
HATE SPEECH V. FREE EXPRESSION: SHOULD DEMOCRACIES REDEFINE THE THRESHOLD?

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Introduction: Free Speech in the Contemporary Era

In the contemporary era, a single online statement has the potential to reach millions within seconds. Although, this connectivity has bolstered civic participation, it has also escalated the spread of hate speech. Modern democracies therefore face a critical dilemma: should they redefine the threshold between free speech and hate speech?

“To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker.” — Frederick Douglass.¹

Freedom of speech and opinion are essential components of democratic societies and human rights. These liberties uphold other essential rights, like the freedom of religion, the right to peaceful assembly, and the right to take part in public affairs. Freedom of speech is the ability to voice one's thoughts and opinions without worrying about social repression, government censorship, or retaliation, as long as such thoughts and opinions do not cause harm to others or inspire violence. Digital media, including social media, have bolstered the right to seek, receive and impart information and ideas.² It fosters open dialogue and understanding across diverse perspectives. People choose their leaders in democratic form of government and when such leader censor certain opinions or limit public discussions it weakens the public trust in the government. Therefore, when free speech is protected, society thrives, however, when not protected individual rights suffer.

By examining constitutional principles, judicial approaches, and the impact of digital

¹ Frederick Douglass. (1860). *A plea for free speech in Boston*. National Constitution Center. <https://constitutioncenter.org/the-constitution/historic-document-library/detail/frederick-douglass-a-plea-for-free-speech-in-boston-1860>

² Oxford Review. (n.d.). *Freedom of speech: Definition and explanation*. The Oxford Review DEI Dictionary. <https://oxford-review.com/the-oxford-review-dei-diversity-equity-and-inclusion-dictionary/freedom-of-speech-definition-and-explanation/>

communication, this article evaluates whether democracies should reconsider the threshold distinguishing protected speech from punishable hate expression.

Legal Provisions and Judicial Interpretation of Freedom of Speech

Article 19 (1)(a) of the Constitution of India guarantees to every citizen a right to freedom of speech and expression, subject to the reasonable restrictions enumerated under 19(2)³. At the International level, Article 19 of International Covenant on Civil and Political Rights (ICCPR) protects the right to express opinions through any medium without any undue intervention.⁴

The Supreme court of India has consistently upheld the importance of this right through its decisions. In *Romesh Thapar v state of madras*⁵ the supreme court held that the right to freedom of speech and expression is indispensable to the functioning of a democracy. In *Sakal papers ltd v union of India*,⁶ the supreme court invalidated the government-imposed regulations on newspaper pricing and advertising stating that they are nonsensical interference with freedom of speech.

A major ruling in this regard was in *Shreya Singhal v Union of India*,⁷ where the supreme court held that, Article 19(1)(a) protects the freedom to express even unpalatable, annoying or dissenting views that go against societal norms unless it amounts to incitement with a proximate and direct nexus leading to any of the eight subject matters mentioned in Art. 19(2). Further, in the recent 2020 case *Anuradha Bhasin v UOI*⁸ the supreme court held that indefinite internet shutdown is unconstitutional and stated that the freedom of speech through internet is protected under article 19(1)(a).

Nevertheless, constitutional protection of speech is accompanied by corresponding social and ethical responsibilities. Even lawful expression, when exercised irresponsibly, may disrupt social harmony, deepen societal divisions, and erode public trust. Consequently, while safeguarding free expression remains essential in a democracy, its misuse may also manifest in forms such as hate speech, thereby necessitating a careful balancing of competing

³ Constitution of India. (1950). art. 19(1)(a) & 19(2).

⁴ United Nations. (1966). *International covenant on civil and political rights* (Art. 19).

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁵ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124 (India)

⁶ *Sakal Papers (P) Ltd. v. Union of India*, AIR 1962 SC 305 (India)

⁷ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India)

⁸ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

constitutional values.

Understanding Hate Speech

The United Nations Strategy and Plan of Action on Hate Speech defines hate speech as any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of their religion, ethnicity, nationality, race, colour, descent, gender or any other identity factor.⁹

The 267th Report of the Law Commission of India says that “context” is a crucial factor in determining whether the speech amounts to hate speech.¹⁰ Though, no single definition for hate speech exists globally, it generally refers to any form of expression, that aims to incite violence and hatred, or promotes hostility against a group of people based on certain inherent characters.

Hate speech undermines human rights and rule of law. It results in atrocities and human rights violations and even genocides against communities. It causes extensive social disruption, and individual psychological harm, especially, against minorities and other vulnerable groups.

India hate lab documented that in India, an average of four hate speech happens in a day, often around religion or caste. Hate speech crimes against minorities in India marked a 13% increase since 2024 and 97% rise compared to 2023, indicating an alarming and exigent spike.¹¹ Further, a lot of women journalists and queer social media influencers have increasingly been subjected to bullying, rape threats, hateful slurs and sexual remarks over various social media platforms.

Impact of Digitalisation on Hate speech

The scope and scale of hate speech have changed utterly since the rise of digitalisation. Social media has enabled rapid and widespread expansion of content, often without adequate regulation. Through social media, any information or content can reach masses, almost instantaneously, without necessary time or institutional capacity for effective regulation. This makes the impact of such content far more dangerous than it was ever before.

⁹ United Nations. (n.d.). *What is hate speech?* <https://www.un.org/en/hate-speech/understanding-hatespeech/what-is-hate-speech>

¹⁰ Law Commission of India. (2017). *Report No. 267: Hate speech*. Government of India. <https://lawcommissionofindia.nic.in/report267/>

¹¹ Centre for the Study of Organized Hate. (2026, January 13). *Hate speech events in India 2025*. <https://www.csohate.org/2026/01/13/hate-speech-events-in-india-2025/>

Digitalisation helps maintain the shield of anonymity which makes people less reluctant towards posting controversial and hateful content. Posting and circulating information online in an unregulated way also helps people escape accountability and further aggravates the situation. On social media, people are likely post content that they might never express in a face-to-face setting. Social media algorithm helps connect like-minded people and filters content against once views which leads to an increase in group-based hostility and radicalisation.

Judicial Response and Legal Framework Addressing Hate Speech in India

In the case of, *Shaheen Abdulla v. UOI*,¹² the SC ordered the police to take Suo moto action against hate speech crimes, irrespective of the religion of the speaker. The Supreme Court in this case observed that hate speech is a very serious constitutional wrong which poses a threat to the secular and democratic character of the country and directed that police must act immediately under the existing provisions (Sections 153A, 153B, 505 and 295A IPC) and not remain indifferent. The Court directed police to register Suo motu FIRs against perpetrators of hate speech without waiting for any formal complaint, directed weekly reports from investigating officers in hate speech cases and laid down a clear contempt warning that hesitation or failure to act would attract contempt proceedings against the erring officers irrespective of the religion of the speaker, stating that protecting "Bharat as a secular nation" as envisaged by the Preamble is a constitutional duty.

The supreme court has reiterated, in the case of *Javed Ahmad Hajam v. State of Maharashtra*, the lens through which a speech should be evaluated to determine whether it attracts criminal liability under BNS. The court said that the speech must be assessed by "the standards of reasonable, strong-minded, firm and courageous men", rather than "those of weak and vacillating minds, nor of those who scent danger in every hostile point of view."¹³

The relevant provisions regarding hate speech in Indian legislation include IPC section 153A (now BNS section 196)¹⁴ criminalizes causing enmity and hatred towards groups. Section 295A (BNS section 299)¹⁵ punishes deliberate and malicious acts that outrage the religious

¹² *Shaheen Abdulla v. Union of India*, (2022) SCC OnLine SC 1467 (India)

¹³ *Javed Ahmad Hajam v. State of Maharashtra* 2024 INSC 187

¹⁴ *Indian Penal Code*, 1860, § 153A (now *Bharatiya Nyaya Sanhita*, 2023, § 196) (India)

¹⁵ *Indian Penal Code*, 1860, § 295A (now *Bharatiya Nyaya Sanhita*, 2023, § 299) (India)

feelings of a community, Section 505(1) & (2) (section 353 BNS)¹⁶ penalizes publication and circulation of content that causes hatred between groups, Section 123(3A), Section 125 of Representation of People's Act, 1955¹⁷, Provisions of protections of civil rights act, 1955, and Scheduled Caste and the Schedule Tribes (Prevention of Atrocities) Act, 1989.¹⁸

Comparative analysis: India and the United States

Freedom of speech is guaranteed in both India and the USA, but their approaches to hate speech are different. In India, after the Shreya Singhal case¹⁹, courts struck down IT Act Section 66A which strengthened digital expression but still allowed for limits aimed at maintaining public order and communal harmony in a diverse society. This shows a balanced approach that values social stability more than absolute freedom.

On the other hand, the USA's First Amendment offers nearly complete protection, covering even offensive or hateful speech, unless it incites immediate lawless action (*Brandenburg v. Ohio*, 1969)²⁰ or represents real threats. There are no specific laws against hate speech in the USA. This strong stance accepts discomfort to encourage open debate, seeing restrictions as potential pathways to censorship.

Arguments Against Redefining the Threshold

Free speech is the bedrock of democratic society and overregulating it will weaken the principle upon which the democracy is built. Making the definition of hate speech too broad will lead to censorship of unpopular opinions, which will undermine the limits of protection given under article 19(1)(a). Expanding the scope of definition will give government excessive power to suppress dissent. Government may label mere criticism of policies, institutions etc., as hate speech thus suppressing voices of the public and opposition. It will incite fear in the minds of people and due to this they might self-censor their opinions leading to a chilling effect on public discourse. This could discourage the conversations on polarizing issues such as religion, caste, politics and gender, which are essential topics for democratic dialogue. Counter speech and open dialogues lies at the heart of democracy and a stricter threshold would seriously affect

¹⁶ *Indian Penal Code*, 1860, § 505(1)– (2) (now *Bharatiya Nyaya Sanhita*, 2023, § 353) (India)

¹⁷ *Representation of the People Act*, 1951, §§ 123(3A), 125 (India)

¹⁸ *Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act*, 1989 (India)

¹⁹ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India)

²⁰ *Brandenburg v. Ohio*, 395 U.S. 444 (1969)

political commentaries, academic research and artistic expressions, harming intellectual freedom and cultural development. Redefining the threshold would be redundant as many democracies already have adequate frameworks for regulating hate speech and free speech.

However, the solution does not involve diluting our dedication to freedom of expression; rather, it requires us to clarify its boundaries. As António Guterres points out, managing hate speech isn't about stifling ideas, but about safeguarding against harm and ensuring that all voices, particularly those at risk of exclusion, are acknowledged.²¹ The way forward involves promoting both free expression and human dignity, ensuring that democracy continues to be a platform for all voices.

Arguments in Favour of redefining the threshold

In the contemporary times, there has been a significant increase in hate speech crimes, as information and speech can disseminate more widely and rapidly through digital platforms. Existing thresholds were developed in the era of mass media with gatekeepers and limited reach. Rise in political polarization and growing acceptance of exclusionary language have created a pressing need for democracies to reconsider and lower the threshold of hate speech. It is crucial to ensure that freedom of speech of one individual does not interfere with rights of other individuals. Redefining should clearly distinguish between free speech and hate speech, so that free speech can be protected, and hate speech can be regulated, criminalised and punished. Democracies are meant to safeguard the rights and dignity of all individuals and hate expressions seriously undermine these fundamental principles as it not only causes violence or physical threat, but also leads to depression, anxiety and social exclusion.

Current legislative framework in India is insufficient to address the contemporary hate expressions. A clear definition for hate speech and dedicated legislation is needed to ensure its harms are fully addressed and regulated. Karnataka's 2025 Bill is the first state-level effort to create a specific hate speech law, extending protection to groups such as gender and sexual orientation.²² Many democracies, including Canada, UK and Germany have extended the definition of hate speech to cover expressions degrading minorities, demonstrating that

²¹ U.N. Secretary-General, *United Nations Strategy and Plan of Action on Hate Speech* (June 18, 2019), available at <https://www.un.org/en/hate-speech/un-strategy-and-plan-of-action-on-hate-speech/>

²² The Indian Express. (2025, December 10). *Karnataka cabinet clears hate speech and hate crimes prevention bill*. <https://indianexpress.com/article/cities/bangalore/karnataka-congress-cabinet-grants-clearance-hate-speechlaw-with-10402723/>

democracies can thrive with defined hate speech boundaries.

Therefore, Democracies must defend free speech, but not at the expense of permitting hate speech to undermine equality, dignity, and fundamental social values.

Conclusion

Free expression has always been the foundation of a democracy, however, it should not, under any circumstances, be allowed to become a shield for hatred. In the age of digitalisation and social rifts, it has become a challenge to balance right to freedom of speech with individuals' rights against hate speech. In the times of growing hate speech crimes and atrocities, it is essential to draw the delicate line that separates lawful expression from hate expressions. However, this demarcation should not act as a censor upon the unpopular opinions that are intrinsic to a democracy. Though various legislations, provisions and supreme courts judgement exist to address the issue, they appear inadequate in the light of the complexity of the issue. Democracies like India should aim to tackle the growingly blurred boundary between hate expression and free speech by recalibrating the existing thresholds.