

# Hate Speech Vis-À-Vis Freedom of Speech in Indian Democracy

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## ABSTRACT

The abstract gives a broad study on hate speech, its evolution, legal consequences as well as freedom of speech in a democratic state. One is the Evolution of Hate Speech discussed in chapter one which goes from looking at the different aspects of hate speech to its roots during colonial India. Legal cases such as Pravasi Bhalai Sangathan v Union of India, enable readers to comprehend what amounts to hate speech and how it affects marginalized groups. This chapter highlights the change and restrictions laid down by the constitution with regard to hate speech as an exception to free expression. Potential Harm and Impact on Individuals and Communities looks at some of the long term effects of hate crimes. From personal damages such as psychological traumas and costs; community-wide issues like economic setbacks, school dropout rates due to fear or tension; this section explores them all in details. It also recognizes that communities can be resilient while highlighting the importance of recognizing nuanced impact. Legal framework in India, as explained in Chapter three analyzes constitutional provisions particularly Article 19(1)(a) and ancillary legislations like Sections 153A, 153B & 295A of Indian Penal Code (IPC). Additionally, it examines Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for its efficacy. It affects people psychologically and communities economically and socially, from individual trauma to community difficulties. The chapter acknowledges community strength while stressing the need to understand hate speech's harm to protect people's rights and safety.

**KEYWORDS:** Hate speech, Freedom of speech, Cable Television Networks (Regulation) Act, Indian Constitution, Fundamental Rights, Article 19(a), Hate crimes, Legal framework in India, Right to freedom of speech and expression

## CHAPTER 1: Evolution of Hate Speech

Hate speech encompasses various forms of expression, including speech, gestures, conduct, writing, or displays, that have the potential to incite violence, prejudicial actions against individuals or groups, or to disparage and intimidate specific individuals or groups. In the case of Pravasi Bhalai Sangathan v Union of India, the Supreme Court provided a definition characterizing hate speech as an attempt to marginalize individuals based on their group membership. This involves an endeavor to delegitimize group members in the eyes of the majority, ultimately diminishing their social standing and acceptance within society.<sup>1</sup>

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<sup>1</sup> Hate Speech, *available* at:

In layman terms, ‘hate speech’ refers to statements that are offensive and may incite hatred or disaffection towards a particular individual or group especially based on their inherent characteristics such as race, religion or gender that may bring about public uproar. Hate speech in India has a long history and its evolution can be traced back to colonial times when it was used to divide people on religious and caste lines. In 1994, the Indian government enacted the “Cable Television Networks (Regulation) Act to regulate hate speech and offensive content on television. This law empowered the government to regulate cable television networks and act against content that was found to be offensive. In case of *Pravasi Bhalai Sangathan v Union of India*<sup>2</sup> the Court directed the government to take steps to prevent hate speech and to take legal action against those engaged in it. Thus, hate speech has been an evil spreading inequality and discrimination in the social spheres since the inception of UN but it was only after the enforcement of the Indian Constitution in 1950 that Fundamental Rights were declared including the Freedom of Speech and Expression under Article 19(1)(a) that granted certain limitations as well on the free speech. Alas, hate speech is an exception of freedom of speech and expression. In the case of *Ramesh v Union of India*<sup>3</sup> the Supreme Court held that ***‘hate speech has the potential to disturb public order and is not protected under the freedom of speech and expression. The Court also directed the government to take steps to curb hate speech and take appropriate legal action against those who engage in it’***.

The debates within the Constitutional Assembly hold significance due to their proximity to the present day, with enduring relevance to contemporary conceptions, ideals, and values.<sup>4</sup> The deliberations of the Fundamental Rights Subcommittee of the Constitutional Assembly offer substantial insights into the divergent viewpoints regarding hate speech provisions within criminal law. Legal scholar Arun Thiruvengadam has characterized this discourse as motivated by the tension between universalist and particularistic concerns during the drafting process.<sup>5</sup> Thiruvengadam posits that the formulation of the free speech clause, transitioning from draft Article 13 to the finalized Article 19, is shaped by a shift from universal concepts of free speech, which Indian nationalists relied on during the struggle against colonialism, to a more particularistic language. This transition is underscored by the influence of his work, "The Interplay of the Universal and the Particular in the Evolution of the Constitutional Right to Free Speech in India" (Feb. 23, 2012), an unpublished manuscript available with the author (manuscript at 18). This perspective is situated within the broader context of "Politics and Ethics of the Indian Constitution," edited by Rajeev Bhargava in 2008.<sup>6</sup> The significant events of that era in the subcontinent, including Partition, mass violence, migration, the influx of refugees, and threats to public order and safety, served as a backdrop to the Constitutional Assembly discussions. Political theorist Rajeev Bhargava outlines five pivotal visions that prominently shaped the deliberations during this crucial period:

1. Nehru's social democratic vision
2. Ambedkar's liberal democratic vision, closely intertwined with Nehru's perspective

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<https://www.clearias.com/hate-speech/#:~:text=The%20Law%20Commission%20of%20India's,sexual%20orientation%2C%20or%20other%20characteristics.> (Visited on February 19, 2023).

<sup>2</sup> AIR 2014 SC 1591

<sup>3</sup> Writ Petition (Civil) No. 107 of 1988

<sup>4</sup> POLITICS AND ETHICS OF THE INDIAN CONSTITUTION, 12 (Rajeev Bhargava ed.,2008).

<sup>5</sup> Id

<sup>6</sup> supra

3. Gandhi's non-modernist, quasi-communitarian vision
4. The radically egalitarian vision, as represented by members like K.T. Shah
5. The Hindutva or Hindu right-wing vision.<sup>7</sup>

The architects of the Constitution strengthened and redefined expressions of liberal individualism, incorporating communitarian values that were not consistently aligned with individual autonomy.<sup>8</sup> A pivotal component of this process was the establishment of the Fundamental Rights Subcommittee, presided over by J.B. Kriplani. This Subcommittee played a crucial role in deliberating on provisions related to the freedom of speech and expression, ultimately shaping draft Article 13, now recognized as Article 19, which encompasses the right to freedom of speech and expression. The discourse on the free speech clause drew from the Karachi Resolution of the Indian National Congress, wherein the right to free speech was constrained by provisos addressing contraventions of law or morality.<sup>9</sup>

## CHAPTER 2: Potential Harm and Impact on Individuals and Communities.

Hate crimes, with their multifaceted impact, exact a severe toll not only on the individuals directly targeted but also on the communities to which they belong. This toll extends well beyond the immediate incident, leaving a profound and lasting impact on various aspects of society. At the individual level, victims of hate crimes often endure profound psychological trauma, manifesting as emotional distress, anxiety, and depression. These effects linger long after the occurrence of the hate crime, contributing to a heightened sense of fear and intimidation. Individuals are compelled to live with ongoing concerns for their personal safety, impacting their overall well-being.

The broader implications of hate crimes extend to the community level, where they foster an atmosphere of distrust and vulnerability. Social isolation and alienation may affect those targeted, leading to a withdrawal from community engagement. The erosion of trust within communities impedes collective progress and collaboration, hindering the overall well-being and cohesion of the affected groups.

Hate crimes also have economic ramifications, imposing financial strain on individual victims through medical expenses or potential loss of employment. Businesses within targeted communities may suffer economic repercussions due to damaged reputations, affecting the livelihoods of residents. Moreover, hate crimes create barriers for individuals from targeted groups in terms of education and professional opportunities, limiting their career advancement and access to quality education.

Beyond the economic and social aspects, hate crimes contribute to public health challenges. They contribute to a decline in mental health across affected communities, resulting in increased stress, anxiety disorders, and other mental health challenges. The repercussions of hate crimes are not confined to the immediate aftermath; they may trigger a cycle of violence, prompting retaliatory actions and perpetuating tensions between different communities.

Despite these challenges, communities affected by hate crimes often exhibit resilience and solidarity, forming support networks and engaging in initiatives that promote understanding and tolerance. However, it is crucial to recognize that hate crimes also contribute to cultural and social divisions,

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<sup>7</sup> Penguin India to Destroy Doniger's Controversial Book 'The Hindus: An Alternative History', SAMAY LIVE, Feb. 12, 2014, at <http://global.factiva.com.ezp3prod1.hul.harvard.edu/ha/default.aspx>.

<sup>8</sup> In doing this mapping exercise I have drawn upon the Supreme Court's observations in a 2014 decision, *Pravasi Bhalai Sangathan v Union of India*, Writ Petition (C) No. 157 of 2013 (Mar. 12, 2014) (Judgment Information System, Supreme Court official website).

<sup>9</sup> Resolution on Fundamental Rights and Economic and Social Change, Indian National Congress Session, Karachi, (1931) in GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION*, 69 (1966).

fostering an "us versus them" mentality that hinders efforts to build inclusive societies and promote diversity. Acknowledging the multifaceted impact of hate crimes is imperative for developing comprehensive strategies. These strategies should address the root causes of hate, support victims, and foster an environment of tolerance and acceptance. Legal measures, education, and community engagement play pivotal roles in mitigating the impact of hate crimes and working towards a society that values diversity and inclusivity.

## **CHAPTER 3: Legal Framework in India:**

### **3.1 Constitutional Provisions Related To Freedom Of Speech And Expression In India.**

The privilege of enjoying freedom of expression is specifically safeguarded for Indian citizens under Article 19(1)(a) and is not extended to foreign nationals or individuals who are not Indian citizens<sup>2</sup>. The entitlement to openly communicate one's viewpoints and opinions through various means such as spoken or written words, literature, publishing, illustrations, or any other form falls under the umbrella of freedom of speech and expression. Consequently, this encompasses the articulation of one's ideas, emotions, viewpoints, and thoughts through any communicative medium or visual representation, including signs, gestures, symbols, and similar forms of expression. The rights conferred by Article 19 of the Indian Constitution are inherent to free individuals and are not statutory rights; rather, they are grounded in natural law or common law. Therefore, every citizen possesses the right to exercise these freedoms, subject to limitations established by the state as deemed necessary.

Freedom of expression fulfills four overarching special purposes:

1. It empowers individuals to achieve self-fulfillment, allowing them to express their thoughts, beliefs, and emotions openly.
2. It aids in the discovery of reality and the verification of claims, contributing to an individual's understanding of the truth and facilitating the disclosure of it.
3. It enhances an individual's capability to engage in decision-making processes, fostering active participation in societal matters.
4. It provides a mechanism for achieving a meaningful balance between maintaining social cohesion and enabling social transformation

Within the intricate tapestry of Indian society, the universal privilege of forming individual opinions and expressing them openly finds essence. This right, grounded in the people's entitlement to access information, deems the active promotion of freedom of speech a crucial aspect for those engaging in citizen-government interactions. Given the community's profound interest in the unhindered expression of ideas, the government is expected to exercise greater caution when imposing taxes on entities linked to the newspaper and media industry. However, Article 19(1)(a) excludes protection for public demonstrations—whether religious, political, or social—that cause disruptions or result in tangible harm. While commercial and creative speech isn't explicitly outlined in Indian laws, the judiciary has recognized the evolving landscape. The Supreme Court has asserted that 'commercial speech' deserves the protection of Article 19(1)(a), ensuring all Indian citizens the right to access, consume, and engage with commercial speech. Artistic expressions, spanning painting, mime, dance, poetry, and literature, fall under the expansive umbrella of freedom of speech and expression.

Crucially, the right to free speech, as articulated in Article 19(1)(a), has been broadened to encompass the right to receive and transmit information. In landmark cases such as *State of Uttar Pradesh v. Raj Narain and Secretary, Ministry of Information and Broadcasting*, *Govt. of India v. Cricket Association*

of Bengal, the Supreme Court affirmed that every citizen possesses the right to freely speak, receive, and disseminate information on matters of public significance. This acknowledgment emphasizes the pivotal role of the print media as a potent instrument for the dissemination and acquisition of information for every individual.

### **3.2 Supplementary Laws**

#### **3.2.1 Indian Penal Code**

Sections 153A and 153B of the Indian Penal Code (IPC) are legal provisions aimed at preventing actions that promote enmity between different groups based on factors such as religion, race, place of birth, residence, language, etc. Section 153A specifically penalizes acts that attempt to foster disharmony or hatred among diverse communities, covering offenses committed through spoken or written words, signs, visible representations, or any other means. Violating Section 153A can lead to imprisonment for up to three years, a fine, or both, with enhanced punishment for aggravated offenses. On the other hand, Section 153B addresses imputations, assertions, or statements prejudicial to national integration. Similar to Section 153A, it encompasses offenses involving words, signs, or visible representations that promote feelings of enmity, hatred, or disharmony against national integration. The punishment for violating Section 153B includes imprisonment for up to three years, a fine, or both.

Both sections play a crucial role in maintaining communal harmony within India's diverse population, emphasizing the significance of national integration. These legal provisions underscore the need to discourage activities that could potentially disrupt social cohesion and peace, treating violations as criminal offenses with corresponding legal consequences for those found guilty of promoting enmity or making statements prejudicial to national integration.

Section 295A of the Indian Penal Code (IPC) is a legal provision crafted to address offenses involving the deliberate and malicious outraging of religious feelings with the specific intention of maintaining communal harmony. The section outlines that individuals who engage in such actions, using spoken or written words, signs, visible representations, or any other means, shall be subjected to legal consequences. The key aspect emphasized in Section 295A is the deliberate and malicious intent behind the act. It is not a blanket restriction on the expression of views or criticisms of religious beliefs. Rather, the section focuses on acts intended to deliberately outrage the religious sentiments of any class of citizens in India. The prescribed punishment for offenses under Section 295A can include imprisonment for a term that may extend up to three years, a fine, or both. This legal provision is designed to strike a balance between the constitutionally protected right to freedom of speech and expression and the imperative to prevent actions that could lead to religious animosity or tensions within the diverse Indian society. The legal interpretation and application of Section 295A often involve a careful examination of the intent behind the alleged act. Courts play a crucial role in determining whether the act in question was carried out with a deliberate and malicious intention to outrage religious feelings. This nuanced approach helps ensure that the legal provision is applied judiciously, respecting individual freedoms while safeguarding the broader goal of preserving communal harmony in the country.

Section 295A serves as a legal safeguard to protect diverse religious sentiments in India by addressing deliberate and malicious acts that may threaten communal harmony. Its application involves a delicate balance between individual freedoms and the collective interest of maintaining social cohesion and respect for religious beliefs. Sections 505(1) and 505(2) of the Indian Penal Code (IPC): Offenses Relating to Public Mischief and Statements Conducive to Public Mischief.

Section 505(1): This provision addresses offenses involving the making, publishing, or circulating of statements, rumors, or reports with the intent to incite or likely to incite public fear, alarm, or induce someone to commit an offense against the state or public tranquility. The focus is on the intention behind the communication, aiming to prevent the spread of false information that could disrupt public order. Individuals found guilty under Section 505(1) may face imprisonment or a fine.

Section 505(2): This section deals with offenses related to statements creating or promoting enmity, hatred, or ill-will between different groups on grounds of religion, race, place of birth, residence, language, caste, or community. It encompasses communications that are likely to incite violence or disturb public peace. Similar to Section 505(1), the emphasis is on the intention to create disharmony among different groups. Offenses under Section 505(2) may result in imprisonment or a fine.

Both these sections reflect the legislative intent to safeguard public order and communal harmony by penalizing actions that involve the deliberate spreading of false information likely to incite fear or hatred among the public. The legal application of these sections involves assessing the intent behind the statements or communications to ensure a balance between freedom of expression and the preservation of public tranquility. These provisions play a vital role in maintaining social harmony and preventing the dissemination of information that could lead to public unrest or hostility between different groups.

### **3.2.2 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is primarily designed to prevent atrocities and crimes against individuals from Scheduled Castes (SCs) and Scheduled Tribes (STs). Although the act does not explicitly address hate speech, its provisions deal with verbal abuse, humiliation, and intimidation, which align with the broader concept of hate speech. Section 3 of the Act outlines various offenses against SCs and STs, encompassing actions like forcing them to consume offensive substances or intentionally humiliating them, akin to hate speech. Section 4 prescribes more stringent punishments for these offenses compared to similar ones under the Indian Penal Code (IPC). Section 7 imposes a duty on public servants to prevent atrocities against SCs and STs, potentially covering actions related to hate speech. Section 14 establishes special courts to exclusively try cases related to atrocities against these communities, ensuring a focused judicial process. Additionally, Section 18 creates a presumption of an offense in certain cases, facilitating a more expeditious legal process when hate speech is involved. While not explicitly addressing hate speech, the Act's provisions contribute to addressing verbal abuse, humiliation, and intimidation against SCs and STs and provide a legal framework for instances where hate speech is perceived as part of an atrocity.

## **CHAPTER 4: Free Speech as a Keystone of Democratic State**

The right to freedom of speech and expression has long been considered fundamental and indivisible in the context of a robust democracy and a healthy society. Often referred to as democracy's fourth pillar, this right is seen as essential to the functioning of a democratic polity. In a democracy, where the governance is by and for the people, the importance of free and open expression cannot be overstated. It is perceived as a tool that elevates humans to a dignified status rather than mere animals. Some argue that democracy loses its meaning without access to unrestricted speech and expression. While safeguarding this right is crucial, there's also a recognition of the need to maintain a balance, as improper exercise of privileges can lead to corruption. In the United States, the First Amendment stands as a protector of free and uninhibited speech, closely tied to the principles of democracy. Similarly, the European Convention on Human Rights recognizes free speech as a fundamental natural civil right,

asserting its status as a core principle and a vital element in a democratic society by empowering individuals to express themselves without fear. Chief Justice Patanjali Shastri, in *Romesh Thappar v. State of Madras*<sup>10</sup>, The importance of open political deliberation and public education in facilitating the proper functioning of popular governmental institutions is emphasized. The assertion is made that, while there may be concerns about potential misuse of the freedom granted by such enormous rights, the framers of the Constitution, led by figures like Madison, likely agreed that retaining some imperfections in the concept is preferable to sacrificing all its merits. The recognition of free speech on civic matters as crucial to the intricate democratic system is presented as an obligatory consequence of the constitutional provisions establishing it, Justice K.K. Mathew has observed<sup>11</sup>. The significance of the right to free expression is emphasized as a crucial and indispensable element of a nation that has embraced democracy. While many associate democracy primarily with a voting system, it is argued that it encompasses much more, allowing citizens to participate in the country's functioning beyond elections. The right to express opinions about democratic processes is considered an integral part of citizenship, extending even after administrations are established. The right to free expression is depicted as inclusive, allowing various forms of expression, whether eloquent, logical, courteous, or even discourteous, insulting, illogical, and puzzling. However, it is acknowledged that the constitution imposes reasonable restrictions on this right to ensure proper regulation by the state.

## CONCLUSION

Chapters in this book highlight and detail the problem of hate speech in India. Consequently, an intricate socio-legal system is revealed. The initial chapter established the basis of the study by tracing its origins back to the colonial era as a divisive tool. As such, *Pravasi Bhalai Sangathan v Union of India* case provided a judicial framework for interpreting hate speech as a vehicle through which marginalization could be achieved. The second chapter has extended discussion to several dimensions of hate crimes that affect individuals and communities. In addition to psychological impact, it explored economic losses as well as social isolation caused by the discriminatory acts. Nevertheless, this section equally recognized that such communities are strong enough to withstand these attacks and even make efforts at organizing themselves into supportive systems thereby necessitating comprehensive measures aimed at addressing causes leading to hate-related activities. Chapter 3 goes deep into an examination of the legal framework under Indian law with particular emphasis on constitutional provisions under Article 19(1)(a) and supplementary laws like Sections 153A, 153B, 295A of IPC and The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is clear from when one analyzes this that fundamental principles were violated.

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<sup>10</sup> MANU/SC/0006/1950.

<sup>11</sup> K.K. Mathew, *Democracy, Equality and Freedom* in Upendra Baxi (eds.), Eastern Book Company, Lucknow, 1978, p. 98.