



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## BALANCING FREEDOM OF SPEECH AND HATE SPEECH LAWS IN INDIA

~Anushree

### Abstract

This research paper explores the complex relationship between freedom of speech and hate speech in the Indian context, particularly in the age of digital communication. It emphasizes that while freedom of expression is a cornerstone of democracy enshrined in Article 19(1)(a) of the Indian Constitution, it is not absolute and must be balanced against the harms caused by hate speech. The article traces judicial interpretations that underscore the need for clear restrictions without stifling dissent or creativity. It also examines the legal framework addressing hate speech through the Bharatiya Nyaya Sanhita, the Representation of People Act, and other statutes. The role of online content is critically evaluated, highlighting both its power to empower and its potential to polarize. By analyzing recent judicial decisions and regulatory interventions, the paper advocates for a balanced approach involving the judiciary, legislature, media platforms, and civil society to ensure freedom of expression does not become a tool for division.

**Keywords:** Freedom of Speech, Hate Speech, Article 19(1)(a), Digital Media, Judiciary, Online Content, Cyber Regulation, Democracy, Human Rights, Bharatiya Nyaya Sanhita,.

### Introduction

In a democratic state such as India, balancing the need to protect freedom of speech while inhibiting hate speech is at once a constitutional requirement and a social problem. Freedom of speech has been regarded as one of democratic values—enabling citizens to express ideas, challenge authority, and take an active part in public life. But this freedom is also used to

propagate hate speech, defined by Black's Law Dictionary as "speech that carries no meaning other than the expression of hatred for some group... especially in circumstances in which the communication is likely to provoke violence."<sup>1</sup>

Over recent decades, instances of hate speech in India have escalated, leading to communal riots and tension. Since independence, the right to free speech, as guaranteed by Article 19(1)(a) of the Indian Constitution<sup>2</sup> and resonated in global instruments such as the Universal Declaration of Human Rights (UDHR)<sup>3</sup>, has remained crucial for both social advancement and governmental transparency. It is this right that has enabled citizens to question state actions and demand transparency in governance, thereby reinforcing the checks and balances essential to a democratic society.

The role of media platforms in shaping public views is paramount, yet they have also been implicated in disseminating hate speech for political or ideological gains. The media, historically regarded as the 'fourth pillar of democracy' as well as the state watchdog, now stands at an intersection. While its fundamental duty is reporting news in truth and fairness, predispositions have crept in tending to further polarize the communities and undermine public institution trust.

### **Freedom of speech and expression under the Indian Constitution**

The freedom of speech and expression in India is guaranteed in Article 19(1)(a)<sup>4</sup> of the Constitution. It reflects the country's abiding allegiance to democratic principles and belief in the idea that educated public discourse is key to societal growth.

In *Pravasi Bhalai Sangathan v. Union of India*<sup>5</sup>, the Supreme Court acknowledged the danger emanating from hate speech without directly criminalizing it owing to the absence of an explicit enactment. To eschew excesses of the judiciary, the Court sent this issue to the Law Commission

---

<sup>1</sup> *Black's Law Dictionary* 983 (9th ed. 2009).

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

<sup>3</sup> *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948).

<sup>4</sup> *India Const.* art. 19(1)(a).

<sup>5</sup> *Pravasi Bhalai Sangathan v. Union of India*, A.I.R. 2014 S.C. 1591.

and underscored that available criminal laws were sufficient as long as they were properly enforced. The actual problem, in its view, was not one of legislation but one of poor enforcement. The judgment reinforced the cooperation of both the government and civil society in enforcing the legal system.

This right is not merely a statutory privilege but is rooted in natural law, often termed the “mother of all liberties.” It grants individuals freedom to articulate one's views in speech, writings, publications, art, gestures, sign language, and other forms of expression. Freedom of speech is also recognized at international level. As stated in the UDHR and ICCPR respectively:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>6</sup>

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>7</sup>

Notably, only Indian citizens are eligible for protection under Article 19(1)(a). Foreign nationals living in India do not receive this liberty, although they may benefit from other protections under international human rights law.

The right of free expression in India is not absolute, however. Article 19(2) of the Constitution allows for reasonable restrictions in terms of sovereignty and integrity of India, security of state, friendly relations with other states, public order, decency or morality, contempt of court, defamation, and incitement of an offense. In its decision dated 3 January 2023, in a unanimous report by a five-judge Constitution Bench headed by Justice Abdul Nazeer, the freedom of speech was deemed not to be subject to restriction for any purpose other than those specified in Article 19(2)—even for other fundamental right violation.<sup>8</sup>

---

<sup>6</sup> *Universal Declaration of Human Rights* art. 19, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948).

<sup>7</sup> *International Covenant on Civil and Political Rights* art. 19, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>8</sup> *Kaushal Kishore v. State of Uttar Pradesh*, (2023) 4 S.C.C. 1.

The landmark judgment of *Shreya Singhal v. Union of India*<sup>9</sup>, where the Supreme Court decided to strike down Section 66A of the Information Technology Act, 2000, highlighting the importance of safeguarding online free speech and ensuring that any restrictions are both reasonable and narrowly tailored to maintain public order. This judgement marked a significant milestone in the protection of free speech and expression in the digital age.

### **Understanding Hate Speech**

According to the 267th Report of the Law Commission of India, “Hate speech generally is an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like (sections 153A, 295A read with section 298 IPC). Thus, hate speech is any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence.”<sup>10</sup>

Various sections of the Bharatiya Nyaya Sanhita, Representation of People Act, etc., have historically been employed to punish speech that instigates violence, fosters enmity, or affronts religious sentiments.

- Section 196 of the Bharatiya Nyaya Sanhita<sup>11</sup>, 2023 penalizes acts that disturb public peace or promote enmity between groups based on religion, race, language, region, caste, or community. It covers speech, writing, electronic communication, and signs.
- Section 197<sup>12</sup> of the Bharatiya Nyaya Sanhita further criminalizes statements that question a group’s loyalty to the Constitution or deny their citizenship rights based on identity. It also covers content inciting disharmony or spreading false information threatening India’s unity or security.
- Section 8 of the Representation of People’s Act, 1951<sup>13</sup>, prevents a person convicted of

---

<sup>9</sup> *Shreya Singhal v. Union of India*, A.I.R. 2015 S.C. 1523.

<sup>10</sup> *Law Commission of India*, 267th Report (2017).

<sup>11</sup> *Bharatiya Nyaya Sanhita* § 196 (2023).

<sup>12</sup> *Bharatiya Nyaya Sanhita* § 197 (2023).

<sup>13</sup> *Representation of the People Act* § 8, No. 43, Acts of Parliament, 1951 (India)

the illegal use of the freedom of speech from contesting an election.

- Sections 123(3A) and 125 of the RPA<sup>14</sup>, bars the promotion of animosity on the grounds of race, religion, community, caste, or language in reference to elections and includes it under corrupt electoral practices.
- Under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act<sup>15</sup>, anyone who intentionally insults or intimidates a member of a Scheduled Caste or Scheduled Tribe in a public space, with the intent to humiliate, faces imprisonment ranging from six months to five years.

### **Freedom of Speech and Online Content**

Online content, ranging from text and images right through to multimedia messages and videos, has taken center stage in today's communications. With YouTube, Instagram, and other platforms leading the charge, people now spend an average of 2.3 hours each day consuming online content. Such increased use has positioned the internet as an extremely influential and expressive medium for creativity, sharing information, and cross-cultural conversations.

On the positive side, it encourages knowledge access, advances e-learning, spurs entrepreneurship, and builds communities beyond borders. But at the same time, this freedom has led to the spread of misinformation, increase in cases of cyberbullying, privacy issues, as well as possibilities for radicalization in cyberspace, become grave issues for society. In addition, problems of digital addiction and broadening digital divide make matters increasingly complex.

Recent incidents, such as the controversy surrounding Ranveer Gautam Allahbadia v. Union of India and Others<sup>16</sup>, highlighted the evolving nature of digital expression and the growing need for clear, enforceable guidelines. While creative freedom and dissent must be protected, speech that incites hatred, discrimination, or violence cannot be justified under the guise of free

---

<sup>14</sup> *Representation of the People Act* §§ 123(3A), 125, No. 43, Acts of Parliament, 1951 (India).

<sup>15</sup> *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act* § 3(1)(x), No. 33, Acts of Parliament, 1989 (India).

<sup>16</sup> *Ranveer Gautam Allahbadia v. Union of India & Ors.*, (2025) S.C.C. 698.

expression.

To confront these problems, India has put in place a multi-faceted legal structure. The Information Technology Act, 2000, and related rules regulate online activities, and the Indian Penal Code deals with criminal matters such as defamation or hate speech. Some recent statutes, such as the 2021 Intermediary Guidelines, seek responsibility from online platforms. In *Maheshwari vs. Union of India*<sup>17</sup>, the Supreme Court held that social media users cannot be held legally accountable for merely sending or sharing anything if there is no intentional effort to promote violence or hate speech.

In *Faheema Shirin R.K. v. State of Kerala*<sup>18</sup>, the Kerala High Court ruled that one's freedom of speech and choice should not be limited merely because another objected to something another had uploaded to social media. It underscored the significance of letting individuals share their views without fear of censorship.

Indian judicial interpretations prioritize balance — safeguarding free speech while preserving public order, clarity in regulation, and content moderation proportionate to the offense. With growing online expression, so should our work to make sure it's safe, inclusive, and constructive.

## **Conclusion**

In a culturally diverse nation such as India, freedom of speech stands as one pillar of democracy that allows each citizen, regardless of caste, class, and gender, to have his/her say. But this freedom is constantly pushed to its limits by rising instances of hate speech, which not only challenge the dignity of an individual, but also the integrity of the nation. While Article 19(1)(a) assures us of our right to free speech, Article 19(2) rightly puts reasonable checks so that speech does not offend public order, morality, or another's rights. The actual test is in making sure that the laws get enforced in an even-handed and consistent manner without muffling creative speech and healthy criticism of society.

---

<sup>17</sup> *Maheshwari v. Union of India*, [2020] S.C.C. Online SC 1223.

<sup>18</sup> *Faheema Shirin R.K. v. State of Kerala*, [2019] INSC 644.

Finding the right balance is our shared responsibility. Legislatures must give clear definitions and parameters. The judiciary must ensure accountability. Media and online platforms must moderate. Above all, we as citizens must create a culture of respect, tolerance, and rational thinking.

India's greatest strength is its diversity. Maintaining that strength is supporting free speech while also standing against hate. In so doing, we do not merely defend the letter of the Constitution, but also its spirit—one which imagines an inclusive, compassionate, and harmonious society. Let us work so that the market of ideas remains an arena for discussion, not division; for discourse, not discrimination.