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## THE LEGAL FRAMEWORK FOR TACKLING HATE SPEECH IN INDIA: NEED REFORMS

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### ABSTRACT

The social structure of diverse India battles intensively with hate speech incidents as one of its most critical issues. *Article 19(1)(a)* within the Indian Constitution provides constitutional freedom of speech but these freedoms may face permissible limitations. Hate speech law enforcement in India receives criticism because its applications show unclear regulations which also lack sufficient provisions and display inconsistencies. Different sections in the Indian *Penal Code (IPC)* together with the newly passed *Bhartiya Nyaya Sanhita (BNS) 2023* have redefined legal perspectives dealing with such matters. These laws present challenges during enforcement mainly because of their unclear definitions. This paper reviews the present legal framework by exploring recent changes while assessing obstacles for a better understanding of the need for substantial reform efforts toward an improved framework to govern hate speech in India. The author bases their argument on case studies and international comparisons to establish that India requires precise regulatory language for hate speech enforcement together with robust free speech protection and public order standards.

**KEYWORDS:** Hate Speech, Indian Penal Code, Bhartiya Nyaya Sanhita, Legal Reforms, Free Speech

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## INTRODUCTION

Social harmony meets free speech in a destructive way that creates extensive disagreements between different groups. The combination of social media expansion with rising patterns of religious intolerance and communal violence has made India spend much time discussing hate speech regulations. As a nation built on diverse cultural backgrounds India struggles to achieve a balance between constitutional freedom rights while securing public peace and stopping violent rhetoric. Under the doctrines of the Indian Constitution, *Article 19(1)(a)*<sup>2</sup> stipulates freedom of speech but this right has no limitless boundaries<sup>3</sup>. The Constitution allows the application of reasonable limits on *Article 19(1)(a)* to ensure the protection of national security as well as public order and decency.<sup>4</sup> The laws regarding hate speech in India come under question since they include vague definitions and face difficulties when enforced.<sup>5</sup>

*The National Crime Records Bureau (NCRB) recorded a 45% increase in hate speech cases throughout the previous two years prompting the need for effective legal frameworks to address the situation.*<sup>6</sup>

## METHODS

The article employs a qualitative assessment of Indian hate speech laws through a legal framework evaluation. The article utilizes provisions from *the Indian Penal Code (IPC), Sections 153A and*

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<sup>2</sup> Constitution of India, art. 19(1)(a) (1950).

<sup>3</sup> The New Indian Express, *Explainer: Hate Speech and How Indian Laws Deal with It*, The New Indian Express, <https://www.newindianexpress.com/nation/2022/Apr/15/explainer--hate-speech-and-how-indian-laws-deal-with-it-2442459.html>.

<sup>4</sup> Madan B. Lokur & Medha Damojipurapu, *Navigating the Meaning of Hate Speech and Sedition in India*, Policy Brief Series No. 138 (2022), <https://www.toaep.org/pbs-pdf/138-lokur-damojipurapu/>.

<sup>5</sup> Lawyers Club India, *Hate Speech in India: Legal Provisions & Case Laws*, Lawyers Club India, <https://www.lawyersclubindia.com/articles/hate-speech-in-india-legal-provisions-case-laws-14956.asp>.

<sup>6</sup> Times of India, *45% Rise in Hate Speech Cases Over Past 2 Yrs: NCRB Report*, Times of India, <https://timesofindia.indiatimes.com/india/45-rise-in-hate-speech-cases-over-past-2-yrs-ncrb-report/articleshow/105766371.cms>.

295A along with the *Bhartiya Nyaya Sanhita (BNS) 2023* as primary sources. Judicial interpretations from landmark cases such as *Pravasi Bhalai Sangathan v. Union of India (2014)* and *Amish Devgan v. Union of India (2020)* were reviewed. The study uses NCRB statistical data together with European legal systems and United Nations-defined standards and includes interpretations of key Indian constitutional laws section 153A and section 295A and the BNS 2023.

## LEGAL FRAMEWORK FOR TACKLING HATE SPEECH IN INDIA

### 1. Constitutional Framework and Indian Penal Code (IPC) 1862

As the main enforcement tool the Indian penal code serves to regulate hate speech, it maintains unclear definitions that authors ambiguity in its execution.

- i. *The Indian Constitution through Article 19(1)(a)1950*<sup>7</sup> provides freedom of speech along with expression rights to citizens. Hate speech cannot escape regulations under *Article 19(2)* because they safeguard *order, moral values, and national defense* goals. The regulation of hate speech exists through state control under this framework although disputes appear concerning the scope of restrictions.
- ii. *Section 153A of the Indian Penal Code 1862*<sup>8</sup>, makes it illegal to stimulate hostility between religious communities as well as racial or linguistic groups or those identifying with their place of origin or social group. Through this provision, the government aims to prevent communal conflicts by banning verbal communications leading to potential violence.
- iii. Under *Section 295A of the IPC 1862*<sup>9</sup>, speaking words that insult the religious beliefs of any group becomes a crime when the offense aims to trigger hatred between people or

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<sup>7</sup> The Constitution of India, art. 19(1)(a) (1950),

[https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf).

<sup>8</sup> Indian Penal Code, § 153A (1862).

<sup>9</sup> Indian Penal Code, § 295A (1862).

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hostility toward others. This provision exists to stop verbal expressions that would damage the religious feelings of particular individuals or groups.

The open nature of these sections creates ambiguity since they serve as basic hate speech regulations although they need multiple interpretations. Without a single acceptable hate speech definition, the laws produce inconsistent enforcement outcomes because some cases get dismissed because of ambiguity yet others are misused to silence disagreements.<sup>10</sup>

## 2. The Bhartiya Nyaya Sanhita (BNS) 2023<sup>11</sup>

India enacted the Bhartiya Nyaya Sanhita (BNS) 2023 during 2023 to become the replacement for all IPC and *Criminal Procedure Code (CrPC)* and *Indian Evidence Act* laws. Despite being recognized for its modern approach the BNS 2023 lacked appropriate solutions regarding the intricate matters of hate speech. The BNS 2023 faces problems in hate speech enforcement because it fails to approach the subject with appropriate complexity.<sup>12</sup>

The basic hate speech regulations in law present difficulties during prosecution efforts because of their simplistic nature. Promoting enmity and religious insults remains punishable under the law but it does not supply a clear definition for hate speech which allows an ambiguous application of legal principles.

## RECENT LEGISLATIVE DEVELOPMENTS

Review all recent legal modifications that focused on hate speech regulations.

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<sup>10</sup> [https://en.wikipedia.org/wiki/Hate\\_speech\\_laws\\_in\\_India?utm](https://en.wikipedia.org/wiki/Hate_speech_laws_in_India?utm)

<sup>11</sup> Bhartiya Nyaya Sanhita (BNS) Act, 2023.

<sup>12</sup> Citizens for Justice and Peace, *BNS 2023: Does Nothing to Bring in a Nuanced, Effective Understanding of Hate Speech, Making Its Prosecution Even More Difficult*, Citizens for Justice and Peace, <https://cjp.org.in/bns-2023-does-nothing-to-bring-in-a-nuanced-effective-understanding-of-hate-speech-making-its-prosecution-even-more-difficult/>.

1. During July 2024 the Indian government passed new criminal statutes against hate speech that lead to maximum *three-year prison* sentences. The government adopted these legislative measures because they found support within the recommendations made by both the Law Commission and multiple other committees advocating hate speech legislation as an independent criminal code.<sup>13</sup>
2. During 2023 the Supreme Court of India ordered all state governments to file hate speech cases directly without waiting for citizen complaints to ensure prompt response against communal hostility.<sup>14</sup>

## CHALLENGES IN TACKLING HATE SPEECH

### 1. Ambiguous Definitions and Inconsistent Enforcement

The main issue in controlling hate speech in India stems from the absence of a commonly agreed definition and standardized standards. The provisions of Sections 153A and 295A in the Indian Penal Code work to restrict hate speech but they fail to establish clear definitions for hate speech boundaries. Different courts interpret identical speeches differently when the law lacks precise definitions of hate speech.

The Supreme Court decided *Pravasi Bhalai Sangathan v. Union of India 2014*<sup>15</sup>. The Supreme Court of India noticed the poor definition clarity of hate speech regulations and issued an order to the Law Commission about studying hate speech to establish proper legal criteria.

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<sup>13</sup> Times of India, *Hate Speech Becomes a Crime with 3-Year Jail Term*, Times of India, <https://timesofindia.indiatimes.com/india/hate-speech-becomes-a-crime-with-3-yr-jail-term/articleshow/102663803.cms>.

<sup>14</sup> Newsclick, *Hate-Free India: SC 2023 – Several Steps Forward, Miles to Go*, Newsclick, <https://www.newsclick.in/hate-free-india-sc-2023-several-steps-forward-miles-go>.

<sup>15</sup> Pravasi Bhalai Sangathan v. Union of India, (2014), <https://theamikusqraie.com/case-commentary-on-pravasi-bhalai-sangathan-v-union-of-india/>.

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## 2. The Digital Age and Social Media

The spread of hateful content through social media platforms gained momentum because users now possess the ability to rapidly distribute inflammatory material worldwide. Law enforcement finds it strenuous to address online hate speech because of anonymity which combines with fast spread and international location challenges. Indian government faces difficulties in controlling digital hate speech because the rapid developments in technology make it expand past international boundaries. Online platforms choose user engagement metrics over content regulation therefore making it hard to fight the vast issue.

## 3. The Need for Proper Coordination Between Freedom of Expression Rights and Security Protocols

India's constitutional right to free speech exists in a potential conflict with the measures intended to manage hate speech. Current laws have become a tool according to legal scholars and activists who assert that they enforce political dissent and reduce free speech rights. Cases such as *Amish Devgan v. Union of India and Ors (2020)*<sup>16</sup> Dissent-related issues are examined regarding hateful speech regulations and their impact on free expression.

India faces a difficult dilemma regarding how to properly mediate the ongoing struggle between freedom of speech and law enforcement for public order maintenance.

## INTERNATIONAL PERSPECTIVES AND COMPARISONS

### European Frameworks

Hate speech regulation in European nations establishes relevant examples that Indian law-makers should consider. The *European Court of Human Rights (ECHR)*<sup>17</sup> maintains the judicial position

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<sup>16</sup> *Amish Devgan v. Union of India and Ors.*, (2020), [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-385580.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-385580.pdf).

<sup>17</sup> Wikipedia, *European Court of Human Rights*, [https://en.wikipedia.org/wiki/European\\_Court\\_of\\_Human\\_Rights](https://en.wikipedia.org/wiki/European_Court_of_Human_Rights).

that public order protection along with individual rights truth constitutes proper restrictions on hate speech. The European nations Germany and the United Kingdom enforce rigorous hate speech legislation that aims at stopping violent calls and defends democratic institutions. India could benefit from adopting these laws since their definitions are clearer than those of India's legislation.<sup>18</sup>

## Global Standards

The Rabat Plan of Action together with the International Covenant on Civil and Political Rights provide international standards to govern hate speech. *These frameworks accept limitations on hate speech to protect people while retaining freedom of speech as their main priority.* India should implement the complex methodology found in other countries when developing reforms to its legal standards.<sup>19</sup>

## CASE STUDIES

### Haridwar Dharam Sansad Incident (2021)

A religious assembly in Haridwar (2021) remains a prominent illustration of how India struggles to manage hate speech manifestations especially when related to religious beliefs. A religious retreat at Haridwar featured public speakers who delivered tense speeches that targeted specific religious communities by invoking violent actions and developing hostile relations between faith groups. The speeches that spread across social media networks generated strong nationwide anger and multiple groups including human rights organizations together with minority representatives condemned the provocative content that aimed to trigger community-based violence. The local

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<sup>18</sup> European Centre for Minority Issues, *Words that Hurt: Hate Speech, the Media and the Law*, ECMI, [https://www.ecmi.de/fileadmin/user\\_upload/WP\\_119\\_Words\\_that\\_Hurt\\_2\\_ECMI.pdf](https://www.ecmi.de/fileadmin/user_upload/WP_119_Words_that_Hurt_2_ECMI.pdf).

<sup>19</sup> Jonathan B. Baker, *The Economics of FRAND and Patent Hold-Up*, in *Antitrust and Patent Law* 321, 321 (Oxford University Press 2020), <https://academic.oup.com/book/57833/chapter-abstract/472222492?redirectedFrom=fulltext&login=false>.

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authorities delayed taking legal action against terrorists who specifically demanded violence because these circumstances appeared to show inconsistencies in how hate speech laws get enforced.

Successful public advocacy led the police to file charges against the clergyman under two provisions of the Indian Penal Code; Section 153A and Section 295A that punish speech promoting conflict and religious content insults. Those in charge frequently demonstrate delayed reactions towards hateful religious speech that stems from influential spiritual leaders in large religious meetings because controlling hate speech in religious situations proves challenging.<sup>20</sup>

## RESULTS

The legal framework for hate speech within India proves both unclear and varying in its standards. The existing provisions in the IPC and BNS 2023 maintain ambiguous definitions of hate speech that result in irregular enforcement from authorities. Hate speech cases reported by the NCRB demonstrate an increasing situation with a 45% rise during the study period. Harmful speech spreads swiftly and without visibility in the digital era since online platforms allow users to broadcast content without revealing their identities. Judicial establishments interpret laws differently which leads to confusing application of these laws by law enforcement agencies. By implementing reforms through BNS 2023 the law remains unspecific in dealing with hate speech that occurs in contemporary circumstances, especially via modern networked platforms.

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<sup>20</sup> Newsclick, *Hate-Free India: SC 2023 – Several Steps Forward, Miles to Go*, Newsclick, <https://www.newsclick.in/hate-free-india-sc-2023-several-steps-forward-miles-go>.



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## DISCUSSION

The lack of a specific legal definition of hate speech produces inconsistent results when law enforcement tries to apply it. A precise legal definition should be adopted based on the European model because it would help both law enforcement and judiciary professionals achieve higher consistency in their law application practices. The spread of social media technologies creates difficulties for hate speech regulation because online platforms enable secret distribution thus requiring advanced digital regulations. The matter becomes worse when courts face inconsistencies in their decision-making as the *Pravasi Bhalai Sangathan* case demonstrates. The improvements introduced by BNS 2023 are inadequate for addressing current hate speech problems that are primarily digital thus indicating an ongoing need for further legal development and precise regulatory standards.

## RECOMMENDATIONS FOR REFORMS

The existing problems demonstrated strong evidence for changing India's legal system regarding hate speech.

### 1. Clear and Precise Definition of Hate Speech

The law must establish a certain and enforceable definition of hate speech. *The legal definition needs to draw from established international models to defend vulnerable groups from harmful language that leads to violence but also protect free expression.*

### 2. Robust Enforcement Mechanisms

The execution of hate speech laws requires stronger means of implementation. Hate speech investigations and detection through law enforcement agencies ought to get enhanced capabilities

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to monitor hate speech content online especially. By working with technical companies the process of monitoring harmful digital posts and their subsequent removal would become more efficient.<sup>21</sup>

### 3. Judicial Clarity

*Achieving judicial clarity about these laws becomes necessary for enforcing the consistent application of hate speech laws.* The legal system needs to define specific rules for understanding what qualifies as hate speech and to guarantee these laws protect freedom of speech together with political expression.<sup>22</sup>

### 4. Public Awareness and Education

Campaigns aimed at the public should teach citizens about the damaging impact of hate speech together with the specific boundaries that exist for free speech. These educational programs establish inclusive settings that minimize hateful expressions in society.

## CONCLUSION

Indian society faces dual responsibilities to govern hate speech both from a moral standpoint and from a judicial perspective. The growing polarization across the nation surpasses the capacity of present hate speech laws to adapt to digital forms of hate speech. *The approaches to prosecute hate speech through laws create uncertainty which both enables misuse and lacks shelter for vulnerable communities. The present regulatory system lacks sufficient capabilities to handle contemporary hate speech because these types of speech thrive within digital platforms while spreading rapidly through anonymous platforms.* India needs to undertake immediate legislative

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<sup>21</sup> Ritika Singh, Lakshmi P. Nath, Priyanshi Mishra, Surabhi Jain, Aditi Singh & Dr. Sunil Maria Benedict, *Online Hate Speech in India: Legal Reforms and Social Impact on Social Media Platforms*, 1 (CMR University, School of Legal Studies 2024), <https://ssrn.com/abstract=4732818> (Feb. 2, 2024).

<sup>22</sup> Legal Loom, *The Balance Between Free Speech and Hate Speech: Constitutional Limits and Judicial Interpretation I*, Legal Loom, <https://www.legalloom.org/post/the-balance-between-free-speech-and-hate-speech-constitutional-limits-and-judicial-interpretation-i>.

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updates to establish exact hate speech regulations alongside detailed court instructions and effective measures to prevent violations of free speech. The effort to create tolerance should depend on both public education and awareness about important social issues. India needs to fill legal shortcomings to establish a framework that protects both the freedom of expression rights and social harmony needs at the same time while safeguarding a diverse cultural society.

