

LAWFOYER INTERNATIONAL
JOURNAL OF DOCTRINAL LEGAL
RESEARCH
(ISSN: 2583-7753)

Volume 2 | Issue 2

2024

© 2024 *LawFoyer International Journal of Doctrinal Legal Research*

Follow this and additional research works at: www.lijdlr.com
Under the Platform of LawFoyer – www.lawfoyer.in

After careful consideration, the editorial board of LawFoyer International Journal of Doctrinal Legal Research has decided to publish this submission as part of the publication.

In case of **any suggestions or complaints**, kindly contact info.lijdlr@gmail.com

To submit your Manuscript for Publication in the **LawFoyer International Journal of Doctrinal Legal Research**, To submit your Manuscript [Click here](#)

HATE SPEECH VS. FREEDOM OF EXPRESSION: STRIKING THE RIGHT BALANCE IN A DIVERSE SOCIETY

Romika Narotra¹

I. ABSTRACT

This research paper delves into the complex lawful and moral situations encompassing hate speech in India, centring on the fragile balance between safeguarding free speech and combating discrimination. The paper starts by looking at the constitutional framework that ensures the right to freedom of speech and expression in India, compared with the basic to anticipate hate speech that prompts violence and separation. It dives into the authentic and sociopolitical setting that has formed the talk around hate speech in India, investigating the intersectionality of caste, religion, and ethnicity in fuelling unfair talk. The paper fundamentally analyses the existing legitimate instruments in India for tending to hate speech, including provisions beneath the Indian Penal Code and the Information Technology Act. It moreover assesses the effectiveness of these laws in controlling hate speech and holding culprits responsible. Moreover, the paper investigates the ethical contemplations characteristic in directing hate speech, such as the pressure between protecting marginalized communities and maintaining the standards of free speech. Drawing on case thinks about and comparative analyses, the paper offers insights into potential changes and approach suggestions to explore this legal and moral minefield. It advocates for a nuanced approach that maintains free speech whereas heartily combating hate speech through focused on legislation and proactive requirement mechanisms. Eventually, the paper looks for to contribute to the progressing talk on hate speech in India and offer a roadmap for safeguarding free speech whereas promoting a more inclusive and equitable society.

II. KEYWORDS:

Hate speech , Legal framework , Free speech , Discrimination , Ethical considerations

¹ Amity University Noida

III. INTRODUCTION

Hate speech constitutes a shape of speech that looks for to degrade, threaten, or affect violence against people or bunches based on their inherent characteristics². It goes beyond simple expression of opinion, serving to marginalize and outlaw powerless communities, subsequently encroaching upon their respect and rights. In India, where diversity may be a hallmark of its social texture, the repercussions of hate speech are significant. The country's pluralistic society includes a large number of religions, dialects, and societies, making it basic to cultivate harmony and respect among its differing people . Disappointment to address hate speech can result in social distress, communal violence, and erosion of trust among communities, posing critical challenges to India's democratic ethos and stability. The legal scene concerning hate speech in India is multifaceted as moreover expressed within the case of *Pravasi Bhalai Sangathan vs. UOI (2014)*, the Supreme Court analyzed hate speech and highlighted that it marginalizes people based on their enrollment in a group, emphasizing the inconvenient affect of hate speech on social cohesion , Whereas the Indian Penal Code and other statutes prohibit hate speech, there exists a sensitive adjust between checking hate speech and maintaining the right to free speech³ . Striking this balance raises moral questions around where to draw the line between ensuring individuals' right to express themselves freely and preventing the spread of harmful and discriminatory talk. Besides, enforcement mechanisms, such as the part of law enforcement organizations and the legal, come under investigation for their adequacy and fair-mindedness⁴.

Addressing the legitimate and moral measurements of hate speech in India requires a nuanced understanding of constitutional principles, human rights, and societal standards

² Ethical dilemma (2023a) Corporate Finance Institute. Available at: <https://corporatefinanceinstitute.com/resources/esg/ethical-dilemma/> (Accessed: 16 March 2024).

³ Gorenc, N. (2022). Hate speech or free speech: an ethical dilemma?. Available at: <https://www.tandfonline.com/doi/full/10.1080/03906701.2022.2133406> URL (Accessed: 16 March 2024)

⁴ United Nations. (n.d.). Hate speech versus freedom of speech. United Nations. Available at: <https://www.un.org/en/hate-speech/understanding-hate-speech/hate-speech-versus-freedom-of-speech> URL (Accessed: 16 March 2024)

IV. RESEARCH OBJECTIVES

To examine the legal and moral problems encompassing hate speech in India, with a focus on defending free speech whereas combating discrimination.

V. RESEARCH QUESTIONS

1. How can India viably address the legitimate and moral challenges postured by hate speech to maintain free speech and combat discrimination
2. What are the basic socio-political variables that contribute to the predominance of hate speech in India, and how do these components meet with lawful and moral contemplations in addressing the issue?

VI. RESEARCH HYPOTHESES

The research hypothesizes that by sanctioning comprehensive hate speech legislation, improving requirement components, advancing societal mindfulness, and cultivating a culture of resistance and inclusivity, India can successfully defend free discourse whereas combatting discrimination and hate speech

VII. RESEARCH METHODOLOGY

The research methodology adopted in this paper is purely doctrinal in nature. Doctrinal research, also known as library-based research, is a distinctive method of conducting legal research that involves the study and analysis of existing legal provisions, case laws, and scholarly works. This methodology is well-suited for examining the theoretical and conceptual aspects of law and for providing a systematic exposition of legal doctrines and principles. The primary sources relied upon in doctrinal research include statutory materials, judicial precedents, and authoritative texts, while secondary sources such as commentaries, articles and legal digests are also consulted. The research process involves the identification, collection, and critical analysis of these sources to draw logical conclusions and offer insights into the legal issues under investigation. Through doctrinal research, this paper seeks to provide a comprehensive and coherent understanding of the legal framework governing the subject matter at hand.

VIII. LITERATURE REVIEW

Hate speech, characterized by unfair language aimed at prompting violence or hatred against people or groups, remains a significant concern all inclusive. In India, hate speech is recognized as a prompting to hatred basically against particular groups, as laid out within the *267th Report of the Law Commission of India*⁵. The country's hate speech laws point to prevent discord among its diverse ethnic and devout communities. In any case, hate speech poses enduring challenges to justice, functioning through hint and references that delegitimize gather individuals within the eyes of the majority⁶. Efforts to combat hate speech incorporate detection mechanisms, such as those utilized by online stages like YouTube to censor content promoting violence or hatred . Also, legislative activities have been proposed, such as *The Criminal Law (Amendment) Bill, 2017*, which aimed to deny incitement to hatred⁷. Despite these measures, hate speech remains a persistent threat, frequently leading to hate crimes against marginalized groups⁸.

IX. LEGAL FRAMEWORK ON FREEDOM OF SPEECH IN INDIA

Freedom of speech and expression could be a crucial right ensured to all citizens of India under Article 19(1)(a) of the Constitution. It includes the liberty to express one's opinions, contemplations, convictions, and ideas freely without fear of censorship or retaliation⁹. The Supreme Court, in the case of *Romesh Thappar v. State of Madras (1950)*, established that freedom of speech is crucial for the working of democracy . A critical breakthrough within the development of freedom of speech law in India was the case

⁵ Drishti IAS (2023) Hate speech, Drishti IAS. Available at: <https://www.drishtias.com/daily-updates/daily-news-analysis/hate-speech-5> (Accessed: 16 March 2024).

⁶ Alkomah, F. and Ma, X. (2022) A literature review of textual hate speech detection methods and datasets, MDPI. Available at: <https://www.mdpi.com/2078-2489/13/6/273> (Accessed: 16 March 2024).

⁷ Hate speech laws in India - a conundrum to crack (no date) Scribd. Available at: <https://www.scribd.com/document/391042579/Hate-Speech-Laws-in-India-a-Conundrum-to-Crack> (Accessed: 16 March 2024).

⁸ Literature review: Hate crimes and youth (no date) Office of Juvenile Justice and Delinquency Prevention. Available at: <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/hate-crimes-and-youth> (Accessed: 16 March 2024).

⁹ Article 19(1) in constitution of India. Available at: <https://indiankanoon.org/doc/1142233/> (Accessed: 16 March 2024).

of *Brij Bhushan v. State of Delhi (1950)*¹⁰. This landmark case marked the primary time the Supreme Court tended to the issue of flexibility of speech and maintained its significance in a democratic society¹⁰. In any case, opportunity of speech in India is subject to sensible restrictions beneath Article 19(2) of the Constitution, such as public order, defamation, prompting to an offense, and contempt of court¹¹. The Supreme Court, in the case of *Kedar Nath Singh v. State of Bihar (1962)*¹², clarified that sedition, as characterized in Section 124A of the Indian Penal Code, isn't unlawful but emphasized the significance of recognizing between criticism of the government and actuation to violence or public clutter¹³. India has hated speech laws pointed at avoiding strife among its different ethnic and religious communities. These laws allow citizens to seek punishment for hate speech offenders. The Supreme Court also in the case of *Pravasi Bhalai Sangathan v. UOI (2014)*, analysed hate discourse and its marginalizing impacts, highlighting the significance of combating it¹⁴.

Hate speech laws in India essentially aim to prevent disharmony and animosity among different groups of individuals. Section 153A of the Indian Penal Code (IPC) particularly prohibits people from making statements or engaging in activities that promote sentiments of hatred or ill-will between different religious, racial, linguistic, or regional groups¹⁵. Moreover, hate speech is recognized as an incitement to hatred, primarily focusing on a specific group of people. A derogatory comment made on the grounds of religion, race, caste, community, sex, gender, sexual orientation, place of birth, or home can too be categorized as hate speech¹⁶.

¹⁰ Romesh Thappar vs the State of Madras on 26 May, 1950. Available at: <https://indiankanoon.org/doc/456839/> (Accessed: 16 March 2024).

¹¹ Article 19(2) in constitution of India. Available at: <https://indiankanoon.org/doc/493243/> (Accessed: 16 March 2024).

¹² Kedar Nath Singh vs state of Bihar on 20 January, 1962. Available at: <https://indiankanoon.org/doc/111867/> (Accessed: 16 March 2024).

¹³ India code: Section details. Available at: https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=10 (Accessed: 16 March 2024).

¹⁴ Pravasi Bhalai Sangathan vs U.O.I. & Ors on 12 March, 2014. Available at: <https://indiankanoon.org/doc/194770087/> (Accessed: 16 March 2024).

¹⁵ Section 153A. promoting enmity between different groups Available at: https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=164 (Accessed: 16 March 2024).

¹⁶ Sc directions on hate speech: How courts have read IPC SEC 295A, other provisions (2022) The Indian Express. Available at: <https://indianexpress.com/article/explained-law/hate-speech-ipc-sec-295a-supreme-court-8224954/> (Accessed: 16 March 2024).

Section 295A of the Indian Penal Code (IPC) particularly addresses acts aiming to outrage religious sentiments of any person by insulting its religion or religious beliefs. This arrangement makes deliberate and malicious acts of insulting religion or religious convictions a culpable offense. Section 295A could be a cognizable, non-bailable, and non-compoundable offense, reflecting its reality¹⁷. Legal experts consider Section 295A as a basic apparatus to defend religious sentiments and keep up communal harmony. In any case, talks about arise with respect to its compatibility with the opportunity of speech and expression ensured beneath Article 19(1)(a) of the Indian Constitution¹⁸. Recent perceptions by the courts highlight the noteworthiness of this arrangement in curbing hate speech and protecting religious harmony within the nation¹⁹. Supreme Court headings have given direction on interpreting and implementing Section 295A to address consider and malicious acts pointed at offending religious feelings.

However, India's legal framework concerning hate speech has faced criticism for not having particular arrangements tending to hate speech specifically. As of now, courts depend on different provisions of the IPC to punish wrongdoers of hate speech²⁰. In any case, the Constitution of India does not protect hate speech under the pretence of free speech, emphasizing that hate speech cannot be naturally protected²¹. In spite of the existing laws, there's progressing debate on the effectiveness of hate speech legislation and its execution in controlling hate-mongering activities and cultivating communal harmony in India.

A. Challenges in Hate Speech

¹⁷ Section 295A in the Indian Penal Code, 1860. Available at: <https://indiankanoon.org/doc/1803184/> (Accessed: 16 March 2024).

¹⁸ India code: Section details. Available at: https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=331 (Accessed: 16 March 2024).

¹⁹ Sandhu, J. S. (2023, September 24). Observation on hate speech law: Insults to religion made unwittingly would be out of IPC Section 295A's purview: HC. *The Indian Express*. <https://indianexpress.com/article/cities/chandigarh/hate-speech-law-insults-religion-ipc-section-295as-purview-hc-8953496/> (Accessed : 16 March 2024)

²⁰ Times of India - Hate speech becomes a crime with 3-yr jail term <https://timesofindia.indiatimes.com/india/hate-speech-becomes-a-crime-with-3-yr-jail-term/articleshow/102663803.cms> (Accessed :16 March 2024)

²¹ The Wire - Govt Must Say 'Enough Is Enough' and Put a Stop to... <https://thewire.in/rights/india-hate-speech-violence> (Accessed : 16 march 2024)

Subjectivity in interpretation refers to the influence of individual viewpoints, sentiments, or biases when understanding or analysing data, events, or thoughts. It recognizes that people bring their special backgrounds, beliefs, and encounters to the method of elucidation, leading to different understandings or perspectives. Adjusting differing viewpoints includes considering different perspectives or elucidations of the same subject matter and endeavouring to get it each viewpoint empathetically. Like, Individual Bias where, People may interpret data based on their individual biases, social foundation, or past encounters, leading to subjective interpretations, Emotional Impact in which feelings can shape how people see and interpret data, affecting their understanding and judgment, social standards, values, and convictions can affect elucidation, leading to shifted viewpoints based on social backgrounds,

Solution, Balancing Points of view to relieve subjectivity, it's basic to consider and respect diverse perspectives, effectively tune in to others, and stay open-minded, engaging in basic thinking makes a difference people assess their own interpretations and biases, fostering a more adjusted understanding of the subject matter, empathizing with differing points of view permits people to appreciate the complexity of elucidations and advances valuable dialogue.

Balancing subjectivity in interpretation includes recognizing individual biases whereas effectively looking for to understand and respect contrasting points of view, eventually contributing to a more comprehensive and nuanced understanding of the subject matter. Contextual Consideration , Recognizing the effect of hate speech on vulnerable groups requires relevant considerations that recognize the diverse societal, cultural, and historical foundations within which hate speech works. Vulnerable groups, such as minorities, marginalized communities, and people with intersecting identities, are excessively influenced by hate speech, driving to social exclusion, discrimination, and indeed violence²². However, directing and controlling online hate speech postures noteworthy challenges within the advanced age. The anonymous nature of online platforms, coupled with the speed and scale of data spread,

²² Hate speech on social media: Global Comparisons (no date) Council on Foreign Relations. Available at: <https://www.cfr.org/backgrounder/hate-speech-social-media-global-comparisons> (Accessed: 17 March 2024).

complicates endeavours to screen and address abhor discourse successfully²³. In 2024, these challenges endure as policymakers, technology companies, and civil society organizations hook with finding strong administrative systems and innovative arrangements to combat online hate speech whereas maintaining flexibility of expression and ensuring vulnerable groups from harm²⁴.

B. Legal Initiatives to combat hate speech

A recent case including hate speech in India occurred when the Madhya Pradesh state government informed the Supreme Court around measures taken to address hate speech cases. The Madhya Pradesh government laid out measures to anticipate hate discourse and despise violations within the state, The state government expressed that Cyber Cells at the area level have been teaching to screen despise discourse ceaselessly, counting appointing nodal officers and setting up social media cells. The state government named the Director of Police of each area and the Deputy Commissioner of Police of each Commissionerate as the Nodal Officers, observing anti-social components and unruly adolescents.

Officers, checking anti-social elements and unruly young people. A social media Cell has been constituted for consistent checking on social media platforms, with a Deputy Superintendent of Police level Officer as its Nodal Officer. The Cyber Cell at the Locale Base camp Level is coordinated to keep a consistent observe on social media stages and advise Senior Officers quickly in case of hate speech transfers. This case highlights the progressing endeavours by specialists to combat abhor discourse through mechanical implies and lawful authorization²⁵.

²³ Hatano, A. (2023) *Regulating online hate speech through the prism of Human Rights Law: The potential of localised content moderation*, Brill. Available at: https://brill.com/view/journals/auso/41/1/article-p127_6.xml?language=en (Accessed: 17 March 2024).

²⁴ Dralega, C.A., Iglund, T. and Seddighi, G. (1970) *Challenges in regulating online hate-speech within the Norwegian context*, SpringerLink. Available at: https://link.springer.com/chapter/10.1007/978-3-031-53770-7_12 (Accessed: 17 March 2024).

²⁵ Hate speech case: MP government tells Top Court District Cyber Cells Keeping Watch (2024) India Today. Available at: <https://www.indiatoday.in/law/story/hate-speech-cases-mp-government-tells-supreme-court-district-cyber-cells-keeping-watch-2510897-2024-03-05> (Accessed: 17 March 2024).

Moreover, In the recent case against TN BJP chief Annamalai, affirmations arose from an interview he gave to a YouTube channel two days some time recently Diwali in 2022. It was claimed that Annamalai made articulations amid this meet that were considered hate speech . The case picked up consideration as the Supreme Court intervened, issuing a stay on the proceedings. This improvement underscores the earnestness with which hate speech charges are treated in legitimate procedures, particularly when including public figures or political leaders. The intervention of the highest court highlights the significance of maintaining laws and controls concerning hate speech, emphasizing the require for responsibility and adherence to ethical standards in open talk.²⁶

Legislative measures to combat despise discourse include different approaches, including promoting education, strengthening enactment, and implementing practical steps pushed by legal bodies just like the Supreme Court of India.²⁷

Legal frameworks such as Section 153A, addressing activities promoting animosity between different groups based on religion, race, or place of birth, play a crucial role. Moreover, international efforts, just like the European Parliament's determination to expand the list of EU violations to incorporate hate speech and despise wrongdoing, reflect a broader commitment to combatting this issue²⁸. In spite of these measures, challenges hold on, requiring nonstop assessment and enhancement of lawful systems to successfully address hate speech²⁹.

Collaborative efforts between governments, civil society, and technology companies are pivotal in executing lawful activities to combat hate speech. Governments

²⁶ Hate speech case against TN BJP chief Annamalai: SC stays proceedings (2024) The Indian Express. Available at: <https://indianexpress.com/article/india/hate-speech-case-against-tn-bjp-chief-annamalai-sc-stays-proceedings-9182767/#:~:text=The%20Supreme%20Court%20Monday%20stayed,Datta%20said%20while%20staying%20proceedings> . (Accessed: 17 March 2024).

²⁷ Supreme Court in 2023: Several steps forward, miles to go - CJP Available at: <https://cjp.org.in/supreme-court-in-2023-several-steps-forward-miles-to-go-in-the-fight-against-hate/> (Accessed 17 March 2024)

²⁸ Texts adopted - Extending the list of EU crimes to hate speech - European Parliament Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2024-0044_EN.html (Accessed on : 17 March 2024)

²⁹ An Indian law on hate speech: the contradictions and lack - CJP Available at: <https://cjp.org.in/an-indian-law-on-hate-speech-the-contradictions-and-lack-of-conversation/> (Accessed on: 17 March 2024)

frequently sanction enactment and build up administrative systems to address despise discourse, giving the legitimate basis for enforcement activities³⁰. Civil society organizations play a crucial part in pushing for approaches that secure free speech whereas combating hate speech. They regularly lock in in mindfulness campaigns, screen hate speech online, and collaborate with governments and tech companies to create viable strategies³¹. Technology companies execute community measures and substance control arrangements to expel hate speech from their stages. Collaboration between these partners includes sharing skill, assets, and data to create comprehensive approaches that adjust the assurance of free discourse with the anticipation of hurt caused by hate speech³².

X. CONCLUSION, SUGGESTIONS & RECOMMENDATIONS

In conclusion, the research underscores the complexity of addressing hate speech whereas maintaining the standards of flexibility of expression. The proposals highlighted in different thinks about emphasize the significance of evaluating and correcting legitimate systems . A comprehensive approach is fundamental to successfully combat hate discourse, which includes advancing positive speech and regarding flexibility of expression as the norm . Legislative efforts to control online hate speech are vital, as prove by corpus-assisted semantic investigations of parliamentary debates . In any case, it's crucial to explore the ethical situation postured by hate discourse, balancing freedom of expression with the assurance of human dignity.

³⁰ Bourassa, N. (2019) To protect free speech while choking extreme speech, government policymaking must be collaborative, Scroll.in. Available at: <https://scroll.in/article/922936/to-protect-free-speech-while-choking-extreme-speech-government-policymaking-must-be-collaborative> (Accessed: 17 March 2024).

³¹ An evidence-based workshop on prevalence of digital violence and hate speech in Nepal in Nepal United Nations. Available at: <https://nepal.un.org/en/224024-evidence-based-workshop-prevalence-digital-violence-and-hate-speech-nepal#:~:text=The%20UN%20Resident%20Coordinator%20Office,to%20combat%20and%20mitigate%20it> . (Accessed: 17 March 2024).

³² Models of governance of online hate speech. Available at: <https://rm.coe.int/models-of-governance-of-online-hate-speech/16809e671d> (Accessed: 17 March 2024).

XI. REFERENCES

A. Books / Commentaries / Journals Referred

1. IPC
2. Constitution of India

B. Online Articles / Sources Referred

1. Indian kanoon
2. Case mine
3. CJP
4. Times Of India

C. Cases Referred

1. *Pravasi Bhalai Sangathan vs. UOI (2014)*
2. *Romesh Thappar v. State of Madras (1950)*
3. *Brij Bhushan v. State of Delhi (1950)*
4. *Kedar Nath Singh v. State of Bihar (1962)*