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THE PROLIFERATION OF HATE SPEECH IN THE AGE OF RIGHT TO FREE SPEECH

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I. ABSTRACT

It is difficult to determine when and where to draw the boundary between "hateful speech" and "freedom of expression." For a true democracy, the former is absolutely necessary, whereas the latter is the exact opposite barrier. In this work, the author examines this deference using pertinent case law and customs. Limitations on "freedom of speech," which is fundamental to a democratic society, are scrutinized. "Hateful speech" is no longer considered "freedom of speech" when it violates laws that forbid the propagation of hatred and/or the incitement of violence. A very complicated and sensitive subject, hate speech includes any form of communication that differs from a person or a group based on some features like race, color, ethnicity, gender, sexual orientation, nationality, religion etc. The laws pertaining to "hateful speech" have proven challenging to enforce in the modern era because there are new ways to express oneself every day due to greater connectedness. This paper explores the concept of "hateful speech" in its broadest sense, how it varies from "freedom of speech and expression," and how the spread of "hateful speech" has hurt the nation. This paper aims to examine the meaning of hate speech and the point at which freedom of speech and expression crosses into unlawful speech, and to determine how a constitutional balance may be maintained between hate speech laws and Articles 14, 19(1)(a), 19(2), 21 and 25 of the Constitution of India so as to prevent misuse of powers. For this paper, the research methodology will be comparative and doctrinal or non-empirical. Primary and secondary data are the two types of data that the present study analyses.

II. KEYWORDS

free speech, freedom, hate speech, hatred, human rights.

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III. INTRODUCTION

A very complicated and sensitive subject, hate speech includes any form of communication that differs from a person or a group based on some features like race, color, ethnicity, gender, sexual orientation, nationality, religion etc. This phenomenon, closely linked to human rights and freedom of expression, are a challenging paradox in modern society. Freedom of speech is a fundamental right, but it is often contested when it crosses the path of hate speech, a type of communication that can lead to violence, prejudice, and dissimilarity. The spread of hate speech, which frequently targets minorities and undermines societal cohesiveness, puts the limits of free speech to the test in the digital age.

Democracy struggles to control online hate that breaches human rights, causes psychological harm, and encourages prejudice while defending free expression. Legal restrictions and proactive counter-speech are necessary to balance them. Threats, derogatory language, and insults based on sexual orientation, race, or religion are examples of hate speech. It is known to cause victims to experience despair, worry, and terror. With the anonymity of the internet frequently protecting offenders, the emergence of social media has facilitated the quick dissemination of damaging discourse.

António Guterres, the secretary-general of the United Nations, said "Addressing hate speech does not mean limiting or prohibiting freedom of speech. It means keeping hate speech from escalating into something more dangerous, particularly incitement to discrimination, hostility and violence, which is prohibited under international law."

The ability or right to voice one's thoughts without restriction, censorship, or legal repercussions is known as freedom of speech. This philosophy upholds a person's or a community's right to express their thoughts and beliefs without worrying about reprisals, censorship, or legal repercussions.

The United Nations' Universal Declaration on Human Rights and international human rights laws both acknowledge the right to freedom of expression as a human right. "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart

information and ideas through any media and regardless of frontier," according to Article 19 of the 1948 Universal Declaration of Human Rights.

The Rabat Plan of Action is a key UN guidance document, which was approved in October 2012, and uses a six-part, high-threshold test to differentiate between freedom of expression and unlawful incitement to hatred (national, racial, or religious). It provides directions regarding the implementation of Article 20 of the ICCPR (International Covenant on Civil and Political Rights), which aims to promote a balance between restricting harmful speech and protecting freedom of expression. According to Article 20 of the International Covenant on Civil and Political Rights (ICCPR), state parties are required by legislation to forbid any advocacy of national, racial, or religious hatred as well as propaganda for war that would inspire prejudice, animosity, or violence. It prevents violence and hatred by limiting the right to free speech. With an emphasis on international human rights norms, the goal is to rectify the legal and policy flaws in the prohibition of incitement to enmity, discrimination, or violence.

A. Six-Part Threshold Test

The Rabat Plan of Action framework lists following essential elements for evaluating possible hate speech:

1. Political and social background.
2. The speaker's position or standing.
3. The goal is to stir the audience against a specific group.
4. The message's substance, tone, and style.
5. The speech's scope, impact, and reach.
6. a plausible chance of real, direct harm.

The Rabat Plan of Action favours broad legal and civil frameworks and suggests that criminal penalties for hate speech be utilized as a last option. The Rabat Plan of Action emphasizes how governments, leaders, and civil society must work together to prevent violence while preserving the right to free speech

B. Statement of Problem

This paper seeks to examine the meaning of hate speech and identify the point at which freedom of speech and expression ceases to enjoy constitutional protection. It further analyses how a balance may be maintained between hate speech laws and Articles 14, 19(1)(a), 19(2), 21 and 25 of the Constitution of India in order to prevent misuse of statutory powers and ensure the protection of constitutional rights.

C. Research Objective

1. To Understand the meaning of Hate Speech and when the Freedom of Speech crosses the path of Hate Speech.
2. To find out how a balance can be maintained between Hate Speech Laws and Freedom of Speech and Expression.
3. To find out whether judicial scrutiny in case of Hate Speech cases can be an effective tool for the prevention of misuse of these laws.
4. To identify existing legal and institutional challenges and propose reasonable and inclusive recommendations.

D. Research Questions

1. What constitutes hate speech under Indian constitutional and statutory law?
2. At what point does the exercise of freedom of speech and expression under Article 19(1)(a) cease to enjoy constitutional protection and become punishable as hate speech?
3. Whether judicial oversight is sufficient to prevent misuse of executive powers in the enforcement of hate speech laws?

E. Hypothesis

The Hate Speech Laws can be justified as a reasonable restriction on the Freedom of Speech and Expression, but the powers assigned to executive officials without judicial scrutiny to deal with Hate Speech offences is against the principles of Separation of Powers, Principle of Check and Balances as well as rule of law and needs amendment. The consolidation of laws relating to Hate Speech, establishment of Special Tribunals

with defined jurisdiction and speedy trial of these offences will remove uncertainty regarding jurisdiction, results in fair trial and also remove the burden of higher judiciary

F. Research Methodology

For this paper, the research methodology will be comparative and doctrinal or non-empirical. It includes a thorough examination of the source materials, text reviews, and the entire body of research on the subject under study.

Primary and secondary data are the two types of data that the present study analyses. Primary data is made up of information gathered from a variety of statutes, tribunals, and court records.

Secondly, data includes pertinent books, articles, research papers, news reports, and magazines on the subject of study. Also, accessing relevant information regarding the above-mentioned issue will require internet access to some extent.

G. Literature review

The following literature has been reviewed in order to identify the problems and difficulties with the Hate Speech statute in India and to recommend corrective actions to get over these obstacles.

1. "Indian Constitutional Law" authored by Dr. M.P. Jain
2. "Constitutional Law of India" authored by Dr. J.N. Pandey
3. The "Constitution of India" by Prof. V.N. Shukla, as edited by M.P. Singh.
4. "Constitutional Law-I" by Dr. S.R. Myneni
5. "Introduction to the Constitution of India" by Dr. Durga Das Basu
6. The report on "Hate Speech Laws in India" compiled by the National Law University (NLU), Delhi, represents a comprehensive consolidation of the legislative and judicial landscape concerning hate speech within the Indian context.
7. The Bhartiya Nyaya Sanhita by Dr. K.D. Gaur
8. The Bhartiya Nagarik Suraksha Sanhita by Dr. K.D. Gaur

IV. FREE SPEECH: WHAT IS IT ALL ABOUT?

One of the greatest thinkers of his day, Socrates, was put on trial for encouraging people to pursue "moral truths" and "not believing in the gods in whom the city believes."

This is not a particularly shocking statement in the modern era. While atheism is now commonly accepted in our society, it was not the case in Athens during Socrates' day, and he was sentenced to death for attempting to initiate this discussion. What category would we put this under now? Would it be considered "free speech" for Socrates, a philosopher, to challenge the moral truths of this world and our existence, or would it be deemed disruptive and not something that could be exercised as a matter of right to question the very foundation of society at the time the gods?

This is only one of the numerous instances where "free speech" has two sides. "Freedom of speech" is defined by Amnesty International as "the right to seek, receive, and impart information and ideas of all kinds, by any means." People can express themselves without worrying about "retaliation," "censoring," or "intervention" from the government because to the right to "freedom of speech and expression," also referred to as the capacity to be heard. According to the law, this freedom may be subject to processes, limitations, requirements, and penalties in a free democracy.

. This freedom includes the freedom of the public to express their grievances through petitions or protests, as well as the freedom of the press to express their opinions. While the terms "freedom of expression" and "freedom of speech" are sometimes used synonymously, the latter refers to the ability to obtain information via any means. "If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter," states George Washington. "The liberty to speak and communicate ideas includes having the liberty to print and disseminate one's thoughts and other viewpoints through any media."

Democracy is essential to "freedom of expression," and "freedom of speech" is essential to democracy. India swiftly transitioned to a democratic society after achieving independence in 1947, giving its citizens a voice. India took the same steps as the majority of developed nations at the time to guarantee that this voice could be granted

as a right and safeguarded so that it could not be taken away. This led the Indian Constitution's framers to include Article 19(1)(a), which states that all Indian citizens have "freedom of speech and expression," which includes the ability to express one's thoughts and opinions via any medium, including "word of mouth, writing, through imagery, etc."

The fundamental idea of "freedom of speech and expression" is restricted to citizens solely in the Indian Constitution. However, "freedom of speech and expression" is not unqualified; reasonable limitations may be imposed by the government. When necessary to safeguard India's "sovereignty and integrity," "safety of the nation," "friendly relations with other countries," "preservation of public order," and moral standards, or in situations involving "contempt of court," "defamatory," or "inciting statements," Article 19(2) [13] of the Constitution permits "reasonable restrictions" on "freedom of speech." Therefore, "reasonable restrictions" on "freedom of speech and expression" are necessary for the general well-being and harmony of society.

Language and words have enormous power; they are the main means of socialization, and basic words have sparked the largest conversations. It is our duty to use them wisely. It is crucial to know that "hate speech" is not covered by "freedom of speech." Under the pretence of exercising their basic rights, many people indulge in "hate speech," which fosters distrust and worry. However, communication that you just don't like cannot be considered "hate speech."

George Orwell's statement, "If liberty means anything at all, it means the right to tell people what they do not want to hear," aptly illustrates this. Realizing that everyone has access to freedom is crucial. "If hate speech that disparages certain groups of people is produced under the pretence of free speech, that person's freedom is taken away. Liberty and equality coexist and are not antagonistic to one another. The goal of "free speech" is to give everyone a chance to express themselves without disregarding or silencing others with less authority.

V. UNCOVERING HATE SPEECH

"Offensive discourse targeting a group or an individual based on their inherent characteristics such as race, religion, or gender" is how the United Nations defines

"hate speech." " Speech that has no meaning other than the expression of hatred toward a particular group, especially in circumstances in which such expression is likely to provoke violence, hostility, or discrimination" is described in Black's Law Dictionary (Bryan A. Garner (ed), *Black's Law Dictionary* (11th edn, Thomson Reuters 2019)).

The term "hate speech" refers to any form of communication, whether "verbal," "written," or "behavioural," that targets or uses disparaging remarks about a person or group of people based on who and how they are, such as their "religious practice," "ethnic background," "national origin," "caste," "appearance," "sex," or even other identity-related traits.

Although "hate speech" has no set legal definition, it is commonly understood to imply "any speech, document, action, gesture, or depiction that encourages aggression or sows' division among groups or communities."

A. 267th Law Commission Report 2017 titled "Hate Speech"

According to the 267th Law Commission Report 2017 "Hate speech typically is an inducement to hate principally towards a set of individuals characterized in regard to caste, ethnic behaviour, sex, sexual preference, religious belief, and the similar,"

Citing current legislation as inadequate, the 267th Law Commission Report (2017) on "Hate Speech" suggests revising the Indian Penal Code (IPC) to specifically punish inciting hatred. In order to prevent hate speech, the report suggests adding new provisions (153C and 505A) that define it as rhetoric that incites hatred against marginalized groups.

The Supreme Court's ruling in *Pravasi Bhalai Sangathan v. Union of India* (2014) prompted the preparation of the 267th Law Commission Report on Hate Speech (2017). In that ruling, the Court asked the Law Commission to look into the necessity of defining hate speech and offer recommendations for improving the legal system.

In response to a Supreme Court order, the 21st Law Commission filed this report in March 2017. Discussions about its implementation frequently focus on striking a balance between free expression and the suppression of public disorder, even if the

proposals were meant to reinforce legal processes. This is especially true with the introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, which superseded the IPC.

According to 267th Law Commission Report Language (spoken or written), signs, or images that inspire hatred against groups based on sexual orientation, gender, race, or religion are all considered forms of hate speech. It claims that hate speech serves as a prelude to major crimes like terrorism and genocide.

B. The 267th Law Commission Report (2017) suggests the following changes to the IPC

1. **The "Test" for Hate Speech:** The commission stressed that communication that marginalises or insults communities should also be considered hate speech, and that "incitement to violence" should not be the only criterion.
2. **Balancing Rights:** The 267th Report on Hate Speech recognizes the conflict between the requirement for equality and public order (Article 19(2)) and freedom of speech (Article 19(1)(a)).
3. **Adding two new provisions:** The 267th Law Commission Report (2017) suggests amending the Indian Penal Code (IPC) by adding two new provisions to specifically criminalize hate speech.
4. **Section 153C (Prohibiting incitement to hatred):** Penalizes anyone who uses words, signs, or visible representations to incite hatred, violence, or discrimination against a group or person based on religion, race, caste, sex, gender identity, sexual orientation, place of birth, residence, language, disability, or tribe. Punishment includes up to 2 years in prison and a fine of up to Rs 5,000, or both.
5. **Section 505A (Causing fear, alarm, or provocation of violence):** Criminalizes publicly using gravely threatening or derogatory words or actions against someone on the same protected grounds to cause fear or alarm, or to provoke the use of unlawful violence. This carries a punishment of up to 1 year of imprisonment, a fine of up to Rs 5,000, or both.

C. Follow-up Context (as of 2026)

Inaction on the Law Commission report for the previous eight years (2017–2025) can be attributed due to the following reasons:

- 1. Political Inaction:** It has been alleged that the Union Government disregarded the 267th report's recommendations for robust, nuanced criminal provisions. The suggested definitions were not incorporated in the 2024 revision of criminal laws, which replaced the IPC with the BNS.
- 2. Current Law Argument:** The Supreme Court has already noted that the Indian Penal Code's (IPC) current provisions such as those that deal with inciting animosity between groups are adequate, which lessens the pressure on the government to enact new laws.
- 3. Concerns About Misuse:** There is a lot of discussion about whether laws pertaining to hate speech would be used to restrict political or legitimate opposition, which raises questions about the possible misuse of these authorities.
- 4. Definition Difficulties:** Legislative action has been hesitant due to the challenge of developing a definition that is wide enough to protect the fundamental right to free expression (Article 19(1)(a)) and strict enough to prevent hate speech.
- 5. Lack of Specificity on Election Issues:** According to the Election Commission of India (ECI), the 267th Report's usefulness was limited because it did not offer enough suggestions for bolstering the ECI to prevent hate speech during elections, such as the authority to deregister political parties. The Election Commission of India (ECI) stated that the 267th Report's usefulness in the eyes of the poll body was limited because it did not offer enough suggestions for bolstering the ECI to prevent hate speech during elections, such as the authority to deregister political parties.

The report's suggestion to make inciting hatred (Section 153C) and inciting fear, alarm, or provocation of violence (Section 505A) explicitly illegal remains unimplemented.

The BNS, 2023's important sections against hate speech include:

1. **Section 196 (IPC 153A):** Promotes enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and acts prejudicial to the maintenance of harmony.
2. **Section 197 (Section 153B IPC):** Covers imputations and assertions prejudicial to national integration.
3. **Section 299 (Section 295A IPC):** Penalizes deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.
4. **Section 353 (Section 505 IPC):** Deals with statements conducing to public mischief, including making, publishing, or circulating statements, rumours, or reports that create or promote enmity, hatred, or ill-will between different religious, racial, linguistic, regional, caste, or community groups.

Therefore, "any phrase, whether printed or spoken, gesture, or visual depiction within the hearing or vision of an individual to cause terror or panic, or inciting violence" might be considered "hate speech."

"Hate speech" is defined as any expression that calls for violence or utilises harsh language. In the modern era, "hate speech" is defined as more than just offensive speech; it also includes "insulting," "disparaging," "discriminating," "provocative," and communication that encourages, supports, or inspires violence. It has the effect of disturbing social harmony and order.

More importantly, however, "hate speech" becomes an especially serious type of "hate crime" that directly damages the victims' physical and mental well-being. It has an intangible effect on its victims, restricting their freedom of speech and expression and preventing them from engaging in public discourse and the democratic process. "Victims of hate speech feel fear, may be reluctant to engage in conversation or enter public spaces, and may alter their behaviour or appearance to avoid hate speech," the report states.

In this sense, "hate speech" presents its targets as individuals who are not only "discriminated against, but are also seen by others as undesirable targets and

legitimate objects of hostility." The intangible effects of "hate speech" are the most dangerous and detrimental to a person's sense of security and right to live with dignity.

VI. SPEECH AND EXPRESSION: HATEFUL OR NOT?

Since everyone possesses equal rights and liberties, freedom of speech and expression is recognised as a fundamental human right. Because both free speech and hate speech involve the communication of ideas and opinions, they are sometimes mistakenly treated as equivalent. However, speech that promotes hatred, discrimination, or violence ceases to enjoy constitutional protection when it threatens public order, state security, or other interests recognised under Article 19(2) of the Constitution of India. It is easy to see how an act impacts public order but not security services, or how it affects the rule of law but not civil order.

Limitations imposed for the sake of state security must be reasonable and have a direct, immediate connection to civil order rather than a remote or unlikely one. The Apex Court upheld the constitutionality of section 295A IPC (Now, section 299 in the Bharatiya Nyaya Sanhita (BNS)) in "Ramji Lal Modi v. State of U.P." and declared that "this section does not punish each act of disrespect to or try to disrespect the religious practice or the religious beliefs of a group of citizens." However, the court criticized only those acts of disrespect or all those variations of efforts committed with an intentional and deceptive intention.³

In "Ramesh v. Union of India," the Supreme Court declined to rule on speech in solitude, ruling that "a film that promotes peace cannot be deemed to have violated Article 19(1)(a) simply because it depicts extremism and aggression to illustrate the hopelessness of such actions."⁴

Therefore, rather than the act itself, the limitation under Article 19(2) is justified by the likelihood of the conduct and its influence on public peace. The Court refused to weigh the right to free speech against the societal interests specified in Article 19(2). It was decided that "the issue of identifying the region of freedom of speech and expression

³ *Ramji Lal Modi v State of Uttar Pradesh* AIR 1957 SC 620.

⁴ *Ramesh v Union of India* (1988) 1 SCC 668.

whenever it would seem to contradict the different social preferences listed under Article 19(2) might well be lightly touched upon in this, and it society as a limitation on speech had been justified only when it was a case of damage to the society." It is necessary to compromise the goals of society's interests and freedom of speech and expression.

The court additionally ruled that "our commitment to freedom of speech and expression requires that it is not curtailed unless such consequences of permitting it are urgent and the public good is in jeopardy." The threat shouldn't be remote, unlikely, or unrealistic. It must be directly and intimately connected to the expression.

The court once again addressed the problem of "hate speech" in "Jafar Imam Naqvi v. Election Commission of India," where the plaintiffs requested that the Electoral Commission issue a mandamus writ to take appropriate action against the candidates' hateful remarks made during the election. However, the court rejected the petition because, under Article 32 of the Constitution, the petition addressing words made during an election campaign does not qualify as a public interest action, and the court cannot legislate on matters where the legislative intent is evident.⁵

Section 66 A of the Information Technology Act, 2000 was declared illegal by the judges in "Shreya Singhal v. Union of India" because there was no clear link between the restriction and the law. "The connection between the communication and actions that could be undertaken depending on the text is noticeably lacking, i.e., the connection between both the text and actions that could be taken depending on the messaging is notably missing," the court ruled. Since "debate" and "advocacy" are regarded as the fundamental components of Article 19(1), they were separated from "provocation."⁶

The court found in *State of Maharashtra v. Sangharaj Damodar Rupawate* that "the impact of the phrases utilized in the offensive content should be assessed using the specifications of a sensible, firm, and brave person as opposed to those with sluggish and waffling thoughts or individuals who see a threat in every opposing viewpoint."

⁵ *Jafar Imam Naqvi v Election Commission of India* (2014) 15 SCC 420.

⁶ *Shreya Singhal v Union of India* (2015) 5 SCC 1.

Additionally, the Supreme Court upheld the conviction under the Scheduled Tribes and Scheduled Castes (Prevention of Atrocities) Act, 1989 for using the terms "pallan," "pallapayal," "parayan," or "paraparayan" with the intent to insult in "Arumugam Servai v. State of Tami Nadu."⁷

"In interpreting sections 153A and 505(2) of the Indian Penal Code, 1860 (now sections 153A IPC is Section 196 of the Bharatiya Nyaya Sanhita (BNS), 2023 and Section 505(2) IPC is Section 353 of the Bharatiya Nyaya Sanhita (BNS), 2023), the common characteristic in both sections seems to be that they both make it unlawful to promote feelings of hostility, hatefulness, or ill-will among various religious, race-based, linguistic, or local groups, castes, and societies, as well as to engage in actions that are harmful to the repairs of harmonious relationships," the Court said in "Bilal Ahmed Kaloo v. State of AP". At least two communities or groups must be involved in order for this condition to apply. Simply hurting the feelings of one group or community without mentioning another group or society will not attract both components."⁸

"Section 153A (1) Indian Penal Code, 1860 now Section 196 of the Bharatiya Nyaya Sanhita (BNS), 2023), prohibits the encouragement of hatred, hostility, or other negative emotions on any basis, including race, ethnicity, national origin, place of origin or domicile, languages, class, or group," the court ruled in Babu Rao Patel v. State of Delhi. Recent decisions show that India upholds a system that safeguards "free speech," and judges exercise extreme caution when restricting the application of Article 19(1)(a) of the Constitution. This stance is being adopted out of fear that the State would misuse its authority to impose strict controls.

In *Amish Devgan v. Union of India*, the Supreme Court undertook a comprehensive examination of the law relating to hate speech and observed that such speech strikes at the constitutional values of equality, dignity and fraternity in a pluralistic democracy. The Court explained that whether speech amounts to hate speech must be determined by considering four interrelated factors:

1. The content of the expression,

⁷ *Arumugam Servai v State of Tamil Nadu* (2011) 6 SCC 405.

⁸ *Bilal Ahmed Kaloo v State of Andhra Pradesh* (1997) 7 SCC 431.

2. The context in which it was made,
3. The intent of the speaker, and
4. The actual or likely harm caused to the targeted group or to public order.

The Court reaffirmed that freedom of speech under Article 19(1)(a) does not protect speech that incites hatred, discrimination or violence, and endorsed the standard of a reasonable, strong-minded, firm and courageous person in assessing the effect of the impugned words. The judgment also addressed the problem of multiple FIRs arising from the same speech and emphasised the need for proportionate and orderly legal process. This decision is of particular relevance to the present study because it supports the need for structured judicial oversight and specialised institutional mechanisms to prevent arbitrary or excessive enforcement of hate speech laws.⁹

D. Key Issues

1. **Legal Vagueness:** There is legal ambiguity because there isn't a single, widely accepted definition of hate speech. Instead of preventing actual harm, this permits regulation to be applied arbitrarily to stifle political opponents or minority views.
2. **Digital Amplification:** Hateful discourse may spread instantly throughout the world thanks to social media, which increases its impact and makes it harder to stop.
3. **The "Balancing" Dilemma:** In particular, when speech incites violence or hates crimes, society finds it difficult to strike a balance between the need to defend human dignity, safety, and social cohesiveness and the right to free expression.
4. **Weaponization of Free Speech:** Critics contend that political actors frequently utilize hate speech as a weapon to target immigrants, refugees, and minorities, inciting fear.

⁹ *Amish Devgan v Union of India* 2020 SCC Online SC 994.

5. **Mental and Sociological Harm:** Beyond acts of physical violence, hate speech contributes to the normalization of prejudice in public discourse and produces serious psychological suffering.

E. Key Challenges in Regulation

1. **Enforcement Delays:** Regulation is sometimes ineffectual in real time because online information travels more quickly than legal action can be taken.
2. **Platform Responsibility:** According to the UNDP on non-violent communication, online intermediaries encounter difficulties in recognizing and eliminating hate speech without violating the right to free speech.
3. **Proving Intent:** In legal processes, it is challenging to establish the intent to promote hatred or violence.

VII. RECENT LEGISLATIVE DEVELOPMENT

A. The Karnataka Hate Speech and Hate Crimes (Prevention) Bill, 2025

The Karnataka Hate Speech and Hate Crimes (Prevention) Bill, 2025, In an effort to address growing communal tensions, the Karnataka Hate Speech and Hate Crimes (Prevention) Bill, 2025 was passed by both houses of the Karnataka Legislature in December 2025. It aims to punish hate speech and crimes with 1–7 years in prison (up to 10 for repeat offences) and fines up to ₹1 lakh. The bill, which targets discrimination based on religion, race, caste, gender, and sexual orientation in written, spoken, and online content, is awaiting the Governor's assent. The Karnataka Assemble passed the Bill on december 18 2025 but the Governor of Karnataka declined to grant Assent to the Bill and reserved the Bill for the consideration of President of India under Article 201 of Constitution of India.

Bill's inclusion of online content and digital communications in the definition of hate speech is one of its main aspects. This includes a broad variety of digital expressions, such as posts on social media, forwarded messages, memes, videos, and even publicly shared private communications. The concept include content that encourages prejudice, animosity, or marginalisation on the basis of religion, caste, race, gender,

sexual orientation, or political convictions, going beyond the conventional legal definition of hate speech, which is concentrated on incitement to violence. This wide breadth raises questions about vagueness and potential misuse even as it seeks to represent the nuances of contemporary online hate.

Additionally, the Bill Places hate speech in the category of serious criminal offences by classifying it as a non-bailable and non-cognizable offence. This implies that the police cannot make an arrest without a magistrate's prior sanction and that the accused cannot seek bail as a matter of right. The severity of hate speech in generating social disruption, psychological injury, and communal discontent is reflected in this classification. However, detractors contend that this criminalisation framework could stifle dissent and be used as a tool for political retaliation, particularly in the absence of a clear legal threshold for what constitutes hate speech.

The Bill's extending of legal liability to digital intermediaries, including social media platforms and internet service providers, is one of its most prominent and contentious provisions. These platforms must remove hate content that has been flagged within a certain amount of time (usually 24 to 36 hours) after receiving notification from state authorities. Significant fines, legal liability, and even the suspension of business inside the state are possible outcomes of noncompliance. The IT Rules 2021's framework is strengthened by this action, but it also imposes more stringent requirements, particularly with regard to deadlines and fines.

Furthermore, as the Union List of the Constitution governs internet and telecommunication services, Bill's introduction of state-level jurisdiction for digital content control poses serious federalism concerns.

Bill's inclusion of private communications in its purview is arguably its most controversial feature. According to the Bill, the sender of a private digital message (such as one sent via WhatsApp, Signal, or Telegram) that contains hate content and is made public by forwarding, screenshotting, or broadcasting may face criminal charges.

This provision has raised serious privacy concerns, especially after the Supreme Court's historic recognition of the right to privacy as a fundamental right in Justice K.

S. Puttaswamy v. Union of India (2017). The goal is to track and punish the origin of viral hate campaigns, which frequently start in closed groups. This clause raises concerns about state intervention into private life and may result in increased monitoring or backdoor traceability requirements from encryption platforms.

The Karnataka Hate Speech and Hate Crimes (Prevention) Bill, 2025 is a bold and ambitious attempt to update the laws governing hate speech in the internet era. But it also starts a complicated discussion about constitutional restrictions on state authority, freedom of speech, privacy, and the allocation of legislative authority at the federal level. Opponents caution that the law runs the risk of turning into a tool for censorship and control unless it is supplemented by strong procedural protections and judicial oversight, while advocates see it as an essential remedy for digital impunity.

B. Problems with Current Legislation

1. Many hate speech laws are criticised for being overly broad or unclear, which can result in inconsistent enforcement and possible abuse to silence marginalised voices or political criticism.
2. The broad hate speech laws may create the potential to stifle free speech by making people self-censor for fear of legal ramifications, even when their communication is lawful.
3. Because of the internet's global reach and volume of content, it can be difficult to enforce hate speech laws, particularly online. Determining jurisdiction in cases of cross-border hate speech is another problem.
4. The definition and boundaries of hate speech are not universally agreed upon, which causes major differences in national laws and enforcement strategies. This discrepancy can make it more difficult to combat hate speech, particularly on the internet.

C. Problems with the Current Judicial System

1. Many judges find it difficult to strike a balance between upholding free speech and punishing hate speech. This frequently leads to either insufficient reactions to damaging hate speech or unduly expansive laws that violate free speech.

2. The number of channels for hate speech has expanded dramatically due to the growth of digital platforms. Present judicial frameworks are often outdated and ill-equipped to address the nuances of online hate speech effectively.
3. Judges frequently lack the specialised expertise necessary to comprehend and handle hate speech matters, particularly those having intricate cultural, social, and digital circumstances.
4. Hate speech legislation may be ineffectual due to the sluggishness of the legal system. The impact of penalties may be lessened, and future offenders may not be deterred if adjudication is delayed.

VIII. SUGGESTIONS AND RECOMMENDATIONS:

Enhancing anti-hate speech legislation is a challenging but necessary endeavour to better society. Hate speech laws are intended to safeguard individuals and groups from discrimination and acts of violence while preserving the right to free speech. However, striking a balance between preserving speech freedom and safeguarding against damaging discourse is challenging. Here are some recommendations for improving hate speech laws as well as an examination of the problems with the current legislation.

1. **Clear Definition of Hate Speech:** The ambiguity and wide interpretation of what constitutes hate speech is one of the primary problems with the regulations currently in place. The intention to incite hatred, violence, or discrimination against people or groups on the basis of protected characteristics, such as race, religion, ethnicity, sexual orientation, gender identity, or disability, shall be clearly and precisely defined by legislation. This clarity will aid in preventing the abuse of the law to stifle free expression.
2. **Focus on Incitement to Violence:** Speech that encourages violence or discrimination against people or groups should be prohibited by law. This strategy lessens the possibility of restricting free speech while focusing on the most detrimental consequences of hate speech. A direct and likely connection to impending damage should be a prerequisite for what qualifies as incitement.

3. **Protection of Freedom of Expression:** Strong safeguards for freedom of expression, as specified by international human rights law, must be included in any legislation pertaining to hate speech. This involves making sure that speech limitations are appropriate, required, and have a valid purpose. As long as these opinions do not encourage violence or discrimination, the law should safeguard people's freedom to voice unpopular or dissenting opinions without fear of suppression or reprisal.
4. **Education and Awareness:** In order to address the underlying biases and stereotypes that drive hate speech, legislation should be complemented by public education and awareness efforts. By encouraging tolerance and respect for diversity, society can lessen the demand for hate speech. Educational programs that highlight the importance of diversity and the harm caused by hate speech can concentrate on schools, workplaces, and the media.
5. **Digital Regulation and Cooperation:** Laws must address the role of digital platforms in disseminating harmful content in light of the surge in hate speech on the internet. This involves using clear standards and procedures for content moderation to hold social media corporations responsible for hate speech on their networks. To properly address the issues of online hate speech, governments, tech corporations, and civil society must collaborate.
6. **Support for Victims:** Strong support for victims of hate speech, including access to justice, legal aid, and remedies, should be provided by legislation. In order to ensure that victims' concerns are taken seriously and immediately addressed, hate speech reporting mechanisms should be easily accessible and efficient.
7. **Balancing Rights with Responsibilities:** It is essential to have precise criteria that aid in differentiating between hate speech and protected expression. This entails improving legislative requirements to guarantee that they safeguard people from harm without needlessly restricting their right to free speech.
8. **Digital Literacy and Laws:** It is crucial to update legal and judicial procedures to better reflect the reality of the digital age. This includes educating judges and

attorneys on digital literacy, comprehending online cultures, and identifying how digital platforms contribute to the spread of hate speech.

9. **Specialized Training and Resources:** To successfully handle hate speech cases, judges must invest in specialised training that covers the psychological, sociological, and cultural aspects of hate speech. This can also entail setting up courts or specialised sections to deal with these kinds of situations more effectively.
10. **Swift and Proportionate Justice:** The deterrence effect of hate speech charges can be increased by streamlining the legal system to guarantee prompt response. It is essential to have procedures in place for speedier adjudication and make sure fines are appropriate for the harm done.
11. **Community Engagement and Education:** The judiciary should collaborate with communities to inform the public about the negative impacts of hate speech and the value of polite conversation. A more accepting and understanding culture can be promoted by interacting with educators, community leaders, and digital platforms.
12. **International Co-operation:** International collaboration is essential in the creation and enforcement of legislation against hate speech since hate speech frequently crosses national boundaries, particularly when it occurs online. Countries can better address global issues by exchanging legal frameworks, tactics, and best practices.
13. **Protecting Victims and Witnesses:** In hate speech prosecutions, it is crucial to safeguard and assist victims and witnesses. This entails providing them with psychological support, legal protection, and protection from reprisals.

IX. CONCLUSION

As this discussion on hate speech and its regulation draws to a close, it's critical to take a moment to consider the path taken, the lessons learned, and the difficulties that still lie ahead. In addition to summarizing the topics covered, the concluding thoughts on this topic also consider the wider ramifications of hate speech in our increasingly digital and connected society. As we've seen, hate speech is a dynamic term that is

impacted by social, cultural, and technical shifts. It exists at the nexus of the protection of people and communities from damage and the right to free speech. How to make sure that attempts to stop hate speech do not violate the fundamental right to free expression is a constant challenge brought about by this dichotomy. The delicate balance necessitates constant adjustment, particularly as new communication channels and social standards develop. While protecting people from harmful speech is a shared goal, there is no general pattern for regulating hate speech, as the journey through numerous national and international legal regimes has shown. Every nation's approach is influenced by its distinct legal, cultural, and historical background. Because it enables a variety of tactics and solutions that may be modified and embraced as best practices, this diversity is a strength rather than a negative. However, this diversity also makes it difficult to establish unified worldwide standards, especially in light of hate speech that spreads across national boundaries through social media and the internet.

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