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BALANCING FREE SPEECH AND HATE: THE NEED FOR A CLEARER HATE SPEECH LAW IN INDIA

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1. Introduction

In India's dynamic democratic setup, the freedom of speech guaranteed under Article 19(1)(a) of the Constitution plays a crucial role in promoting public debate, dissent, and creative expression. However, this right is not without boundaries. Article 19(2) permits the state to impose reasonable restrictions, particularly in the interest of maintaining public order—a provision that is increasingly invoked to limit speech considered offensive. In recent years, the rise in hate speech, especially on digital platforms, has deepened the conflict between protecting free expression and ensuring communal harmony.

Hate speech now encompasses not just blatant calls for violence but also more insidious forms of discrimination, often aimed at individuals based on religion, caste, gender, or political beliefs. Episodes such as the 2020 Delhi riots and the continuous stream of online harassment highlight the serious societal damage that such speech can inflict.

Despite this growing menace, India lacks a clear and unified legal definition of hate speech. Provisions in the Indian Penal Code that deal with the issue are often ambiguous, unevenly enforced, and susceptible to misuse. This leads to situations where legitimate dissent is suppressed, while genuinely harmful rhetoric escapes scrutiny. Such legal uncertainty places an undue burden on the judiciary and undermines the principle of the rule of law. The absence of a consistent legal framework makes it even more difficult to strike a fair balance between upholding freedom of speech and protecting societal peace.

This article takes a critical look at India's current legal mechanisms addressing hate speech, evaluates key judicial responses, examines best practices from other democratic countries, and puts forward recommendations for a constitutionally grounded, transparent legal

framework that effectively counters hate speech while upholding democratic principles and safeguarding vulnerable groups.

What Constitutes Hate Speech?

Hate speech is a term that's widely used in public, political, and legal discussions—but in India, it remains without a precise legal definition. This lack of clarity makes it difficult to regulate and enforce consistently. A pressing dilemma is whether hate speech should be seen as merely offensive expression, or only when it crosses into the territory of inciting discrimination, violence, or hostility.

Internationally, institutions like the United Nations define hate speech broadly, including any form of communication—verbal, written, or symbolic—that targets individuals or groups based on identity markers such as religion, ethnicity, gender, or nationality. The Council of Europe similarly categorizes it as expression that provokes or justifies racial or other forms of hatred. These global standards emphasize that context, intent, and impact are essential to differentiating hate speech from permissible free speech.

In India, there is no dedicated law that defines hate speech. Existing provisions under the

Bhartiya Nyaya Sanhita 2023 such as Sections 196, 299, and 353/ Indian Penal Code—such as Sections 153A, 295A, and 505—criminalize certain kinds of provocative or offensive speech, particularly when it fosters enmity between communities or insults religious sentiments. However, these laws don't offer a comprehensive or coherent definition, leading to inconsistent application, often influenced by prevailing political or social pressures.

The Law Commission of India attempted to bridge this gap in its 267th Report (2017), recommending the insertion of new legal sections—153C and 505A—to specifically address hate speech. These proposed additions focused on speech that could potentially incite violence or hatred. Despite the detailed recommendations, no legislative action has followed to date.

In the absence of clear statutory language, Indian courts have had to step in. In *Pravasi Bhalai Sangathan v. Union of India*, the Supreme Court highlighted the dangers posed by hate speech and underscored the need for legal reform, but refrained from drafting laws itself, leaving the responsibility with Parliament. Similarly, in the landmark *Shreya Singhal v. Union of India* case, the Court established an important distinction between advocacy and incitement—stating that only the latter justifies legal limitations on speech.

One of the most complex challenges remains the blurry line between offensive speech and hate speech. In a country as socially and culturally diverse as India, critical commentary or satire is sometimes misread as hate speech, and occasionally weaponized to stifle dissenting voices. A well-crafted legal definition, therefore, needs to walk the fine line between protecting individuals from harm and safeguarding the democratic right to free expression.

Crucially, both the intention behind a statement and its societal impact must be taken into account. While malicious speech should certainly be penalized, even speech without

harmful intent can have damaging consequences if it spreads widely and fosters animosity. In the age of viral content and digital media, any meaningful regulation of hate speech must assess not just what is said and why, but also how far it travels, whom it reaches, and the effect it ultimately has on public order and social harmony.

Existing Legal Framework on Hate Speech in India

India guarantees the right to freedom of speech and expression under Article 19(1)(a) of the Constitution. However, this right is not absolute and is subject to reasonable restrictions under Article 19(2), especially concerning public order, morality, decency, and incitement to offences—areas closely linked to hate speech. Despite these constitutional safeguards, India lacks a specific, comprehensive law to define and regulate hate speech. Instead, a fragmented legal framework exists, spread across various statutes such as the Indian Penal Code (IPC), Representation of the People Act (RPA), and Information Technology (IT) laws.

- The BNS/IPC includes several sections used in hate speech cases, such as Section 196 B.N.S. / Section 153A IPC (promoting enmity), Section 299 B.N.S./ Section 295A IPC (insulting religious beliefs), Section 302 B.N.S./ Section 298 IPC (hurting religious sentiments), and Sections 353(1)(b) B.N.S./ Sections 505(1)(b) IPC and Section 353(2) B.N.S. / 505(2) IPC (statements causing public mischief). However, these provisions are vague and open to broad interpretation. Terms like “outrage religious feelings” or “promoting enmity” are not clearly defined, leading to both misuse—against dissenting voices like comedians and journalists—and under-enforcement in genuine cases involving inflammatory speech.
- The Representation of the People Act, 1951, attempts to regulate hate speech during elections. Section 123(3) deems

appeals based on religion, caste, or community as corrupt practices, while Section 125 criminalizes enmity-promoting speech during campaigns. Despite this, political leaders often indulge in divisive rhetoric with minimal consequences, as enforcement remains weak and symbolic.

- In the digital sphere, the IT Act and the 2021 IT Rules seek to curb online hate speech. While intermediaries like social media platforms are mandated to take down unlawful content and ensure traceability, these rules have been criticized for being overly broad, lacking transparency, and potentially threatening free expression. The 2015 Supreme Court verdict in *Shreya Singhal v. Union of India* struck down Section 66A of the IT Act for being unconstitutional, highlighting the challenge of balancing speech regulation and freedom.
- Efforts like the Law Commission's 267th Report proposed new IPC sections (153C and 505A) to address hate speech more effectively, focusing on intent and context. However, these recommendations remain unimplemented. Overall, India's legal approach to hate speech suffers from vague definitions, selective enforcement, and a lack of cohesive national strategy—leaving space for both suppression of free speech and unchecked propagation of hate.

4. Judicial Interpretations and Landmark Cases

Indian courts have played a crucial role in interpreting laws related to hate speech, balancing the right to freedom of speech under **Article 19(1)(a)** with reasonable restrictions under **Article 19(2)**. The judiciary has faced challenges due to the absence of clear statutory definitions, often leading to context-specific and sometimes inconsistent judgments.

Key Cases on Hate Speech:

1. **Shreya Singhal v. Union of India (2015):** The Supreme Court struck down Section 66A of the Information Technology Act, ruling that vague terms like "grossly offensive" lacked clarity. It emphasized that only speech inciting violence or disorder could be restricted, reinforcing that mere offensiveness doesn't qualify as hate speech.
2. **Pravasi Bhalai Sangathan v. Union of India (2014):** The Court recognized the threat posed by hate speech but declined to create new laws, stressing that legislation should come from Parliament. It encouraged self-regulation in media and political responsibility.
3. **Amish Devgan v. Union of India (2020):** The Court upheld that even indirect speech could qualify as hate speech if it incited hatred. It focused on context, intent, and the identity of the speaker in determining hate speech.
4. **Tehseen Poonawalla v. Union of India (2018):** In response to rising hate-fueled violence, the Court issued guidelines to curb lynching and hate crimes, highlighting the need for quick action to prevent unrest.

Challenges:

Courts have identified issues like vague laws, delayed police action, and the absence of proactive legislation. A standardized judicial test, based on content, intent, context, and impact, is necessary for clearer, fairer determinations of hate speech. The Law Commission's recommendation for new penal provisions to address these gaps is still pending.

5. The Role of the Judiciary in Shaping the Hate Speech Debate in India

The Indian judiciary has played a critical role in navigating the complex balance between the constitutional right to free speech and the need

to regulate hate speech for maintaining public order. Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, but this right is not absolute. Under Article 19(2), the State can impose reasonable restrictions in the interest of sovereignty, security, morality, and public order. The courts have consistently interpreted these provisions to define the limits of free expression, especially in the context of hate speech.

Over the years, several landmark cases have helped shape India's legal stance on hate speech. These judicial pronouncements demonstrate how courts have responded to evolving social and political contexts while balancing fundamental rights with collective harmony.

One of the earliest cases, **K.K. Verma v. Union of India (1954)**, upheld Section 295A of the Indian Penal Code, which penalizes deliberate insults to religious sentiments. The court ruled that speech which may provoke communal tensions or disturb public peace can be legitimately restricted. This decision laid an early foundation for regulating hate speech under criminal law.

In **Romesh Thapar v. State of Madras (1950)**, the Supreme Court asserted the primacy of free speech in a democracy. It struck down a state order that censored a journal, arguing that restrictions on speech must be precise and not vague or arbitrary. Similarly, in **Brij Bhushan v. State of Delhi (1950)**, the court ruled that censorship should not be used to suppress dissent, and any restriction must be proportionate and necessary.

A turning point came in the **Shreya Singhal v. Union of India (2015)** judgment. The Supreme Court struck down Section 66A of the IT Act for being overly broad and vague, as it allowed arbitrary arrests for online speech. The court held that while hate speech and incitement to violence can be restricted, laws must be clearly defined and constitutionally valid. This case set an important precedent for regulating digital speech without undermining free expression.

In **Tehseen Poonawalla v. Union of India (2018)**, the court addressed the rise in mob lynchings fueled by hate speech. It recognized hate speech as a serious threat to public safety and directed the government to act proactively in curbing such acts. The court emphasized the importance of swift action to prevent hate speech from escalating into violence.

The **Zakia Jafri v. State of Gujarat (2018)** case, though centered on the Gujarat riots, underlined the responsibility of the State to ensure justice when hate speech incites communal violence. The Supreme Court called for accountability for those spreading hate, reinforcing the idea that hate speech must be addressed with seriousness and urgency.

Despite these judgments, India's approach to hate speech regulation remains largely reactive. Courts often deal with cases individually, which has led to inconsistencies in interpretation. There is no comprehensive legal framework that clearly defines hate speech or outlines consistent standards for regulation, especially in the digital space.

While the judiciary has underscored the need to protect free expression, it has also acknowledged that hate speech, when unchecked, can threaten democracy and public order. However, without concrete legislative reform, judicial efforts alone cannot provide lasting solutions. The **Shreya Singhal** case, for instance, highlighted the gaps in law after striking down an unconstitutional provision, but no robust replacement law has yet been enacted.

In today's polarized and rapidly digitizing world, there is a pressing need for judicial leadership in guiding legal reforms. Clear definitions, guidelines for online platforms, and a balance between counter-speech and restrictions are essential. The judiciary must continue to play a forward-looking role—not just in resolving cases but in shaping a coherent and fair legal framework for managing hate speech in India.

6. The Need for a Clearer Legal Framework on Hate Speech in India

India is currently facing a critical juncture in balancing free speech and social harmony, especially with the growing influence of digital platforms and increasing political and social polarization. The issue of hate speech has become more urgent in this context, demanding the need for a clearer and more effective legal framework. This framework is crucial not only to protect democratic values but also to maintain social stability.

6.1 The Urgent Need for Legislative Clarity

India's existing legal provisions on hate speech are fragmented and outdated, primarily found in the Indian Penal Code (IPC), the Information Technology Act, and the Representation of the People Act. However, these laws are vague and insufficient in addressing modern hate speech, especially on digital platforms. Several factors highlight the need for reform:

1. **The Rise of Digital Platforms:** The internet, particularly social media, amplifies hate speech, enabling it to spread quickly. Current laws, designed for traditional media, are not equipped to handle the rapid spread of harmful content online.
2. **Increasing Polarization:** Political and social polarization has turned hate speech into a tool for division. A clear legal framework would help identify and penalize harmful speech, ensuring it does not stifle legitimate criticism.
3. **Inconsistent Enforcement:** Selective enforcement often leads to misuse of hate speech laws, with some individuals facing legal action while others escape scrutiny. A defined legal framework would promote consistency in enforcement across India.

6.2 Benefits of a Clearer Legal Framework

A clearer legal framework would offer several benefits:

1. **Protecting Social Harmony:** By quickly identifying and penalizing hate speech, it can prevent the escalation of social unrest and promote peaceful coexistence among diverse communities.
2. **Preventing Violence:** Hate speech often leads to violence. By regulating it effectively, the government could prevent events like mob lynching and communal riots before they escalate.
3. **Balancing Free Speech and Accountability:** The framework would ensure that free speech is protected while preventing harmful speech that incites violence and disrupts social cohesion.
4. **Preventing Misuse of Laws:** A defined framework would prevent the misuse of laws against individuals expressing controversial opinions or political dissent, thus safeguarding freedom of expression.
5. **Building Public Trust:** A transparent approach would build trust in the justice system, showing the government's commitment to both addressing harmful speech and protecting individual freedoms.
6. **International Alignment:** Aligning India's laws with international standards, such as those in Germany and the UK, would enhance India's global credibility in regulating hate speech.

6.3 Proposals for Reform

Several key reforms are necessary to create a more effective framework:

1. **Defining Hate Speech:** India should adopt a clear, comprehensive definition of hate speech that distinguishes between harmful and legitimate speech.
2. **Incorporating International Standards:** Adopting guidelines from international best practices would help ensure the

laws are both effective and contextually appropriate for India.

3. **Clarifying Online Hate Speech:** Specific laws are needed to address hate speech on digital platforms, with a hybrid model that combines self-regulation by platforms and legal accountability for harmful content.
4. **Strengthening Accountability:** Mechanisms should be in place to ensure swift action against hate speech, such as specialized hate speech courts or fast-track tribunals.
5. **Promoting Public Awareness:** Public awareness campaigns would help educate people about the impact of hate speech and promote a culture of tolerance.

6.4 Challenges to Implementing Reform

Despite the clear need for reform, there are challenges:

1. **Political Resistance:** There is fear that new laws could be misused for political purposes, particularly in a polarized environment.
2. **Balancing Free Speech and Regulation:** The challenge lies in finding the right balance between protecting free speech and regulating hate speech.
3. **Technological Complexity:** Regulating online hate speech requires dealing with global platforms and ensuring international cooperation.

In conclusion, India needs a clearer, more structured legal framework to effectively address hate speech, especially in the digital age, while maintaining the delicate balance between free speech and social harmony.

7. Conclusion and Recommendations on Regulating Hate Speech in India

India's legal framework for addressing hate speech is currently fragmented, inconsistent, and outdated. While the Constitution

guarantees freedom of speech as a fundamental right, the unchecked rise of hate speech—especially in digital spaces—poses a serious threat to public order and communal harmony. The judiciary has attempted to step in, but in the absence of a coherent legislative framework, enforcement remains uneven and often subject to political or personal bias.

This article explored the current legal stance on hate speech in India by examining existing laws, judicial pronouncements, and regulatory challenges. It emphasized the urgent need for reform, especially in the face of growing political polarization and the rapid spread of hate speech online.

Key Findings

Several critical issues were identified that point to the inadequacy of the current approach to hate speech regulation:

- **Lack of Clear Legal Definition:** Present laws do not offer a precise definition of hate speech, which leads to subjective interpretations and inconsistent enforcement.
- **Judicial Gaps:** Courts have made significant rulings, including in the *Shreya Singhal* and *Tehseen Poonawalla* cases. However, judicial intervention has largely been reactive, with the absence of proactive legislative measures putting undue burden on courts to create case-specific solutions.
- **Digital Challenges:** The internet, particularly social media, has made it easier for hate speech to spread quickly and widely. Existing laws are ill-equipped to handle the volume and speed of digital communication.
- **Enforcement Failures:** At the ground level, law enforcement often lacks the will or clarity to act uniformly. Selective enforcement and political interference further erode public trust in the law.

- **Political Polarization:** In today's charged socio-political climate, hate speech is often used as a tool for mobilization, making its regulation even more urgent and complicated.

Recommendations for Reform

To address these challenges, the article outlines a multi-pronged reform strategy:

- **Define Hate Speech Clearly:** A well-articulated legal definition is essential. It should distinguish between protected speech and harmful speech that incites violence or hatred. This definition should draw from international standards and eliminate vague terms like "grossly offensive."
- **Update Digital Laws:** India needs new laws that specifically address online hate speech. These should replace outdated provisions like Section 66A of the IT Act (struck down in *Shreya Singhal*) with clearer regulations. Social media platforms should be made accountable for moderating and reporting harmful content in a timely manner.
- **Introduce Dedicated Legislation:** A specific statute dealing with hate speech would improve clarity and enforcement. It should outline penalties and offer special protection to marginalized communities targeted by hate speech based on religion, caste, gender, or ethnicity.
- **Support Judicial Clarity:** Courts need clearer statutory guidelines to evaluate hate speech. Factors like intent, context, and impact should be considered. The establishment of a national commission on hate speech could aid judicial review and policy recommendations.
- **Balance Free Speech and Regulation:** Laws must protect genuine political speech, criticism, and satire, while clamping down on incitement. A tiered

test—discussion, advocacy, and incitement—should be adopted, as in *Shreya Singhal*, to separate protected speech from punishable content.

- **Educate the Public:** Public awareness campaigns, especially among youth and in educational institutions, should focus on responsible speech and digital literacy. Media organizations should also adopt self-regulatory practices to minimize hate speech.
- **Ensure Accountability:** Independent oversight bodies should be formed to handle complaints transparently and without political interference. These institutions must have the authority to act against offenders, regardless of their affiliations.

Final Thoughts

Hate speech regulation in India needs urgent, balanced, and forward-looking reforms. Free speech is vital to democracy, but so is the protection of public order and social unity. By creating a clear legal framework supported by education and independent oversight, India can ensure both the protection of expression and the preservation of harmony in its diverse society.