

**Ensuring Effective Enforcement of Hate Speech Regulations in India: A Study of
Constitutional Governance**

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Abstract:

Hate speech has emerged as a serious challenge to the democratic and constitutional framework of India, particularly in the digital age where information spreads rapidly. While our Indian Constitution assures freedom of speech and expression under Article 19(1)(a), it also impose some reasonable restrictions under Article 19(2) to maintain public order in the society, decency, and harmony. Even if there are legal provisions under the Bharatiya Nyaya Sanhita and other statutes, the enforcement of hate speech regulations remains inconsistent and often ineffective. The gap between the legal framework and its actual application is examined in this essay, focusing on the effect of constitutional governance in ensuring effective enforcement. It analyses key judicial pronouncements, including *Shreya Singhal vs. Union of India*, which highlight the judiciary's approach in striking a balance between required limits and free speech. The study also explores challenges such as vague legal definitions, misuse of laws for political purposes, selective enforcement, and the growing influence of social media platforms. Through a doctrinal and analytical approach, the paper argues that effective enforcement requires not only strong laws but also accountable institutions, clear guidelines, and coordinated efforts among the legislature, executive, and judiciary.

Keywords: Hate Speech, Constitutional Governance, Freedom of Speech, Reasonable Restrictions.

1. Introduction

One of the most significant liberties granted to citizens in a democratic nation like India is the freedom of speech. Our Constitution assures this right under Article 19(1)(a)¹, which allows every individual to present their thoughts, opinions, and ideas without unnecessary interference. This freedom plays an important role in shaping public opinion, encouraging debate, and strengthening democracy. But this freedom isn't unqualified. The Constitution itself recognizes that unrestricted speech can sometimes harm society. Therefore, reasonable restrictions are given under Article 19(2)², which allow limiting speech in the interest of public order, morality, decency, and national security. This balance between freedom and restriction becomes especially important when dealing with hate speech.

In recent years, hate speech has become a growing concern in India. Words may now spread more quickly than ever before and reach a broad audience in a matter of seconds thanks to the growth of social media and digital communication platforms. While this has many benefits, it also increases the risk of misuse. Statements that promote hatred, violence, or discrimination against individuals or communities based on their caste, gender, religion or ethnicity can create serious social tensions³.

The problem is not only the existence of hate speech, but also the difficulty in controlling and regulating it effectively. India has laws such as provisions under the Bharatiya Nyaya Sanhita, 2023, which aim to punish acts that disturb communal harmony or incite hatred⁴. However, despite these laws, enforcement remains inconsistent. Sometimes, authorities act too slowly, and in other cases, laws may be misused for political or personal reasons.

The judiciary has also played an important role in addressing this issue. In cases like *Shreya Singhal v. Union of India*, The Supreme Court highlighted the significance of protecting free speech while also ensuring that harmful speech does not go unchecked. Such judgments highlight the ongoing struggle to strike the right balance between liberty and control.

¹ INDIA CONST. art. 19, cl. (1)(a)

² INDIA CONST. art. 19, cl. (2)

³ Law Commission of India, Report No. 267 on Hate Speech (2017)

⁴ Bharatiya Nyaya Sanhita, 2023, Sections 196, 299, 353

This paper focuses on understanding how hate speech laws are enforced in India and whether constitutional governance is effective in dealing with this challenge. It focuses on to examine the gap between the legal provisions and actual implementation. It also explores how institutions like the legislature, executive, and judiciary can work together to ensure that laws are applied fairly and effectively.

In simple terms, the core issue is this: how can India safeguard the freedom of expression while also prohibiting harmful speech others and disturbs social harmony? Finding the answer to this question is essential for maintaining both democracy and peace in society.

2. Concept of Hate Speech

Hate speech is a term that is widely used, but not always clearly understood. In simple words, hate speech refers to any form of expression spoken, written, or symbolic—that spreads hatred, discrimination, or violence against a person or a group of people⁵. This hatred is usually based on characteristics such as religion, caste, race, gender, language, or nationality⁶.

Unlike ordinary speech, hate speech not only express an opinion; it often aims to hurt, insult, or provoke others⁷. It can create fear among targeted communities and disturb social harmony. For example, speeches that encourage violence against a particular religious group or messages that insult a community's identity can be considered hate speech.

One of the most difficult things to comprehend hate speech is distinguishing it from free speech. In a democracy, people are having the right to specify their opinions, even if those views are unpopular or critical⁸. However, this right does not include the freedom to spread hatred or incite violence. The line between these two can sometimes be very thin and difficult to identify.

Another important aspect of hate speech is its impact. Words have power, and when used irresponsibly, they can lead to serious consequences. Hate speech can promote discrimination, increase social divisions, and even lead to violence or riots⁹. In a diverse country like India,

⁵ United Nations Strategy and Plan of Action on Hate Speech (2019)

⁶ Kumar, R., *et al.* (2022). The dark side of free speech: Hate speech in India. *NeuroQuantology*, 20(12), 4152–4161. <https://doi.org/10.48047/NQ.2022.20.12.NQ77742>

⁷ Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press, 2012)

⁸ Constitution of India, art. 19(1)(a)

⁹ Law Commission of India, Report No. 267 on Hate Speech (2017)

where people from different religions, cultures, and backgrounds live together, such speech can be particularly dangerous¹⁰.

At present, Indian law does not provide What is hate speech? Instead, different laws address different forms of harmful speech. For example, provisions under the Bharatiya Nyaya Sanhita deal with actions that incite animosity between communities or disparage religious convictions. While these laws are helpful, the lack of a clear and uniform definition often creates confusion and inconsistency in enforcement.

Internationally, there have been efforts to define and regulate hate speech more clearly. Many countries and organizations recognize that while freedom of expression is important, it must be limited when it endangers people's rights and dignity of others¹¹. This idea reflects a broader principle: one person's freedom should not harm another person's safety or respect.

In the current digital era, the nature of hate speech has also changed. Social media platforms allow users to share messages instantly with a wide audience. This makes it easier for hate speech to spread quickly and widely. Concurrently, it becomes more difficult for authorities to monitor and control such content. This has made the problem more complicated.

3. India's Constitutional Structure and Laws Regarding Hate Speech

India's approach to this concept is deeply rooted in its constitutional values, which focuses on to balance personal freedom with social harmony. Our Constitution ensures the right to freedom of speech and free expression under Article 19(1)(a)¹². This right allows every citizen to express their ideas, opinions, and beliefs freely. It is considered essential for the functioning of democracy, as it encourages open discussion, criticism, and the exchange of ideas.

However, this liberty is not unlimited. The Constitution itself places certain boundaries through Article 19(2)¹³. These limitations give the state the power to regulate speech where it could endanger morality, decency, public order, or the nation's sovereignty and integrity. In simple

¹⁰ Kumar, R. (2026). *Unravelling the dynamics of hate speech and crime: Causes, impacts, and mitigation approaches*. *Interdisciplinary Journal for Analysis in Education, Science, Commerce, Management & Law*, 2(2), 1–XX. <https://ijaescml.org>

¹¹ United Nations Human Rights Council, Rabat Plan of Action (2012)

¹² Constitution of India, art. 19(1)(a)

¹³ Constitution of India, art. 19(2)

terms, while people are free to speak, they cannot use this freedom to spread hatred, incite violence, or disturb peace in society. This balance between rights and restrictions reflects the idea of constitutional governance¹⁴. It implies that the Constitution must serve as the foundation for all state operations, guaranteeing justice, accountability, and the rule of law. In the context of hate speech, constitutional governance plays an important role in making sure that laws are not only present but also applied properly. It ensures that authorities do not misuse laws to suppress genuine criticism, while also taking strict action against speech that threatens social harmony.

To deal with hate speech, India has several legal provisions, particularly in relation to the Bharatiya Nyaya Sanhita. Acts that foster animosity between various groups are penalized under Section 196 for reasons like as religion, race, or language¹⁵. Section 299 deals with deliberate and malicious acts intended to insult religious beliefs¹⁶. Section 353 addresses statements that may create public mischief or incite violence¹⁷. These provisions aim to maintain communal harmony and prevent conflicts arising from hateful expressions.

In addition to traditional laws, the digital era has required new legal mechanisms. The Information Technology Act, 2000 plays an important role in regulating online content¹⁸. It provides a framework to address harmful or offensive material shared through electronic platforms. However, enforcing these provisions effectively remains a challenge due to the vast and fast-moving nature of online communication.

Another important area where hate speech is closely monitored is during elections. Election laws, along with the Election Commission of India's Model Code of Conduct forbid political parties and candidates from employing hate speech to gain votes¹⁹. Speeches that target specific communities or promote division are strictly restricted, as they can influence voters and disturb public peace. The Commission has the authority to prohibit campaigning, issue notices, and prosecute offenders.

4. Judicial Approach and Landmark Cases

¹⁴ M.P. Jain, Indian Constitutional Law (LexisNexis, 8th edn., 2018)

¹⁵ Bharatiya Nyaya Sanhita, 2023, Section 196

¹⁶ Bharatiya Nyaya Sanhita, 2023, Section 299

¹⁷ Bharatiya Nyaya Sanhita, 2023, Section 353

¹⁸ Information Technology Act, 2000, Section 69A

¹⁹ Election Commission of India, Model Code of Conduct for the Guidance of Political Parties and Candidates

The Indian judiciary has had a significant impact on how hate speech is understood and regulated. Given that Indian law lacks a precise definition of hate speech, courts have stepped in to interpret its meaning and set limits on free speech²⁰. The Supreme Court invalidated Section 66A of the IT Act in *Shreya Singhal v. Union of India* stating that vague laws can restrict genuine free speech²¹. The Court made an important distinction between “discussion,” “advocacy,” and “incitement,” holding that only speech that incites harm should be restricted.

The Court acknowledged the growing issue of hate speech in *Pravasi Bhalai Sangathan v. Union of India*, but declared that current legislation were adequate if they were put into practice properly²². It emphasized the responsibility of authorities to act effectively rather than demanding new laws.

In a similar vein, the Court considered what defines hate speech in *Amish Devgan v. Union of India* and noted that speech which targets a community’s dignity or promotes hatred can be restricted²³. The judgment helped clarify that intent, impact, and context are important in identifying hate speech.

Overall, the judiciary acts as a guardian of the Constitution²⁴. It ensures that freedom of speech is protected while also preventing its misuse. Through its interpretations, the Court has tried to maintain a balance between individual liberty and social harmony.

5. Challenges in Enforcement

Despite having laws and judicial guidelines, the enforcement of hate speech regulations in India faces several challenges. One major issue is the lack of a clear and uniform definition of hate speech²⁵. This creates confusion and leads to inconsistent interpretation by authorities. Misuse of the law for private or political gain is another issue, where actions are sometimes taken selectively against certain individuals while others are ignored.

²⁰ Law Commission of India, Report No. 267 on Hate Speech (2017)

²¹ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

²² *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477

²³ *Amish Devgan v. Union of India*, (2020) 4 SCC 1

²⁴ Constitution of India

²⁵ Law Commission of India, Report No. 267 on Hate Speech (2017)

Selective enforcement by authorities further weakens the effectiveness of these laws²⁶. In many cases, action depends on political pressure or public attention rather than legal merit. Furthermore, the growth of social media and digital platforms has facilitated the quick and widespread dissemination of hate speech. Monitoring such content is difficult, and often harmful messages circulate before any action can be taken.

Delay in judicial processes is another significant challenge. Cases related to hate speech often take a long time to be resolved, reducing the impact of legal action²⁷. By the time a decision is made, the damage may already have been done. These challenges show that having laws is not enough; effective implementation, clear guidelines, and institutional accountability are equally important.

6. Role of Constitutional Governance

In essence, constitutional governance means that the government's actions must follow the rules, ideals, and guidelines specified in the Constitution. It ensures that power is not used arbitrarily and that the rights of citizens are protected at all times. Constitutional governance is crucial in preserving a balance between defending freedom of expression and prohibiting speech that could undermine social peace when it comes to hate speech.

The Constitution is not only a legal document; it shows the ideals of justice, equality, and dignity²⁸. When it comes to hate speech, constitutional governance ensures that these ideals are respected. It shields people from prejudice and animosity while also preventing the abuse of free expression. In simple terms, it acts as a guiding framework that tells the State how to act fairly and responsibly.

Different institutions play key roles in ensuring constitutional governance. The judiciary acts as the guardian of the Constitution²⁹. It interprets laws and ensures that they do not violate fundamental rights. Through various judgments, courts have clarified the limits of free speech

²⁶ Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (Oxford University Press, 2016)

²⁷ Marc Galanter & Jayanth K. Krishnan, "Bread for the Poor: Access to Justice and the Rights of the Needy in India" (2004) 55 Hastings L.J. 789

²⁸ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966)

²⁹ M.P. Jain, *Indian Constitutional Law* (LexisNexis, 8th edn., 2018)

and have tried to define what constitutes hate speech. The judiciary also ensures that any restriction on speech is reasonable and not excessive.

The legislature is responsible for making laws. It has the duty to create clear, precise, and effective laws to deal with hate speech. However, the lack of a single, all-encompassing rule that defines hate speech is one of the problems in India. This makes applying the law consistently challenging. Therefore, the legislature must work towards creating clearer guidelines and updating existing laws to address modern challenges, especially those arising from digital platforms.

The executive, which includes the police and administrative authorities, is responsible for implementing these laws³⁰. Its role is crucial because even the best laws are ineffective if they are not properly enforced. The executive must act impartially and promptly in cases of hate speech. It should not be influenced by political or social pressure. Proper training and awareness among officials can help improve enforcement.

Another important aspect of constitutional governance is the rule of law³¹. According to this idea, no one is above the law and everyone is equal before it. Regarding hate speech, the rule of law ensures that action is taken based on legal principles rather than personal or political bias. It also builds trust among citizens that justice will be delivered fairly³².

Accountability is equally important. Institutions must be answerable for their actions. There should be procedures in place to hold authorities responsible if they disregard laws against hate speech. This can be achieved through judicial review, transparency, and public awareness³³.

7. Comparative Analysis

Understanding how other countries deal with hate speech can provide useful lessons for India. Different countries follow different approaches depending on their history, culture, and legal systems.³⁴

³⁰ Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982)

³¹ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 10th edn., 1959)

³² A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 10th edn., 1959)

³³ M.P. Jain, *Indian Constitutional Law* (LexisNexis, 8th edn., 2018)

³⁴ Michel Rosenfeld, "Hate Speech in Constitutional Jurisprudence: A Comparative Analysis" (2001) 24 *Cardozo L. Rev.* 1523

For example, the United States has very strong protection for free speech. Under its Constitution, even offensive or controversial speech is often protected unless it directly incites violence³⁵. The focus is more on protecting individual liberty, even at the cost of allowing some harmful expressions. This approach emphasizes the idea that open debate is essential for democracy.

On the other hand, Germany follows a stricter approach towards hate speech. Due to its historical experiences, especially during the Nazi era, Germany has strong laws that prohibit speech promoting hatred, discrimination, or denial of historical atrocities like the Holocaust³⁶. The government actively regulates such speech to prevent social harm and protect human dignity.

These two approaches show different ways of balancing free speech and social protection. The United States prioritizes freedom, while Germany focuses more on preventing harm³⁷. For India, a balanced approach is necessary. India is a diverse country with multiple religions, languages, and cultures. Therefore, unrestricted speech like in the United States may create social tensions, while overly strict laws may suppress genuine expression.

India can learn several lessons from these countries. First to prevent confusion, laws must be specific and unambiguous, like in Germany. Second, free expression needs to be strongly protected, as seen in the United States, to ensure that democratic values are not compromised. Finally, effective enforcement and public awareness are essential to make any legal framework successful.

In conclusion, constitutional governance provides the foundation for dealing with hate speech in a fair and balanced manner. By learning from global practices and strengthening its own institutions, India can better protect both freedom of expression and social harmony.

8. Conclusion

This study shows that although India has a robust legal and constitutional framework to combat hate speech, there are major gaps in its implementation. The harmony between reasonable limitations under Article 19(2) and freedom of speech under Article 19(1)(a) remains a complex but essential aspect of constitutional governance. Maintaining this balance is important for

³⁵ U.S. Constitution, amend. I; *Brandenburg v. Ohio*, 395 U.S. 444 (1969)

³⁶ German Criminal Code (Strafgesetzbuch), Section 130 (Incitement to Hatred)

³⁷ Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press, 2012)

protecting both individual liberty and social harmony. Unrestricted speech can lead to division and conflict, while excessive restrictions can harm democracy. Therefore, a careful and balanced approach is necessary.

In strengthening constitutional governance is the key to addressing hate speech effectively. This requires clear laws, responsible institutions, and active participation from society. By working together, India can guarantee the preservation of freedom of expression while simultaneously safeguarding the dignity and solidarity of its citizens.

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