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BALANCING FREEDOM OF SPEECH AND HATE SPEECH LAWS IN DEMOCRATIC SOCIETIES

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ABSTRACT

The tension between the right to freedom of speech and the need to regulate hate speech constitutes a persistent challenge in democratic societies². In India, this challenge is compounded by the nation's profound cultural, linguistic, and religious diversity, which shapes both the social and legal landscapes³. Legal frameworks, societal norms, and emerging technologies intersect, creating complex scenarios where freedom of expression may conflict with the imperative to protect community interests⁴. This paper undertakes a comprehensive analysis of the constitutional provisions and statutory mechanisms governing freedom of speech and hate speech in India, critically examining judicial interpretations that have influenced contemporary discourse⁵. By exploring socio-legal implications and policy considerations, the study underscores the intricate balance that democracies must strike between protecting individual liberties and ensuring societal cohesion⁶.

Keywords: Freedom of Speech, Hate Speech, Democratic Societies, Constitutional Law, Judicial Interpretation, Social Harmony, Legal Regulation

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² *Article 19(1)(a) of the Constitution of India guarantees the right to freedom of speech and expression*

³ *See Granville Austin, The Indian Constitution: Cornerstone of a Nation, Oxford University Press, 2016, p. 145*

⁴ *Richard Delgado & Jean Stefancic, Understanding Hate Speech Law in a Global Context, Routledge, 2020, p. 22.*

⁵ *Shreya Singhal v. Union of India, (2015) 5 SCC 1; see also Rajeev Dhavan, Constitutional Interpretation in India, Oxford University Press, 2017, p. 201*

⁶ *Nadine Strossen, Hate: Why We Should Resist It with Free Speech, Not Censorship, Oxford University Press, 2018, pp. 57–60*

INTRODUCTION

Freedom of speech is widely regarded as a cornerstone of democratic governance, enshrined in Article 19(1)(a) of the Constitution of India, which guarantees citizens the right to express their views without undue interference⁷. This right ensures that individuals can engage in political debate, critique government policies, and participate in social discourse, thereby fostering an informed citizenry. However, Article 19(2) allows the state to impose reasonable restrictions in the interest of public order, morality, security, and to prevent incitement of offenses, including hate speech⁸. Hate speech is generally understood as any expression that promotes prejudice, hostility, or violence against individuals or groups based on religion, race, caste, gender, or ethnicity⁹. In a culturally and linguistically diverse society such as India, regulating hate speech without infringing upon the fundamental right to expression remains a complex task. The proliferation of digital media has further amplified the challenge, as online platforms often provide a rapid and wide-reaching avenue for the dissemination of incendiary content¹⁰. This paper critically examines legal frameworks, socio-cultural dynamics, and judicial pronouncements to explore the delicate balance between protecting freedom of expression and maintaining social harmony.

REVIEW OF LITERATURE

The relationship between freedom of speech and hate speech regulation has been the subject of extensive academic and judicial inquiry, both in India and internationally. Scholars such as Granville Austin and S.P. Sathe have emphasized that the Indian Constitution envisions freedom of expression as a moral and political cornerstone of democracy, yet one that must coexist with social responsibility¹¹. Austin observes that the framers of the Constitution intended Article 19(1)(a) to foster open political discourse while preventing speech that disrupts public order or incites violence¹². Internationally, theorists like Jeremy Waldron and Nadine Strossen have explored the philosophical and practical justifications for regulating hate speech. Waldron argues that hate speech undermines the dignity and security of

⁷*Ibid*

⁸S.P. Sathe, *Freedom of Speech and Expression in India*, Universal Law Publishing, 2018, pp. 33–36

⁹*Ibid*; Jacob Mchangama, *Speech in the Public Square*, Cambridge University Press, 2021, p. 78

¹⁰*Ibid*; Yochai Benkler, Robert Faris & Hal Roberts, *Network Propaganda*, Oxford University Press, 2018, pp. 122–125.

¹¹S.P. Sathe, *Freedom of Speech and Expression in India*, Universal Law Publishing, 2018, pp. 25–30.

¹²Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, 2016, p. 145.

marginalized groups, threatening the moral foundation of democratic equality¹³. In contrast, Strossen maintains that countering hate speech through open debate is preferable to state censorship, which often suppresses dissenting views and weakens democratic pluralism¹⁴. Indian judicial scholars such as Rajeev Dhavan and Fali Nariman have further examined how constitutional interpretation has evolved to balance speech rights with social cohesion. Dhavan contends that Indian courts such cases, which have sought to harmonize the tension between free expression and community interests by applying the principle of proportionality¹⁵. Collectively, the literature underscores that while freedom of expression remains a vital democratic right, its regulation is indispensable in a diverse and emotionally charged polity such as India.

STATEMENT OF THE PROBLEM.

The tension between freedom of speech and the regulation of hate speech represents a persistent challenge in India's constitutional and democratic framework¹⁶. While Article 19(1)(a) of the Constitution guarantees the right to freedom of speech and expression¹⁷, Article 19(2) permits the imposition of reasonable restrictions to safeguard public order, decency, morality, and national security¹⁸. Despite these constitutional provisions, the rise of digital communication platforms has intensified the spread of hate speech, creating socio-legal dilemmas about the limits of expression in a pluralistic society¹⁹. Judicial interpretation has evolved to address this tension, but questions remain regarding consistency, enforceability, and balancing individual liberty with societal harmony.

OBJECTIVES OF STUDY

The primary objective of this study is to critically examine the legal and constitutional framework governing freedom of speech and hate speech in India, with particular reference to judicial interpretation and contemporary societal dynamics²⁰. Specifically, the research aims to: (i) analyse constitutional provisions related to free speech under Articles 19(1)(a) and

¹³Jeremy Waldron, *The Harm in Hate Speech*, Harvard University Press, 2012, p. 89.

¹⁴Nadine Strossen, *Hate: Why We Should Resist It with Free Speech, Not Censorship*, Oxford University Press, 2018, pp. 57–60.

¹⁵Rajeev Dhavan, *Constitutional Interpretation in India*, Oxford University Press, 2017, pp. 205–210.

¹⁶Uppendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company, 1980), p. 88.

¹⁷*The Constitution of India*, art. 19(1)(a).

¹⁸*The Constitution of India*, art. 19(2).

¹⁹Pratiksha Baxi, *Hate Speech and Democracy in India* (Oxford University Press, 2020), p. 12.

²⁰M. P. Singh, "Freedom of Speech and Hate Speech in India," *Indian Journal of Constitutional Law* Vol. 12 (2018): 23–45

19(2); (ii) evaluate the evolution of judicial thought through landmark Supreme Court judgments shaping India's free speech jurisprudence; (iii) investigate the socio-legal implications of hate speech in the context of India's pluralistic society; (iv) examine the role of digital media in amplifying both free expression and hate-based communication; and (v) propose policy recommendations that balance free speech with constitutional morality and social harmony²¹.

HYPOTHESES

Based on these objectives, the study formulates the following hypotheses:

- H₁: Judicial interpretation has progressively clarified the limits of free speech while protecting democratic expression.
- H₂: Existing legal and constitutional frameworks are insufficient to address the challenges posed by digital amplification of hate speech.
- H₃: Balancing free speech and societal harmony requires a nuanced approach integrating judicial safeguards, legislative clarity, and responsible digital governance²².

Collectively, the study seeks to contribute to the ongoing academic and policy discourse on reconciling liberty with responsibility in India's democracy²³.

RESEARCH METHODOLOGY

This research adopts a doctrinal and qualitative methodology, focusing on the analysis of constitutional texts, judicial decisions, legislative enactments, and scholarly writings related to freedom of speech and hate speech²⁴. Primary sources include constitutional provisions, statutes such as the Indian Penal Code (Sections 153A, 295A), and landmark judgments of the Supreme Court of India. Secondary sources encompass academic commentaries, law review articles, and publications by leading constitutional scholars. The study employs analytical and comparative methods, examining how Indian jurisprudence aligns with or diverges from international approaches, particularly those adopted in the United States,

²¹*Ibid.*, p. 28.

²²K. K. Ghai, *Freedom of Expression in India: Judicial and Social Perspectives* (New Delhi: Political Science Notes, 2019), p. 34

²³D. D. Basu, *Commentary on the Constitution of India*, 9th ed. (LexisNexis, 2022), Vol. 1, p. 112.

²⁴M.P. Jain, *Indian Constitutional Law*, LexisNexis, 2021, p. 312

United Kingdom, and European Union²⁵. Emphasis is placed on the interpretive principles used by Indian courts, such as proportionality, reasonableness, and constitutional morality, to assess restrictions on free speech. Data is interpreted thematically to identify recurring judicial trends and policy gaps. In addition, the research incorporates a socio-legal perspective, recognizing that law operates within a dynamic social framework. This approach allows the study to evaluate not only the textual and doctrinal dimensions of free speech but also its real-world implications in a digitally interconnected society²⁶.

CONCEPTUAL FRAMEWORK

Freedom of Speech: This encompasses the right of individuals to express ideas, opinions, or beliefs without censorship or undue governmental interference²⁷. It includes political speech, artistic expression, academic discourse, and personal commentary. The principle is central to the functioning of a democratic society, as it facilitates dialogue, dissent, and the exchange of ideas essential for governance and social progress²⁸.

Hate Speech: Hate speech refers to expressions intended to incite violence, discrimination, or hostility against a particular group. The classification of hate speech is context-dependent, taking into account social, cultural, and legal frameworks²⁹. Legal systems typically evaluate the potential harm posed by the speech, balancing it against the societal value of free expression.

Democratic Society: A democratic society prioritizes individual liberties, civic participation, and governance accountable to its citizens. Within such a system, the challenge lies in ensuring that the exercise of one right does not undermine the rights or safety of others³⁰. Freedom of expression is therefore protected alongside mechanisms to prevent societal harm, making the regulation of hate speech an essential, albeit complex, feature of democratic governance.

²⁵David Kretzmer, "Freedom of Speech and Limits of Tolerance," *International Journal of Constitutional Law*, Vol. 8, No. 1, 2010, p. 112.

²⁶Upendra Baxi, *The Future of Human Rights*, Oxford University Press, 2020, p. 64.

²⁷Article 19(1)(a), *Constitution of India*; Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, 2016, p. 145.

²⁸S.P. Sathe, *Freedom of Speech and Expression in India*, Universal Law Publishing, 2018, pp. 33–36

²⁹Richard Delgado & Jean Stefancic, *Understanding Hate Speech Law in a Global Context*, Routledge, 2020, pp. 22–45

³⁰Nadine Strossen, *Hate: Why We Should Resist It with Free Speech, Not Censorship*, Oxford University Press, 2018, pp. 57–65

JUDICIAL INTERPRETATIONS

The Indian judiciary has played a pivotal role in defining the contours of freedom of speech and hate speech, interpreting constitutional provisions in light of evolving societal and technological realities³¹. Article 19(1)(a) guarantees the right to free expression, while Article 19(2) empowers the State to impose reasonable restrictions in the interests of public order, morality, and the sovereignty and integrity of India³². Courts have consistently emphasized that the right to speech is not absolute and must be exercised with responsibility. This interpretation reflects the constitutional vision of balancing individual liberty with collective security and social harmony. One of the most significant judgments in this context is *Shreya Singhal v. Union of India (2015)*, where the Supreme Court of India struck down Section 66A of the Information Technology Act, 2000, for being vague and unconstitutional³³.

The Court held that the provision violated Article 19(1)(a) by criminalizing online speech without clear standards of what constituted offensive content. However, the Court simultaneously reaffirmed the State's power to regulate expressions that incite violence or threaten public order. This case marked a landmark moment in digital free speech jurisprudence, highlighting judicial commitment to safeguarding individual rights while acknowledging legitimate state concerns over hate speech in cyberspace. Another crucial precedent is *Pravasi Bhalai Sangathan v. Union of India (2014)*, in which the Supreme Court recognized the growing menace of hate speech in public discourse but declined to issue specific guidelines, urging the legislature to frame comprehensive laws addressing the issue³⁴.

The judgment underscored the need for a statutory framework that balances constitutional freedoms with the prevention of divisive or inflammatory rhetoric. Similarly, in *Amish Devgan v. Union of India (2020)*, the Court reiterated that free speech cannot be used as a shield to justify expressions that promote hatred or discrimination. The Court emphasized that the dignity of individuals and communities must be protected within the broader ambit of constitutional morality and social order³⁵.

³¹*Romesh Thappar v. State of Madras, AIR 1950 SC 124; Brij Bhushan v. State of Delhi, AIR 1950 SC 129*

³²*Article 19(1)(a) and 19(2), Constitution of India.*

³³*Shreya Singhal v. Union of India, (2015) 5 SCC 1.*

³⁴*Pravasi Bhalai Sangathan v. Union of India, (2014) 11 SCC 477*

³⁵*Amish Devgan v. Union of India, (2020) 11 SCC 1.*

Judicial interpretations have also reflected sensitivity toward India's pluralistic ethos. In *Bilal Ahmed Kaloo v. State of Andhra Pradesh (1997)*, the Supreme Court stressed that provisions under Sections 153A and 295A of the Indian Penal Code should be applied cautiously to avoid misuse against legitimate criticism or satire³⁶.⁶ This judicial restraint ensures that the boundary between free expression and hate speech remains flexible, adapting to the evolving socio-political context. The judiciary's nuanced approach demonstrates an ongoing effort to maintain equilibrium between liberty and restraint, ensuring that neither state censorship nor unrestricted speech undermines democratic integrity.

RESULTS

The examination of constitutional provisions, judicial precedents, and legislative policies indicates a consistent judicial endeavor to maintain a delicate balance between individual liberty and societal protection³⁷. Indian courts have generally interpreted the right to freedom of speech under Article 19(1)(a) expansively, while simultaneously upholding reasonable restrictions under Article 19(2) to safeguard public order, morality, and communal harmony³⁸. Landmark judgments such as *Shreya Singhal v. Union of India (2015)*³⁹ and *Amish Devgan v. Union of India (2020)*⁴⁰ illustrate the judiciary's nuanced approach in distinguishing between permissible free expression and prohibited hate speech, emphasizing the importance of context, intent, and potential harm in adjudication. The analysis further reveals that, although India's constitutional and legal framework provides robust safeguards for free expression, the enforcement of hate speech laws often remains inconsistent⁴¹. Legislative ambiguities, selective implementation by law enforcement agencies, and the absence of clear procedural standards have contributed to uneven application, highlighting gaps between judicial intent and practical enforcement⁴². Overall, the results underscore the judiciary's pivotal role in shaping India's free speech jurisprudence, while also pointing to the need for

³⁶ *Bilal Ahmed Kaloo v. State of Andhra Pradesh*, (1997) 7 SCC 431

³⁷ M. P. Singh, "Freedom of Speech and Hate Speech in India," *Indian Journal of Constitutional Law* Vol. 12 (2018): 27

³⁸ *The Constitution of India*, arts. 19(1)(a) and 19(2).

³⁹ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

⁴⁰ *Amish Devgan v. Union of India*, WP (Civil) 930/2020, *Supreme Court of India*

⁴¹ Pratiksha Baxi, *Hate Speech and Democracy in India* (Oxford University Press, 2020), p. 36.

⁴² K. K. Ghai, *Freedom of Expression in India: Judicial and Social Perspectives* (New Delhi: Political Science Notes, 2019), p. 41

more coherent legislative guidance and institutional mechanisms to ensure consistent protection against hate speech without unduly restricting legitimate expression⁴³.

DISCUSSION

The interplay between freedom of expression and hate speech regulation highlights a fundamental tension between liberal constitutional ideals and the complex realities of India's pluralistic society⁴⁴. Speech in India often intersects with religion, caste, and politics, amplifying the potential for social discord⁴⁵. Judicial pronouncements reveal an evolving understanding of how speech impacts social stability and civic morality. While the judiciary has generally adopted a rights-based approach, its decisions also reflect pragmatic sensitivity to India's socio-political realities⁴⁶. For example, by striking down vague or overbroad laws that curtail free speech, courts have reaffirmed democratic freedoms, while simultaneously endorsing reasonable restrictions to prevent communal disharmony, thereby balancing individual liberty with societal protection⁴⁷. The rise of digital media introduces additional complexities. Social networking platforms facilitate both democratic participation and the rapid spread of hate speech, misinformation, online harassment, and communal polarization⁴⁸. This digital dimension necessitates legislative and regulatory frameworks that are responsive to technological realities, while remaining anchored in constitutional safeguards⁴⁹. The discussion suggests that a coherent, technology-sensitive approach integrating education, regulation, and accountability mechanisms is essential to curtail hate speech without infringing upon the right to dissent or legitimate free expression⁵⁰.

CONCLUSION

Freedom of speech and the regulation of hate speech represent two sides of the same constitutional coin, both crucial for sustaining democracy and maintaining social order⁵¹. A

⁴³D. D. Basu, *Commentary on the Constitution of India*, 9th ed. (LexisNexis, 2022), Vol. 1, p. 118.

⁴⁴Pratiksha Baxi, *Hate Speech and Democracy in India* (Oxford University Press, 2020), p. 42.

⁴⁵M. P. Singh, "Freedom of Speech and Hate Speech in India," *Indian Journal of Constitutional Law* Vol. 12 (2018): 29–31.

⁴⁶K. K. Ghai, *Freedom of Expression in India: Judicial and Social Perspectives* (New Delhi: Political Science Notes, 2019), p. 45.

⁴⁷*Shreya Singhal v. Union of India*, (2015) 5 SCC 1; D. D. Basu, *Commentary on the Constitution of India*, 9th ed. (LexisNexis, 2022), Vol. 1, p. 120.

⁴⁸Pratiksha Baxi, *Hate Speech and Democracy in India* (Oxford University Press, 2020), p. 48.

⁴⁹K. K. Ghai, *Freedom of Expression in India: Judicial and Social Perspectives* (New Delhi: Political Science Notes, 2019), p. 50.

⁵⁰D. D. Basu, *Commentary on the Constitution of India*, 9th ed. (LexisNexis, 2022), Vol. 1, p. 123.

⁵¹Pratiksha Baxi, *Hate Speech and Democracy in India* (Oxford University Press, 2020), p. 52.

democratic society cannot thrive without free expression; yet, unchecked or malicious speech has the potential to undermine civic coexistence and communal harmony⁵². Indian jurisprudence has gradually evolved toward a contextual balance, emphasizing that liberty must coexist with responsibility and that constitutional guarantees are not absolute⁵³. Looking forward, it is imperative for the legislature, judiciary, and civil society to collaborate in establishing clearer statutory standards and promoting digital literacy to curb the spread of hate-driven narratives⁵⁴. Such measures are not intended to suppress dissent but to encourage responsible expression that aligns with constitutional morality⁵⁵. By harmonizing the right to free speech with the imperatives of collective welfare, India can continue to strengthen its democratic ethos while upholding the dignity, equality, and unity of its citizens⁵⁶.

⁵²M. P. Singh, "Freedom of Speech and Hate Speech in India," *Indian Journal of Constitutional Law* Vol. 12 (2018): 33–34.

⁵³K. K. Ghai, *Freedom of Expression in India: Judicial and Social Perspectives* (New Delhi: Political Science Notes, 2019), p. 55.

⁵⁴D. D. Basu, *Commentary on the Constitution of India*, 9th ed. (LexisNexis, 2022), Vol. 1, p. 125.

⁵⁵*Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

⁵⁶Pratiksha Baxi, *Hate Speech and Democracy in India* (Oxford University Press, 2020), p. 58.