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HATE SPEECH VS. FREE SPEECH: A CONSTITUTIONAL AND LEGAL BALANCING ACT

Abstract

In contemporary legal discourse, the conflict between hate speech and freedom of expression presents a complex challenge, particularly within pluralistic democracies. On one hand, freedom of expression is a bedrock of democratic governance and public discourse; on the other, hate speech threatens the dignity, safety, and equality of vulnerable groups.

This article aims to examine the legal framework surrounding hate speech and freedom of expression, both in India and internationally. Through an analysis of constitutional principles, judicial precedents, important and relative statutes and international instruments, the article explores the legal and philosophical tensions at the intersection of these rights, ultimately advocating for a balanced approach grounded in constitutional morality and human dignity.

Keywords: Pluralistic Democracy, Chilling effect, UN Strategy, Accountability etc.

● Introduction :

There is no universally accepted definition of hate speech. However, common elements across jurisdictions include expressions that incite hatred, discrimination, or violence based on identity markers such as race, religion, ethnicity, gender, or nationality. In general, people have a common viewpoint which may oppose to each other and sometimes the vagueness arises there. In spite of it, in this 21st century, the basic awareness and knowledge from the people are highly demanding and appreciated.

● **Definition :**

According to the **United Nations Strategy and Plan of Action on Hate Speech (2019)**⁽¹⁾:

- “Hate speech is any kind of communication in speech, writing or behavior that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are— in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.”⁽¹⁾

Foot note:

(1) United Nations Strategy and Plan of Action on Hate Speech, 2019.

The lack of a precise definition often leads to over breadth or vagueness, raising concerns about misuse or overregulation. **The European Court of Human Rights**⁽²⁾, while upholding certain hate speech laws, insists on the need for narrow and clearly defined legal thresholds⁽²⁾.

▪ **Constitutional Framework in India:**

Article 19(1)(a)^[1] of the Indian Constitution guarantees to all citizens the right to freedom of speech and expression. This right is a **cornerstone of individual liberty and democratic engagement**. However, this right is not absolute; **Article 19(2)** allows the State to impose reasonable restrictions on the freedom of speech and expression 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

Thus, hate speech can be curtailed if it threatens public order or incites an offence. The principle of **equality** under **Article 14** reinforces the argument that hate speech targeting particular communities undermines constitutional morality and must not be permitted to override the dignity and rights of others.

● **Essential Nature of Free Speech:**

In some precedents the concept was cleared by the honorable Supreme Court of India. Some of them are:

Foot Note :

(2) **Garaudy v. France (2003) European Court of Human Rights App No. 65831/01**

[i] **Universal's The Constitution of India (bare act)** by Lexis Nexis

In **S. Rangarajan v. P. Jagjivan Ram**^{(3)[ii]}, the Court asserted that free expression can only be restricted when it poses a real and imminent danger to public order.

In **Romesh Thappar v. State of Madras**⁽⁴⁾, the Supreme Court held:

“Freedom of speech and of the press lay at the foundation of all democratic organisations.”

This decision drew upon the **Brandenburg v. Ohio**⁽⁵⁾ principle in U.S. law, which protects speech unless it is: “Directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

A landmark ruling came in **Shreya Singhal v. Union of India**^{(6) [iii]}, where the Supreme Court Struck down Section 66A of the IT Act for being vague and overbroad. Held that only incitement, and not mere advocacy or discussion, can justify curtailment of speech.

▪ Statutory Framework on Hate Speech in India:

Foot Notes :

(3) S. Rangarajan v. P. Jagjivan Ram [1989] 2, SCC 574.

(4) Romesh Thappar v. State of Madras [1950] AIR 124, SCR 594

(5) Brandenburg v. Ohio [1969] 395, U.S. 444

(6) Shreya Singhal v. Union of India [2015] SC 329

[ii] SCC Online < <https://www.scconline.com> > accessed on October 24, 2025

[iii] Manupatra < <https://mobile.manupatra.in> > accessed on October 24, 2025

Although the Indian Constitution does not define hate speech, several provisions of the Indian Penal Code (IPC) penalize hate speech-related offences; those are as following :

1. Section 153A IPC ^[iv]

Criminalizes promotion of enmity between groups on grounds of religion, race, place of birth, etc.

2. Section 153B IPC

Targets assertions prejudicial to national integration.

3. Section 295A IPC

Punishes deliberate acts intended to outrage religious feelings.

4. Section 505(1) & 505(2) IPC

Covers statements that create public mischief and promote enmity.

These laws provide a legal basis and eminent or effective viewpoints for curbing hate speech, though they are sometimes criticized for being vaguely worded and prone to misuse. On other hand, in some Landmark Judgements, the Court also obtained several views:

Pravasi Bhalai Sangathan v. Union of India⁽⁷⁾ : The Court acknowledged the threat of hate speech but deferred to the legislature, stating that new guidelines or definitions should emerge via legislative action, not judicial overreach.

Foot notes :

[iv] K. Kannan and Anjana Prakash, *The Indian Penal Code, 2021*

(7) *Pravasi Bhalai Sangathan v. Union of India* [2014] SC 1591, AIR 2014

Subramanian Swamy v. Union of India⁽⁸⁾

The Supreme Court upheld the criminal defamation law and observed that dignity is a constitutional value, thereby validating restrictions on speech that harms reputation.

Amish Devgan v. Union of India⁽⁹⁾

The Court upheld the FIRs against a TV anchor for allegedly derogatory remarks against a religious figure, stating that the right to freedom of speech does not protect hate speech.

- **International Jurisprudences** are also including this noble concept and appreciating it for many years , such as:

A. United States

The First Amendment offers the strongest protection of free speech globally. In *Brandenburg*, the Court protected speech unless it incites imminent lawless action.

B. European Union

Article 10 of the **European Convention on Human Rights (ECHR)** permits freedom of expression but allows restrictions that are necessary in a democratic society. They found it necessary to have a **reasonable restriction** is needed to maintain the Public Order and Interest in larger basis.

In **Garaudy v. France**⁽¹⁰⁾, the ECHR upheld a Holocaust denial law, reasoning that denialism undermined democratic values.

Foot Notes :

(8) Subramanian Swamy v. Union of India [2016] SCR 184

(9) Amish Devgan v. Union of India, [2021] SCR 160

(10) Garaudy v. France [2003] ECHR App No. 65831/01

C. Canada

Under **Section 1** of the Canadian Charter[v] , free speech can be limited if justified in a free and democratic society.

In **R. v. Keegstra**⁽¹¹⁾, the honourable Supreme Court of Canada upheld hate speech laws, stating that protecting the dignity of marginalized groups justified restrictions on speech.

▪ **The Digital Era and Emerging Challenges:**

The internet and social media platforms are now the “New Normal”. Everyone is well acquainted with the Social Media and Internet world. People got Used to it. Often we see lots of humiliations, disrespect or lowering one's status are now like spreading like forest-fire. Knowingly or unknowingly people are getting this change and get it like taken for granted. So in several cases this doctrine comes in to play. These have magnified the reach of hate speech. The **anonymity, virality, and borderless** nature of online communication present novel legal and regulatory challenges.

▪ Indian Legal Response:

Section 69A of the IT Act, 2000^[v] government to block public access to online content in the interest of sovereignty, integrity, and public order.

The Intermediary Guidelines and **Digital Media Ethics Code Rules, 2021** obligate platforms to:

Remove unlawful content within a set timeframe.

Foot Notes :

[v] Canadian Charter of Rights and Justice <<https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/>> Accessed on October 24, 2025 (11) R v. Keegstra [1990] S.C.R. 697

[vi] Ministry of Electronics and Information Technology of India, “The Information Technology Act”, 21 of 2000

▪ Chilling Effect:

Overregulation, however, can lead to chilling effects, where individuals and journalists self-censor out of fear of criminal prosecution or government reprisal.

Thus, regulatory frameworks must be narrowly tailored to avoid suppressing legitimate dissent.

▪ The Need for Legal Reform:

Recognizing the vagueness in current laws, the Law Commission of India in its 267th Report (2017) recommended:

Sections 153C and 505A are proposed additions to the **IPC** aimed at penalizing harmful speech. **Section 153C** targets speech that causes fear or alarm within identity-based groups, while **Section 505A** addresses speech that inflicts psychological or **emotional harm based on identity**. This is also equivalent to section 356, 196 and some part of 198 of BNS Both provisions focus on intent and actual harm, aiming to create clearer and fairer standards for enforcement while balancing free speech with protection from targeted hostility.

▪ **Recommendations:**

❖ **Codified Definition of Hate Speech**

Parliament should enact a statutory definition, drawing from the **Law Commission's** recommendations. In this era, it can be one solution of this issue. This will include **definitions, important aspects, ways, importance of such act, type of offence and the suitable Punishments.**

❖ **Training for Law Enforcement**

Police and judiciary must be trained in applying hate speech laws sensitively and constitutionally. Firstly, it is needed to make sure that at the **Prima Facie stage** what are the requirements those are essential to **constitute a offence** under this aspect. Then, what are the steps the **Administration** can take immediately. But it is also needed

to keep in mind that any other rights guaranteed by Constitution are not getting Violated. Often it is seen that in due process, **Article 14 and 21** use to get violated or ignored but this should keep in mind and ensure the fare and square implementation of laws. In this way that will ensure the rights and dignity of the people even at the grassroots level.

❖ **Protecting Dissent and Journalism**

Media is considered as 4th pillar of the **Democracy**. Media use to reach at the grassroots levels and every single to single incidents are shown efficiently by the media and efficient journalists. So, it is the high time to enact some protection and welfare to them to protect the **liberty and freedom** of the common people. Ensuring that hate speech laws are not weaponized to silence critics or journalists or minorities. So, it should keep in mind.

❖ **Platform Accountability**

Platform accountability is essential to protect individuals from **hate speech and suppressions** specially the **Minorities** through online. By enforcing **content moderation, transparency, and swift removal of harmful**

content, platforms help uphold users' **rights to dignity, safety, and equal participation with maintaining the healthy atmosphere to evolve and one can be his best self**. Now a days lots of Social Media Platforms enacted this feature that the **sensitive and harmful contents** are getting **auto-detected and deleted** soon. This not only ensures the reputations of that platform but also protects the rights of the common people. So, without accountability, the digital spaces can become **breeding grounds for hatred, misinformation, and targeted abuse, leading to serious real-world consequences and undermining democratic values**.

❖ **Social media companies must**

Social media companies must take **concrete, effective and strict** action to protect individuals from **hate speech and humiliations throughout the platforms**. This includes enforcing **strict moderation policies, unavoidable penalties, legal effects, increasing transparency, and prioritizing user safety**. It is high time that such measures are necessarily to be implemented to **safeguard fundamental rights, prevent abuse, and promote a healthy relationship between the individuals through out the Social Networks and Platforms and also a respectful digital discourse**. These platforms often act as **virtual public squares**, and **with that influence comes responsibility**. So, **protection should be the high priority**.

Allowing unchecked hate speech can normalize **discrimination, marginalize vulnerable communities, and even incite real-world violence**. Therefore, the social media companies must invest in **robust content moderation** systems, **employ culturally aware and well trained moderators, and ensure quicker responses to complaints**. They should also provide clear reporting mechanisms and proper punishments such as **temporarily blocking to post or react or permanent deletion of account**. Apart from there, for users and share regular transparency reports about their enforcement practices.

Further, **collaboration with legal authorities, administration and civil society organizations** will surely play a very much vital role to ensure that **platform policies align with democratic values and human rights**.

Protecting users from hate speech is not just a policy issue—it's a moral and humanized effect.

❖ **Complying with takedown notices**

Complying with takedown notices is important and plays a fruitful, effective, long-term and swift role in protecting individuals from hate speech. When platforms or the social services provide the reasonable respond

promptly to such notices, they help prevent the spread of **harmful, offensive, or inciteful** content. That is really appreciable under this context. This is considered as clear-cut violation of **Article 21 that guarantees to live with Dignity**, some jurists admire it. This not only safeguards the **rights and dignity** of targeted individuals or communities but also reinforces accountability in the digital space and supports a safer online environment to securely browse and entertaining oneself.

❖ **Be transparent and equal about content removal**

Often it is seen that the Social Media Influencers post harming the public rights and dignities through out the hate speeches. The Social Media companies often get accused to **work arbitrary**. So, it is the fact to be concerned. It is also the liability of State to enact strict laws to protect the rights.

❖ **Provide appeals mechanisms**

Providing an appeal mechanism is crucial in protecting individual's rights from hate speech, as it often seeks to ensure **fairness and transparency** in the content moderation process. This is the fact that should keep in mind that over concernness is harmful. Sometimes, some **good and helpful posts** are also **deleted** which does not even

affects any **emotion or thinking of a person or community**. Sometimes, content may be **wrongfully removed or flagged due to overreach or misinterpretation**.

That's why an **appeal system** should be there to allow users **to challenge such decisions, helping to correct mistakes and prevent the misuse of takedown procedures**. This balance is **essential** and fully **Constitutional to protect both freedom of expression and the right to be free from harmful or hateful content**. So this also should imply.

❖ **Promote Constitutional Morality**

And lastly, it is the one thing that is needed to implement immediately. Because in our daily life, we knowingly or unknowingly, use hate speech that hampers other person's dignity and that is not deserving at all. Legal interpretations should balance **liberty with dignity, promoting fraternity and equality** in diverse societies. So, to aware people throughout several steps, campaigns and many more ways are highly needed and appreciated.

● Conclusion :

The tension between **freedom of expression and hate speech regulation** lies at the intersection of liberty and **equality**. While **speech must be free for democracy to flourish, it cannot come at the cost of inciting hatred, violence, or systemic discrimination**. It also need to keep in notice that such practice is not harming any individual's rights and dignity. Because **to limit one's right means the justice and equality to all**. Thus, **Article 14, 19 and 21** collectively the **Golden Triangle** is formed and well established to protect democracy, equality and fairness.

A balanced legal framework, rooted in constitutional values, international standards, and judicial prudence, is obviously essential to preserve both **individual autonomy and collective dignity**. As India navigates the challenges of a digitally connected, culturally diverse, and politically active population, the jurisprudence on hate speech and free expression must evolve in a way that protects rights without enabling harm and Affecting the dignity.