

Free Speech V/S Hate Speech on Digital Platform

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ABSTRACT

The emergence of digital platforms has greatly increased the scope of free expression by enabling instantaneous cross-border opinion sharing. Article 19[1](a) of the Indian Constitution, which states that "everyone has right to express their own thoughts freely through various means such as printing, media, publishing, writings, signs etc., but they come with reasonable restrictions under Article 19[2] to maintain decency, social order and peace, security of state, friendly relations with international states, etc."

In any case, the distinction between free expression and disparaging speech has become more hazy due to the proliferation of hate speech on digital platforms that incites violence, discrimination, or disrupts public order. Legal obscurity has resulted from selective enforcement and the lack of a precise legal definition of disparaging speech on the internet in India.

Even with laws like the Information Technology Act of 2000, the Indian Penal Code (now known as the Bharatiya Nyaya Sanhita, 2023), and others, controlling hate speech online continues to be a difficult task.

This study examines the tension between limiting online hate speech and defending free expression, highlighting the necessity of clear legal regulations, technological responsibility, and striking a balance between constitutional rights and social harmony on digital platforms.

Keywords: Constitution of India, digital platforms, Bharatiya Nyaya Sanhita 2023, free speech, hate speech, Law Commission 267th report, reasonable restrictions, and freedom of expression.

INTRODUCTION

A democratic society depends on the right to free speech, which is protected under Article 19[1](a) of the Indian Constitution. It enables people to express their ideas, opinions, and beliefs without worrying about the repercussions. This right is not unrestricted, though. The State may impose "Reasonable Restrictions" on fundamental right for the purposes of public order, decency, morality, and national security, according to Article 19[2]. Differentiating between protected free speech and disparaging hate speech, particularly on digital platforms like Twitter, Facebook, Instagram, You Tube, and others that are crucial in this day and age, is a major topic of discussion in Indian law.

Although it isn't specifically defined in the Indian Constitution, hate speech is any communication that incites violence or fosters animosity towards people or groups because of characteristics like religion, caste, race, birthplace, etc. The Supreme Court of India acknowledged the lack of a clear legal definition of hate speech in *Pravasi Bhalai Sangathan V. Union of India* AIR 2014 and emphasised the need for legislative clarity because failing to do so would amount to "judicial overreach." The Court stated that while free speech is vital, it shouldn't jeopardise harmony and public tranquilly. Therefore, this issue was sent to the Law Commission to determine if it is appropriate to define hate speech and to recommend to Parliament that the Election Commission be strengthened in order to combat the threat of hate speech, regardless of when it is made. Two The lack of a precise legal definition leads to inconsistent enforcement. Sections 196, 299, and 353, as well as Sections 69A and 66A of the Information Technology Act of 2000, Section 19 of the Cable Television Network (regulation) Act of 1955, and Section 8,123(3A) of the Representation of Peoples Act of 1951, among other laws, attempt to

control such speech. However, these rules need to be reevaluated in order to improve their efficacy and clarity due to the evolving nature of communication, particularly through digital means.

The communication landscape has changed thanks to platforms like Facebook, Instagram, You Tube, and Twitter (X). They empower marginalised voices and democratise information, but they also make it easier for hate speech to spread quickly. These platforms' broad reach and anonymity provide serious difficulties for regulatory bodies trying to control harmful information without restricting free speech. Divisive content is frequently promoted by engagement-driven algorithms, widening societal gaps.

This essay explores the tension between the need to regulate hate speech in the digital sphere with the constitutional guarantee of free speech. It looks into the flaws in current legislation and emphasises the urgent need for all-encompassing legal and technological approaches that can successfully balance social harmony and individual rights. Furthermore, I highlight the critical role that platform responsibility, government accountability, and judicial clarity play in preventing speech abuse while preserving democratic liberties.

In order to address this complex issue in a way that respects the fundamental right to free expression and actively addresses the threats posed by hate speech in both real-world and virtual public spaces, a careful and contextualised approach is essential.

Legal Framework in Indian Constitution:

Article 19[1](a) and Article 19[2]: In a democracy, the right to free speech and expression is essential. "All citizens shall have the right to freedom of speech and expression," according to this clause. This implies that the freedom to freely express one's own beliefs and opinions by words, writing, printing, photographs, or any other media encompasses the expression of one's thoughts through any communicative medium or visual representation, such as gestures, signs, and the like. It also involves the freedom to publish or disseminate other people's opinions. However, this right is restricted by Article 19[2], which gives the State the authority to impose "Reasonable Restriction" on the following grounds: "security of the State, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement to offence and integrity and sovereignty of India."

There are no clear laws or regulations regarding hate speech in India, despite the fact that this right is essential for people to survive without dignity. The new Act of Bharatiya Nyaya Sanhita 2023, the Information Technology Act 2000, the Representation of People's Act 1951, the Cinematograph Act 1952, and a few online digital media guidelines that criminalize derogatory speech and equate free speech with hate speech have replaced the various provisions mentioned under the Indian Penal Code.

Legislation around Hate Speech:

Presently, in our democratic country the following have bearing on Hate Speech, mentioned as:-

Bharatiya Nyaya Sanhita ,2023 (hereinafter BNS,2023)

Section 196 : “Promoting enmity between different groups on grounds of religion , between different group on grounds of religion ,race ,place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony”. This section states that anyone who promotes or attempts to promote on the aforementioned grounds disharmony or feelings of enmity, hatred, or ill-will between different religious, racial, linguistic, regional, caste, or communities by words, written or spoken, signs, visible representation, electronic communication, or in any other way faces up to three years in prison, five years in prison if the act is committed in a place of worship, a fine, or both.

Section 197: “Imputations, assertions and prejudicial to national integration”.

This section states that anyone who: a) makes or publishes any imputation that any class of people shall; b) asserts, counsels, advises, propagates, or publishes that any class of people shall; c) makes or publishes any

assertion, counsels, plea, or appeal concerning the obligation of any class of people; d) makes or publishes false or misleading information jeopardising the sovereignty, unity, and integrity of India; e) faces up to three years in prison, a fine, or both.

Section 299: “Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs”. This section says that Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or through electronic means or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 302: “Uttering words, etc., with deliberate intent to wound religious feelings of any person”. This section says that Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

"Statements conducing to public mischief" (Section 353 [1]). According to this clause, anyone who disseminates rumours or false information, particularly via electronic means, with the intention of inciting violence, causing terror, interfering with military operations, or fostering animosity between communities faces a maximum sentence of three years in prison or a fine. Such acts carry a maximum sentence of five years in prison and a fine if they occur in a house of worship or during religious activities.

According to Section 152: "Acts endangering sovereignty unity and integrity of India," anyone who wilfully encourages or supports rebellion, separatism, or acts that jeopardise India's unity and sovereignty—through speech, writing, signs, electronic means, or money—may be fined and imprisoned for up to seven years.

Information Technology Act, 2000

Section 66A: “Punishment for sending offensive messages through communication service, etc.” According to this section, anyone who uses a computer resource or communication device to send:

- (a) any information that is extremely offensive or menacing; or
- (b) any information that he knows to be false but for the purpose of persistently causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will;
- (c) Any electronic mail or electronic mail message intended to irritate or inconvenience the addressee or recipient, or to mislead or deceive them about the source of such messages, is punishable by up to three years in prison and a fine.

The judgment from *Shreya Singhal v. Union of India*, AIR 2015 highlights that Section 66A of the IT Act was struck down for being vague, arbitrary, and infringing on free speech under Article 19(1)(a). It failed the test of reasonable restriction under Article 19(2) and was misused to curb legitimate online expression.

Section 69A; “Power to issue directions for blocking for public access of any information computer resources”. This section states that:-

- (1) The Central Government or any of its officers specially authorized in this regard may, subject to the provisions of sub-section
- (2) for reasons to be recorded in writing, by order direct any agency of the Government or intermediary to block for public access any information generated, transmitted, received, stored, or hosted in any computer resource if it is convinced that doing so is necessary or expedient in the interest of India's sovereignty and integrity, defense

of India, security of the State, friendly relations with foreign States, public order, or to prevent incitement to commit any cognizable offence.

(2) The process and precautions that must be followed in order to carry out such public access blocking may be stipulated.

(3) The intermediary faces a maximum sentence of seven years in prison and a fine if they disregard the instruction given under sub-section (1).

Representation of People's Act ,1951

Section 8 : This section focuses on individuals contesting elections for disqualification on conviction for certain offences mentioned under BNS section 196 ,299 etc.,⁷

Section123 (3A): This section states that it prohibits candidates or their agents from promoting or attempting to promotes hatred or enmity based on religion , race caste community or languages during election .It focuses to ensure fair and democratic elections by preventing the use of derogatory language to influence voters.

Cable Television Networks (Regulation)Act 1955

Section19: This section states that the authorities have the power to prohibits the transmission of programs that promotes disharmony ,hatred or ill-will between different groups based on religion, race, language or any other ground or that disrupts public order.

Role of Digital Platform

- Social media sites like Facebook, YouTube, WhatsApp, and Twitter have banned and restricted posts and content about any topic that leads to or encourages violence, such as terrorism, organised hate, criminal activity, sensitive posts, and offensive content like cyberbullying, child abuse, or hatred towards a specific community, caste, religion, or indigenous people.
- If a user disobeys any of their content moderation guidelines, the content will be removed, and if the situation is safe, they may report it to law enforcement. These businesses voluntarily engage in self-regulation, which is commendable.
- While navigating the complications of freedom of expression, digital platforms have a key role in both enabling and mitigating hate or derogatory speech. While they promote the free exchange of ideas and information, their algorithms have the potential to amplify harmful content and create echo chambers. It is still difficult for platforms and legislators to strike a balance between the necessity to defend free speech and the obligation to combat hate speech.
- Platforms must strike a balance between protecting free expression and preventing hate speech, harassment, and the dissemination of harmful material that encourages violence. India's implementation of the 2021 Intermediary Guidelines has resulted in stricter content filtering regulations for social media companies.
- The Information Technology (intermediary guidelines and digital media ethics code) Rules,2021; are set of guidelines issued by the Indian Government to regulate digital news media and intermediaries.

Key Aspects of the IT Rules, 2021: -

i. Enhanced diligence: Social media platforms are required to exercise greater diligence in managing content on their platforms.

ii. User safety and dignity: Within 24 hours of receiving complaints, intermediaries must remove or disable access to content that shows nudity or sexual acts or known as dark web also including morphed images.

iii. Privacy policies and user education: Privacy policies must educate users about prohibited content including copyrighted material, defamatory hate speech and other violating contemporary laws.

iv. Prohibited content: It prohibits users from uploading, creating, or sharing content that threatens national unity.

v. Self regulation: A three-tiered complaint redressed mechanisms is established.

vi. Traceability: The rules aim to ensure the traceability of information.

The purpose of YouTube's community rules and hate speech policy is to prevent hate speech while maintaining the right to free expression.

Content that promotes or glorifies violence against people or organizations, incites hatred, or encourages violence is prohibited on YouTube.

Content that encourages violence or hatred against people or groups on the basis of age, caste, religion, nationality, etc. is banned on YouTube.

The Supreme Court recently granted YouTuber Ranveer Allahbadia protection from arrest for making controversial remarks during his show India Got Latent, despite harshly criticising the offensive nature of his language in a case that incited hatred and enmity online through a YouTube video. Based on the current comments, the bench, which was made up of Justices Surya Kant and N.K. Singh, declared that no more criminal charges should be made. If needed, Allahbadia has the option to request police protection in Thane. However, the court urged him to stop participating in similar events and temporarily banned him from doing so. Due to the harsh nature of his language, he incited hostility.

“Addressing hate speech does not mean limiting or prohibiting freedom of speech”. It means keeping hate speech from escalating into something more dangerous, particularly incitement to discrimination, hostility, and violence, which is prohibited under International Law.

Significant Case Laws that revolves around Hate Speech and Free Speech:

The landmark case law that sets the base for the need of making legal provisions for curbing hate or derogatory speech either on offline society or online/digital platforms. As in this fast growing network people share their thoughts, opinions etc. widely in no time through digital platforms/social media and the increasing number of offences that incite ill-will, hatred among different communities based on religion, caste, region, etc. needed attention and hence, this significant judgement of case *Pravasi Bhalai Sangathan V. Union of India & Ors* under which the derogatory speech made by people's representatives, political/religious leaders on religion, caste, region and ethnic lines which are violative of Article 14, 15, 16, 19, 21, 38 and 51A(a), (b), (c), (f), (i), and (j) of the Constitution during Election and this time it led to violence between people based on Muslim community and people asked for proper legal framework that provides security from hate speech as there is no specific definition in legal provisions; however, the provisions mentioned in Indian Penal Code (hereinafter IPC) under section 153A now section 196 of BNS that says if anybody promoting enmity or hatred between groups based on religion, race, language, region, or caste through words, signs, or electronic means is a punishable offence; section 153B of IPC now section 197 of BNS; section 298 of IPC now section 302 of BNS; section 66A and 69A of Information Technology Act, 2000 and section 123(3) of Representative of People's Act, 1951 that prohibits candidates or their agents from promoting or attempting to promote hatred or enmity based on religion, race, caste, community or languages during election. It focuses to ensure fair and democratic elections by preventing the use of derogatory language to influence voters; penalizes the act which creates or attempts to create enmity between individuals based on the grounds religion, caste, region, language etc. Moreover, the Supreme Court held no specific action but directed this issue to the Law Commission and asked the Chairman to provide sufficient remedy to curb the menace of hate speech also provide with more specific laws that can safeguard the issues raised by hate/derogatory speech.

On the other hand where social media like Instagram helps in spreading news/information for the welfare of society, helps people make a side income by making post on various issues/topics, however, it also become the reason of violence as it is a large community of people belonging to various religion and can spread hatred in no time and that what happened in Satara riots, Maharashtra^{14a} where the communal clashed over a social media post on Instagram that resulted in one death, 10 injured people and 23-24 were arrested. Internet services have been suspended across the district till Tuesday midnight to curb up the situation spread by 2 Muslim youth for posting derogatory content against Hindu community on 18 August insulting about the sacred deity Shree Ram and Mata Sita resulting in unrest and riots between both individuals. Hence, the FIR have been lodged under IPC section 295A now section 299 of BNS that says anyone. who deliberately and maliciously intends to offend the religious sentiments of any group in India—through speech, writing, signs, electronic means, or other actions—will face up to three years of imprisonment, a fine, or both. Later, the post were removed by the government by section 69A of IT ACT, 2000 and the situation was stabled.

Lastly, not so recent case of *Amish Devgan V. Union of India, 2020*¹⁵ where the informational news turned out to be chaos for the famous news reporter Mr. Amish Devgan where the hatred occurred during a debate show on (broadcasting channel) News18 named as “Aar Paar” on 15 June 2020 by managing director Amish Devgan who was accused of using derogatory speech against a Muslim saint known as ‘Pir Hazrat Khwaja Gareeb Nawab’ mentioning him as “aakrantak Chishti aya... aakrantak Chishti aya... lootera Chishti aya... uske baad dharam badle”. Translated in English the words spoken would read – “Terrorist Chishti came. Terrorist Chishti came. Robber Chishti came – thereafter the religion changed,” imputing that ‘the Pir Hazrat Moinuddin Chishti, a terrorist and robber, had by fear and intimidation coerced Hindus to embrace Islam’. His words were alleged and had the spark of spreading outrage or incite religious hatred towards Muslim community.

This resulted in seven FIR against him, people on social media abused him and had given death threats on his phone; out of fear he filed a FIR on 20 June 2020 requesting for quashing all FIR’s against him. However, the Supreme Court declined and rejected the prayer of petitioner for quashing of the FIR’s but have granted interim protection against arrest subject to his joining and cooperating in investigation. Although, he apologized for his words as he did not had any intention of spreading violence, still the hatred was spread and lead to unrest.

Is it essential to keep free speech and speech in balance?

In order to defend people's rights, prevent injury, foster social cohesiveness, etc., it is imperative to strike a balance between hate speech and free expression.

In a democratic nation where freedom of expression is a fundamental right, striking a balance between hate speech and free speech is crucial. In a democratic society, it helps avoid violence, prejudice, and other issues while safeguarding each person's fundamental rights. The legislative and judicial branches' roles:

I. Judicial functions:

- i. The Indian judiciary has been essential in establishing the parameters of free expression and weighing it against national security, public order, and constitutional principles, among other considerations.
- ii. The judiciary ensures that legislation pertaining to hate speech are in line with constitutional norms by interpreting them.
- iii. The judiciary upholds individual liberties, such as the right to free speech, while making sure that hate crimes are also dealt with.
- iv. The judiciary oversees the constitutionality of laws and government acts pertaining to free speech and hate speech.

II. Legislative functions:

The Legislature is crucial in striking a balance between the necessity to control hate speech and the right to free expression.

ii. The legislature establishes the definition of hate speech and the consequences for those who use it.

iii. Laws are updated by the legislature to take into account evolving societal demands and technical developments.

iv. Laws that effectively combat hate speech while preserving free speech are reviewed and improved by the legislature.

CONCLUSION

In conclusion, the study explores the intricate connection between the growing threat of hate speech on digital platforms and the constitutionally guaranteed right to free expression. Social media's development has made it possible for people to voice their thoughts anywhere in the world, but this freedom frequently results in the dissemination of content that is incendiary and divisive.

While Article 19(2) permits the government to impose reasonable limits in order to maintain public order, decency, and national integrity, Article 19(1)(a) of the Indian Constitution ensures freedom of speech. However, Indian law still lacks a defined definition of "hate speech," which makes enforcement more difficult. The authors point out that this legal vacuum results in contradictory court decisions and selective application of current laws.

Hate speech is addressed by a number of laws, including the Information Technology Act (2000) and the Bharatiya Nyaya Sanhita (2023). While Sections 66A and 69A of the IT Act deal with the transmission of offensive internet messages and the government's authority to restrict harmful information, respectively, Sections 196, 197, and 299 of the BNS criminalise content that incites religious hatred or insults religious beliefs.

To illustrate the practical effects of hate speech, a number of court cases are cited. For instance, the Supreme Court stressed the necessity of a statutory definition of hate speech in the **Pravasi Bhalai Sangathan v. Union of India** case in order to prevent judicial overreach. In a similar vein, events like the Satara riots and the controversy surrounding journalist Amish Devgan demonstrate how social media posts can turn violent or cause conflict within a community, leading to legal action under current legislation. Additionally, the function of digital platforms is examined. Although social media sites like Facebook and YouTube use community guidelines to filter content, their efforts are sometimes poor and mostly voluntary. In an effort to hold these intermediaries more accountable, the Indian government introduced the 2021 Intermediary Guidelines and Digital Media Ethics Code, which calls for improved content filtering procedures and speedier answers to user complaints.

The authors support a reasonable strategy that protects democratic expression while reducing offensive discourse. In order to create a culture of polite communication, they recommend that hate speech be legally defined, that the context and intent of speech be taken into account, and that education and digital literacy be encouraged. In order to guarantee that laws are in line with constitutional principles, they also emphasise the significance of platform accountability and the active participation of the legislature and judiciary.

In the end, the article comes to the conclusion that societal cohesion depends on striking a compromise between hate speech and free expression. In an increasingly digital world, protecting individual rights while upholding integrity and peace requires technology control, legal changes, and public involvement.

Legal and pragmatic advice:

India requires a comprehensive and well-defined strategy that protects individual rights and stops the spread of harmful content in order to meet the growing concern about the abuse of free expression on digital platforms. The creation of a precise, legal definition of hate speech is one of the most urgent necessities. Indian law's current

vagueness leads to uneven enforcement and possible abuse. A clear definition would make it easier for courts, law enforcement, and internet platforms to recognise and deal with dangerous information. Additionally, the establishment of specialised regulatory agencies or the improvement of already-existing organisations, such as the Law Commission, could aid in the evaluation and suggestion of changes appropriate for the digital era.

In order to prevent hate speech from being misused, these organisations should routinely assess its effects, particularly during politically delicate times like elections.

Additionally, digital platforms need to be more accountable by improving their methods for content moderation. To make sure they don't fuel polarisation, algorithms that support information that is controversial or contentious should be reevaluated. Platforms must to be mandated to adhere to clear guidelines for eliminating offensive content and give users a way to contest moderation rulings.

Promoting digital literacy and awareness is crucial at the societal level. Users need to be made aware of the distinction between hate speech and constructive criticism, as well as how their actions on the internet can affect communities in real life. Such subjects could encourage more responsible digital citizens if they are taught in schools and universities.

Last but not least, it will be essential to promote collaboration between the government, tech firms, civic society, and the courts. In the digital realm, cooperative efforts can guarantee that no one's safety or dignity is compromised while protecting the right to free speech.