

Freedom of Speech V. Hate Speech in India

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Abstract

This article analyses the often complex and sensitive issue of freedom of expression and hate speech in India. The Constitution of India considers free expression as one of the fundamental rights that a democracy must provide, but 'reasonable restrictions' are necessary to safeguard public order and social peace. The paper attempts to outline the development of laws relating to speech, considers some important judicial rulings, and analyses recent changes in law such as the Bharatiya Nyaya Sanhita, 2023. Using case studies and global examples, it draws attention to the challenges arising from digital technologies and politics. The article goes further to examine the ethics and philosophy of speech and calls for a blend of freedom and accountability. Finally, it suggests ways to advance speech that strengthens democracy while encouraging moderation in inflammatory language, illustrating how speech can be used effectively to bring people together instead of tearing them apart.

Keywords- *Freedom of Speech, Hate Speech, Indian Constitution, Interpretation, Digital Age Challenges*

I. Introduction

"The pen is mightier than the sword, yet words can wound as deeply." This paradox encapsulates the duality of speech in India—a nation celebrated for its democratic values yet fraught with challenges of diversity. Freedom of speech empowers individuals to voice thoughts, challenge authority, and inspire change, forming the cornerstone of democracy. However, this freedom also bears the weight of responsibility. When words foster hatred, incite violence, or fracture social harmony, they threaten the very foundation of democracy.

India's legal framework strives to navigate this delicate balance, ensuring that speech remains a force for progress rather than discord. Through an exploration of constitutional principles, legal provisions, societal challenges, and ethical dimensions, this article delves into the intricate terrain where the right to speak meets the duty to protect harmony.

II. Freedom of Speech in India

The liberty of speech and expression is considered as one of the most treasured fundamental rights enshrined in the Constitution of India, embodying the very essence of a thriving democracy. Article 19(1) (a) of the Constitution of India grants every citizen the liberty to articulate their thoughts, share their perspectives, and express their convictions. It lays a vital

groundwork for the free exchange of ideas, the relentless quest for truth, and the cultivation of accountability within governance.

III. Hate Speech

Hate speech erodes the core ideals of democracy and freedom of expression by inciting disparity, acrimony, and violence against individuals or groups based on their race, religion, or ethnicity. Although Article 19(1)(a) guarantees the right to free speech, this right is not unlimited. Article 19(2) of the Constitution of India permits imposing reasonable restrictions to address hate speech that endangers public order, morality, or societal decency. These provisions also extend to preventing defamation, contempt of court, and incitement to criminal acts, emphasizing the need to balance personal liberties with the collective interests of society. Indian courts have consistently upheld this balance, as demonstrated in *Shreya Singhal v. U.O.I.*,¹ which stressed the importance of curbing speech that causes harm without stifling lawful expression. Similarly, in *Ramji Lal Modi v. The State of U.P.*,² the Court validated restrictions on speech to safeguard public peace and order.

IV. Historical Evolution of Free Speech in India

The roots of free speech in India trace back to the colonial era, where laws like the Sedition Act of 1870 were used to suppress dissent against British rule. Leaders like Mahatma Gandhi and Bal Gangadhar Tilak faced prosecution for exercising their right to free speech in the fight for independence.³ In post-independent India, the Constitution of India guaranteed this right but tempered it with safeguards to prevent its misuse.⁴

The evolution of free speech laws reflects India's journey as a democracy. The replacement of the Indian Penal Code (IPC) with the Bharatiya Nyaya Sanhita (BNS) in 2023 exemplifies this progression. Provision like Section 196 of the BNS penalize acts promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc. by words, either spoken or written, or by signs or by visible representations or through electronic communication, aiming to strike a balance between freedom and order. Also, Section 302 of the Sanhita states that anyone who deliberately tries to hurt someone's religious feelings by speaking, making sounds, gestures, or showing objects to them shall be punished. These provisions reflect the evolving legal landscape in India, aimed at curbing hate speech and maintaining societal harmony.⁵

V. Contemporary Challenges

In recent years, India has witnessed a surge in incidents testing the boundaries of free speech and hate speech. The Haridwar hate speeches of 2021, where calls for violence against a specific community were made during a religious gathering, sparked

¹AIR2015SUPREMECOURT1523

²AIR1957SUPREMECOURT620

³ Explained Desk, "Explained: When were Tilak and Gandhi tried under these diction law?" *The Indian Express*, Jul.17, 2021.

⁴M.P. Jain, *Indian Constitutional Law* 1052(LexisNexis, Gurgaon, Haryana,8thedn.2018).

⁵TheBharatiya Nyaya Sanhita, 2023 (No.45of2023), ss. 196, 302.

nationwide outrage.⁶ Similarly, remarks about the Prophet Muhammad by a political spokesperson in 2022 led to widespread protests and international criticism.⁷

These incidents underscore the challenges of regulating hate speech in a digital age. Social media platforms amplify divisive rhetoric, making it harder to enforce accountability. While the Information Technology (IT) Rules, 2021, aim to regulate online content, critics argue they risk curbing legitimate dissent.

VI. Judicial Interpretations and Challenges

The judiciary has been instrumental in defining the equilibrium between the right to free speech and the boundaries of hate speech. In the landmark case of *Ramji Lal Modi v. The State of U.P.*,⁸ the Highest Court upheld the constitutional validity of Section 295A of the IPC. This section imposes penalties on individuals who, with intentional and malicious intent, engage in acts designed to offend the religious beliefs or practices of any community, whether through spoken or written words, signs, or visible representations, thereby provoking outrage and deep resentment.⁹ The Court highlighted that such restrictions are justified when they aim to protect public order and avert potential disruptions to societal peace. Section 295A of the IPC (now Section 299 of the BNS) serves as a safeguard against actions that may provoke hostility or undermine the coexistence of diverse communities.

At the same time, the judiciary has acknowledged the critical importance of preserving free speech. It has repeatedly cautioned against the misuse of hate speech laws to suppress lawful expression or silence constructive dissent. By fostering a careful balance, the courts emphasize that while society must guard against harmful rhetoric, it must also nurture an environment where diverse voices can thrive without fear, ensuring harmony between liberty and responsibility.

The debate over free speech versus hate speech extends beyond legal frameworks into ethical and social realms. John Stuart Mill's "Harm Principle" offers a useful lens: freedom should extend until it harms others.

Ethical and Social Dimensions

Similarly, Karl Popper's "Paradox of Tolerance" warns that unlimited tolerance of intolerant speech can lead to the erosion of tolerance itself.¹⁰ In a diverse society like India, speech must be exercised with sensitivity to cultural and religious sentiments. Ethical responsibility demands that individuals use their freedom to build bridges rather than barriers.

⁶HTCorrespondent, "Haridwarhatespeech: Uttarakhand cops file case" *Hindustan Times*, Dec. 24, 2021.

⁷TIMESOFINDIA.COM, "Remarks against Prophet: Saudi joins Arab backlash; India hits out at OIC, Pakistan" *The Times of India*, Jun. 6, 2022.

⁸AIR1957SUPREMECOURT620

⁹The Indian Penal Code, 1860 (No.45OF1860), s.295A

VII. A Comparative Perspective

Globally, democracies grapple with similar challenges. The United States protects free speech under the First Amendment, with limited restrictions, while European countries impose stricter hate speech laws to preserve social harmony. India's approach lies in between, allowing free expression but regulating speech that threatens public order or communal harmony.

Learning from these models, India can refine its legal and institutional mechanisms to address hate speech while safeguarding freedoms.

VIII. Solutions and the Way Forward

- i. Clearer Definitions: Laws must clearly define hate speech to prevent misuse and overreach.
- ii. Platform Accountability: Social media companies should adopt robust content moderation policies while ensuring transparency.
- iii. Civic Education: Public awareness campaigns can promote responsible speech and tolerance.
- iv. Judicial Oversight: In *S.Rangarajan v. Jagjivan Ram*,¹¹ the Apex Court of India emphasized that the application of hate speech laws must be guided by

¹⁰Karl Popper, II *The Open Society and Its Enemies* (Routledge, Milton Park, New York, 1945)

¹¹AIR 1989 SC2192 judicial prudence, ensuring a delicate balance between safeguarding free expression and upholding societal welfare.

IX. Conclusion

In the vibrant tapestry of Indian democracy, freedom of speech is not merely a right but a holy trust. It allows us to challenge norms, inspire progress, and celebrate the diversity that defines us. Yet, this freedom, if misused, can unravel the very harmony it seeks to uphold. Hate speech, like a slow poison, corrodes the foundations of trust, respect, and unity that bind a society together.

As citizens of a diverse and evolving nation, we bear the collective responsibility to wield our words with wisdom. Freedom of speech is not absolute-it is tempered by the duty to ensure our expressions uplift rather than divide, heal rather than harm. Justice P. Shah aptly observed, "The pursuit of freedom is always tempered by ethical responsibility," reminding us that true liberty lies in restraint guided by respect for others.

Looking forward, India stands at a crossroads. With advancements in technology and the increasing complexity of public discourse, our challenge is to harness speech as a tool of empowerment rather than division. This calls for stronger laws, responsible platforms, and a citizenry educated in the ethics of expression. As John Milton envisioned centuries ago:

“Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.”

In embracing this vision, let us strive to make speech a force for unity, a bridge between divides, and a beacon of hope for future generations. Words, after all, hold the power to shape nations and redefine destinies. Let us use them not as weapons of discord but as instruments of progress, justice, and peace.