

THE LAWWAY WITH LAWYERS JOURNAL

VOLUME:-27 ISSUE NO:- 27 , SEPTEMBER 21, 2025

ISSN (ONLINE):- 2584-1106

Website: www.the lawway with lawyers.com

Email: thelawwaywithlawyers@gmail.com

Authored By : Mansewak singh

FREEDOM OF SPEECH VS. HATE SPEECH: WHERE SHOULD THE LAW DRAW THE LINE?

Freedom of speech is often hailed as the lifeblood of democracy, empowering citizens to voice dissent, challenge authority, and contribute to the marketplace of ideas. Yet this right is not without limit. Hate speech, which fosters hostility, violence, and discrimination threaten the dignity, equality, and social cohesion of diverse communities. This paper expands upon the existing discourse examining constitutional provisions, statutory frameworks, judicial precedents. Comparative international models and the role of academic research in doing so. Its statutes. The Indian experience within a global context while highlighting the challenges of regulating speech in an age dominated by digital communication and. Placed politics. The paper further incorporates historical sociology and psychological perspectives to deepen the understanding of the subject. Finally, suggests pathways for reform and reconciliation. Arguing that safeguarding liability must go hand in hand with protecting human dignity and preventing social harm.

Introduction

The right to freedom of speech and expression, enshrined in Article 19 (1)(a) of the Indian Constitution, is a cornerstone of democratic governance. This right enables citizens to express opinions freely, engage in political discourse and hold the government accountable. However, freedom of speech has always been tempered by acknowledgement that words can cause real harm when weaponized as instruments of hate, exclusion, or incitement. Article 19(2) of the Constitution reflects this delicate balance by permitting the state to impose reasonable restrictions in the interests of public order, morality, security and the sovereignty of India. The central question that arises, therefore, is where should the line be drawn between legitimate expression and hate speech?

The debate is particularly significant in India given its extraordinary diversity of religions, languages, castes and culture in such a context. Unregulated speech is igniting deep social fault lines while excessive restrictions risk eroding democratic freedoms. The challenge is further compounded in the digital age, where social media accelerates the spread of divisive narratives. This paper aims to provide a comprehensive exploration of this debate by examining constitutional principles, case laws, comparative perspective, academic research, and contemporary challenges.

I. Constitutional & legal framework in India

The Indian constitutional framework recognizes freedom of speech as both a fundamental right and a condition. Article 19(1)(a) subclause established the right to freedom of speech and expression which Article 19(2) empowers the state to impose reasonable restrictions. In specific circumstances, this duality ensures that while citizens are free to voice their opinions, such liability cannot extend to the point of threatening social harmony or national security.

The BNS contains several provisions that regulate hate speech. Criminalizing promoting enmity between groups on grounds of religion, race, language. These deliberate acts intended to outrage religious views addresses statements that in state public mischief. These provisions though essentially have been criticized for vagueness, leaving room for arbitrary enforcement, for example, peaceful criticism. Government policies have occasionally been labeled as instruments, reflecting the risk of political misuse. Judicial precedents have played a crucial role in clarifying these ambiguities.

In *Romesh Thapar v. the state of Madras*, the Supreme Court recognized free speech as the foundation of democracy. Later, in *Shreya Singhal v. Union of India*, the court struck down the section 66A of the IT act noticing that vague laws disproportionately curtailed speech similarly in *Pravasi Bhalai Sangathan versus Union of India*, the court acknowledged the dangers of hate speech but expressed the need for Parliament to frame a more precise definition. The Law Commission of India. 267th report attempted to provide such clarity, recommending a definition of hate speech based on intent and impact. Yet, despite these efforts, India still lacks a comprehensive legislative framework.

II. Defining Hate speech v. Free speech

One of the most significant challenges in this debate is the absence of a universally accepted definition of hate speech. The speech is typically associated with dissent criticism and the Free exchange of ideas, whereas hate speech refers to expression that targets individuals or groups with honesty, exclusion, or calls to violence. However, the line between these categories is often blurred, leading to controversies.

The Law Commission of India's 267th report Underscored the importance of both intent and impact in distinguishing hate speech from free speech. For example, a satirical remark, while potentially offensive, may not have the same impact as deliberate call to violence against the community. Similarly, criticism of government policies, though sharp, cannot be acquainted with speech intended to spread hatred.

Internationally, the United Nations has attempted to provide clarity, defining hate speech as. “Offensive discourse targeting groups or individuals based on attributes such as race, religion or ethnicity or gender, which can lead to intolerance and discrimination”.

European legal systems tend to adopt a dignitaries approach. Italian approach prioritizing the dignity of vulnerable groups over unrestricted liberty. United States. On the other hand, follows. The marketplace of ideas approach protecting almost all speech unless it crosses the. Threshold of directly inciting imminent violence

In India ambiguity in statutory language has led to. Arbitrary and inconsistent. Enforcement, for instance, while criticism of historical figures of religious practices is sometimes. Tolerated. Other instances have related to criminal charges. This inconsistency highlights the urgent need for clearer definitions that distinguish between legitimate critique and speech that directly undermines social harmony.

III. Global perspectives

1. United States

The 1st amendment of the US constitution offers near absolute protection to speech the landmark judgment in. *Brandenburg v Ohio* 1959 established that speech can only be restricted in its sites. Imminent lawless action which sets an extremely high. There is a whole protecting even hate filled speech unless it presents a clear and intimidate danger. As a result, neo-Nazi rallies, racist demonstrations and extremist propaganda often. Fall within the ambit of protected speech in the US while this model ensures rebuffed. Liberty. It also exposes minorities to potential harm.

2. Europe.

European democracy is shaped by the legacies of fascism and genocides. Adopt A much stricter approach under the Article 10 of European Convention. On human rights, freedom of expression is granted but is subject to limitations necessary in a democratic society. Countries like Germany

and France criminalize Holocaust denial, racist propaganda and instant. Meant to religious hatred, this model reflects the belief that democracy requires protecting human dignity and preventing group-based harms, even at the expense of absolute liberty.

3. South Africa.

South Africa, emerging from the trauma of apartheid, has taken a strong stance against hate speech, the Promotion of equality and Prevention of Unfair Discrimination Act 2000 explicitly. Hands it speech. Emphasizing reconciliation, equality, and inclusivity, this reflects broader attempts to heal societal wounds and prevents speech from reopening old divides.

4. India.

India occupies a middle ground between the US and European models. While it recognizes. The importance of free speech it allows. Restrictions under Article 19(2) to maintain public order and morality. However, India's difficulty lies in its vague statutory definitions and selective enforcements, while the courts have occasionally protected free expression. Political authorities have often invoked hate speech laws to suppress dissent. Leading to acquisition of double standards.

IV. Academic research and university perspectives

Academic institutions. Worldwide have been. Central to shaping the debate on freedom of speech versus hate speech, universities serve as microcosms of society where free exchange of fighters is encouraged but. They also grapple with the challenge of maintaining inclusivity and preventing harassment.

One of the most influential framework comes from the University of Chicago. Chicago's Principles 2014, which emphasize the university should remain open forums for debate even when opinions. Expressed or deeply offensive, the principal acknowledge limited exceptions such as direct threats, harassment, or speech that prevents others from exercising their rights similarly. Calvin report 1967 from the same university advocated institutional. Neutrality. Ensuring that the university as a body does not adopt political stances, thereby protecting the independence of inquiry.

India academic discourse has highlighted the fragmented nature of hate speech laws, Jindal Global University Research, (2023). Pointed out that while multiple IPC provisions exist, they lack coherence and often overlap, creating confusion and enforcement, scholars have recommended. Harmonization of Indian laws with international norms emphasizing clarity and proportionality.

University of Edinburgh (2022) praised how Indian courts have historically navigated hate speech, often linking judgments to the politics of history and collective memory. This suggests that judicial interpretation is not merely legal but is influenced by sociocultural narratives.

Surveys conducted in other parts of the world further demonstrate the complexity of balancing academic freedom and regulations. Auditions.

- The Knight Foundation and Ipsos survey (2023) found that a majority of US students practice self-censorship on campus, fearing backlash for controversial opinions.
- Research by University College London (2023) highlighted the suppression of gender critical academic views in the UK, suggesting that even advanced democracies face challenges in balancing academic freedoms with inclusivity. Bastions of free speech, they also serve as battlegrounds for global struggle over hate speech and inclusivity.

V. Contemporary Challenges in India

India, given its socio-political complexities, faces unique challenges in regulating hate speech:

1. Vagueness in Laws

Sections 153A and 295A of the IPC have been criticized for being overly broad, leaving their interpretation to the discretion of Law enforcement officials. This often results in arbitrary application, where dissent is labeled as hate speech.

2. Digital amplification

Social media platforms like WhatsApp, Facebook and Twitter have transformed the nature of communication. Hate filled rumors can spread to millions. And within minutes, sometimes sparking violence. Scholars described this as fear speech, where the emphasis is less on hatred and more on instilling insecurity and distrust among groups.

3. Political misuse.

Hate speech laws are frequently weaponized to silence critics of the government or political establishment. Authorities often equated political dissent with speech that endangers public order. Eroding democratic accountability.

4. Communal tensions and electoral. Politics.

Politicians sometimes exploit identity based rhetoric for electoral gains. Normalizing hate speech during campaigns. Despite the Election Commission of India's model code of conduct, enforcement remains inconsistent.

5. Academic freedom under pressure

universities in India have. Increasing restrictions. On student protests, research, and publications, expressions of dissent are often conflated with sedition or hate speech, creating a chilling effect on academic freedom.

6. Judicial backlog.

Even when hate speech cases are filed, the slow judicial process undermines timely redress. By the time a verdict is delivered, the harm caused by the speech, such as riots, mistrust, or. Reputational damage has already taken root.

These challenges illustrate that India's struggle is not simply about drawing legal. Boundaries, but about reconciling democracies. Twin imperatives, liberty and equality falsification.

VI. Psychological and Sociological Perspectives

Understanding hate speech also requires insights from psychology and sociology:

Psychological Harm: Hate speech inflicts psychological trauma on targeted communities, leading to fear, anxiety, and alienation. It is not merely “speech” but an act that undermines human dignity.

Sociological Impact: Hate speech reinforces stereotypes, normalizes prejudice, and deepens social divisions. In a diverse country like India, even small sparks can escalate into communal violence.

VII. Case studies in India

1. **Muzaffarnagar rights**, (2013). Spread via WhatsApp and inflammatory speeches contributed to communal violence, displacing thousands. This demonstrated the lethal role of digital hate speech.
2. **Anti-CAA protest** (2019 to 2020) during protests against the citizenship amendment act both supporters and opponents engaged in. Heated Theodoric. Several leaders' speeches were criticized as crossing the line into in. Sentiment. Next time.
3. **Social media trolling** Prominent activists, journalists and women leaders face coordinated online abuse, often caused in hate speech targeting gentle religion or caste. The absence of swift legal remedies. Exhibits the.

These case studies Illustrate how hate speech essentially in the digital era, is not a theoretical issue, but one with devastating real-world consequence.

VIII. Future reforms and international cooperation

To address the complexities. Of free speech and hate speech in India. Future reforms could include:

- Comprehensive hate speech law, enhancing A standalone statute that consolidate its provisions, defines hate speech clearly and incorporates safeguards against misuse
- Independent regulatory body establishing an autonomous institution to oversee digital platforms, ensuring transparency, accountability in content moderation

- Cross-border Corporation. Hate speech often transcends borders via digital media. International collaboration is necessary for tracking, regulating and removing harmful content
- Civic education and dialogue. Empowering citizens with critical. Media literacy and encouraging inter community. Along to build resilience against. Divisive rhetoric

IX. Conclusions

Freedom of speech and hate speech exist on a fragile spectrum, where excess on either side can destabilize democracy. India's experience illustrates that too much liberty risks inflaming divisions, while excessive restrictions risk authoritarian suppression. The path forward lies in refining the middle ground: clearer laws, intent-based assessments, judicial safeguards, and robust civic engagement.

Comparative perspectives show that while the U.S. prioritizes liberty and Europe emphasizes dignity, India must chart a path that reflects its pluralistic society and historical context. Universities, digital platforms, and civil society must also share responsibility for fostering healthy discourse.

Ultimately, the goal is not to silence speech but to ensure that speech serves as a tool for dialogue, critique, and progress rather than division and destruction. Protecting freedom of expression while curbing hate speech is not a contradiction—it is the essence of sustaining democracy in a diverse society.

References

1. Constitution of India, 1950.
2. Indian Penal Code, 1860.
3. *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.
4. *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.
5. *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477.
6. Law Commission of India, *267th Report on Hate Speech* (2017).
7. University of Chicago. (2014). *Report of the Committee on Freedom of Expression* ("Chicago Principles").
8. University of Chicago. (1967). *Kalven Committee Report on the University's Role in Political and Social Action*.
9. Arora, Ishita. (2023). *Complexities of Hate Speech Regulations in India*. Jindal Global University.
10. University of Edinburgh. (2022). *Hate Speech in India: Judicial Politics of History and Memory*.
11. Knight Foundation & Ipsos. (2023). *Free Expression on Campus: Annual Report*.

12. University College London. (2023). *Academic Freedom and Gender-Critical Views in the UK*.
13. *Brandenburg v. Ohio*, 395 U.S. 444 (1969).
14. European Convention on Human Rights, Article 10.
15. Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 (South Africa).