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Hate speech regulation in India: A constitutional dilemma between free speech and public order

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Abstract

The regulation of hate speech in India presents one of the most pressing constitutional dilemmas in the modern era. The Indian Constitution guarantees freedom of speech and expression under Article 19(1)(a), yet subjects this right to reasonable restrictions under Article 19(2). In practice, the thin line between permissible criticism and punishable incitement has become increasingly blurred. This paper offers a doctrinal and comparative analysis of hate speech regulation in India, situating it in constitutional theory, judicial interpretation, statutory mechanisms, and international practices. Drawing on landmark cases such as *Ram Manohar Lohia*, *Pravasi Bhalai Sangathan*, *Shreya Singhal*, and *Amish Devgan*, this paper argues that current legal provisions are both overbroad and under-inclusive. While they provide scope for misuse, they often fail to address emerging challenges posed by digital platforms. The paper concludes with detailed recommendations for legislative clarity, procedural safeguards, independent oversight mechanisms, and public education measures, aiming to harmonize free speech with communal harmony and equality.

Keywords: Hate speech, freedom of speech, article 19, public order, constitution of India, judicial interpretation, comparative law

1. Introduction

Speech is the lifeblood of democracy, but speech that incites hatred against communities threatens the very foundation of a plural society. India's constitutional order, forged in the crucible of partition violence, sought to balance liberty with social order. While Article 19(1)(a) enshrines free expression, Article 19(2) enables restrictions to prevent harm to public order, morality, and the rights of others.

The dilemma is acute in India's contemporary landscape, where communal polarization and digital platforms have amplified the reach and impact of hate speech. Hate speech laws are frequently invoked in criminal complaints, but their vagueness and inconsistent enforcement raise concerns about misuse and chilling effects on dissent.

This paper explores the jurisprudential and doctrinal challenges in regulating hate speech in India. It examines how courts have struggled to balance liberty and order, reviews statutory provisions, and situates India's approach within global frameworks.

2. Literature Review

Legal scholars in India and abroad have long debated hate speech regulation. Rajeev Dhavan argues that free speech must be contextualized within India's socio-political realities, where dignity and equality are equally significant constitutional values. Gautam Bhatia emphasizes the importance of proportionality in restrictions, warning against vague standards that silence legitimate dissent.

The Law Commission of India's 267th Report highlighted that the Indian Penal Code provisions are insufficient to tackle contemporary manifestations of hate speech, particularly in digital spaces. The report recommended new provisions with clearer definitions. Yet, critics fear that new laws might be weaponized by the state.

International scholarship, especially by Jeremy Waldron, underscores that hate speech erodes dignity and undermines equal citizenship, justifying regulation. In contrast, the U.S. free speech tradition, based on John Stuart Mill's marketplace of ideas theory, tolerates even offensive speech unless it incites imminent lawless action.

3. Theoretical Framework

Two competing philosophies dominate the discourse:

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1. **Marketplace of Ideas / Millian Harm Principle:** Free speech should be maximized, restricted only when there is direct and imminent harm. This underpins U.S. jurisprudence.
2. **Dignity and Equality Paradigm:** Speech that dehumanizes groups undermines their democratic participation and thus justifies regulation, even if immediate violence does not occur. This approach resonates with European jurisprudence and India's emphasis on dignity under Article 21.

This paper adopts a middle path: hate speech regulation must target only those expressions that (a) target protected groups, (b) are made with intent or reckless disregard, and (c) have a proximate causal link to serious harm.

4. Research Objectives, Questions & Hypothesis Objectives

- To analyze the constitutional and statutory framework of hate speech in India.
- To evaluate judicial approaches and doctrinal inconsistencies.
- To examine comparative perspectives.
- To propose reforms for clarity and balance.

Research Questions

- How has Indian constitutional law defined and regulated hate speech?
- Are existing laws sufficient and consistent with constitutional guarantees?
- What reforms are necessary for a balanced framework?

Hypothesis

Indian hate speech laws are vague and inconsistently applied, risking misuse against dissent. A rights-based framework with precise definitions and safeguards can reconcile free speech with communal harmony.

5. Research Methodology

This study adopts a doctrinal legal research methodology, analyzing primary sources (Constitution, IPC, IT Act, Supreme Court judgments) and secondary sources (scholarly commentaries, Law Commission reports). Comparative methods examine Germany's NetzDG, UK's hate speech laws, and U.S. First Amendment jurisprudence.

6. Constitutional and Statutory Framework in India

- **Article 19(1)(a):** Freedom of speech and expression.
- **Article 19(2):** Reasonable restrictions on grounds including public order, decency, morality, defamation, and incitement.
- Statutory provisions include:
 - **IPC § 153A:** Promoting enmity between groups.
 - **IPC § 295A:** Deliberate acts to outrage religious feelings.
 - **IPC §§ 504-505:** Provocation and public mischief.
 - **IT Act & Rules:** Regulate online platforms; 2021 Rules impose liability for takedown of unlawful content.

7. Judicial Approach to Hate Speech

- **Ram Manohar Lohia v. State of Bihar (1966):** Introduced the "proximity test" between speech and disorder.
- **Pravasi Bhalai Sangathan v. Union of India (2014):**

Recognized harms of hate speech, urged institutional action.

- **Shreya Singhal v. Union of India (2015):** Struck down § 66A IT Act for vagueness; emphasized precision in laws.
- **Amish Devgan v. Union of India (2020):** Clarified hate speech is not protected if it undermines dignity or incites hostility.
- **Recent orders (2024-25):** Courts stressed accountability of officials in preventing hate speech during communal tensions.

8. Comparative Perspectives

- **Germany (NetzDG, 2017):** Requires platforms to remove manifestly illegal content within 24 hours. Critics fear over-removal.
- **UK (Racial and Religious Hatred Act, 2006):** Criminalizes stirring up hatred with intent safeguards.
- **U.S. (Brandenburg v. Ohio, 1969):** Protects hate speech unless it incites imminent lawless action.

9. Challenges in Regulating Hate Speech in India

1. Vague and broad statutory provisions.
2. Political misuse against journalists and dissenters.
3. Over-censorship by intermediaries due to liability fears.
4. Evidentiary challenges in proving intent and causation.
5. Algorithmic amplification of hate speech online.

10. Findings

India's hate speech framework is fragmented and inconsistently enforced.

Judicial decisions stress precision, proportionality, and context.

Comparative lessons show that India must avoid extremes of over-regulation (Germany) and laissez-faire (U.S.).

11. Recommendations

1. **Statutory Clarity:** Define hate speech narrowly (intent + proximate harm).
2. **Procedural Safeguards:** Judicial oversight for arrests and takedowns.
3. **Platform Due Process:** Mandate reasoned removal, appeal rights, and transparency reports.
4. **Institutional Oversight:** Establish an independent Hate Speech Commission.
5. **Public Education:** Promote counter-speech and digital literacy campaigns.
6. **Electoral Safeguards:** Strengthen Election Commission monitoring of hate speech during campaigns.

12. Conclusion

Hate speech regulation in India embodies the tension between liberty and order. Courts have emphasized the need for clarity, context, and proportionality. A hybrid approach — precise statutory definition, judicial oversight, and social responsibility is essential to preserve India's plural democracy.

13. Limitations & Scope for Future Research

- This study is doctrinal; empirical data on enforcement patterns could add depth.
- Future research may examine algorithmic amplification of hate speech.
- Comparative studies on electoral speech regulation merit further attention.

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