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# DEFINING HATE SPEECH IN INDIA: AMBIGUITIES, ENFORCEMENT CHALLENGES, AND THE CONSTITUTIONAL DILEMMA

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Aditya Pal<sup>1</sup> & Taarini Rankawat<sup>2</sup>

## I. ABSTRACT

*Hate speech is still one of the most concerning challenges for India's democratic and constitutional framework, especially in the digital age. Despite the enactment of Bhartiya Nyaya Sanhita in 2023, which was promised to replace and eradicate the 'colonial mindset' from the legal dimensions of India, the provisions pertaining to hate speech are largely the same and therefore, continue to suffer from definitional ambiguity. Terms such as 'hatred, enmity, disharmony' etc. lack a precise legal requirement as to when a speech becomes hateful, envious OR disharmonious in nature. This legal gap leads to an inconsistent application of laws related to hate speech and it is further deteriorated by 'selective application'. This paper critically examines the continuity of hate speech provisions from IPC in 1860 to BNS in 2023, highlighting the constitutional dilemma of freedom of speech under Article 19(1)(a) and reasonable restrictions under Article 19(2). Empirical data from the National Crime Records Bureau (NCRB) reveals a sharp rise in hate speech cases, however with a caveat that even then the conviction rate is relatively low, which further underpins the weak enforcement mechanisms owing to a lack of precise definition for hate speech. The study further explores judicial oscillation in the interpretation of hate speech, the challenges that are posed by digital regulations like the IT Act of 2000 and it also reviews the US, UK and Germany's law regarding the same, which further solidifies a 'clear and standalone' law for hate speech in India, so as to effectively regulate the freedom of speech and expression in a culturally rich and diverse country like India.*

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## II. KEYWORDS

Article 19 free speech, NCRB hate speech data, Comparative hate speech law, freedom of speech and expression, selective enforcement

## III. INTRODUCTION AND RESEARCH PROBLEM

Hate speech has emerged as one of the most important and pressing challenges for India's democratic landscape and constitutional regime. In recent years, owing to the excessive use of social media, there is a proliferation of rhetorics that are communal in nature which are no doubt contributing to the overall weakening of the already sensitive social harmony of India. The enactment of *Bhartiya Nyaya Sanhita* OR the BNS in 2023 which was to replace the Indian Penal Code OR the IPC of 1860 and eventually modernize the current laws on crime, couldn't do so if we talk about the provisions criminalizing hate speech since they still carry the ambiguities of the same provision in the IPC.

The dilemma in the definition itself is highly ambiguous, as the title of this paper suggests since terms like 'enmity', 'disharmony' and even 'hatred' aren't explained well. In fact, there is a lack of legal clarity as to when an act of speech is said to violate and promote 'hatred' or cause 'disharmony'. Moreover, there is a lack of legal definition which pinpoints as to what shall be the essentials that constitute 'hatred' OR 'disharmony'. This makes it very dangerous in the hands of the State because it can curb free speech in the name of 'reasonable restrictions' by labelling them as constituting 'hatred' OR 'disharmony'. There is a lack of coherence between safeguarding liberty as enshrined under Article 19(1)(a) and ensuring the tensile strength of the social fabric as provided for under Article 19(2) as 'reasonable restriction' on free speech. This is what makes hate speech such a crucial problem.

Then comes the issue of complication as has been brought forth by the digitization of everything, more specifically the problem of hate speech on social media like Facebook, Instagram, X (Twitter previously) and so on. The digital age has further complicated the issue of hate speech because many a times such acts of hate speech transcend jurisdictional boundaries. There is also the issue of anonymity which makes

it so that the intersection of Information Technology Act, 2000 and BNS, 2023 is a *sine qua non*. Another important thing to note is that hate speech on social media often leads to real world implications like communal riots and violence.

This paper, therefore, seeks to question the very definition of hate speech under BNS, 2023 and scrutinize the gaps that exist in its enforcement mechanisms. This paper shall analyze doctrinal provisions, empirical trends, and judiciary's interpretation while positing this problem in Indian criminal law with that of the world. This is because the stakes are high, since we know that freedom of speech is a quintessential feature of liberty that is directly related to the idea of John Locke in the context of social contract theory that 'Right to life and liberty shall not be handed over to the State'.

Hate speech therefore needs proper transparency, especially with respect to the abovementioned terms which are innately ambiguous in nature because as we know it that ambiguous terms grant lawyers a lot of opportunity to interpret and argue the law in their favor in courts. On top of that, as discussed above, these ambiguities need to be resolved with legal precision else there can be more injustice than justice. This is why there is a research gap in the legal clarity of hate speech as an offence as per the BNS, 2023 which this paper aims to establish and eventually propose some recommendations to bridge the same.

### **A. Research Objectives**

1. To critically examine the ambiguities in the definition of hate speech provisions as provided for under the *Bhartiya Nyaya Sanhita (BNS), 2023*.
2. To trace the continuum of hate speech regulation from the colonial era *Indian Penal Code (IPC), 1860* to *BNS, 2023*.
3. To evaluate the dilemma brought forth by the constitutional provisions under Article 19(1)(a) regarding 'free speech' and reasonable restrictions under Article 19(2).
4. To analyze judiciary's interpretation of 'what constitutes hate speech?' and the oscillation which is prevalent in its jurisprudence.
5. To assess the empirical trends that are prevalent in hate speech cases, including NCRB's data on rising cases with a low conviction rate.

6. To study the challenges posed by digital regulation of hate speech and how the provisions of IT Act, 2000 overlap with that of BNS, 2023.
7. To bring forth comparative insights from countries like USA, UK and Germany for India.

## **B. Research Questions**

1. Whether BNS,2023 resolves the ambiguities in the definition of hate speech.
2. How constitutional tensions fare between the provision of free speech and its reasonable restrictions?
3. What is the judicial interpretation of hate speech?
4. What is the nature of empirical trends regarding hate speech cases in India?
5. Whether digital regulations complicate the enforcement mechanism for hate speech complaints.
6. How and what India can learn from USA, UK and Germany?
7. What kind of reforms are necessary in order to ensure clarity, consistency and justice in the law relating to hate speech?

## **C. Research hypotheses**

1. **Primary hypothesis:** Bhartiya Nyaya Sanhita has failed to reform the law relating to hate speech while retaining the same ambiguities in definition that the IPC had thereby undermining enforcement and constitutional clarity.
2. **Secondary hypothesis:** Comparative models suggest that hate speech regulation can strike a fine balance between liberty and security through precise statutory language.

## **D. Research Methodology**

1. **Doctrinal analysis:** By examining the statutory provision under IPC, 1860 and BNS, 2023 while also reviewing the constitutional provisions found under the Part III of the Constitution of India.
2. **Case law review:** By analyzing the landmark cases like Ramji Lal Modi, Shreya Singhal, Pravasi Bhalai Sangathan, etc. in order to trace the trajectory of judicial interpretation on hate speech.

3. **Empirical method:** By reviewing NCRB's data highlighting the rising hate speech cases with low conviction rates.
4. **Normative inquiry:** By evaluating the constitutionally posed dilemma between freedom of speech and reasonable restrictions, which further lead to challenges in enforcement.
5. **Critical literature review:** By engaging with the scholarly discourse on doctrinal ambiguities which leads to 'selective enforcement'.

## E. Literature Review

The literature reviewed for writing this paper is arranged in a systematic and thematic manner as follows-

### 1. Evolution of hate speech regulation in India

- Hate speech laws historically find its root in the colonial era with the IPC of 1860 with provisions like Section 153A, 295A and 505, which criminalized 'promoting enmity' among different groups and deliberate acts enraging the religious sentiments among these groups.
- *Bhartiya Nyaya Sanhita, 2023* reorganized the abovementioned provisions of the IPC however it still retains the substantive content that they originally had, meaning thereby that in spirit and soul, the provisions are somewhat the same. This is why the dilemma in the very definition of those provisions exists, like vagueness in terms like enmity, hatred and disharmony. This raises problems with interpretation.<sup>3</sup>
- Recently, the scholars were emphasizing that India lacks a 'standalone' law on the act of hate speech since currently it is only mentioned under the BNS and IPC.<sup>4</sup>

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<sup>3</sup> 'BNS Section 196: Combat Hate Speech' [https://www.ezylegal.in/blogs/section-196-of-bharatiya-nyaya-sanhita-bns?utm\\_source=copilot.com](https://www.ezylegal.in/blogs/section-196-of-bharatiya-nyaya-sanhita-bns?utm_source=copilot.com) accessed 18 April 2026.

<sup>4</sup> Siddhi Khartode, 'HATE SPEECH LAWS IN INDIA: EVOLUTION, LANDMARK JURISPRUDENCE & EMERGING CHALLENGES' 4.

## 2. Constitutional dimensions

- The constitution of India guarantees freedom of speech under the ambit of its article 19(1)(a), which however is subjected to some 'reasonable restrictions' under clause (2) of the same provision.
- Scholars often highlight the dilemma that the constitution often suffers from, like balancing liberty with good order amongst the citizens. Aritra Biswas points out that 'hate speech regulation presents as one of the most concerning constitutional challenges'.<sup>5</sup>
- Another scholar, Faizal Rizwi highlights that the courts have often jumped back and forth from protecting free speech at one hand to upholding the 'reasonable restrictions' on the other, which reflects the unresolved dilemma and doctrinal tensions in the constitutional law.<sup>6</sup>

## 3. Judicial interpretation and pronouncements

- Landmark cases like *Ramji Lal Modi v. State of U.P.* (1957) have been significant for upholding restrictions on hate speech relating to religious sentiments; per contra, the case of *Shreya Singhal v. Union of India* (2015) is a landmark as it held Section 66A of the IT Act as unconstitutional.
- Scholars, therefore, argue that these cases underscore the struggle of judiciary to negotiate legal precision with public order at large.<sup>7</sup>

## 4. Empirical trends

- As per NCRB's data, there is a 45% rise in hate speech cases between the period from 2021-2023, wherein Uttar Pradesh, Rajasthan and Maharashtra having been reported the highest number of cases.<sup>8</sup>

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<sup>5</sup> Aritra Biswas, 'Hate Speech Regulation in India: A Constitutional Dilemma between Free Speech and Public Order' *International Journal of Criminal, Common and Statutory Law*.

<sup>6</sup> Khartode (n 2).

<sup>7</sup> Parvejur Rahman and Sagufta Mehnaz, 'International Journal for Multidisciplinary Research (IJFMR)' [2024] SSRN Electronic Journal <https://doi.org/10.2139/ssrn.5054029> accessed 18 April 2026.

<sup>8</sup> '45% Rise in Hate-Speech Cases over Past 2 Yrs: NCRB Report | India News - The Times of India' [https://timesofindia.indiatimes.com/india/45-rise-in-hate-speech-cases-over-past-2-yrs-ncrb-report/articleshow/105766371.cms?utm\\_source=copilot.com](https://timesofindia.indiatimes.com/india/45-rise-in-hate-speech-cases-over-past-2-yrs-ncrb-report/articleshow/105766371.cms?utm_source=copilot.com) accessed 18

- Another report underpins a 31% increase in offences promoting ‘enmity’ in the year 2022 wherein about 1500 cases are registered under Section 153A of the IPC, 1860.<sup>9</sup>
- Scholars therefore warn that despite such high and concerning numbers of hate speech instances, the conviction rate remains low, which further reflects ‘weak’ enforcement and ‘selective targeting’ by the police.<sup>10</sup>

## 5. Digital Oversight and Regulation

- The overlapping and intersecting of the BNS provisions with that of IT Act, 2000 further complicate the enforcement mechanism, thereby leading to gaps in justice process.
- Sarthak Bobade’s study pertaining to hate speech highlights the ‘digital challenges’ related to hate speech, noting clearly that there is a difficulty in ‘balancing’ free speech with that of online content regulation.<sup>11</sup>
- Detection mechanism in unpopular languages of India remains ‘underdeveloped’, limiting effective regulation on digital platforms and social media.<sup>12</sup>

## 6. Comparative paradigm

- The ‘NetzDG’ norms of Germany, mandates ‘removal of hate speech’ within the time span of 24 hours, which reflects a ‘pro-active’ model rather than a reactive one.<sup>13</sup> However, since the adoption of the EU Digital Services Act (DSA) in 2022, the NetzDG now operates within the broader framework of

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<sup>9</sup> PTI, ‘“Hate Speech”: NCRB Data Shows 31% Rise in Offences Promoting Enmity between Groups in 2022’ (The New Indian Express, 6 December 2023)

<https://www.newindianexpress.com/nation/2023/Dec/06/hate-speech-ncrb-data-shows-31-rise-in-offences-promoting-enmity-between-groups-in-2022-2639157.html> accessed 18 April 2026.

<sup>10</sup> Sarthak Bobade, ‘HATE SPEECH REGULATION IN INDIA - LEGAL FRAMEWORK, DIGITAL CHALLENGES, AND SOCIETAL IMPLICATIONS’ (2024) 4.

<sup>11</sup> *ibid.*

<sup>12</sup> Kathiravan Pannerselvam and Saranya Rajiakodi, ‘Systematic Literature Review on Hate Speech Detection in Indian Low-Resource Languages’ (2025) 9 *Journal of Computational Social Science* 5 <https://doi.org/10.1007/s42001-025-00432-5>

<sup>13</sup> Damaris Gimenez, ‘Democracy in Action? A Comparative Analysis of The US and Germany’s Speech Law’.

the DSA.<sup>14</sup> The NetzDG now operates within the broader framework of the DSA Act. The DSA reconciles the platform obligations, weaving in transparency, accountability and systemic risk assessment requirements.

This suggests that India, while studying the German model, has to consider 'how DSA smoothly incorporates National laws in the Supranational regime'.

- The USA too protects 'offensive speech' under the ambit of the 1<sup>st</sup> Amendment, intervening only when such a speech incites 'imminent' lawless action. This was held in the case law of *Brandenburg v. Ohio*.<sup>15</sup>
- The Public Order Act of United Kingdom criminalizes even threatening speech which is abusive in nature and is 'likely' to cause harassment OR distress. Scholars, therefore, often argue that India must 'adapt' such lessons (from UK, Germany and USA) cautiously, given its unique socio-cultural landscape.<sup>16</sup>

## 7. Core findings from the literature review

- There is a 'persistent vagueness' in the statutory language under the BNS and IPC which further undermines the already 'weak' enforcement.
- There is a clear 'constitutional tension' between the provisions of Article 19(1)(a) and clause (2) of the same, highlighting that free speech often conflicts with reasonable restrictions.
- The empirical data from NCRB and Hate Speech Report clearly shows that the hate speech cases are quite high in numbers in terms of registration of complaints, however, *per contra*, there is a relatively 'low' conviction rate.
- The digital regulations often complicate the enforcement rather than simplifying it, especially in 'low-resource languages' of India which are not that popular.

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<sup>14</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) OJ L 277/1

<sup>15</sup> Gimenez (n 11).

<sup>16</sup> 'Hate Speech: Comparing the US and EU Approaches'.

- The comparative study of UK, USA and Germany's model are insightful but not conclusive for India's rich and diverse cultural and social landscape.

## IV. RESEARCH & ANALYSIS

### A. Doctrinal analysis of BNS' provisions pertaining to hate speech

The Bhartiya Nyaya Sanhita OR the BNS was enacted in 2023 to formally replace the colonial era Indian Penal Code of 1860 with a view to 'modernize' the criminal laws pertaining to modern and independent India. However, on close inspection of the same, one finds that the changes brought forth by the BNS are only 'cosmetic' in nature and not that substantive as was promised. This scenario is exactly the same if we talk about the offence of hate speech because the same old structure of the IPC, which talked about 'hatred', disharmony and the feelings of enmity, is continued as it is. This makes one question whether the changes brought forth are even relevant? In fact, the same old dilemma repeats, even with BNS now in operation and i.e. hate speech v/s free speech.

### B. Continuity from IPC to BNS

The most relevant provisions pertaining to hate speech in the IPC were Sections 153A, 295A and 505, wherein Section 153A criminalized the acts of promoting 'enmity' between different groups on the grounds of religion, race OR language<sup>17</sup>; Section 295A penalized the 'deliberate and malicious' acts which are intended to 'outrage' religious feelings.<sup>18</sup> Per contra, Section 505 was targeted at those statements which pertained to the conduct of 'mischief' in public.<sup>19</sup>

Under the Bhartiya Nyaya Sanhita (BNS), 2023, these sections have been reorganized and reiterated without substantial alteration; IPC's Section 153A corresponds to Section 196 of the BNS, IPC's Section 295A is now Section 299 in the BNS, and IPC's Section 505 corresponds to Section 353 of the BNS, while IPC Section 153B corresponds

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<sup>17</sup> Indian Penal Code 1860, s 153A

<sup>18</sup> Indian Penal Code 1860, s 295A

<sup>19</sup> Indian Penal Code 1860, s 505

to Section 197. Notably, Section 353 of the BNS expands the scope of the earlier provision by explicitly encompassing statements made through electronic means.

This is why the main critique of BNS is that it only reorganizes the same sections in a standard manner, however it nowhere attempts to give a definite clarity regarding the same old ambiguous terms as- 'hatred, enmity, fear and disharmony', which are still undefined in the text of the BNS. This demonstrates that the BNS retains the same doctrinal framework as that of IPC, thereby continuing the same ambiguities in the definition of hate speech.

### **C. Dilemma in the definition itself**

The vagueness in the statutory text is what scholars call the 'paradise for lawyers' because it can give rise to varied interpretations and when the same is extended to enforcement agencies like the police, this often leads to 'selective application' of the provisions of the Act, many a times targeting dissenters and minorities. This interpretative gap is what fuels ambiguity in terms like 'enmity' and 'disharmony'. This is because these terms are subjective in nature and vary across cultures and communities. This is the main dilemma of the definition which is not rectified by the BNS, 2023. In fact, this requirement of precision was also emphasized in the case law of *Shreya Singhal v. Union of India*.<sup>20</sup>

### **D. Struggle of interpretation by Judiciary**

Judiciary has time and again struggled to interpret hate speech. In fact, if we see at the trend of interpretation by the Supreme Court in a chronological manner, we find that judiciary has often 'oscillated' from one stand to the other. In *Ramji Lal Modi v. State of U.P.*, the supreme court upheld the mandate of Section 295A with a clear emphasis on the need to protect 'religious sentiments'.<sup>21</sup>

In *Pravasi Bhalai Sangathan v. Union of India*, the Supreme Court acknowledged the dangers that hate speech poses. However, it refused to issue guidelines citing that it is the prerogative of the State to regulate the matter and thus, it directed the Law

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<sup>20</sup> *Shreya Singhal v Union of India* AIR 2015 SC 1523.

<sup>21</sup> *Ramji Lal Modi v State of U.P.* AIR 1957 SC 620.

Commission of India to carefully examine the issue in question and recommend legislative reforms to the Parliament.<sup>22</sup> In response to this, the Law Commission of India, was tasked with examining the issue that hate speech as a legal provision entails. Pursuant to the SC's view in the *Pravasi Bhalai Sangathan* case, the Commission released its 267<sup>th</sup> report in 2017<sup>23</sup>, recommending 'statutory amendments' to address the ambiguities in the definition and the gaps which plague the enforcement of the same. The report recommended 'legal precision' in the text of the provision because it would then help in ascertaining whether or not the speech was actually a 'hate speech' as per the Law.

Per Contra, in *Shreya Singhal v. Union of India*, the supreme court held that Section 66A of the IT Act of 2000 as 'unconstitutional', citing it as vague, underscoring the constitutional requirement of 'legal precision' on its use.

These cases, as mentioned above, point out the fact that judiciary has time and again struggled to properly interpret the provisions of hate speech. In *Amish Devgan v. Union of India* (2021) 1 SCC 1, the Supreme Court provided a more structured approach by identifying key elements of hate speech, namely content, intent, and the resulting harm or impact. The Court also declined to quash criminal proceedings, holding that the existing legal framework is sufficient to address such offences even where the speech may have been made without deliberate malice. This decision reflects an attempt to bring greater doctrinal clarity, although questions remain as to whether it resolves the broader pattern of judicial inconsistency.

### **E. Overlapping digital regulations**

The overlapping provisions of IT Act and BNS further complicate the aspect of enforcement since police officers often lack technical clarity of IT Act provisions. Although the judiciary struck down the highly ambiguous Section 66A of the IT Act, the intermediary guidelines continue to complicate the matter of hate speech on digital platforms like social media further<sup>24</sup>. On top of that, BNS provisions operate in

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<sup>22</sup> *Pravasi Bhalai Sangathan v Union of India* AIR 2014 SC 1591

<sup>23</sup> Law Commission, *Hate Speech* (Law Com No 267, 2017).

<sup>24</sup> *Bobade* (n 8).

tandem with digital regulation, creating further uncertainty for enforcement agencies in properly prosecuting the aspects of hate speech. These issues further pose questions about 'double jeopardy' and conflicts in jurisdiction.

#### **F. Challenges in enforcement**

The absence of clear and precise understanding of terms like hatred, enmity and disharmony, often translates into practical challenges in enforcement since the police officers and prosecutors often struggle to ascertain whether a particular speech amounts to hate speech OR not? This inconsistency undermines the legitimacy of the offense of hate speech.

#### **G. Empirical trends in enforcement**

The enforcement challenges pertaining to hate speech are manifestly evident because of the doctrinal ambiguities under the BNS, whereas statutory language is no doubt vague, but the actual reality of prosecution, convictions and judicial interventions reveal the magnitude of problem that hate speech poses. This is clearly evident in the empirical evidence.

#### **H. Rising complaints of hate speech**

National Crime Records Bureau (NCRB) data suggests that there is a consistent rise in hate speech cases in recent years, owing to social media misuse and lack of clarity in the legal definition of hate speech. In fact, from 2021 to 2023, offences under Section 153A of the IPC, that is promoting enmity between groups, have increased by nearly 45 percent. States such as Uttar Pradesh, Maharashtra and Rajasthan have reported the highest number of such cases, partly due to the sensitive socio-political context in these regions. However, even with this sharp rise in reported cases, there is no effective deterrence policy, as conviction rates remain comparatively low. Additionally, it is pertinent to note that while the *Bhartiya Nyaya Sanhita* was enacted in 2023, it came into force on 1 July 2024, and therefore 2023 cannot be treated as its first operational year.

### **I. Conviction rate and the gaps in enforcement**

Despite the rising number of cases, the conviction rates remain comparatively low. NCRB data indicates that conviction rates for offences such as those under Section 153A IPC have hovered at around 20% in recent years. Several factors contribute to this gap, including the challenge of proving culpability in hate speech cases, limited technical capacity to trace digital instances, and concerns regarding selective application against dissenters and minorities. This remains a serious concern, as courts have often dismissed cases due to insufficient evidence demonstrating how the impugned speech meets the legal threshold of hate speech.<sup>25</sup>

### **J. Selective application of hate speech**

A consistent theme across the empirical evidence so forth present regarding hate speech is that it is mostly used for silencing activists, journalists, students and political dissenters because their dissent is often 'selectively' considered as hate speech which promotes enmity and disharmony.<sup>26</sup> This implies that hate speech law is more or less subject to political pejorative of the ruling party and this is where the problem of 'selective application' of hate speech plagues the Indian law. This problem is further exacerbated by vague statutory text without clear definition of terms like hatred and disharmony.

### **K. Judiciary's response**

The trend of judicial intervention in the pretext of hate speech has been uneven. High courts of Bombay and Delhi have time and again quashed FIR against dissenters, upholding the constitutional guarantee of free speech. *Per contra*, other courts have upheld the prosecution and eventual conviction of such people. In fact, Supreme Court is itself seen oscillating between this dilemma of whether to allow free speech OR suppress it with reasonable restrictions.<sup>27</sup>

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<sup>25</sup> Pannerselvam and Rajiakodi (n 10).

<sup>26</sup> Biswas (n 3).

<sup>27</sup> Khartode (n 2).

### **L. Constitutional provisions regarding hate speech**

The constitution of India, 1950 is the grundnorm which is the basis of all the laws in the country. Bearing such a nature of this document, it is pertinent that there would be provisions regarding Right to life and liberty. In fact, there are various kinds of liberties OR freedoms that are guaranteed by the constitution under the ambit of its Article 19(1). One of those provisions are freedom of speech and expression under sub-clause (a) of 19(1).<sup>28</sup> In fact, this freedom of speech and expression is central to the aspect of right to life under article 21. However, one thing to keep in mind is that this provision of Article 19(1)(a) is not 'absolute' in nature, there are certain 'reasonable restrictions' that are enshrined under clause (2) of the same article.

### **M. Jurisprudence of such restrictions**

The jurisprudence on these restrictions have evolved from cases like *Ramji Lal Modi v. U.P.* (1957) where in the court upheld section 295A of the IPC, citing the reason that 'deliberate acts outraging religious sentiments, fall under the ambit of "reasonable restrictions"'. However, in the case of *Shreya Singhal v. Union of India* (2015), the supreme court struck down the vague provision of Section 66A of the IT Act, 2000 citing it as 'violative of the requirement of precision'.

If we see recently then in *Modern Dental College v. State of Madhya Pradesh* (2016), the court has articulated the 'test of proportionality' which now requires that in order to be applicable, the 'reasonable restrictions' ought to be necessary, proportionate and 'least restrictive' in nature.<sup>29</sup>

### **N. The dilemma of balancing liberty with security**

This is one of the most acute constitutional and legal dilemmas that are prevalent today as balancing liberty of speech and expression has to be done without sacrificing security. The BNS provisions regarding hate speech do not resolve such a dispute by any means or whatsoever.

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<sup>28</sup> Constitution of India 1950, art 19(1)(a)

<sup>29</sup> *Modern Dental College and Research Centre v State of Madhya Pradesh* AIR 2016 SC 2601: (2016) 7 SCC 353.

## V. SUGGESTIONS AND RECOMMENDATIONS

The following reformatory measures are desirable in order to resolve the dilemma that hate speech provisions pose-

- 1. Statutory clarity:** By properly and precisely defining terms such as 'hatred, enmity and disharmony', most of the problems regarding the hate speech as an offence shall be resolved because without statutory clarity, these provisions are prone to be abused by lawyers. This can easily be remedied by incorporating the Law Commission's 267<sup>th</sup> Report recommendations on having 'legal precision' in the language of the provisions pertaining to hate speech. The commission recommended the insertion of Sections 153C and 505A in the IPC in 2017, so as to cover speech that causes 'fear, alarm, OR provokes violence'. Unfortunately, these recommendations are not incorporated in the BNS, 2023.
- 2. Standalone hate speech law:** By enacting a separate and comprehensive legislation on hate speech, the contemporary problem of ambiguity in the terms and interpretation of hate speech shall be resolved because right now, we have to rely on BNS alone.
- 3. Digital regulations:** By strengthening the 'detection' mechanism for hate speech on digital platforms like the social media that too in a diverse and linguist country like India, the problem of hate speech as an ambiguous provision shall be resolved.
- 4. Capacity building:** By training police personnel and prosecutors in 'digital forensics' in order to detect hate speech so as to improve the conviction rates.
- 5. Proportionality test:** By applying the 'doctrine of proportionality' as was propounded in the Modern Dental College Case, there can be a balance between liberty of speech and security of the State at the same time.
- 6. Global Comparative models:** By adapting lessons from Germany's NetzDG (24 Hour removal) norm, UK's 'Public Order Act' and USA's 'Brandenburg test', we can tackle the problem of hate speech in India with some modifications.

## VI. CONCLUSION

Hate speech is one of the most heated topics in the legal galleries because it is something that is not properly defined. Usage of terms like hatred and disharmony are often wanting of precise legal definition since they are not statutorily defined. This means that if we take into account the interpretation of statutes then there is no internal aid to understand what these terms actually mean. This further means that they can mean so many things to so many individuals and that makes it subjective.

For a law to be good, there has to be some sort of objectivity emboldened into it so that it is 'fair' and reasonable for everyone and not just for few. This is why there is an issue regarding the 'selective application' of the provisions of hate speech. Furthermore, due to this ambiguity, the enforcement agencies like the Police and Public prosecutors, find it hard to prosecute the accused persons who have allegedly committed 'hate speech'.

This is further deteriorated when we take into account the digital landscape of social media wherein Section 66A was struck down for its ambiguity however, no other guideline was issued as to what should constitute and what shall not constitute hate speech.

In fact, BNS having been enacted to 'end' the oppressive colonial era laws have somewhere failed to achieve this feat since it is just a 'cosmetic restructuring' of IPC, polished to look 'modern'. This is why there is a need for 'statutory clarity' regarding the same and as seen in the comparative review of the EU and US laws regarding hate speech, we find that it's not as easy as it seems because India is an altogether different country in its size and diversity and making laws regarding speech shall not be easy.

Therefore, there is a clear need to reconcile and make separate laws for hate speech, more specifically a legislation aimed towards catering speech and expression which are harmful for the society as a whole because as the paper argues, the BNS doesn't do a good job at doing so.

Thus, the hypotheses as propounded by this paper stands to be proved.

## VII. REFERENCES

1. Constitution of India 1950, art 19(1)(a), art 19(2).
2. Indian Penal Code 1860, ss 153A, 295A, 505.
3. Bhartiya Nyaya Sanhita 2023, s 196.
4. Ramji Lal Modi v State of U.P. AIR 1957 SC 620.
5. Pravasi Bhalai Sangathan v Union of India AIR 2014 SC 1591.
6. Shreya Singhal v Union of India AIR 2015 SC 1523.
7. Modern Dental College and Research Centre v State of Madhya Pradesh AIR 2016 SC 2601: (2016) 7 SCC 353.
8. 'BNS Section 196: Combat Hate Speech' <https://www.ezylegal.in/blogs/section-196-of-bharatiya-nyaya-sanhita-bns> (accessed 18 April 2026).
9. Siddhi Khartode, 'Hate Speech Laws in India: Evolution, Landmark Jurisprudence and Emerging Challenges' (Year, Institution/Publisher if available) Page 4.
10. Aritra Biswas, 'Hate Speech Regulation in India: A Constitutional Dilemma between Free Speech and Public Order' (Year) Volume (Issue) *International Journal of Criminal, Common and Statutory Law*.
11. Faizal Rizwi, commentary in Khartode (n 2).
12. Parvejur Rahman and Sagufta Mehnaz, '[Title of Article]' (2024) *International Journal for Multidisciplinary Research (IJFMR)*, SSRN Electronic Journal <https://doi.org/10.2139/ssrn.5054029>
13. '45% Rise in Hate-Speech Cases over Past 2 Yrs: NCRB Report | India News - The Times of India' <https://timesofindia.indiatimes.com/india/45-rise-in-hate-speech-cases-over-past-2-yrs-ncrb-report/articleshow/105766371.cms>
14. PTI, 'Hate Speech: NCRB Data Shows 31% Rise in Offences Promoting Enmity between Groups in 2022' (The New Indian Express, 6 December 2023) <https://www.newindianexpress.com/nation/2023/Dec/06/hate-speech-ncrb-data-shows-31-rise-in-offences-promoting-enmity-between-groups-in-2022-2639157.html>

15. Sarthak Bobade, 'Hate Speech Regulation in India: Legal Framework, Digital Challenges, and Societal Implications' (2024, Institution/Publisher if available) Page 4.
16. Kathiravan Pannerselvam and Saranya Rajiakodi, 'Systematic Literature Review on Hate Speech Detection in Indian Low-Resource Languages' (2025) 9 *Journal of Computational Social Science* 5 <https://doi.org/10.1007/s42001-025-00432-5>
17. Damaris Gimenez, *Democracy in Action? A Comparative Analysis of The US and Germany's Speech Law.*
18. 'Hate Speech: Comparing the US and EU Approaches'.
19. *Brandenburg v Ohio* 395 U.S. 444 (1969).