

# ONLINE HATE SPEECH AND ITS LEGAL IMPLICATIONS IN INDIA

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## ABSTRACT

India constitutes a democratic nation, and our right to freedom of expression is one of our fundamental rights. However, there are some restrictions to free speech, such as the possibility of punishment for those whose words are offensive, dangerous, or endanger others. Several provisions of the Indian Penal Code ban discussing hate speech because the country's rules against it are intended to avoid strife among its numerous communities and citizens. Any words that disparage or demean a group of people based on their race, caste, gender, religion, or other characteristics are considered hate speech. Other than expressing hatred for other individuals, the words have no other significance. Hate speech is on the rise in India on a daily basis because of carelessness and misunderstandings that freedom of expression does not necessarily mean that a person can say whatever they feel is appropriate. People will discriminate against one another and adhere to the caste system because India is a very populous nation with a variety of religions. This is turning into a significant issue for the growth of hate speech in India, thereby showcasing the importance of its regulation.

**Keywords:** *Democracy, Freedom of expression, Hate speech, Discrimination, Regulation*

## 1.1. INTRODUCTION

Bringing together of people from every corner of the globe has sped up technical advancement, but it has also raised some extremely odd problems about the law and how it is applied. Given that whatever is composed on the web may have been generated by anybody; from any part of the entire world; published on a server anyplace in the global community; and accessible to (or directed at) any individual; wherever in the world as a whole, the term "hate speech" by itself, which had previously been ambiguous, was made increasingly so. Hate speech is now widely acknowledged as posing an imminent danger to civilization. With the message reaching a large audience quickly in this digital age, the problem of hate speech becomes even more significant. Since there is now no effective legal framework in place, the creation and distribution of internet information has become a new problem in the fight against hate speech. In order to close the legal gaps created by

this, legislation must be introduced. A new legislation governing hate speech on the internet in India has been frequently stressed by the Supreme Court of India. Additionally, the Law Commission of India and many expert committees have submitted studies suggesting various changes to the current laws.

## 1.2. RESEARCH PROBLEM

The meaning to hate speech has historically been vague, although it is typically constrained and geared toward the objectives of the state's governing power. It is often simpler to agree on definitions of "hate speech" where societies are clearly defined such as by geography. The concepts of "hate speech" tend to rely upon the social and philosophical norms of any civilization. The reason for this was due to the fact that only an imposing organization that was well-known, revered, or believed among everybody within the area could impose the definition there. Such territorial limitations have been eliminated by

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the expansion of the Internet as a worldwide channel of interaction.

### 1.3. LITERATURE REVIEW

#### **Chinmayi Arun, *On WhatsApp, Rumours, Lynchings, and the Indian Government***

This article analysed WhatsApp's role in the propagation of rumours that resulted in mob violence in India. Because of WhatsApp's end-to-end encryption, it emphasized the difficulties in holding individuals accountable. The Indian government demanded that WhatsApp accept responsibility for the propagation of fake information and adopt preventative steps. The article, however, contended that tackling the core causes of violence, such as social and economic disparities, is critical. The importance of improved media literacy education and critical thinking abilities was also stressed. To solve the issue, it finished by proposing for a multi-stakeholder approach involving the government, technology corporations, civic society, and individuals.

#### **Barrie Sander, *Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation***

The difficulties of content control on online platforms were examined in this article, focusing on hate speech. It discussed the drawbacks of a human rights-based approach to content management and made the case that platforms need to be more proactive in preventing harm from online hate speech. It also emphasized the possibility of unexpected repercussions of content moderation rules, such as restricting appropriate speech. The necessity of cooperation between platforms, civil society, and governments was stressed, as well as the significance of transparency, accountability, and participation in content moderation choices. The paper called for a balanced and context-specific approach to content management that respects freedom of expression while averting harm from hate speech.

#### **Ganesh Bhutkar, Vidhi Raghvani, and Siddharth Juikar, *User Survey about Exposure of Hate Speech among Instagram Users in India***

To determine the scope and effects of hate speech on Instagram users in India, a poll was undertaken. The survey's findings were discussed in

this article. Numerous users were subjected to hate speech on the social media platform, according to the survey. The article examined the various forms of hate speech recognized and emphasized the detrimental effects it has on both people and society at large. Additionally, it highlighted the shortcomings of Instagram's content control guidelines and the want for more effective reporting systems. According to the authors, teaching users on how to spot hate speech and report it could be a useful strategy for doing so. It emphasized, in its conclusion, the importance of online platforms accepting accountability for the dissemination of hate speech and taking meaningful action to solve the problem.

#### **Abhishek Velankar, Hrushikesh Patil, and Raviraj Joshi, *A Review of Challenges in Machine Learning based Automated Hate Speech Detection***

This article looked at the difficulties in creating automated systems for detecting hate speech based on machine learning. It talked about how difficult it is to define hate speech and how accurate identification requires strong training datasets. It also brought to light the shortcomings of current algorithms in identifying hate speech that is dependent on context and the possibility of biased results. The essay went into more detail about the moral issues of automated hate speech detection, including issues with free speech and privacy. To create more accurate hate speech detection systems, the authors recommended interdisciplinary cooperation between specialists in machine learning, linguistics, and social sciences. The article's conclusion emphasized the value of ongoing study and advancement in order to deal with the complicated problems related to automated hate speech identification.

#### **Mehvish Ashraf, *Online Hate Speech in India: Issues and Regulatory Challenges***

This article addressed the problem of hate speech on Indian online forums. The article emphasized how hate speech could have a detrimental effect on both individuals and society at large. It also looked at how difficult it is to control hate speech online because of the vast volume of content and the absence of precise definitions and rules. The necessity of a thorough legal system that strikes a balance between the right to free speech and the need to suppress hate speech was discussed. The risk of censorship

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and the significance of accountability and openness in content filtering were also underlined.

### 1.4. SCOPE AND OBJECTIVES

This paper aims to analyse online hate speech in India. This research paper includes the evolution of online hate speech in India. It discusses the role of social media in amplifying hate speech. It also talks about the legal frameworks for freedom of religion and hate speech on religion. This paper also covers various cases where online hate speech led to hurting of religious sentiments. It looks into why the term "hate speech" could not be defined yet. Lastly, it talks about the ways in which such unfair use of freedom of expression can be curtailed.

### 1.5. METHODOLOGY

The Doctrinal method will be followed for conducting research on the topic. The kind of research done was Descriptive and Explanatory. Normative research will be conducted where various books were referred to and so were many websites, articles, for a clear view on the research paper. The study will also review relevant literature, laws, and statutes related to the online hate speech in India. Various cases will be studied and analysed, which will be collected from case law search engines like Manupatra and SCC Online.

### 1.6. RESEARCH QUESTION

- What are the legal regulations available in other countries to curb online hate speech?
- Has the term "hate speech" been defined yet in India?

### 1.7. HYPOTHESIS

Different countries have different rules and regulations to curb the menace of online hate speech in India.

India has not defined the term "hate speech" till now. However, as per the United Nations, "hate speech" refers to offensive discourse targeting a group, or an individual based on inherent characteristics (such as race, religion or gender) and that may threaten social peace.

## 2. INTRODUCTION

Since the beginning of mankind, people have always had a tribal nature. The concept of "us" vs. "them" is unavoidably born out of the collectivist idea of a group based on uniform characteristics like complexion, race, language in question, and traditions. The man was ultimately compelled to interact with individuals who were distinct from him on similar conditions so as to meet his numerous requirements. However, the prejudice that existed between the two communities did not entirely disappear as a result of this interaction. The physical violence and verbal abuse are the two main ways that a discriminating attitude manifests itself. This led to the idea of hate crimes being acknowledged by the government.

The freedom of expression is a right secured under the Indian Constitution. It is protected in Article 19(1)(a) of the Constitution that states all citizens have the freedom of expression. This right allows individuals to express their thoughts, opinions, beliefs, and ideas freely through various mediums, such as speech, writing, printing, publishing, and other forms of communication. However, it is important to note that this right is subject to certain reasonable restrictions mentioned under Article 19(2) of our Constitution. These restrictions allow the government to impose limitations on freedom of speech in the public order interest, decency, morality, security of the state, friendly relations with foreign states, defamation, incitement to an offense, and integrity and sovereignty of India.<sup>1</sup>

The Indian judiciary plays a crucial role in understanding and safeguarding the freedom of speech. The Apex Court of India has consistently held this freedom to be the foundation of a democratic civilization and should be given a broad interpretation to protect and promote diverse viewpoints and ideas. The court has recognized that the right to criticize, dissent, and engage in peaceful protest is an essential component of this freedom. However, the Supreme Court has also recognized the need to balance freedom of speech with other competing rights and interests, such as maintaining public order,

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<sup>1</sup> Mehvish Ashraf, Online Hate Speech in India: Issues and Regulatory Challenges <https://www.ijlmh.com/online-hate-speech-in-india-issues-and-regulatory-challenges/> accessed 20th May 2023

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preserving communal harmony, and preventing hate speech and incitement to violence. The court has laid down various tests and principles to determine the constitutionality of restrictions on freedom of speech, emphasizing the importance of proportionality and reasonableness.

The development of the internet has changed the way people interact with one another. The speed and wide audience reach of internet communication, combined with the ability to remain anonymous, bring together people who share similar views, and the inadequacy of current legal frameworks to deal with such issues, make it an ideal environment for hate-related crimes. Abuse that is directed in online forums frequently carries over and is reflected in real life as well. Due to some internet content, numerous cases of mob lynchings, racial unrest, and horrific murders have been documented recently.<sup>2</sup>

### 3. EVOLUTION OF HATE SPEECH IN INDIA

#### 3.1. Pre-Independence Era

In the pre-independence era of India, hate speech often played a significant role in exacerbating communal tensions and divisions within society. The period leading up to India's independence from British colonial rule was marked by social and political movements that sought to assert the rights and aspirations of various religious and communal groups. During this time, hate speech was employed by different political factions to mobilize support, consolidate power, and advance their agendas. The rhetoric used in public speeches, writings, and propaganda often targeted specific religious or communal groups, aiming to create fear, animosity, and mistrust. The communal divides between Hindus and Muslims were particularly exploited for political gains. Leaders from both communities used inflammatory language to incite religious sentiments and deepen the sense of separateness between the two groups. This rhetoric often portrayed the "other" community as a threat, fostering an "us vs. them" narrative.<sup>3</sup>

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<sup>2</sup> Supra n1

<sup>3</sup> Supra n1

One notable example of hate speech during this era was the partition of India in 1947, which led to the creation of India and Pakistan as separate nations. The communal tensions between Hindus and Muslims escalated to a point where hate speech fuelled violence and large-scale riots, resulting in the loss of thousands of lives and mass displacement of people. Political and religious leaders, as well as influential speakers and writers, played a crucial role in shaping public discourse and influencing public opinion through hate speech. Divisive rhetoric, based on religious, cultural, and communal identities, was employed to garner support and consolidate power among specific groups. However, it is important to note that not all leaders and movements resorted to hate speech. Many prominent figures, such as Mahatma Gandhi and Jawaharlal Nehru, advocated for unity, peace, and harmonious coexistence among different communities. They emphasized the values of tolerance, non-violence, and inclusivity in their speeches and actions.

#### 3.2. Post-Independence Period

In the post-independence era of India, hate speech continued to be a significant issue, although the nature and context of hate speech evolved in response to changing socio-political dynamics. While India's leaders emphasized secularism and the ideals of unity in diversity, instances of hate speech persisted, often leading to communal tensions and acts of violence.

- **Communal Riots:** The post-independence period witnessed several instances of communal riots, often fuelled by hate speech. These riots were triggered by religious or communal tensions and resulted in violence, destruction of property, and loss of lives. Hate speech, both in public speeches and through media outlets, played a role in inciting and exacerbating these conflicts.
- **Extremist Groups and Political Rhetoric:** Various extremist groups emerged, promoting religious nationalism and divisive ideologies. Some political parties and leaders used hate speech to rally support and consolidate their base. Inflammatory language, targeting specific religious or communal groups, was employed to create fear, polarize communi-

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ties, and gain political mileage.<sup>4</sup>

- **Caste-Based Discrimination:** Hate speech was also prevalent in the context of caste-based discrimination. The caste system, although officially abolished, continues to influence Indian society. Hate speech targeting lower-caste communities, such as Dalits, often perpetuated discrimination, reinforcing social hierarchies, and creating a hostile environment.
- **Technological Advancements and social media:** The advent of the internet and social media platforms in the 21st century has had a significant impact on the spread and amplification of hate speech. Online platforms provide a medium for individuals to express and disseminate hateful ideas and stereotypes, often anonymously. This has contributed to the rapid spread of hate speech and its ability to incite violence and create social tensions.

### 4. DEFINING HATE SPEECH

In layman's terms, "hate speech" refers to offensive statements that may endanger societal harmony and targets a group or a person based on intrinsic traits (such as race, religion, or gender). The UN 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 who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor" in order to give the UN a unified framework to address the issue on a global scale. International human rights legislation does not, as of yet, have a standard definition of hate speech.<sup>5</sup>

Hate speech refers to any form of communication, be it spoken, written, or expressed through other means, that promotes, incites, or

advocates hatred, discrimination, hostility, or violence towards individuals or groups based on attributes such as their race, religion, ethnicity, nationality, sexual orientation, gender identity, or other protected characteristics. Hate speech typically involves derogatory, offensive, or inflammatory language, gestures, symbols, or actions that aim to demean, marginalize, or dehumanize targeted individuals or groups. It often seeks to perpetuate stereotypes, promote prejudice, and create an atmosphere of fear, intolerance, or animosity. It is important to note that hate speech is distinct from legitimate criticism, freedom of expression, or the peaceful expression of dissenting opinions. It goes beyond the boundaries of respectful and constructive dialogue, violating the dignity, equality, and rights of individuals or communities.

Various international and national legal frameworks and human rights instruments provide guidelines for understanding and addressing hate speech. However, the definition and boundaries of hate speech may vary depending on cultural, social, and legal contexts. While the freedom of speech is a fundamental right, hate speech is generally not protected under this right. Many countries have enacted laws or regulations that aim to restrict or penalize hate speech, striking a balance between protecting individuals' rights and ensuring social cohesion, equality, and the prevention of harm.

### 5. HATE SPEECH vs. FREEDOM OF SPEECH IN INDIA

Freedom of speech is a fundamental right protected under the Indian Constitution. It is contained in Article 19(1)(a) of the Constitution, which states that all citizens have the right to freedom of speech. This right allows individuals to express their thoughts, opinions, beliefs, and ideas freely through various mediums, such as speech, writing, printing, publishing, and other forms of communication.

The recognition of freedom of speech in India reflects the importance placed on the values of democracy, pluralism, and open dialogue in a diverse society. It is considered a cornerstone of a vibrant democracy and serves as a crucial tool for fostering public debate, challenging existing norms, and holding those in power accountable.

Nevertheless, it is critical to observe that freedom

<sup>4</sup> Barrie Sander, Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation, 43 *FORDHAM INT'L L.J.* 939 (2020).

<sup>5</sup> United Nations, [<https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>] (last visited 17 May 2023).

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of speech is subject to certain reasonable restrictions mentioned in Article 19(2) of the Constitution. These restrictions include the interests of public order, decency, morality, security of the state, friendly relations with foreign states, defamation, incitement to an offense, and the integrity and sovereignty of India. These limitations are intended to strike a balance between protecting individual rights and ensuring the welfare and well-being of society. Hate speech is considered a reasonable restriction on freedom of speech in India. Freedom of speech is not an absolute right and is subject to certain limitations in the interest of public welfare, social harmony, and the rights of others.<sup>6</sup>

The restrictions on hate speech are justified for several reasons. First, hate speech undermines the principles of equality, dignity, and non-discrimination enshrined in the Constitution. It perpetuates stereotypes, fosters prejudice, and promotes social divisions, hindering the goal of a harmonious and inclusive society. Second, hate speech has the potential to incite violence and disturb public order. It can trigger communal tensions, riots, and other forms of social unrest, posing a threat to the security and stability of the state. By restricting hate speech, the government seeks to prevent the escalation of conflicts and maintain social harmony. Third, hate speech infringes upon the rights of individuals and communities targeted by such speech. It denies them their right to dignity, respect, and equal participation in society. Restricting hate speech is necessary to protect the rights and well-being of those who may be subjected to discrimination, harassment, or violence because of such speech.

### 6. CAUSES BEHIND INCREASE IN ONLINE HATE SPEECH IN INDIA

Online hate speech in India can stem from various factors, including social, political, and technological elements. Understanding the causes can provide insight into addressing this issue effectively. Here are some factors that contribute to the prevalence of online hate speech in India:

- **Communal and Religious Tensions:** India is a diverse country with various religious and cultural communities. Deep-rooted com-

munal and religious tensions can contribute to the spread of hate speech online. Divisive narratives, misinformation, and stereotypes can be amplified through digital platforms, exacerbating existing tensions and fuelling hate speech.

- **Misinformation and Fake News:** The spread of misinformation and fake news contributes to the propagation of hate speech. False narratives, rumours, and manipulated images or videos can be shared virally, leading to the creation of an environment conducive to hate speech. Lack of media literacy and critical thinking skills among users exacerbates this problem.
- **Political Polarization:** Political divisions and polarization can play a significant role in the proliferation of hate speech online. Political leaders, parties, or supporters may engage in or tolerate hate speech to target opponents, incite their followers, or reinforce their ideologies. This can further polarize society and create an environment conducive to hate speech.<sup>7</sup>
- **Anonymity and Online Disinhibition:** The anonymity afforded by online platforms can lead to a sense of detachment and disinhibition, making individuals more likely to engage in hate speech. People may feel emboldened to express hateful views without facing immediate consequences, leading to the spread of vitriolic content online.<sup>8</sup>
- **Lack of Digital Literacy and Awareness:** Limited digital literacy and awareness about the responsible use of online platforms can contribute to the spread of hate speech. Many individuals may not fully understand the consequences of their actions or may not be equipped with the skills to critically evaluate information, leading to the inadvertent or deliberate sharing of hate speech content.
- **Online Trolling and Harassment Culture:** Online trolling and harassment are preva-

<sup>7</sup> Evolution of hate speech in India, Legal Service India (17th May 2023), <https://www.legalserviceindia.com/legal/article-6408-evolution-of-hate-speech-in-india.html>

<sup>8</sup> Ibid

<sup>6</sup> Supra n4

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lent in India, and they often overlap with hate speech. Individuals may engage in targeted harassment or abuse under the guise of anonymity, creating an atmosphere of fear and intimidation. This culture of online harassment can further propagate hate speech and discourage open and respectful dialogue.

### 7. REGULATION OF ONLINE HATE SPEECH IN INDIA

In India, hate speech is addressed and governed by various provisions under the Indian Penal Code (IPC), the Information Technology Act (IT Act), and other legal frameworks. These provisions aim to prevent the promotion of hatred, enmity, discrimination, or violence based on factors such as religion, race, caste, gender, or other protected characteristics. Here are some key provisions governing hate speech in India:

- **Section 153A of the IPC:** This section deals with acts that promote enmity between different religious, racial, or linguistic groups, and prohibits deliberate and malicious acts intended to outrage religious feelings or disturb public harmony. Violations of this section can result in imprisonment and/or fines.<sup>9</sup>
- **Section 295A of the IPC:** This section criminalizes intentional and malevolent acts aimed to disgrace the religious feelings of any community by abusing their religious principles, symbols, or places of worship. Offenders can face imprisonment and/or fines.
- **Section 298 of the IPC:** This section targets hate speech directed at any religious, racial, or linguistic group to wound their religious feelings. It aims to prevent the promotion of enmity or disharmony between communities and imposes penalties for offenders.
- **Section 505 of the IPC:** This section deals with statements or rumours circulated with the intent to incite any class or community to commit an offense against another, creating fear or alarm in the public. It seeks to prevent the spread of hate speech that may disrupt public order or peace. Violations can lead to

imprisonment and/or fines.

- Under Section 8 of the Representation of People's Act of 1951, person who has been found guilty of using their right to free expression unlawfully is prohibited from running for election.<sup>10</sup>
- The Sections 123(3A) and 125 of the Representation of People's Act of 1951 prohibit and classify as corrupt electoral practices the propagation of hatred based on race, religion, community, caste, or language in relation to elections.<sup>11</sup>
- **Section 66A of the IT Act (no longer in force):** Section 66A was added to the Information Technology Act in 2008 to punish online hate speech, but it was later declared unconstitutional by the Supreme Court in **Shreya Singhal v. Union of India**<sup>12</sup>. The Court found that the provision restricted the right to freedom of speech in an arbitrary and disproportionate manner, and therefore violated Article 19(1)(a) of the Constitution. The case involved two girls who were charged u/s 66A for a post on Facebook that was deemed to be hate speech. The widespread condemnation of the arrests led to a Public Interest Litigation and ultimately the provision was struck down.<sup>13</sup>
- **Section 69A of the IT Act:** This section empowers the government to issue directions to block public access to any online content that is deemed to be against the interests of the integrity and sovereignty of India, defence, security of the state, friendly relationships with foreign states, public order, or to prevent provocation to the commission of any offense. This provision can be used to restrict access to online hate speech.

<sup>10</sup> An Indian law on hate speech: the contradictions and lack of conversation, CJP (20th May 2023), <https://cjp.org.in/indian-law-on-hate-speech-the-contradictions-and-lack-of-conversation/>

<sup>11</sup> Hate Speech & Dissenting Views of the Supreme Court, CJP (21st May 2023), <https://cjp.org.in/hate-speech-dissenting-views-of-the-supreme-court/#:~:text=But%20hate%20speech%2C%20whatever%20its,the%20foundations%20of%20human%20dignity.>

<sup>12</sup> Shreya Singhal v. Union of India, AIR 2015 SC 1523

<sup>13</sup> Supra n10

<sup>9</sup> Supra n8

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- **Section 79 of the IT Act:** This section provides immunity to intermediaries (such as social media platforms) from liability for any third-party information, data, or communication link made available or hosted by them. However, intermediaries are required to comply with certain due diligence requirements and guidelines prescribed by the government to prevent and disable access to objectionable content, including hate speech.
- **Intermediary Guidelines and Digital Media Ethics Code:** The Government of India recently introduced new guidelines in February 2021 to regulate social media intermediaries, over-the-top (OTT) platforms, and digital news media. These guidelines impose obligations on intermediaries to proactively monitor and remove or disable access to unlawful content, including hate speech. Non-compliance with these guidelines can result in penalties and loss of safe harbour protection.

It is important to note that the interpretation and application of these provisions rely on the judiciary's understanding of hate speech. Courts consider factors such as intent, context, potential harm, and likelihood of incitement when determining the legality of speech. In addition to these specific provisions, the Indian legal system also recognizes the broader framework of fundamental rights, including the right to freedom of speech under Article 19(1)(a) and its reasonable restrictions as specified in Article 19(2) of the Constitution.<sup>14</sup>

### 8. INTERNATIONAL LAWS GOVERNING ONLINE HATE SPEECH

India does not have specific legislation dedicated solely to online hate speech that aligns with international laws. However, India is a member of the United Nations and is obligated to adhere to international human rights standards that address hate speech. The following international principles and conventions guide India's approach to online hate speech:

- **International Covenant on Civil and Polit-**

**ical Rights (ICCPR):** India is a signatory to the ICCPR, which protects the right to freedom of expression. While this right is subject to restrictions to safeguard the rights and reputations of others and protect public order, India's approach to hate speech must align with the principles outlined in the ICCPR.

- **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD):** India is a party to ICERD, which obligates the country to take measures to combat racial discrimination, including hate speech. The principles of ICERD apply to both offline and online contexts.
- **United Nations Universal Declaration of Human Rights (UDHR):** India upholds the principles of the UDHR, which emphasizes the right to freedom of expression alongside the responsibilities that come with it. India's approach to online hate speech should be consistent with the UDHR's promotion of tolerance, respect for others' rights, and prevention of incitement to hatred.
- **Safer Internet Day and European Frameworks:** While not legally binding, India, as part of its commitment to creating a safe online environment, observes international initiatives like Safer Internet Day and takes inspiration from European frameworks and regulations such as the Digital Services Act (DSA) and the Digital Markets Act (DMA) to shape its own policies and guidelines.

### 9. LACUNA IN REGULATING ONLINE HATE SPEECH IN INDIA

While India has made efforts to address online hate speech through legal frameworks and regulations, there are some lacunas or gaps that exist in effectively combating this issue. These include:

- **Lack of Comprehensive Legislation:** India lacks comprehensive legislation specifically dedicated to online hate speech. While provisions under the Indian Penal Code (IPC) and the Information Technology Act (IT Act) can be applied to online hate speech, the absence of a dedicated law leaves room for

<sup>14</sup> Supra n10

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ambiguity and inconsistent application.

- **Vague Definitions:** The definitions of hate speech and related terms in Indian laws are often broad and open to interpretation. This lack of clarity can create challenges in determining what constitutes hate speech and can lead to inconsistencies in its enforcement.
- **Limited Accountability of Online Platforms:** Online platforms, including social media networks and messaging apps, play a significant role in the dissemination of hate speech. However, the accountability of these platforms for monitoring and moderating hate speech content remains a challenge. The intermediary guidelines recently introduced in India aim to address this issue, but their effectiveness and implementation are still evolving.
- **Inadequate Reporting Mechanisms:** There is a need for robust reporting mechanisms to enable individuals to report instances of online hate speech easily. Awareness about reporting procedures, the role of law enforcement agencies, and the effectiveness of reporting mechanisms need to be strengthened to encourage victims to come forward and take action against hate speech.
- **Overburdened Judicial System:** The Indian judicial system faces a significant backlog of cases, leading to delays in resolving legal disputes, including those related to hate speech. This can hinder timely action against online hate speech offenders and impact the effectiveness of legal measures.
- **Limited Focus on Education and Awareness:** Efforts to address online hate speech should go beyond legal frameworks. There is a need to focus on promoting digital literacy, media literacy, and awareness campaigns to empower individuals to recognize and counter hate speech, promote responsible online behaviour, and foster a culture of respect and tolerance.
- **Intersectionality and Multiple Forms of Discrimination:** Hate speech often targets marginalized communities based on various factors such as religion, caste, gender, and

sexual orientation. The existing legal frameworks may not adequately address the intersectionality of these forms of discrimination, which can leave certain communities more vulnerable to online hate speech.

## 10. LEGISLATIONS OF OTHER COUNTRIES COMBATING ONLINE HATE SPEECH

### 10.1. Germany

The Network Enforcement Act (NetzDG) of Germany, enacted in 2017, aims to combat online hate speech and illegal content. It requires social media platforms with a significant user base to promptly remove or block illegal content, including hate speech. NetzDG imposes a legal obligation on social media platforms to remove or block illegal content, including hate speech, within 24 hours of receiving a valid complaint or risk facing penalties. In case of non-compliance, social media platforms can face substantial fines. For instance, failure to remove illegal content can result in fines of up to \$60 million for the most serious offenses. The law also requires social media platforms to provide transparent reporting on their handling of complaints, including the number of received complaints and the actions taken to address them. NetzDG establishes an independent complaints process, allowing users to report illegal content directly to the platforms. If the content is not removed within the specified timeframe, users can escalate their complaints to the regulatory authorities.

### 10.2. France

The Avia Law, implemented in France in 2020, focuses on combating online hate speech and terrorist content. It mandates social media platforms to remove hate speech within 24 hours of notification. The Avia Law requires social media platforms to promptly remove hate speech and terrorist content from their platforms within 24 hours of receiving a notification from users. In cases of non-compliance, social media platforms can face substantial fines. The law allows for fines of up to \$1.48 million or 4% of global revenue, whichever is higher, for platforms that

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fail to remove illegal content promptly. The law also imposes reporting obligations on platforms, requiring them to report on their efforts to combat hate speech and terrorist content. It aims to enhance transparency and accountability in content moderation practices.

### 10.3. United Kingdom (UK)

The Communications Act 2003 in the UK addresses various offenses related to electronic communications, including hate speech. It makes it an offense to send or post grossly offensive, indecent, or menacing messages through public electronic communications networks, including social media platforms, if the intent is to cause distress or anxiety. Offenders found guilty of sending grossly offensive or indecent messages can face criminal charges and potential imprisonment of up to six months, along with fines. When determining if an offense has been committed, the court considers the context, including the sender's intent, the target of the communication, and the potential harm caused. Victims or witnesses of online hate speech can report incidents to law enforcement agencies, who can investigate the matter and take appropriate legal action against the offenders. It seeks to strike a balance between protecting individuals from harm caused by hate speech and safeguarding freedom of expression. The law aims to address speech that goes beyond legitimate expression and incites hatred or causes distress.

The Malicious Communications Act 1988 in the UK addresses offenses related to malicious communications, including online hate speech. Offense of Sending Malicious Communications: It makes it an offense to send any electronic communication that is indecent, grossly offensive, threatening, or false with the intention to cause distress or anxiety to the recipient. Offenders found guilty of sending malicious communications, including online hate speech, can face criminal charges and potential imprisonment of up to two years, along with fines. The Act covers various forms of electronic communications, including emails, social media posts, text messages, and other digital means of communication. Courts consider the context and intent behind the communication when determining if an offense has been committed. The subjective effect

on the recipient, as well as the sender's intention, are considered. Victims or witnesses of online hate speech can report incidents to law enforcement agencies, who can investigate the matter and take appropriate legal action against the offenders.

## 11. DEFINING HATE SPEECH IN INDIA

### 11.1. Judicial Perspective on Hate Speech

Man is a rational entity who desires to do many things, but in a civil society, his desires must be restrained, regulated, and reconciled with the exercise of similar impulses by other people, according to Justice Patanjali Shastri in **A.K. Gopalan v. State of Madras**.<sup>15</sup> In **S. Rangarajan Etc. vs. P. Jagjivan Ram**<sup>16</sup>, the court ruled that the right to free speech cannot be restricted until the circumstances that led to the situation were detrimental to the community as a whole or the general welfare, and that this risk could not be imagined, remote, or implausible. The expression chosen should have a close and direct connection.

Hate speech is defined by Merriam Webster as *"a speech expressing hatred of a particular group of people."* According to Collins Dictionary, hate speech is "speech that disparages a group on the grounds of colour, race, ethnicity, nationality, religion, sex, sexual orientation, gender identity, or disability, or a person who identifies with such a group". "Hate speech" is defined by the Oxford Dictionary as *"speech or writing that attacks or threatens a particular group of people, especially based on race, religion, or sexual orientation."* It is described as *"speech that carries no meaning other than the expression of hatred for some group, such as the expression of bias against a particular race, especially in circumstances where the communication is likely to incite violence"* by Black's Law Dictionary.<sup>17</sup>

As opposed to this, the Cambridge Dictionary defines hate speech as *"public speech that expresses hate or encourages violence toward a person or group based on something such as race,*

<sup>15</sup> A.K. Gopalan v. State of Madras, AIR 1951 SC 21.

<sup>16</sup> S. Rangarajan Etc. vs. P. Jagjivan Ram, 1989 SCR (2) 204

<sup>17</sup> Indian Law Watch, Issue of Hate Speech: Law Commission Report No. 267, (20th May 2023) <https://indianlawwatch.com/issue-of-hate-speech-law-commission-report-no-267/>

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*religion, sex, or sexual orientation (the fact of being gay, etc.)*". In accordance with the United Nations Strategy and Plan of Action on Hate Speech, hate speech is "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 who they are, that is, based on their religion, ethnicity, nationality, race, color, descent, gender, or other identity factors."<sup>18</sup>

In **Arup Bhuyan v. State of Assam**<sup>19</sup>, the judiciary ruled that a person cannot be penalized for a simple conduct unless they also used violence against someone else or incited someone else to use violence.

In **Pravasi Bhalai Sangathan v. Union of India**<sup>20</sup>, the petitioners requested the court to step in and deem "hate speeches" made by elected officials, political figures, and religious leaders to be unlawful. It was directed specifically to those who had the ability to have a significant effect on society. The Supreme Court defined hate speech as an attempt to marginalize people based on their membership in a group and one that "seeks to delegitimize group members in the eyes of the majority, reducing their social standing and acceptance within society". It also observed that the Law Commission of India should examine hate speech more thoroughly and determine if it is necessary to define it. They should also make suggestions to parliament on how to empower the election commission to prevent hate speech from occurring.<sup>21</sup>

The Supreme Court ruled in **Amish Devgan v. Union of India**<sup>22</sup> that the hate speech does not have any justification or genuine goal apart from inciting hatred against a certain population.

Justice B.V. Nagarathna, in the case of **Kaushal Kishor v. State of Uttar Pradesh & Ors.**<sup>23</sup>, wrote about hate speech in her dissenting judgment. The Constitution Bench consisting of Justices

S. Abdul Nazeer, B.R. Gavai, A.S. Bopanna, V. Ramasubramanian and B.V. Nagarathna ruled on a case involving two politicians who made controversial statements that infringed on the rights of victims. A writ petition was filed against Azam Khan, Minister for Urban Development of the Government of Uttar Pradesh, for calling a rape incident, which occurred in Uttar Pradesh in 2016, a political conspiracy. The incident involved a family being attacked by robbers who also gang-raped the wife and minor daughter. Khan's statement was deemed to infringe on the right to life and personal liberty of the victims.

Out of the five major legal issues dealt with in this case, one of them was whether the other fundamental rights restrict freedom of speech and expression, or were the justifications listed in Article 19(2) the only ones for such restrictions. The Bench determined that an entire set of justifications for exercising free speech and expression is provided under Article 19(2). Hence, even when two fundamental rights compete with one another, no further limitations may be imposed.

Justice B.V. Nagarathna stated that in a democracy based on human dignity, freedom of speech must be exercised in a way that protects the rights of others. Hate speech, regardless of its content, violates human dignity, as seen in **Amish Devgan v. Union of India**<sup>24</sup>. She was worried about speech that may not lead to discrimination or marginalization, but still has negative effects on societal values. According to her, hate speech is when someone uses their freedom of speech to attack the fundamental rights of another person. The values of equality, liberty, and fraternity are important to the Constitution, and hate speech goes against these values by creating an unequal society and violating the unity of citizens from different backgrounds. It is important for society as a whole and individuals to uphold these values and prevent any speech that undermines them<sup>25</sup>.

She emphasized the importance of fraternity, which requires citizens to respect each other's dignity. Mutual respect is crucial for fraternity. She also stated that the limits of freedom of speech and expression should be evaluated based on fraternity and fundamental duties outlined in the Constitution.

<sup>18</sup> Ibid

<sup>19</sup> Arup Bhuyan v. State of Assam, 2011 3 SCC 377

<sup>20</sup> Pravasi Bhalai Sangathan v. Union of India, AIR 2014 SC 1591

<sup>21</sup> Supra n20

<sup>22</sup> Amish Devgan v. Union of India, 2021 SCC Online Del 3353

<sup>23</sup> Kaushal Kishor v. State of Uttar Pradesh & Ors., WRIT PETITION (CRL.) NO. 113 OF 2016

<sup>24</sup> Ibid

<sup>25</sup> Supra n23

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She further stated that public officials and other influential people have a responsibility to be more careful and considerate with their speech, as their words can have a significant impact on the public:

***“It is a no brainer that the right to freedom speech and expression, in a human-rights based democracy does not protect statements made by a citizen, which strike at the dignity of a fellow citizen.”<sup>26</sup>***

They should be aware of the example they are setting and the potential consequences of their words. She parted with the suggestions that Parliament should consider enacting a law or code to prevent disparaging remarks against fellow citizens and that political parties should regulate their members' speech and actions.

### 11.2. The 267th Law Commission Report

This report cited various legislations around hate speech and examined this issue. Relying on **Ramji Lal Modi v. State of Uttar Pradesh**<sup>27</sup>, it noted that not all acts of insult or attempts to “insult the religion or the religious beliefs of a class of citizens” are punishable under Section 295A of the IPC; rather, only those acts of insult or attempts that are committed with the purposeful and malicious intent of upsetting the religious sentiments of that class are punished. Additionally, it was noted that “maintenance of public order” is only one aspect of the phrase “in the interest of public order,” which is used in article 19(2). Thus, if an act is restricted “in the interest of public order,” it will be considered acceptable even if it does not really create a breach of the peace.

The Report stated that freedom of speech has historically been regarded as the foundation of all democracies. The liberal concept served as a check on the state's undemocratic authority. One of the basic freedoms that was included in the Bill of Human Rights was the freedom of speech. The higher significance placed on expression in the hierarchy of freedoms indicates why legislators and the judiciary are hesitant to make a few exceptions that might weaken the essence of this liberty. Maybe this explains why it has been difficult to define hate

speech.

Then it discusses three criteria that courts have used to determine whether a speech qualifies as hate speech. When it is proven that there has been a restriction on the right to free speech, the courts use a three-part approach to assess whether the restriction is legitimate - Whether laws permit the restriction, If the restriction is in line with the justifiable goal being pursued and if such restriction is required in a democracy.

Regarding hate speech and the internet, the Report states that when determining whether or not a speech is permissible, the expression's substance and background are crucial factors to consider. The court considers several factors, including the nature of the remarks, their dissemination and potential impact, the status of the person being targeted, the status of the author of the remarks, the nature and severity of the penalty imposed (to assess the proportionality of the interference), etc.<sup>28</sup>

With respect to a speech being counted as a hate speech, it talked about the “clear and present danger test” which was redeveloped in **Schenck v. United States**<sup>29</sup>. The Court stated that, unless such expression is intended to inspire or create an anticipated illegal action as well as has the potential to encourage or trigger this kind of conduct, a State cannot prohibit advocacy of the application of force or of breaching the law.

It says that the Indian law is currently considering measures like prior restraint or punishment for hate speech. The following non-legal approaches to combat hate speech are also discussed.

- Well-known television series that gently and successfully encourage peace between hostile groups
- proactive measures (particularly in the area of social media networking) to control the transmission of hate speech and mob mobilization.
- the participation of religious leaders to foster compassion throughout religious lines to lessen inter-religious animosity.

<sup>26</sup> Supra n23

<sup>27</sup> Ramji Lal Modi v. State of Uttar Pradesh, 1957 AIR 620 1957 SCR 860

<sup>28</sup> The 267th Law Commission Report, <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081654-1.pdf>

<sup>29</sup> Schenck v. United States, 249 U.S. 47 (1919)

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- Convincing those who are the most vulnerable component to stop distributing false information.

This Report also led to amendments to the Indian Penal Code of 1860 as well as The Code of Criminal Procedure of 1973, via The Criminal Law (Amendment) Act, 2017.

### 11.3. Parameters Of Hate Speech

Not every one of speeches fit the definition of hate speech. Only some speeches are considered to have been hateful in substance. Someone may differentiate between words, debate, campaigning, and provocation using specific criteria. In the case of *Shreya Singhal v. Union of India*, the Supreme Court distinguished between three types of speech: debate, advocacy, and provocation. The Court ruled that a speech can only be restricted based on the exceptions listed in Article 19(2) when it crosses the incitement level. According to Article 19(1) (a), all other forms of speech must be protected, even if they are offensive or unpopular. The key to establishing whether a restriction on free speech is legal is whether it incited the speech in question.

- **Aggressive speech:** If a speech is derogatory and exhibits strong emotion, it may be categorized as hate speech. In the case *Chaplinsky v. New Hampshire*, the US Supreme Court ruled that advocacy statements and discussions of contentious and divisive topics qualify as “low-value speech” and are therefore not protected by the Constitution.
- **Status of the author and victim of the hate speech:** The status of the author is vital to know how significant the impact it might have on the people. To ascertain whether the speech ought to be restrained, it is additionally critical to consider the position of the intended audience. For a politician, there is a greater range of appropriate criticism than there is for an individual.
- **Racial and religious discrimination:** One of the criteria used to assess the extreme nature of speech in a society that is multi-cultural is the practice of racial and religious discrimination.
- **Impact:** Another crucial factor is the pro-

spective impact of the speech and its power to influence the public’s views. The Supreme Court considered the legality of the ban by considering how the movie would affect the viewing public in *Ramesh v. Union of India*.

- **Context:** Not all speech can be considered as hate speech. The appropriateness of the speech is determined by its context.

## 12. CONCLUSION AND SUGGESTIONS

It is important to strike a balance between addressing hate speech and safeguarding the principles of freedom of speech. The restrictions on hate speech must be carefully defined and implemented to prevent the abuse of power and to ensure that legitimate expressions of opinions or criticism are not curtailed. The interpretation of hate speech laws by the judiciary plays a crucial role in maintaining this delicate balance. Courts consider factors such as the intent, context, potential harm, and likelihood of incitement when determining the legality of speech. Judicial scrutiny ensures that restrictions on hate speech are proportionate, reasonable, and consistent with the principles of freedom of speech. Addressing the evolution of online hate speech in India requires a multi-pronged approach. Now and then the absence of a definition regarding ‘hate speech’ is being felt. The Legislators should formulate a legislation or a code of conduct to define, limit and control the spread of hate speech. People could be reprimanded with respect to their first offence; however, it could also range from reprimand to punishment consisting of imprisonment and fine depending on the severity of the offence. Punishment consisting of imprisonment and fines must be fixed for repeated offences. Filters should be set in the social media which could identify a certain term or phrase as ‘incitement’ and remove it, thereby maintaining it as a safe space. Efforts should focus on raising awareness about responsible online behaviour, promoting media literacy and critical thinking, enhancing digital literacy, fostering inclusive and respectful online communities, and holding platforms accountable for monitoring and addressing hate speech. Collaboration among government, civil society organizations, technology companies, and individuals is crucial to mitigate the negative impact of online hate speech and create a safer and more

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inclusive digital space. Although liberty has the same logical interpretation as being set free from all restraints, it has a different legal connotation. Everyone must live with all the legitimate constraints that come with freedom.

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