules, such as Sections 153A, 295A, and 505, and special laws, these are not always applied properly. At times they are misused in such a way that it is political or too strict, which potentially suppresses people who don't agree or accept. Moreover, the employment of subjective language in such provisions facilitates overreach and chilling effects on artistic, journalistic, and academic expression. The occasional

⁴⁸. Danielle Keats Citron, *Technological Due Process*, *Washington University Law Review*, Vol. 85, 2008, pp. 1249–1285 (available at: journals.library.wustl.edu/lawreview/article/6697/galley/23530/view/, accessed 30 August 2025).

inclination of the judiciary towards moral policing or selective treatment—e.g., citing the "influential person" doctrine in the absence of statute—increases the uncertainty and could, in turn, disincentivize serious discourse.

The 2021 Information Technology Rules have introduced some improvements in holding individual accountable online, but they are also worried about giving too much power to the government and potential threat to personal privacy. Hence, the solution demands a more subtle, balanced, and rights-sensitive approach. Legal changes need to define the extent and meaning of hate speech to avoid abuse but retain healthy criticism and dissent. A co-regulatory system with court or quasi-judicial oversight of takedown notices, independent grievance redressal bodies, and procedural transparency of online platforms is the need of the hour.

Lastly, preventing hate speech is a problem that affects everyone in society, not just those involved in law or technology. It demands increased awareness, digital literacy, social empathy, and political maturity. In a multi-religious and multicultural society such as India, freedom of expression has to be supplemented with respect for diversity and dignity. Therefore, preventing hateful speech is not equivalent restricting someone's freedom or liberty. It's about keeping the democratic and fair values that India was built on. Only by working together, with strong constitutionally based principles and, can India's online world becomes open, tolerant, and fair.

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