
CONSTITUTIONAL PROTECTION VS SOCIAL HARM: A DOCTRINAL STUDY OF HATE SPEECH REGULATION

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ABSTRACT

This doctrinal study examines the constitutional tension between the guarantee of freedom of speech and expression and the State's duty to regulate hate speech in order to preserve public order, protect dignity, and secure equality within a pluralistic democracy. The analysis is grounded in the constitutional framework under Article 19(1)(a) of the Constitution of India, which guarantees freedom of speech and expression, read alongside the permissible limitations contained in Article 19(2), allowing reasonable restrictions in the interests of the sovereignty and integrity of India, security of the State, public order, decency, morality, and protection against incitement to offences. The study further situates speech regulation within the equality and dignity mandates embodied in Articles 14, 15, and 21, which impose a constitutional obligation upon the State to prevent discriminatory and harmful expression targeting vulnerable communities. The research evaluates recent statutory developments introduced through the Bharatiya Nyaya Sanhita, 2023, particularly provisions addressing acts endangering national integration, promoting enmity between groups, and statements conducive to public mischief, alongside procedural enforcement under the Bharatiya Nagarik Suraksha Sanhita, 2023, and evidentiary standards under the Bharatiya Sakshya Adhinyam, 2023. Regulation of digital dissemination of hate speech is also examined under the Information Technology Act, 2000, read with intermediary due diligence obligations under contemporary Information Technology Rules. Further doctrinal grounding is drawn from Article 19(3) and Article 20(2) of the International Covenant on Civil and Political Rights, 1966, permitting restrictions necessary for respect of the rights of others and maintenance of public order. The study concludes that while constitutional democracies must preserve robust speech protections, recent statutory reforms necessitate careful judicial scrutiny to ensure proportional regulation consistent with constitutional morality and democratic freedoms.

Keywords: Hate Speech Regulation, Constitutional Protection, Freedom of Expression, Social Harm, Doctrinal Legal Analysis.

I. Introduction

Speech is the lifeblood of democracy, but speech that incites hatred against communities threatens the very foundation of a plural society. Freedom of speech and expression is the cornerstone of a democratic society, providing the mechanism for accountability, political critique, and the exchange of ideas. Yet, this fundamental right is rarely absolute, often clashing with the imperative to protect human dignity, public order, and the rights of vulnerable communities. The right to freedom of speech and expression is available to all citizens under Article 19(1)(a) of the Constitution of India, 1950. Though the Constitution provides a fundamental right to freedom of speech and expression, at the same time Article 19(2) of the Constitution provides that restrictions on the right to freedom of speech and expression can be imposed by the State in the interest 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.

The balance between free speech and hate speech is an important topic today, especially as the world becomes more connected and people from different backgrounds interact more often. As communities deal with the challenges posed by hate speech, a pressing question emerges: how do we protect the essential right of free expression while also keeping individuals and groups safe from harm? This paper looks into the intricate dynamics between free speech and hate speech by examining legal systems and different viewpoints.

1. Historical Evolution: From Colonial Control to Democratic Liberty

The background of free speech in India is deeply intertwined with its struggle against British colonial rule. During this era, draconian measures like sedition laws and strict censorship were utilised to suppress nationalist aspirations. Upon independence, the framers of the Constitution consciously chose to transform these colonial tools into democratic safeguards, though they retained the power to restrict speech in the interest of national security a decision that remains a point of intense scholarly debate.¹ This history contrasts with the American experience, which was born out of a revolutionary rejection of prior restraint, leading to a more libertarian tradition that often prioritises individual liberty even at the risk of societal offence, as reflected in the constitutional standard that speech may be punished only where it is directed to inciting

¹Brij Bhushan v. State of Delhi, AIR 1950 SC 129; Ramji Lal Modi v. State of Uttar Pradesh, AIR 1957 SC 620; Law Commission of India, 267th Report on Hate Speech (Government of India, 2017).

imminent lawless action and is likely to produce such action.²

2. Conceptual Conflict between Free Speech and Hate Speech

In the Indian legal framework, the conceptual conflict is anchored in the interplay between Article 19(1)(a), which guarantees freedom of speech, and Article 19(2), which empowers the State to impose “reasonable restrictions” in the interests of “public order, decency, or morality.” Unlike the United States, where speech is protected unless it incites “imminent lawless action,” the Indian Supreme Court has historically balanced speech against the collective need for communal harmony. In the landmark case of *S. Rangarajan v. P. Jagjivan Ram* (1989), the Court established that while freedom of expression cannot be suppressed unless it poses a “danger to the community,” that danger must be akin to a “quick-sand” or a “spark in a powder keg.” This highlights a unique conceptual middle ground: speech is a primary right, but it is not an exhaustive license to damage the “secular fabric” of the nation.³

3. Research Problem and Rationale

The research problem in the Indian context arises from the structural duality of Article 19(1)(a), which guarantees free speech, and Article 19(2), which allows the State to impose “reasonable restrictions” on grounds such as public order, decency, and incitement to an offence. A significant legal gap exists because India currently lacks a codified, singular definition of “hate speech,” relying instead on scattered provisions like Section 196 of the Bharatiya Nyaya Sanhita (BNS) formerly Section 153A of the IPC which penalises promoting enmity between groups. This lack of precision often leads to inconsistent enforcement, where speech that is merely offensive is frequently conflated with actual incitement to violence.

This research is imperative in light of a documented 13% rise in verified in-person hate speech events in India in 2025 as compared to 2024, with close to 98% of the recorded incidents targeting the Muslim minority and a further 41% rise in incidents targeting the Christian community.⁴ The rationale for a more precise legal framework is twofold: first, to prevent the transition of “routine” hate speech into physical violence, as the same body of documented incidents shows minorities being dehumanised through terms such as “termites,” “parasites,”

²Brandenburg v. Ohio, 395 U.S. 444 (1969).

³S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574; Shreya Singhal v. Union of India, (2015) 5 SCC 1.

⁴India Hate Lab, Report 2025: Hate Speech Events in India (Center for the Study of Organized Hate, Washington D.C., 2026).

and similar epithets, language that is historically a precursor to communal instability.⁵ Second, there is a critical need to protect the “marketplace of ideas” from the “chilling effect” caused by vague laws; without clear definitions, the State may use broad powers to silence legitimate political opposition under the guise of maintaining public order.

4. Objectives of the Study

The primary objective of this study is to critically examine the tenuous balance between the constitutional right to free expression and the necessity of regulating hate speech to maintain social order. It seeks to delineate the legal boundaries that distinguish protected dissent from harmful incitement, analysing how different jurisdictions define “harm” in a democratic context. Furthermore, the research aims to assess the socio-psychological impact of hate speech on marginalised groups while simultaneously investigating the potential “chilling effect” that restrictive legislation may have on political discourse. Finally, the study intends to evaluate the role of digital platforms in accelerating the spread of extremist rhetoric, ultimately proposing a framework for moderation that upholds human dignity without compromising the fundamental principles of liberty.

5. Research Questions

Q1. Where should the constitutional line be drawn between hate speech and legitimate dissent?

Q2. How does unregulated hate speech contribute to the erosion of social cohesion and promotion of discrimination?

Q3. How do definitions of hate speech change in different cultural and political contexts?

6. Scope and Limitations of the Study

The scope focuses on the legal and normative boundaries that define the relationship between the right to expression and the prevention of harm. This typically includes a deep dive into constitutional protections, such as the “reasonable restrictions” doctrine, and the specific penal statutes used to prosecute inflammatory language. The study extends to the digital landscape, examining how social media algorithms amplify hate speech and the effectiveness of

⁵Id.

intermediary liability laws in curating online discourse. Furthermore, the scope encompasses judicial interpretation, analysing how High Courts distinguish between “unpopular speech” that must be protected and “incitement” that must be curtailed. By examining these pillars, the study aims to identify the threshold where a speaker’s right to liberty ends and the State’s duty to protect social harmony begins.

The primary limitation of this research is the inherent ambiguity of language; since there is no universally accepted legal definition of “hate speech,” the study must grapple with a “gray area” where offence is often in the eye of the beholder. The research is also constrained by the subjectivity of context, as words that are considered harmful in one cultural or political climate may be viewed as legitimate critique in another. Additionally, the study faces methodological hurdles regarding data collection on social media, where private groups and encrypted platforms hide the full extent of extremist rhetoric. Finally, the analysis is limited by the temporal nature of law the rapid evolution of digital communication often renders existing legislation or judicial precedents obsolete before they can be fully implemented or studied, leaving a gap between current legal theory and real-world digital practice.

7. Research Methodology (Doctrinal Method)

In a doctrinal research methodology focusing on hate speech and free speech, the primary objective is to engage in a rigorous, qualitative analysis of existing legal frameworks, often referred to as “black-letter law.” This approach treats the law as a self-contained system, where the researcher’s task is to locate, describe, and explain the legal rules governing expression. The methodology begins with the systematic collection of primary sources, such as constitutional provisions (e.g., Article 19 of the Constitution of India and Article 19 of the ICCPR), national statutes, and landmark judicial precedents that define the “threshold of harm” required to restrict speech. By applying deductive reasoning, the researcher analyses how courts have balanced the competing interests of individual liberty versus the protection of human dignity and public order.

IV. Statutory Framework on Hate Speech Regulation

1. Hate Speech under Bharatiya Nyaya Sanhita, 2023

Under the Bharatiya Nyaya Sanhita, 2023, hate speech is not defined in one single provision,

but is addressed through a cluster of offences that criminalise speech or expression capable of disturbing communal harmony, insulting religion, or promoting hostility between groups. Most importantly, Section 196 penalises the promotion of enmity between different groups on grounds such as religion, race, place of birth, residence, language, caste or community, as well as acts prejudicial to the maintenance of harmony. Alongside this, Section 197 targets imputations and assertions prejudicial to national integration, while Sections 299 and 302 deal with deliberate and malicious insults to religious beliefs and words or gestures intended to wound religious feelings. Read together, these provisions show that the BNS treats hate speech primarily as a public order and social harmony offence, rather than merely offensive or unpopular expression. However, this framework also raises an important constitutional tension with Article 19(1)(a) of the Constitution, which protects free speech, subject to reasonable restrictions under Article 19(2). Therefore, in any research on hate speech vs. free speech, the BNS can be analysed as reflecting India's attempt to balance individual expressive liberty with the State's interest in preventing communal disharmony, incitement, and group-based hostility.⁶

2. Procedural Enforcement under Bharatiya Nagarik Suraksha Sanhita, 2023

In the context of hate speech and free speech, procedural enforcement under the Bharatiya Nagarik Suraksha Sanhita, 2023 assumes particular constitutional importance because the legality of State action does not depend only on whether speech is criminalised under substantive law, but also on whether investigation, arrest, search, seizure, and trial are conducted with due process and proportionality. The BNSS lays down procedural safeguards that are crucial in speech-related prosecutions: arrest without warrant is regulated, the arrested person must be informed of the grounds of arrest and of the right to bail, a relative or friend must be informed, and the accused has a right to meet an advocate during interrogation. Further, searches and seizures connected to digital devices, publications, or allegedly inflammatory material must comply with statutory requirements, including recording of search and seizure through audio-video electronic means and preparation of seizure lists in the presence of witnesses. In hate speech cases where the line between legitimate dissent and unlawful incitement is often contested these procedural protections help prevent arbitrary criminalisation of unpopular or dissenting expression. Thus, BNSS operates as a procedural check on executive overreach: it ensures that restrictions on speech are not enforced merely on the basis of public

⁶The Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023), ss. 196, 197, 299 and 302.

outrage or political pressure, but through legally accountable processes consistent with fairness, transparency, and constitutional liberty.⁷

3. Evidentiary Framework under Bharatiya Sakshya Adhiniyam, 2023

The evidentiary framework governing the adjudication of hate speech and free speech disputes in India is now primarily structured under the Bharatiya Sakshya Adhiniyam, 2023, which consolidates the general principles of admissibility, relevancy, proof, and evidentiary burden in judicial proceedings. In the context of hate speech litigation, this statute becomes crucial because courts must determine not only the content of the impugned speech, but also its intent, context, audience impact, medium of dissemination, and likelihood of incitement or public disorder. The Act provides the legal basis for proving such matters through rules relating to relevancy of facts (Sections 3–14), admissions and confessions (Sections 15–25), expert opinion (Section 39), and most significantly, electronic and digital records (Sections 61–63), which are indispensable in cases involving speeches, social media posts, videos, online comments, memes, or digital broadcasts. Further, provisions relating to presumptions concerning electronic messages and records (Sections 85–90, 93), along with burden of proof (Sections 104–109), enable courts to assess whether allegedly hateful expression crosses the constitutional threshold from protected dissent into punishable incitement. Thus, under the BSA, the legal contest between hate speech and free speech is not resolved merely by ideological interpretation, but by a structured evidentiary inquiry into what was said, how it was communicated, what it intended to achieve, and whether the prosecution or complainant has satisfactorily established the ingredients of unlawful speech.⁸

4. Election-Related Hate Speech Laws under Representation of the People Act, 1951

In the Indian electoral context, hate speech is regulated not only through general criminal law but also through the Representation of the People Act, 1951 (RPA), which treats certain forms of divisive campaign speech as threats to electoral integrity. The most important provisions are Section 123(3) and Section 123(3A), which classify as “corrupt practices” any appeal for votes on grounds of religion, race, caste, community, or language, as well as any attempt to promote

⁷The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023); PRS Legislative Research, Legislative Brief: The Bharatiya Nagarik Suraksha Sanhita, 2023; Ministry of Home Affairs, Government of India, explanatory material on the new criminal law framework.

⁸The Bharatiya Sakshya Adhiniyam, 2023 (Act No. 47 of 2023), ss. 3–14, 15–25, 39, 61–63, 85–90, 93 and 104–109.

or incite feelings of enmity or hatred between such groups for electoral gain. In addition, Section 125 makes the promotion of enmity between classes in connection with elections a punishable electoral offence. Together, these provisions show that Indian election law draws a narrower boundary around campaign speech than ordinary political speech, because the law views communal or identity-based mobilisation as capable of distorting voter choice and undermining democratic equality. This framework is also reinforced by the Election Commission of India's Model Code of Conduct, which prohibits candidates and political parties from invoking religion or caste and from making statements likely to create disharmony during campaigns. For a research paper on hate speech vs. free speech, this illustrates a crucial constitutional tension: while Article 19(1)(a) protects political expression, election-period speech receives stricter scrutiny when it ceases to be persuasion and becomes an instrument of exclusion, hostility, or electoral manipulation.⁹

5. Digital Hate Speech Regulation under the Information Technology Act, 2000 and IT Rules, 2021

Digital hate speech regulation under the Information Technology Act, 2000 in India operates largely through a platform-governance model rather than through a standalone statutory definition of "online hate speech." The Act itself becomes relevant principally through Section 79, which grants intermediaries a "safe harbor" from liability so long as they observe due diligence, and through the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which require platforms to inform users not to host or share unlawful content and to remove material upon receiving valid legal notice or court/government orders. After the Supreme Court's decision in *Shreya Singhal v. Union of India*, digital speech regulation in India must remain tethered to Article 19(2) grounds and cannot rely on vague or overbroad standards; this is significant because the Court struck down Section 66A and read down intermediary obligations to avoid unconstitutional censorship. In practice, therefore, online hate speech is regulated through a combination of the IT Act's intermediary liability framework and substantive penal provisions such as Sections 196, 299 and 302 of the BNS (the successors of Sections 153A, 295A, and 505 of the IPC), creating a system in which platforms are expected to act against inflammatory or communal content while constitutional free speech protections continue to constrain excessive State or private censorship. This makes the Indian

⁹The Representation of the People Act, 1951, ss. 123(3), 123(3A) and 125; Election Commission of India, Manual on Model Code of Conduct (2024).

model a contested balance between preventing digital harm and avoiding a chilling effect on legitimate dissent and controversial expression.¹⁰

V. Judicial Approach to Hate Speech Regulation

1. Judicial Protection of Free Speech

The judiciary has played a central role in protecting free speech by treating it as a foundational pillar of constitutional democracy, while also recognising that the right is not absolute. In the Indian constitutional framework, courts have repeatedly affirmed that freedom of speech and expression under Article 19(1)(a) safeguards not only popular or agreeable opinions, but also dissent, criticism, and uncomfortable viewpoints that are essential to democratic participation. At the same time, judicial doctrine has evolved around the idea of constitutional balancing: speech may be restricted only where it falls within the narrow grounds under Article 19(2), such as public order, defamation, or incitement. This becomes especially significant in the context of hate speech, where courts must distinguish between mere offensiveness, which remains protected, and speech that vilifies, marginalises, or provokes hostility against protected groups, which may legitimately be regulated. Judicial protection of free speech, therefore, does not imply unlimited liberty; rather, it ensures that restrictions are subjected to scrutiny for reasonableness, proportionality, and proximity to harm, thereby preventing the State from suppressing dissent under the pretext of regulation. Indian courts have also emphasised that democracy demands a high degree of tolerance for unpopular expression, but not for speech that undermines the dignity, equality, and safety of others. In this way, the judiciary acts as the constitutional mediator between liberty and social harmony, ensuring that hate speech regulation does not become a tool for silencing legitimate free expression.¹¹

2. Supreme Court Interpretation of Hate Speech

The Supreme Court of India has consistently interpreted hate speech through the constitutional balance between freedom of speech under Article 19(1)(a) and the reasonable restrictions under Article 19(2). Rather than treating all offensive or unpopular speech as hate speech, the Court has generally required a closer nexus with public disorder, incitement, hostility, or harm to the

¹⁰The Information Technology Act, 2000 (Act No. 21 of 2000), s. 79; Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021; *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

¹¹*Subramanian Swamy v. Union of India*, (2016) 7 SCC 221; *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477; Constitution of India, Art. 19(1)(a) and Art. 19(2).

dignity and equality of targeted groups. In *Shreya Singhal v. Union of India* (2015), the Court drew an important distinction between discussion, advocacy, and incitement, holding that only speech that reaches the level of incitement can justifiably be restricted under Article 19(2).¹² This doctrinal approach is crucial in hate speech jurisprudence because it prevents the State from suppressing dissent merely on the ground that speech is offensive. At the same time, in *Pravasi Bhalai Sangathan v. Union of India* (2014), the Court acknowledged the serious social danger posed by hate speech, especially when it delegitimises persons on the basis of religion, caste, race, ethnicity, or community identity.¹³ More recently, in *Kaushal Kishor v. State of Uttar Pradesh* (2023), the Court reaffirmed that restrictions on speech must remain constitutionally rooted in Article 19(2), while several opinions in the case emphasised that hate speech also implicates the constitutional values of dignity, equality, and fraternity.¹⁴ Thus, the Supreme Court's interpretation shows that Indian free speech is not absolute: speech remains protected so long as it does not cross the constitutional threshold into incitement, vilification, or speech that undermines public order and the equal citizenship of vulnerable groups.

3. Proportionality and Necessity Tests in Speech Restrictions

In the Indian constitutional framework, restrictions on speech are valid only when they satisfy the dual requirements of necessity and proportionality, both of which operate as safeguards against excessive State control over expression. Under Article 19(1)(a), speech is protected, while Article 19(2) permits only reasonable restrictions on specific grounds such as public order, decency, morality, defamation, and incitement to an offence. The necessity test requires the State to show that restricting the impugned speech is genuinely required to prevent a constitutionally recognised harm, and that no less restrictive alternative would adequately address that harm. The proportionality test goes further by asking whether the measure adopted bears a rational connection to the legitimate aim, impairs free speech as little as possible, and strikes a proper balance between individual liberty and competing societal interests. In hate speech jurisprudence, these tests are especially significant because the State may claim to act in the interest of public order or dignity, but constitutional scrutiny demands that only speech crossing the threshold from discussion or advocacy into incitement may be restricted. The Supreme Court's approach in *Shreya Singhal v. Union of India* reinforced that vague or overbroad restrictions chill lawful expression and therefore fail constitutional scrutiny, while

¹²*Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

¹³*Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477.

¹⁴*Kaushal Kishor v. State of Uttar Pradesh*, (2023) 4 SCC 1.

later jurisprudence such as *Modern Dental College and Research Centre v. State of Madhya Pradesh* and *Anuradha Bhasin v. Union of India* helped consolidate proportionality as a general test for limiting fundamental rights.¹⁵ For a research paper on hate speech versus free speech, this framework is crucial because it shows that Indian law does not permit blanket suppression of offensive or unpopular speech; rather, only narrowly tailored restrictions that are demonstrably necessary and proportionate to a constitutionally legitimate aim can survive judicial review.

4. Analysis of Landmark Judgments

The jurisprudence on hate speech versus free speech in India has been shaped by a series of landmark decisions of the Supreme Court that attempt to balance Article 19(1)(a) the fundamental right to freedom of speech and expression with the reasonable restrictions under Article 19(2). A central judgment is *Shreya Singhal v. Union of India*, where the Court struck down Section 66A of the Information Technology Act for being vague, overbroad, and chilling to legitimate expression. The Court drew a crucial distinction between discussion, advocacy, and incitement, holding that only speech that reaches the threshold of incitement to violence or public disorder can justifiably be restricted. This principle has become foundational in free speech scholarship in India because it narrows the State's power to criminalise offensive or unpopular speech. At the same time, later decisions such as *Amish Devgan v. Union of India* clarified that speech which deliberately vilifies a religious community or promotes enmity may fall outside constitutional protection, thereby reinforcing that hate speech is not shielded merely because it is expressed as opinion.¹⁶ Earlier rulings such as *Ramji Lal Modi v. State of Uttar Pradesh* and *S. Rangarajan v. P. Jagjivan Ram* also remain significant: while the former upheld restrictions on speech affecting public order and religious harmony, the latter insisted that censorship cannot rest on mere fear of disturbance unless the danger is proximate and direct.¹⁷ Collectively, these judgments show that Indian constitutional law does not protect hate speech that threatens dignity, equality, or communal harmony, but it also resists vague or excessive regulation that suppresses dissent, criticism, satire, or unpopular viewpoints. For a research paper, these cases demonstrate that the Indian legal approach is not an absolute preference for

¹⁵*Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 reaffirming the necessity and proportionality standards applicable to restrictions on speech and internet access; *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

¹⁶*Amish Devgan v. Union of India*, (2021) 1 SCC 1.

¹⁷*Ramji Lal Modi v. State of Uttar Pradesh*, AIR 1957 SC 620; *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

either liberty or restriction, but rather a continuing judicial effort to define when speech crosses the constitutional line from protected expression into punishable harm.

VI. Hate Speech in the Digital Age

1. Social Media and Viral Hate Speech

In India, the hate speech versus free speech debate has become especially urgent in the age of social media, where speech no longer remains local, contextual, or slow-moving. Platforms such as X, Instagram, Facebook, and YouTube can transform a single inflammatory post, clip, meme, or hashtag into mass circulation within minutes, often stripping it of context while amplifying outrage, fear, and group hostility. The legal and constitutional concern is not merely the existence of offensive expression, but the algorithmic acceleration and viral replication of content that can deepen communal divisions, normalise prejudice, and, in some cases, create a proximate risk to public disorder. Indian courts have repeatedly emphasised that free speech under Article 19(1)(a) is fundamental but not absolute, and that speech loses constitutional protection when it crosses into incitement, promotion of enmity, or disturbance of public tranquility.¹⁸ This becomes particularly significant online because virality magnifies reach, anonymity lowers restraint, and digital repetition can convert fringe hostility into mainstream discourse. At the same time, India's constitutional framework remains cautious against overbroad censorship: the Supreme Court has insisted that restrictions on online speech must be narrowly tailored, while the regulatory framework under the Information Technology Rules, 2021 places due-diligence and grievance obligations on intermediaries rather than granting unchecked State control. Thus, social media in India sits at the heart of the tension between democratic openness and constitutional order protecting dissent and unpopular speech on one hand, while preventing digitally amplified hate from becoming a tool of social harm on the other.

2. Role and Liability of Intermediaries

In the Indian hate speech–free speech framework, intermediaries such as social media platforms, messaging services, search engines, and hosting providers occupy a legally significant but constitutionally delicate position. Their primary role is not to pre-censor public

¹⁸Javed Ahmad Hajam v. State of Maharashtra, (2024) SCC OnLine SC 850; Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

discourse, but to facilitate digital communication while exercising statutory “due diligence” under Section 79 of the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Indian law broadly grants intermediaries a safe harbour from liability for third-party content, provided they do not initiate, modify, or select the transmission and comply with legal obligations such as grievance redressal, cooperation with lawful orders, retention of information, and timely takedown of unlawful content. In the context of hate speech, this means that platforms may be required to remove content that incites violence, threatens public order, or falls within constitutionally permissible restrictions under Article 19(2), but they are not expected to become private adjudicators of legality on every user complaint. The Supreme Court in *Shreya Singhal v. Union of India* significantly narrowed intermediary liability by holding that “actual knowledge” for takedown arises only through a court order or a valid government notification, thereby protecting online speech from arbitrary private censorship.¹⁹ At the same time, the 2021 Rules expand intermediary responsibilities, especially for significant social media intermediaries, by imposing compliance, grievance, and traceability-related obligations raising ongoing concerns that overbroad compliance pressures may incentivise excessive content removal and chill legitimate dissent or controversial speech. Thus, in India, intermediary liability sits at the core of the hate speech versus free speech debate: intermediaries are expected to curb unlawful harm, but the law must also prevent them from becoming overzealous gatekeepers of constitutionally protected expression.

3. Regulatory Challenges in Online Platforms

A central regulatory challenge for online platforms in India is balancing the constitutional protection of free speech under Article 19(1)(a) with the State’s obligation to curb hate speech, incitement, and unlawful content under Article 19(2). This balance is difficult because digital platforms operate at massive scale, rely heavily on automated moderation, and must often make rapid takedown decisions without clear statutory definitions of “hate speech” or consistently applied thresholds for “incitement.” The Supreme Court in *Shreya Singhal v. Union of India* struck down Section 66A of the IT Act for vagueness and held that intermediary liability should generally arise only upon receipt of a court order or government notification under lawful procedure, thereby emphasising precision and due process in online speech regulation.

¹⁹*Shreya Singhal v. Union of India*, (2015) 5 SCC 1; the Information Technology Act, 2000 (Act No. 21 of 2000), s. 79.

However, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and later amendments, impose extensive due-diligence obligations on intermediaries such as grievance redressal mechanisms, user complaint handling, compliance officers, and content-removal systems which create pressure for over-compliance and “private censorship,” especially when platforms fear loss of safe-harbour protection.²⁰ In practice, this produces a chilling effect: platforms may remove lawful but controversial speech to avoid liability, while still struggling to effectively detect coded, contextual, or vernacular hate speech in India's multilingual and politically sensitive online environment. Thus, India's regulatory dilemma is not merely whether hate speech should be moderated, but how to design transparent, rights-respecting, and procedurally fair moderation frameworks that prevent both online harm and excessive suppression of legitimate democratic expression.

4. Need for Digital Governance Reform

A strong case for digital governance reform in India lies in the fact that online hate speech today is shaped not only by individual speakers, but by platform design, opaque moderation systems, weak transparency norms, and broad executive control over online content. As public discourse increasingly shifts to social media and digital intermediaries, the legal debate can no longer remain confined to punishing unlawful speech after harm occurs; it must also address how digital platforms amplify, suppress, or selectively regulate expression. India's current framework largely operating through the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 places significant compliance obligations on intermediaries, yet concerns remain regarding vagueness, over-removal of lawful speech, inadequate procedural safeguards, and insufficient institutional independence. The controversy around the 2023 amendment concerning government-notified fact-checking, and its subsequent judicial invalidation by the Bombay High Court, illustrates the constitutional danger of allowing the State to become the effective arbiter of online truth.²¹ Therefore, any meaningful response to the hate speech versus free speech dilemma in India requires rights-based digital governance reform: clearer definitions of harmful speech, transparent content moderation, independent oversight, notice-and-appeal

²⁰Rahul D. Thakkar, “Legal Responses to Online Hate Speech in India: Evaluating Section 66A and the Supreme Court's Judgment in *Shreya Singhal v. Union of India*” *Studies in Law and Justice* (2025).

²¹*Kunal Kamra v. Union of India*, Writ Petition (L) No. 9792 of 2023 (Bombay High Court, judgment dated Sept. 20, 2024) striking down the Fact Check Unit amendment to the 2021 IT Rules; Internet Freedom Foundation, “IT (Amendment) Rules, 2023 Struck Down by the Bombay High Court” (2024).

mechanisms for users, algorithmic accountability, and a regulatory model that protects both public order and Article 19(1)(a) freedoms in the digital public sphere.

VII. Comparative and International Perspective

1. International Human Rights Law on Speech Regulation

International human rights law adopts a balanced approach to the regulation of speech by simultaneously protecting freedom of expression and permitting narrowly tailored restrictions on harmful forms of speech. At the global level, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of opinion and expression, including the freedom to seek, receive and impart information and ideas through any medium; however, this right is not absolute and may be restricted by law when necessary for the respect of the rights or reputations of others, national security, public order, public health, or morality. At the same time, Article 20(2) of the ICCPR obligates States to prohibit “advocacy of national, racial or religious hatred” that amounts to incitement to discrimination, hostility, or violence, thereby distinguishing protected offensive speech from punishable hate-based incitement.²² This distinction has been further clarified by the Rabat Plan of Action, developed under the UN framework, which proposes a six-part threshold test context, speaker, intent, content and form, extent of dissemination, and likelihood of harm to assess when speech lawfully crosses into punishable hate speech.²³ In the Indian context, this international framework is highly relevant because Article 19(1)(a) of the Constitution of India protects freedom of speech and expression, while Article 19(2) permits reasonable restrictions in the interests of public order, decency, morality, and incitement to an offence. Indian constitutional jurisprudence, especially in *Shreya Singhal v. Union of India*, reflects a similar commitment to preventing overbroad speech restrictions while preserving space for legitimate democratic dissent. Thus, international human rights law does not endorse unrestricted speech; rather, it seeks to ensure that regulation targets only those expressions that pose a real and serious threat to equality, dignity, and social peace.

²²International Covenant on Civil and Political Rights, 1966, Arts. 19 and 20; United Nations, Office of the High Commissioner for Human Rights, ICCPR text.

²³United Nations Human Rights Council, Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence, UN Doc. A/HRC/22/17/Add.4 (2013).

2. Comparative Approaches to Hate Speech Regulation

Comparative constitutional practice shows that hate speech regulation usually lies on a spectrum between speech-protective and dignity-protective models. The United States adopts the most speech-protective approach, generally permitting even deeply offensive expression unless it crosses into direct incitement, true threats, or imminent lawless action.²⁴ In contrast, European jurisdictions such as Germany and France follow a dignity- and equality-based model, criminalising speech that targets protected groups, glorifies genocide, or threatens social cohesion. India occupies an intermediate position: unlike the U.S., Indian constitutional law expressly permits "reasonable restrictions" under Article 19(2) on grounds such as public order, decency, morality, and incitement to an offence, yet unlike some European systems, India does not have a single codified hate speech statute and instead regulates the field through a patchwork of penal provisions and judicial interpretation. The Law Commission of India's 267th Report recognised this fragmented structure and recommended a more coherent framework, drawing on comparative international models to suggest that Indian law should move beyond merely punishing disorder and also address discriminatory harm.²⁵ At the same time, the Supreme Court of India has repeatedly insisted that regulation must remain narrowly tailored so that vague or overbroad restrictions do not suppress legitimate dissent, satire, political criticism, or unpopular opinion, as seen most clearly in *Shreya Singhal v. Union of India* and the judicial discussions surrounding *Pravasi Bhalai Sangathan v. Union of India*. Thus, the comparative position demonstrates that India's challenge is not whether to regulate hate speech, but how to do so in a way that preserves the constitutional balance between free expression, public order, and substantive equality.

3. Lessons for Indian Legal Framework

The Indian legal framework on hate speech must evolve toward a clearer, narrower, and constitutionally disciplined model of regulation that protects both human dignity and freedom of expression. A key lesson is that the State should regulate only that speech which has a proximate nexus with public disorder, incitement, discrimination, or violence, rather than relying on vague and subjective standards such as "offensiveness," "insult," or "hurt sentiments." Article 19(1)(a) guarantees broad protection to speech, while Article 19(2) permits

²⁴Brandenburg v. Ohio, 395 U.S. 444 (1969).

²⁵Law Commission of India, 267th Report on Hate Speech (Government of India, 2017).

only reasonable restrictions on specific grounds such as public order, decency, morality, defamation, and incitement to an offence; therefore, any hate speech law must satisfy tests of necessity, proportionality, and precision. Judicial developments such as *Shreya Singhal v. Union of India* (2015) and *Anuradha Bhasin v. Union of India* (2020) underline that vague restrictions and executive overreach chill legitimate expression, especially in digital spaces.²⁶ At the same time, recent Indian legal and policy developments show that unchecked online dissemination of communal, caste-based, gendered, and identity-targeted speech can rapidly escalate into social harm. Thus, the principal lesson for India is not to choose between free speech and hate speech regulation, but to build a framework that is content-neutral in design, rights-sensitive in application, and focused on actual harm rather than mere dissent or criticism. Such a framework should include precise statutory definitions, uniform enforcement standards, procedural safeguards, judicial oversight, and stronger accountability for incitement-based expression, thereby ensuring that hate speech laws do not become instruments for suppressing unpopular, political, or minority viewpoints.

VIII. Challenges in Hate Speech Regulation

1. Over-Criminalisation vs Under-Regulation

In the Indian hate speech–free speech debate, the law often oscillates between two equally troubling extremes: over-criminalisation and under-regulation. Over-criminalisation occurs when the State relies too heavily on broad penal provisions such as restrictions justified under Article 19(2) to suppress speech that may be offensive, unpopular, or politically inconvenient but does not necessarily amount to actual incitement or targeted harm. This creates a chilling effect, where speakers, journalists, comedians, academics, and political dissenters may self-censor for fear of prosecution. At the same time, under-regulation is visible when genuinely harmful hate speech especially speech that dehumanises vulnerable communities, foment hostility, or creates a climate conducive to violence is weakly defined, inconsistently prosecuted, or selectively enforced. The result is a legal paradox: India risks punishing protected expression too easily while still failing to adequately curb speech that threatens dignity, equality, and public order.²⁷ A rights-sensitive approach therefore requires moving away from vague, morality-based censorship and toward a narrowly tailored harm-based

²⁶*Shreya Singhal v. Union of India*, (2015) 5 SCC 1; *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

²⁷*Subramanian Swamy v. Union of India*, (2016) 7 SCC 221 on criminal defamation and the constitutional limits of free speech.

framework, where only speech that has a clear nexus with discrimination, violence, or public disorder is criminalised, while robust democratic disagreement remains protected. This tension lies at the heart of the constitutional challenge of reconciling liberty under Article 19(1)(a) with the permissible restrictions under Article 19(2).

2. Misuse of Hate Speech Laws

A major concern in the Indian free speech debate is that hate speech laws, though enacted to preserve public order and protect vulnerable communities, are often framed and enforced so broadly that they risk suppressing legitimate dissent, satire, academic critique, political commentary, and unpopular opinion. Provisions such as Sections 196, 299 and 302 of the Bharatiya Nyaya Sanhita (mirroring the former Sections 153A, 295A and 505(2) of the Indian Penal Code) are frequently invoked not only against genuinely harmful incitement, but also against speech that merely offends, provokes disagreement, or challenges dominant social or religious narratives. This creates a “chilling effect” on expression, where speakers self-censor out of fear of criminal prosecution, police action, or multiple FIRs. The Supreme Court has repeatedly stressed that restrictions on speech must remain narrowly tied to Article 19(2), and that vague or overbroad laws can become instruments of arbitrary State action rather than constitutional safeguards.²⁸ Thus, the misuse of hate speech laws in India lies not merely in their existence, but in their selective, expansive, and often politically charged application, which can blur the line between preventing incitement and punishing disfavoured speech.

3. Vagueness and Enforcement Difficulties

A central difficulty in India’s hate-speech framework is that the law often operates through broad and indeterminate statutory language, leaving both speakers and law-enforcement authorities uncertain about the boundary between punishable hate speech and constitutionally protected expression. Provisions such as Sections 196, 299 and 302 of the BNS (mirroring Sections 153A, 295A, and 505(2) of the erstwhile IPC) rely on terms like “promoting enmity,” “outraging religious feelings,” or causing “public mischief,” which are capable of wide interpretation. This creates a chilling effect on legitimate political, academic, artistic, and journalistic speech, because individuals may self-censor rather than risk criminal prosecution. The Supreme Court in *Shreya Singhal v. Union of India* strongly articulated the constitutional

²⁸Patricia Mukhim v. State of Meghalaya, (2021) 15 SCC 35 cautioning against casually labelling social commentary as hate speech.

objection to vague speech restrictions, holding that a law is problematic when persons of ordinary intelligence must “guess” at what conduct is prohibited and when such ambiguity enables arbitrary or discriminatory enforcement. At the same time, the Court in *Amish Devgan v. Union of India* acknowledged the genuine social harm of hate speech but also underscored the difficulty of crafting a universal definition.²⁹ In practice, therefore, the problem in India is not merely the existence of hate-speech laws, but the uneven and selective manner of their enforcement where inflammatory speech by politically influential actors often escapes timely sanction, while dissenting, satirical, or controversial speech may attract immediate police action.³⁰ This inconsistency weakens both free speech protections under Article 19(1)(a) and the rule of law, because the legitimacy of regulation depends not only on the objective of preventing harm, but also on whether the legal standard is sufficiently precise and applied in a principled, non-partisan manner. The result is a constitutional tension: a democracy committed to pluralism must regulate speech that incites hatred, yet if the law remains vague and enforcement remains selective, the State risks suppressing free expression in the very name of protecting it.

4. Balancing Liberty and Social Harmony

In the Indian constitutional framework, the balance between individual liberty and social harmony lies at the heart of the debate on hate speech and free speech. Freedom of speech and expression under Article 19(1)(a) is a foundational democratic right because it enables dissent, political participation, and the exchange of ideas; however, this freedom is not absolute and is subject to reasonable restrictions under Article 19(2) in the interests of public order, decency, morality, defamation, and incitement to an offence. Indian constitutional jurisprudence has consistently recognised that while unpopular, offensive, or critical speech must ordinarily remain protected, speech that targets vulnerable groups, promotes enmity, or threatens communal peace may justifiably be regulated in order to preserve social cohesion. The challenge, therefore, is not merely to suppress harmful expression, but to distinguish legitimate criticism and robust democratic discourse from speech that undermines dignity, equality, and fraternity. In a plural and diverse society like India, the law must ensure that liberty does not become a shield for social hostility, while at the same time preventing the State from using “social harmony” as a vague justification to silence dissent. Thus, the constitutional objective

²⁹*Amish Devgan v. Union of India*, (2021) 1 SCC 1.

³⁰People's Union for Civil Liberties (PUCL), materials on hate speech and selective enforcement; LiveLaw, analyses of Section 153A of the IPC and free speech jurisprudence.

is not the triumph of restriction over liberty, but a principled reconciliation of both so that freedom survives without endangering the peace and dignity of the community.

IX. Findings and Analysis

1. Key Observations from Doctrinal Study

The doctrinal study reveals that in India, the conflict between hate speech and free speech is shaped by a constitutional commitment to both individual liberty and social harmony. While Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, this right is not absolute and is subject to reasonable restrictions under Article 19(2), particularly on grounds such as public order, decency, morality, incitement to an offence, and the sovereignty and integrity of India. Judicial interpretation shows that Indian courts have consistently attempted to distinguish legitimate dissent, criticism, and unpopular expression from speech that incites hatred, discrimination, or violence against vulnerable groups. However, the doctrinal analysis also indicates a persistent lack of a precise statutory definition of “hate speech,” leading courts to rely on a combination of constitutional principles and penal provisions such as Sections 196, 299, and 302 of the Bharatiya Nyaya Sanhita, 2023 (substantially carried forward from Sections 153A, 295A, and 505 of the erstwhile IPC). Important decisions such as *Pravasi Bhalai Sangathan v. Union of India* and *Amish Devgan v. Union of India* demonstrate that the Indian judiciary recognises hate speech as speech that undermines dignity, fraternity, and equality, especially when it has the tendency to provoke hostility or public disorder.³¹ A key doctrinal observation, therefore, is that Indian free speech jurisprudence does not protect expression merely because it is offensive; rather, the protection narrows where speech crosses into targeted vilification, incitement, or social harm. At the same time, the study also shows concerns regarding overbreadth, vague standards, and selective enforcement, which may risk suppressing legitimate democratic expression in the name of regulation.

2. Emerging Trends in Hate Speech Regulation

An important emerging trend in India’s hate speech regulation is the gradual shift from a purely reactive, speech-after-harm model to a preventive and impact-based regulatory framework.

³¹*Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477; *Amish Devgan v. Union of India*, (2021) 1 SCC 1.

Courts and law-reform bodies increasingly assess hate speech not only by the speaker's words in isolation, but also by their social context, likely audience impact, digital amplification, and potential to marginalise vulnerable groups. This marks a movement away from the older narrow focus on direct incitement to violence and toward a broader constitutional concern with dignity, fraternity, equality, and public order under Articles 14, 19 and 21. The Law Commission of India, in its 267th Report, recognised the inadequacy of fragmented penal provisions and recommended more targeted legal standards for incitement to hatred.³² Similarly, the Supreme Court in *Pravasi Bhalai Sangathan v. Union of India* and later jurisprudence has signalled that regulation must account for the psychological and societal harms of hate speech, especially in a mass-media and online environment. Another clear trend is the increasing relevance of platform governance and intermediary responsibility, where harmful speech is no longer treated only as an offline criminal law issue but also as a problem of digital dissemination, moderation, and State oversight. Thus, India's contemporary approach reflects an evolving attempt to balance free speech protections under Article 19(1)(a) with the constitutional necessity of preventing speech that undermines pluralism, communal harmony, and democratic participation.

3. Gaps in Legal and Policy Framework

Despite the existence of multiple constitutional and statutory provisions to regulate harmful expression, India's legal and policy framework on hate speech remains fragmented, vague, and inconsistently enforced. While Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, the restrictions under Article 19(2) permit limitations in the interests of public order, decency, morality, and incitement to an offence; however, there is still no precise statutory definition of "hate speech" in Indian law. Instead, hate speech is prosecuted through scattered provisions such as Sections 196, 197, 299, 302 and related provisions of the Bharatiya Nyaya Sanhita (earlier IPC Sections 153A, 295A, 505, etc.), which often overlap and leave wide scope for subjective interpretation. This doctrinal ambiguity creates two parallel problems: genuinely dangerous speech may go unpunished, while dissent, satire, political criticism, or unpopular opinion may be wrongly criminalised, producing a chilling effect on legitimate free expression. The Supreme Court in *Pravasi Bhalai Sangathan v. Union of India* itself observed that the challenge is not merely the absence of law but also the lack of effective and principled enforcement, and urged deeper examination of the concept of hate speech.

³²Law Commission of India, 267th Report on Hate Speech (Government of India, 2017).

Further, the Law Commission of India in its 267th Report highlighted the need for a clearer legal framework, yet legislative reform remains incomplete.³³ In the digital sphere, intermediary regulation under the Ministry of Electronics and Information Technology's Information Technology Rules has also raised concerns because broad takedown powers and vague compliance obligations may encourage over-censorship by platforms rather than narrowly targeted regulation. Thus, the principal gap in India is not simply legislative insufficiency, but the absence of a coherent, narrowly tailored, rights-sensitive framework that can distinguish incitement and group-targeted harm from constitutionally protected criticism, disagreement, or offence.

X. Suggestions and Recommendations

1. Need for Clear Legislative Standards

In India, the tension between hate speech regulation and free speech protection makes clear legislative standards indispensable. While Article 19(1)(a) guarantees freedom of speech and expression, Article 19(2) permits only specific and reasonable restrictions, such as those relating to public order, decency, morality, defamation, and incitement to an offence. The Supreme Court has repeatedly stressed that speech cannot be criminalised merely because it is offensive, unpopular, or disturbing; the restriction must have a proximate connection with one of the constitutionally permitted grounds. This becomes especially important in hate speech cases, where vague or overbroad legal language can produce a chilling effect, discouraging legitimate political dissent, satire, academic debate, or criticism of religion and government. In *Shreya Singhal v. Union of India*, the Court held that only speech reaching the level of incitement, and not mere discussion or advocacy, may justifiably be restricted. Later, in *Amish Devgan v. Union of India*, the Court acknowledged the difficulty of defining hate speech and highlighted the need for a more precise legal framework that balances dignity and equality with liberty.³⁴ Therefore, India needs legislative standards that clearly define what constitutes hate speech, identify the threshold of harm or incitement required, and provide objective enforcement criteria, so that the law punishes genuinely harmful expression without becoming

³³*Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477; Law Commission of India, 267th Report on Hate Speech (Government of India, 2017).

³⁴*Shreya Singhal v. Union of India*, (2015) 5 SCC 1; *Amish Devgan v. Union of India*, (2021) 1 SCC 1; Law Commission of India, 267th Report on Hate Speech (Government of India, 2017) recommended for its doctrinal depth on reform proposals.

a tool for arbitrary censorship.

2. Judicial Safeguards against Misuse

In India, judicial safeguards against the misuse of hate speech laws have developed through constitutional scrutiny, narrow statutory interpretation, and insistence on a close nexus between speech and actual public harm. The Supreme Court has repeatedly held that free speech under Article 19(1)(a) may be restricted only within the exhaustive grounds listed in Article 19(2), preventing the State from suppressing unpopular or offensive opinions merely because they provoke discomfort or dissent. In *Shreya Singhal v. Union of India*, the Court struck down Section 66A of the IT Act for vagueness and overbreadth, emphasising that only speech having a proximate connection with incitement or public disorder can be penalised. Likewise, in *Pravasi Bhalai Sangathan v. Union of India*, the Court recognised the social danger of hate speech but declined to endorse unchecked censorship, instead stressing the need for careful enforcement within existing legal limits. More recently, *Amish Devgan v. Union of India* clarified that courts must distinguish between mere insult, unpopular expression, and speech that deliberately targets communities with the tendency to incite hatred or violence.³⁵ Taken together, Indian judicial doctrine functions as an important safeguard by requiring precision in criminal law, protecting dissent and criticism, and ensuring that hate speech provisions are not converted into tools for political silencing or majoritarian intolerance.

3. Strengthening Digital Regulation

In the Indian context, strengthening digital regulation is essential to address online hate speech without converting content governance into a tool of excessive censorship. A rights-compatible framework should focus on clear statutory definitions, procedural safeguards, platform accountability, and judicial oversight. India's current model under the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 places due diligence obligations on intermediaries and requires grievance redressal, takedown compliance, and, for significant social media intermediaries, enhanced compliance mechanisms.³⁶ However, scholars and policy analyses have raised concerns that broad or vague categories of prohibited content can encourage over-removal of lawful speech,

³⁵Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955 – foundational authority restricting penal speech provisions to an incitement/public disorder standard.

³⁶The Information Technology Act, 2000 (Act No. 21 of 2000); Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

especially where platforms act defensively to avoid liability. Therefore, any stronger digital regulation should require narrowly tailored hate-speech standards aligned with Article 19(2) of the Constitution, mandatory reasoned takedown notices, appeal mechanisms for users, transparency reports, and independent review of government or platform moderation decisions. This approach would help India combat online incitement, targeted abuse, and communal hostility while preserving the constitutional protection of legitimate dissent, criticism, satire, and unpopular expression.

4. Awareness and Preventive Measures

In the Indian context, awareness and prevention are essential to addressing hate speech without undermining the constitutional protection of free speech. A balanced approach requires citizens, institutions, and digital platforms to distinguish between legitimate dissent, unpopular opinion, and speech that crosses into incitement, discrimination, or targeted hostility. Preventive measures should therefore focus on legal literacy, digital and media literacy, and responsible online conduct. Public awareness campaigns in schools, universities, and community spaces should educate people about the constitutional framework under Article 19(1)(a) and the reasonable restrictions under Article 19(2), while also sensitising them to the social harms caused by communal, caste-based, gendered, and identity-based hateful expression. Media and Information Literacy (MIL), as recommended by UNESCO, can help individuals identify manipulated content, stereotypes, misinformation, and inflammatory narratives before they spread further.³⁷ At the institutional level, preventive strategies should include stronger content moderation policies, accessible reporting and grievance redressal mechanisms, prompt action against online abuse, and training for law-enforcement and judicial actors so that regulation targets actual incitement rather than suppressing criticism or political disagreement. In a plural democracy like India, the most effective long-term response lies not only in punitive law, but in building a culture of constitutional tolerance, responsible speech, counter-speech, and civic dialogue that protects both dignity and democratic freedom.

XI. Conclusion

In the Indian constitutional framework, the debate between hate speech and free speech is not a contest between liberty and censorship alone, but a deeper attempt to balance individual

³⁷UNESCO, Media and Information Literacy: A Critical Approach to Learning in the Digital Era UNESCO's framework recommendations on media and information literacy.

autonomy, democratic dissent, equality, dignity, and public order. While Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, that freedom is not absolute and is subject to reasonable restrictions under Article 19(2), especially where speech threatens communal harmony, public order, or the dignity of vulnerable groups. Indian courts have consistently held that mere unpopular, offensive, or provocative expression cannot automatically be criminalised; however, speech that is deliberately malicious, targets protected communities, promotes enmity, or carries a real tendency to incite hatred or violence may legitimately fall outside constitutional protection. Judicial decisions such as *Shreya Singhal*, *Pravasi Bhalai Sangathan*, and *Amish Devgan* collectively show that Indian jurisprudence is moving toward a context-based and harm-sensitive approach, where intent, impact, audience, and social consequences matter as much as the words used.³⁸ Therefore, the future of this debate in India lies not in suppressing dissent, but in drawing a principled legal distinction between criticism that strengthens democracy and speech that corrodes the constitutional promise of fraternity and equal citizenship.

³⁸*Shreya Singhal v. Union of India*, (2015) 5 SCC 1; *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477; *Amish Devgan v. Union of India*, (2021) 1 SCC 1.

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