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Balancing Freedom of Speech with Hate Speech Laws in India

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*This paper reflects on the contention between India's balancing freedom of speech while repressing hate speech that invokes incitement to violence or discrimination, all under the guise of democratic values. Article 19(1)(a) of the Constitution of India¹ guarantees the right to freedom of speech subject to reasonable restrictions specified in Article 19(2)². These restrictions toward public order, decency, and national security brought against hate speech, but the framework is so disjointed, having provisions scattered around the Indian Penal Code, the Representation of the People Act and, the Information Technology Act, etc. The article deals with tensions between keeping free expression safe and control of hate speech against an adversarial backdrop of vagueness and overreaching in the laws and their discriminatory application. The two big judicial decisions- *Shreya Singhal v Union of India* and *Ramji Lal Modi v State of Uttar Pradesh*³- have come about to make an interpretation of hate speech that has defined the need to restrict in rather narrowly conceived manners without really limiting free speech. This would increase polarisation for new digital platforms to inform the general atmosphere and, with chances at free expression generally, build up an increased countervailing force in how to afford harm on social media. The comparative perspectives from the US, UK, and the EU illustrate different approaches toward handling hate speech in democratic societies. Finally, the article concludes by arguing that legal reform is fundamentally necessary but complemented with the requisite public education in order to help develop a culture that promotes free speech but does not foster hate and violence.*

¹ Constitution of India 1950, art 19(1)(a)

² Constitution of India 1950, art 19(2)

³ *Shreya Singhal v Union of India* (2015) SC 1523

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INTRODUCTION

The right to freedom of speech and expression is undoubtedly one of the most basic and precious freedoms in a democracy. It has been recognised as necessary for the protection of individual liberty, the fostering of democratic governance, and open discussion within society. The same falls under Article 19(1)(a)⁴ but is definitely not absolute. It holds that such a right can be subjected to reasonable restrictions for preventing hate speech that may create public disorder or violence or infringe on the rights of others.

To this end, the protection of freedom of speech is important for the sustenance of democratic values, individual autonomy and the pursuit of truth. On the other hand, unbridled freedom of speech, particularly in the garb of hate speech, leads to violence, discrimination and marginalisation of the vulnerable communities. A deep dive into the Indian complex dynamics regarding freedom of speech and laws on hate speech, with coverage of constitutional jurisprudence, some judicial decisions, challenges in implementation, and the changing legal and social setting.

CONSTITUTION FRAMEWORK FOR FREEDOM OF SPEECH AND EXPRESSION IN INDIA

Article 19(1)(a): Freedom of Speech and Expression: Article 19(1)(a) gives Indian citizens the freedom of speech and expression given by the Constitution of India. The right is vast and extends to freedom in making communication by words, either spoken or written, and the right to present one's thoughts, views, and gestures in writing and photographs, among other forms of expression. It remains fundamental to individual liberty and smooth-running democratic societies. It enables the free flow of ideas, opinions, and beliefs. Freedom of speech, however, is not absolute. Article 19(2)⁵ permits the state to impose 'Reasonable Restrictions' on such a right,

⁴ Constitution of India 1950, art 19(1)(a)

⁵ Constitution of India 1950, art 19(2)

particularly in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. These are designed to provide a balance between the exercise of the rights of individuals and the greater interests of society.

Reasonable Restrictions on Free Speech: The term 'Reasonable Restriction' means that curtailment of free speech shall be justified and proportionate and should not be incompatible with democratic principles. It is upon the courts to ensure whether the restraint is constitutional or whether there is no redundant infringement of fundamental rights. The concept of meaningful limits has been the subject of many judicial debates and judgments. Time alone will tell how the judiciary has interpreted reasonable limits on the freedom of speech without causing infringement of the very backbone of democracy and individual liberties.

HATE SPEECH: DEFINITION AND LEGAL FRAMEWORK

Hate Speech: Generally, hate speech has been described as the speech, conduct, writing, or expression of acts that incite violence or prejudicial action against people or groups on grounds such as, but not limited to, race, religion, ethnicity, gender, sexual orientation, etc. Hate speech can set an atmosphere for antagonism, discrimination, or even violence, which ultimately leads to results that are also contrary to the values of equality and dignity found in every democratic state. However, hate speech is almost different in every country. No singular Indian legislation defines hate speech, but several enactments have provisions related to speech or expression that incites violence, promotes enmity, or disturbs public order.

Legal Provisions against Hate Speech in India: There are also a lot of laws within India that speak to hate speech. Those particular enactments of law are meant to suppress speech that tends to incite a threat to public order or any form of discrimination that may be used to destroy the social fabric of this nation. Such provisions include **Section 153A**⁶, which talks about punishment that is given to any person inciting hatred between different groups on the grounds of religion, race, language, or any other form, including acts that disturb harmony. **Section**

⁶ Indian Penal Code 1860, s 153A

295A⁷ also deals with acts done with deliberate and sinister intent to outrage the religious feelings of any class by insulting their religion or religious beliefs. **Section 505**⁸ has criminalised the dissemination of any statement that is likely to cause fear or alarm or induce violence. The section clearly describes statements made for promoting enmity, hatred, or ill-will between groups on the grounds of religion, race, language, region, birth, residence, or any other reasonable ground. **Representation of the People Act 1951**⁹ states that no election speech or address shall contain matter of such a character that by offending any class of persons, it is likely to excite feelings of enmity, hatred or intolerance on grounds of religion, race, caste or language. **Section 66A**¹⁰, as it stood before the Supreme Court, overruled it¹¹ purported to condemn communications by way of electronic mail or electronic mail messages, which was held unconstitutional. Other provisions of the IT Act remain a law governing hateful speech and other inciting content distributed online.

Judicial Interpretation of Hate Speech Laws: Because the courts have to draw the line about the limits of hate speech laws, the Indian judiciary has had a very important role in deciding this. Courts are often forced to decide whether the speech crosses over from protected expression into lawful hate speech. Courts balanced free speech rights with restrictions on speech that really and actually threaten public order or an individual's rights in doing so.

A landmark case such as **Shreya Singhal v Union of India**¹² clarifies that it is the judiciary that itself defends these kinds of balances. This great landmark judgment quashed Section 66A¹³, which criminalised 'offensive' messages as being too broad and vague. However, the Court noted that restrictions upon speech, when adequately defined, are essential to social order and individual rights.

⁷ Indian Penal Code 1860, s 295A

⁸ Indian Penal Code 1860, s 505

⁹ Representation of the People Act 1951

¹⁰ Information Technology Act 2000, s 66A

¹¹ *Shreya Singhal v Union of India* AIR 2015 SC 1523

¹² *Ibid*

¹³ Information Technology Act 2000, s 66A

BALANCING FREE SPEECH WITH HATE SPEECH: THE ISSUES

Vagueness and Overbreadth of Hate Speech Laws: The vagueness and overbreadth of certain hate speech laws is undoubtedly one of the most significant obstacles for India in its pursuit of striking a balance between free speech and hate speech. Many provisions, especially under the Indian Penal Code, are drafted in quite general, nebulous terms which are very easily misused and applied arbitrarily. Terms such as ‘promoting enmity’¹⁴ or ‘outraging the religious feelings’¹⁵ that cannot be understood by different authorities uniformly render their implementation altogether inconsistent.

This ambiguity can also have a chilling effect on free speech as people will make self-imposed restrictions for fear of being taken to court. Hate speech also lacks clear definitions of what it constitutes; hence, people will not be in a position to know if their speech has crossed the borderline between the right to protected expression and unlawful incitement.

Selective Application and Political Misuse: A common controversy regarding this practice is how laws of hate speech in India are frequently found to be selectively and politically misused. The laws have been very frequently applied to target political opponents, suppress dissenting voices, or curb free speech in sensitive or controversial cases. Selective application of hate speech laws clouds their legitimacy and has a tendency to give the impression that they are being used for political repression. For instance, there have been inflammatory or communal utterances by political leaders or groups, but such politicians rarely face the law. This is seen with critics and journalists who speak out against grievances getting prosecuted under hate speech laws.

Influence of Social Media and Online Platforms: Social media and online network platforms have starkly put in contrast the need to communicate freely against the desire to suppress odious speech. The internet allows for the speedy and extensive spread of speech, and hate speech is channeled far and wide without much regard for national borders. This leads to cyberbullying being more rampant, as well as widespread misinformation being prevalent.

¹⁴ Indian Penal Code 1860, s 153A

¹⁵ Indian Penal Code 1860, s 295A

While social media companies have introduced content moderation as well as community guidelines to tackle hate speech, the sheer volume of content makes it extremely difficult to trace and put in place in that regard. Moreover, questions on how private enterprises must step into content regulation on the internet only add another layer of complexity to this question.

SOME NOTORIOUS JUDICIAL DECISIONS INFLUENCED THE SENSITIVE BALANCE BETWEEN FREE SPEECH AND HATE SPEECH

Shreya Singhal v Union of India:¹⁶ In this case, the Supreme Court struck down the provision made under Section 66A of the Information Technology Act, 2000, as it criminalised sending any message that is offensive through electronic communication. The court considered the provision to be vague and far-reaching, which actually brought about a chilling effect on free speech. It was a sharp reminder to the Court that free speech is not absolute and every curtailment must be narrowly tailored and proportionate. This case, too, was an event where the judgment yet again placed a balance between individual rights and society's interests, strictly warning against the overbreadth of laws, which may lead to constraining some basic freedoms.

Pravasi Bhalai Sangathan v Union of India:¹⁷ This case has addressed the problem of hate speeches in relation to elections. The Court was concerned that communal and divisive speech by political leaders was on the rise, and there was an urgent call for greater legal machinery to weed out hate speech, especially focusing on the election campaign phase; however, the Court did not propose any new legislation but relied on the effective implementation of existing laws.

Ramji Lal Modi v State of Uttar Pradesh:¹⁸ In this case, the Supreme Court upheld the constitutional validity of Section 295A of the IPC, which criminalises deliberate and malicious acts done with intent to outrage religious feelings. The Court held that reasonable restriction on free speech was constitutionally permissible in the interest of public order. That was an early illustration of the Court's willingness to allow restrictions on speech in cases concerning religious feelings and public order.

¹⁶ *Shreya Singhal v Union of India* (2015) SC 1523

¹⁷ *Pravasi Bhalai Sangathan v Union of India* (2014) SC 1591

¹⁸ *Ramji Lal Modi v State of Uttar Pradesh* (1957) SC 620

S. Rangarajan v P. Jagjivan Ram:¹⁹ The Supreme Court held a stringent rule to sanction any kind of restriction on free speech on the grounds of public order. The Court held that order, decency or morals may be resorted to in suppressing free speech only when the speech involved has a clear and present danger relation to the threatened public order. Such action by the government, such state action must, therefore, demonstrate an actual and imminent danger to public order. Once again, this holding demonstrates and reinforces the constitutional principle that clear and present danger must be present before free speech can be curtailed.

INTERNATIONAL COMPARISON: FREE SPEECH AND HATE SPEECH IN OTHER COUNTRIES

United States of America: The First Amendment of the U.S. Constitution provides for the right to free speech, and the U.S. is more conservative with its approach to free speech than India is. The U.S. provides for greater freedom of speech than India does. The Supreme Court has construed the First Amendment widely to embrace even the most odious, repulsive, and insulting forms of speech, except for those that pose a clear and present danger. The seminal decision in this regard was **Brandenburg v Ohio**,²⁰ where the Court clarified that speech could only be prohibited when it was likely to incite imminent lawless action.

On the other hand, the U.S. has very strict limits on hate speech laws. Comparing that, the protection of free speech over curbing hate speech forms the bedrock of their legal system. That has been repeatedly criticised as a US style approach that tolerates and promotes harmful speech, especially in today's social media age.

United Kingdom: On the other hand, the UK has much stricter laws on hate speech. There exist criminal sanctions for inciting racial or religious hatred in the Public Order Act 1986 and its similar Acts. In addition, the UK strikes a balance between free speech and public order. It is due to such restrictions that court systems have safeguarded by ensuring that such restrictions can never be employed as a tool for silencing political or artistic speech.

¹⁹ *S Rangarajan v P Jagjivan Ram* (1989) SC 2070

²⁰ *Brandenburg v Ohio* [1969] 395 U S 444

European Union: The European Union has also walked the middle ground between hate speech. The European Court of Human Rights has held that though freedom of expression is a fundamental right, it does not afford protection for hate speech that incites either violence or discrimination. For example, in *Jersild v Denmark*²¹, the European Court of Human Rights upheld the conviction of a journalist for broadcasting a racist interview, holding that the promotion of racial hatred could be restrained under European human rights law.

SHIFT OF CHALLENGES AND FUTURE COURSE

Digital Platforms and Content Moderation: As free speech grows increasingly incoherent in this era of digitality, imperatives for controlling hate speech do not appear to let up. It's no longer the go-to space for public discourse anymore. Facebook, Twitter, and YouTube have turned into hotbeds of hate speech, misinformation, and cyber-bullying. These platforms vary in their content moderation policies enormously, and often, there is no transparency in the process of decision-making pertaining to the removal of content. The Indian government has also nudged for more regulation of digital platforms so that hate speech is moderated appropriately but has concerns over censorship and the excesses of the power of the state.

Overlapping Boundaries Between Hate Speech and Criticism: The world is polarising, and it is becoming more challenging to draw the thin line of separating legitimate criticism from hate speech. So subtly can political, religious and social commentary be manipulated and handled in a way that appears hateful and inflammatory based on what's said and to whom. This raises the question: how do you draw a fine enough line between protected speech and unlawful hate speech in a manner that respects various viewpoints without hurting? More sensitive speech and evaluation standards need to be evolved in India across all contexts so that the law of protection of free speech is not diluted as a result of handling the menace of hate speech.

Role of Education and Public Awareness: Laws alone cannot solve the problem of hate speech in any definite way. More than laws, society needs to be addressed by the ways of teaching and public awareness programs that promote acceptance, inclusion, respect for diversity, and

²¹ *Jersild v Denmark* [1994] 19 EHRR 1

dialogue. It is in schools, universities, and civil society organisations that the culture of discussion and critical thinking can begin to foster, which will further lead to mitigating the spread of hate speech.

CONCLUSION

Balancing the right to free speech with the need to suppress hate speech remains one of the most trying legal and social challenges for India at large. The Constitution provides a strong framework to protect free speech while permitting reasonable restrictions in the interest of public order, decency, and morality. However, these very same hate speech laws, which are themselves vague, pose challenges of a different magnitude and are applied differentially, making it very challenging for the platforms in terms of implementation.

Thus, so far, the judiciary has played an important role in balancing free speech versus hate speech. Some landmark decisions have placed strict limitations on the kind of speech that incites violence and other such discriminatory actions, and such laws and regulations should be narrowly tailored. Then, there will come the calls for equilibrium between legal reform, effective enforcement, and public education in pursuit of individual freedoms and social harmony.

It is for this reason that India will always be in flux, legally and socially, to answer such questions and retain the merit of democracy and equality while preventing hatred and violence.