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## **FREEDOM OF SPEECH V. HATE SPEECH: LEGAL BOUNDARIES IN INDIA**

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### **ABSTRACT**

Freedom of speech, a fundamental right, enshrined in the Article 19(1)(a) of The Indian Constitution, serves as a cornerstone for the democratic governance of India. It allows the public of India to express one's own thoughts, opinions, and beliefs freely, and yet, this right is subject to "reasonable restrictions" under the Article 19(2) of the Indian Constitution in order to prolong public order, decency and social harmony. A major aspect that continuously preserves itself in the debates is the intersection of free speech with 'hate speech', that lies with the power to provoke violence, discrimination and hostility among different community groups that are generally based on religion, caste, or racism.

Hate speech is not specifically described in the Article 19(2) of the Indian Constitution, that eventually leads us to 'ambiguity and selective execution' of the laws. Laws such as Section 196 (equivalent to Section 153A IPC), Section 299 (equivalent to Section 295A IPC) and Section 353 (equivalent to section 505 IPC) of the 'Bharatiya Nyaya Sanhita, 2023, aims to restrict and outlaw such thoughts or speech that can become a threat to public decency and social harmony and peace between various communities. Even though such legal provisions are already present in the Indian Constitution, hate speech is becoming more general and extensive, with the rise in the use of digital or social media, that ultimately becomes a challenge for the legal system in our country to enforce such laws.

This research paper explores and talks about the 'legal boundaries, present in the Indian Constitution, for hate speech'. The presence of freedom of speech, along with the suppression of hate speech, is necessary for a democratic country such as India, to support its social harmony and peace within the public.

**Keywords:** Freedom of speech, Article 19(1)(a), Article 19(2), The Constitution of India, reasonable restrictions, free speech, hate speech, Section 196, Section 299, Section 353, Bharatiya Nyaya Sanhita, 2023, Public order, social harmony, national integrity

## INTRODUCTION

Freedom of speech is a fundamental right that preserves the democratic governance for the benefit and greater good of the public in any democratic society. A democratic society cannot rest without freedom in several aspects yet, freedom of speech and expression resides in the topmost category of the hierarchy of freedoms. In general, freedom of speech means freedom of expression. It has truly been said that freedom of speech is the mother of all other freedoms and prepares the way for all other freedoms.<sup>1</sup>

In India, the fundamental right of freedom of speech is enshrined under the Article 19(1)(a) of the Indian Constitution stating that, “*All citizens shall have the right to freedom of speech and expression*”<sup>2</sup>, alongside which, lies the Article 19(2) of the Indian Constitution which states that, “*Nothing in the sub-clause (a) of clause (1) shall affect any operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.*”<sup>3</sup>

Hate speech, in societal interpretation, means a thought or idea that a particular individual or a community or a group may find defamatory or discriminatory based on various aspects such as religion, caste, race or other identities. Precisely, the Constitution of India does not provide a legal definition or interpretation for it, but has provided various provisions in the Bharatiya Nyaya Sanhita, 2023 (previously the Indian Penal Code). Among the various societies and communities, people often use hate speech to create tensions, misinformation or political propaganda by criticising a particular race, caste or religion.

The intersection of free speech with hate speech gives rise to various debates in the Indian society as there are various groups having their own beliefs. On one hand, where free speech enables the public in a democracy to question and criticise the authorities and its decisions, the hate speech, on the other hand, restricts the use of such words that may trigger and incident

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<sup>1</sup> Neha Gadgala, *Freedom of Speech and Expression Versus Hate Speech In India: A Critical Analysis*, Volume 11, Issue 2 IJRAR 118, 119 (2024), IJRAR1DOP012.pdf

<sup>2</sup> India Const. art. 19, cl. 1(a).

<sup>3</sup> India Const. art. 19, cl. 2

which may eventually harm the social harmony and national security. The major challenge that our legal system has to face is to prevent the use of hate speech in an offensive manner where people use it to target a particular community.

This article sees towards the legal provisions, provided in the Constitution of India, that prevents or restricts such use of hate speech. Also looking towards the judicial interpretation and reforms of our legal system that balances the use of right to freedom of speech and expression along with the prevention of hate speech.

## LEGAL FRAMEWORK FOR FREE SPEECH AND HATE SPEECH

Although there are Article 19(1)(a) in the Constitution of India that guarantees the right to freedom of speech and expression allowing one to have their own belief, thought or idea and Article 19(2) that establishes 'reasonable restrictions' on the right to freedom of speech and expression in order to protect public order, social harmony and national security, there is no such well-defined law for hate speech. In lieu of such, there are various provisions under Indian Penal Code, now replaced by Bharatiya Nyaya Sanhita (BNS), 2023, Information of Technology Act, 2000, Representation of People Act, 1951, and few media laws that balance the scale of free speech v. hate speech and criminalize the offences of hate speech.

### 1. Bharatiya Nyaya Sanhita (BNS), 2023 (replacing the Indian Penal Code, 1860)

- a. **Section 196 (Equivalent to IPC Section 153A):** This provision criminalizes all the acts, speeches or writings that are done with the intent of promoting enmity between two or more communities on the grounds of religion, race, caste, or any other identity. It imposes fine and punishment of imprisonment up to 5 years on the accused.<sup>4</sup>
- b. **Section 299 (Equivalent to IPC Section 295A):** This section states that "whoever, with malicious intent of outraging the religious feeling of any class of citizens of India, by any means, either words or signs or visual

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<sup>4</sup> IPC LAWS, Bharatiya Nyaya Sanhita: Section 196 - Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony (last visited Feb. 19, 2025)

representations, shall be punished with imprisonment of either description for a term up to three years, or with fine, or both.”<sup>5</sup>

- c. **Section 353 (Equivalent to IPC Section 505):** This provision states that “any individual or a group of individuals, if publishes or circulates any misinformation, rumour or false statement with intent to cause fear, or harm to public peace and harmony shall be punished with imprisonment which may extend to three years, or with fine, or with both.”<sup>6</sup>

## 2. Information Technology (IT) Act, 2000

- a. **Section 69A:** This act “empowers the government to issue directions to block any online content, that has been uploaded with the intent of hate speech and that can harm social harmony between community groups, for access by the public to preserve public order. Any intermediary who fails to comply with the direction shall be punished an imprisonment for a term up to seven years and shall also be liable to fine.”<sup>7</sup>

## 3. Representation of the People Act, 1951

- a. The act put restraints on a particular individual or a political party using community grounds such as religion, race, caste, or any other identity that forms a basis for gaining votes through such grounds.<sup>8</sup>

## 4. Cable Television Networks (Regulation) Act, 1995

- a. **Section 19:** These acts “prohibit the transmission or re-transmission of such programs, if it is likely to incite, on grounds of religion, race, caste or community or language or any other ground whatsoever, disharmony, or feelings of enmity, hatred, ill-will between different religious, racial, linguistic

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<sup>5</sup> IPC LAWS, Bharatiya Nyaya Sanhita: Section 299 - Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs (last visited Feb. 19, 2025)

<sup>6</sup> IPC LAWS, Bharatiya Nyaya Sanhita: Section 353 - Statements conducing to public mischief (last visited Feb. 19, 2025)

<sup>7</sup> INDIANKANOON, Section 69A in The Information Technology Act, 2000 (last visited Feb. 19, 2025)

<sup>8</sup> INDIANKANOON, Section 123(3) in The Representation of the People Act, 1951 (last visited Feb. 19, 2025)

or regional groups, which is likely to disrupt the public harmony.”<sup>9</sup>

## NEED FOR REFORMS

Even though, with the presence of various legal provisions that restricts the use of hate speech in any form such as verbal or written or visual representations, the rise of use of OTT platforms and social media platforms proves to be a hindrance in application of those laws. Statutes such as Bharatiya Nyaya Sanhita(BNS), 2023, Representations of People Act(RPA), 1951, Information Technology Act(IT), 2000 and other laws that relates to mass media of the country aims to prevent the use or representation of hate speech in order to maintain public order and national integrity, still have faults that makes it difficult for the judiciary to interpret the distinction between the proper or lawful use of free speech and harmful hate speech.

### 1. Misuse and selective implementation of Freedom of Speech

The lack of precise definition, in the legal system of India, regarding hate speech is one of the major hindrances faced during the implementation of such laws that prevent the use of hate speech. Even though, Article19(1)(a) of the Constitution of India provides the freedom of speech and expression to the general citizens of India, Article19(2) of the Constitution of India, allows the ‘reasonable restrictions’ to prevent hate speech, i.e., speech that proves to be a threat to public order, national integrity, or social harmony.

This lack of the definition of hate speech, under the provisions of Bharatiya Nyaya Sanhita (previously the Indian Penal Code) such as Section 196, Section 296 or Section 353, gives rise to misuse of the Article19(1)(a) of the Constitution of India that provides the right to freedom of speech. The offenders tend to interpret the law as per their specific ideas, thoughts or beliefs or we can say the selective enforcement towards the opposition in political debates, or religious activities, or on some other grounds.

There are various cases in which the political parties or their representatives or the members of that party used hate speech which eventually resulted in communal violence and threat to national integrity but still no further action was taken against them due to their political influence.

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<sup>9</sup> The Cable Television Networks (Regulation) Act, 1995, Chapter V, Section19

In the year 2020, a case emerged where *BJP MLA Kapil Mishra* made a short speech on calling for forcefully removal of *anti-Citizenship Amendment Act* protesters. This led to mobs fanning out across the district targeting Muslims through various slogans that fueled the spark of riot on the grounds of religion, that eventually turned into a communal violence. In all, 53 people were killed while hundreds of them were injured, yet, no action was taken, neither against those offenders who ignite the spark of violence nor against Kapil Mishra<sup>10</sup>.

## 2. Rise of hate speech on social media and OTT platforms

Social media, though, has proven itself as a medium to raise concerns about justice towards various crimes such as murders, rapes, suicides due to stress and moreover, in many ways yet it has also been proven a great factor towards the rise in hate speech in India. OTT (Over-the-Top) platforms such as YouTube, have also contributed in raising voice of hate speech towards particular groups and communities. Section 69A of the Information Technology Act, 2000 provides the freedom and power, to the government of India, to block contents, available on such social media and OTT platforms, that risks the public order and national integrity, but the enactment of such laws remains stagnant and inconsistent.

Such platforms often fail to remove this kind of content that promotes hate speech, often based on the grounds of either caste or religion, which when reaches to the public, results in communal violence. Such acts of hate speech affect the nation's peace due to various thoughts and beliefs over a single expression by a person who uploaded this kind of content.

The case of *Pravasi Bhalai Sangathan v. Union of India*, (AIR 2014 SC 1591), addressed the issue, whether the existing legal framework is adequate enough to restrict hate speeches made by political and religious leaders. The petitioner stated that various political leaders use hate speech, that spark the communal violence between people of different religions or ethnicities. It further emphasized that political leaders use hate speech against a particular community to sway the public opinion towards themselves and to gain votes of other communities. The Court noticed that there was a urgent need for a more precise legal framework to restrict the hate speech in India. It was stated that the mere presence of IPC

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<sup>10</sup> THE WIRE, 'Delhi Riots Began With Kapil Mishra's Speech, Yet No Case Against Him': Minority Commission Report - The Wire (last visited on Feb. 20, 2025)

Section 153A & Section 295A was not enough to address the complexities of hate speech. The subjective nature of such provisions makes it challenging to apply these laws to the instances of hate speech in modern era. Moreover, the Court noted that a critical gap was present in the Representations of People Act, 1951, that does not address the hate speech used by political parties to sway the votes towards themselves.<sup>11</sup>

Another recent case of *Ranveer Gautam Allahabadia v. Union of India & Ors.*, 2025, issues a significant ruling concerning the fundamental right of freedom of speech and the restrictions on the use of hate speech. The case mainly revolved around statutes such as the Bharatiya Nyaya Sanhita, 2023, the Information Technology Act, 2000, the Cinematography Act, 1952 and the Indecent Representation of Women (Prohibition) Act, 1986. It raised concerns about the right to freedom of speech under the Article 19(1)(a) of the Constitution of India and the reasonable restrictions imposed by the state on it under the Article 19(2) of the Constitution of India. It also reviewed the provisions of the legal system of India and the power to block the content on OTT platforms, if the content promotes hate speech, harming the public order and national integrity.<sup>12</sup> The case remains under the judicial review, with further hearings to address both, freedom of speech and the legal interpretations of content regulation on such OTT platforms. The final verdict of the case could lead to new legal frameworks governing digital/OTT platforms in India.<sup>13</sup> Also it can lead to new provisions regarding the right to freedom of speech and the use of hate speech.

## CONCLUSION

Article 19(1)(a) that provides that fundamental right to freedom of speech to each, and every citizen of India is the cornerstone for the democratic governance of the nation. This right enable people to present their beliefs, ideas, opinions, and perspectives on several topics throughout the nation. One cannot live freely in a democratic country without having the right to speak his opinion on a certain matter, either a matter of personal interest or public interest. Yet, there are a number of people who misuse their right to free speech to spread hate and ignite

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<sup>11</sup> THE AMIKUS QRIAE, Case Commentary on *Pravasi Bhalai Sangathan v. Union of India* - The Amikus Qriae (last visited on Feb, 20, 2025)

<sup>12</sup> THE LAWMATICS, *Ranveer Gautam Allahabadia v. Union of India*: Supreme Court Order - TheLawmatics (last visited on Feb, 20, 2025)

<sup>13</sup> VIDHIGYA, Supreme Court's Gag Order on *Ranveer Allahbadia*: A Free Speech Debate - Vidhigya Supreme Court Gag Order on *Ranveer Allahbadia* Sparks Free Speech Debate (last visited on Feb, 20, 2025)

violence, in or against, a particular community, that eventually harms the national integrity of the country.

The Indian legal system still holds loopholes, that people, such as public figures, political or religious leaders and other offenders, use to spread hate speech among the nation. These people tends to use defamatory words or statements towards a particular community, that are offensive towards them, and then due to these loopholes, such as selective enforcement or political influence or both, the justice is not served to those who are affected by these hate speech and violence caused by the same. These loopholes and lack of justice marks the inadequacy of the Indian legal system and the need for reforms in it for betterment of the society and its harmony.

Thus, protecting the Article19(1)(a) of the Constitution of India means protecting the democratic principles and ideals of the nation. Article19(1)(a) guarantees that each person has its own voice to speak for itself and no one's ideals will suppress the ideals of another, no matter if its due to societal or cultural differences or ideological conflicts.<sup>14</sup>

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<sup>14</sup> Neha Gadgala, *Freedom of Speech and Expression Versus Hate Speech In India: A Critical Analysis*, Volume 11, Issue 2 IJRAR 118, 125 (2024), IJRAR1DOP012.pdf



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