

A STUDY ON LEGISLATIVE FRAMEWORK FOR ONLINE HATE SPEECH IN INDIA

13

Ms. Shanti Borah

Abstract

With technological advancement, use of online platforms has been increasing among people high in number. It has both merits and demerits. In one hand it is a world of knowledge, but on the other hand it can hamper people lives in different ways. Online hate speech is one of the demerits of it. It refers to derogatory statements provoking hatred against people through digital forum on the basis religion, caste, gender, etc. It cultivates violence, discrimination and intolerance towards specific person or group of persons by using online platforms in rapid spread. In international level, UDHR and different international treaties address online hate speech in various provisions to reduce and protect victims from online hate speech. Article 19(1) (a) of the Constitution of India guarantees to all citizens the right to freedom of speech and expression, which includes the freedom to express opinions through speech, writing, printing or any other medium. This right, however, is not absolute and subject to reasonable restrictions imposed under Article 19 (2) in the larger public interest. Article 19 (2) authorizes the State to restrict free speech by law in the interests of the sovereignty and integrity of India, the security of the State, friendly relationship with foreign States, public order, decency, contempt of court, defamation and incitement to an offence. Online hate speech incites hatred based on race, caste, residence, etc., against individual or group of individuals. Hence, it also comes purview of Article 19(2) of the Constitution of India and prohibited under it. Along with the constitutional provisions, the Information Technology Act, 2000 and other legations regulates online hate speech in India and it is span across different areas depending on the context of the speech. In this paper

Ms. Shanti Borah

Assistant Professor, Centre for Juridical Studies, Dibrugarh University, Dibrugarh. *Email Id: shantiborah1@gmail.com*

Publisher: Anu Books, DOI: <https://doi.org/10.31995/Book.AB355-F26.Ch.13>

Book: Innovative Researches in India: Trinity of NEP 2020, IKS & Technology

Plagiarism Report: 15%

an attempt has been made to highlight the legislative frameworks through which online hate speech can be eliminated and provide a shield to its victims.

Keywords: *Online hate speech, Article 19 (1) (a), IT Act, 2000, etc.*

Introduction

With the evolution of technology, no democracy can overlook the surge in internet-based online platforms, which have grown massively in number. Usage across its various platforms has enhanced dialogue among individuals and groups from diverse backgrounds. The internet offers boundless potential for sharing knowledge and education exchanges. But excessive use of internet based online platforms creates different issues which is not easy to solve without utmost care. Online hate speech is one of them. Through online platforms now opinions can be spread effortlessly and its consequences are not always good. At a time it may be possible to convert ugly face of uncontrolled hate speech and create hatred, violence and intolerance against individual or group of individuals. From highly developed countries to underdeveloped countries all the countries of world have faced such challenges at different times. India is not exception to it. In recent years, multiple incidents of mob violence, religious clashes and horrific killings have erupted due to online posts. Defining hate speech remains challenging, as its meaning hinges on the consequences it produces. The challenge in defining “hate speech” intensify further with the internet’s pervasive role as a communication platform, as it enables anyone worldwide to disseminate content targeting individuals anywhere globally. The UNESCO report from 2015 describes hate speech as a speech occurring “at the nexus of various tensions, manifesting conflicts among diverse groups both within societies and across them.” In its 267th Report, the Law Commission of India describes hate speech as “an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like”. It broadens the definition to encompass “any word written or spoken, signs, visible representations within the hearing or sight of a person with the intent to cause fear or alarm, or incitement to violence”. Hence, hate speech has consistently been used to describe expression that is offensive, derogatory, threatening, or menacing, or that provokes violence, hatred

or discrimination against individual or group of individuals identified by characteristics such as language, race, ethnicity, culture, place of origin, religion, caste, class, gender or similar attributes. UN and its organ in international level through different conventions and commitments take efforts to get rid of online hate speech for the development of society. Similar to that, countries of the world through its legislations make effort to eliminate impact of it. India is not an exemption to it through its different legislations like provisions of Constitution of India, Information Technology Act, 2000, BNS (earlier IPC) and other legislations and upcoming Online Hate Speech (Prevention) Bill, 2024, India attempts abolish online hate speech.

International Perspective

In international level, UN and its organs always works for welfare of human beings. UN in this digitalized era, through its conventions and treaties emphasizes on prohibition of online hate speech which affecting peace of a society. The significant conventions and treaties of UN on elimination of online hate speech are in brief as follows:

Article 7 of the UDHR guarantees every individual protection from all forms of discrimination, as well as from incitement to discriminate. This provision expressly addresses the prohibition of online hate speech grounded in discrimination¹.

Article 19(3) of International Covenant on Civil and Political Rights permits States to impose restrictions on speech to: (i) safeguard the rights or reputations of others; and (ii) protect national security, public order, public health or morals. Complementing this, Article 20 mandates States to outlaw by legislation any advocacy of national, racial, or religious hatred that amounts to incitement to violence, discrimination or hostility².

Article 2 of Convention on Elimination All Forms of Discrimination against Women bans every type of gender-based discrimination, encompassing hate speech. Moreover, Article 4 of the Convention obliges states to adopt steps to prevent hatred and discrimination grounded in race, colour or ethnicity³.

In 2012, the UN High Commissioner for Human Rights, during a sequence of consultations, instructed state representatives to

formulate a framework of guidelines called the Rabat Plan of Action. The discussions centered on the interplay between freedom of expression and hate speech, offering a six-part threshold test (context, speaker, intent, content, extent, likelihood of harm) for limiting speech that incites hatred, particularly tailored for digital spaces⁴. UN Secretary-General in 2019 launched UN Strategy on Hate Speech mainly focuses on hate speech in online platform⁵. “Countering and Addressing Online Hate Speech: A Guide for Policy Makers and Practitioners” policy launched by the UN Office on Genocide Prevention in 2023 basically stresses over elimination of online hate speech.

Besides, the countries of the world considers online hate speech is a barrier to development. Hence, the countries through national and international legislative framework tries to eliminate online hate speech. Some of the countries legislative framework are as follows:

The Constitution of USA provides widespread protection to freedom of speech which includes hate speech. Section 230 of the Communications Decency Act, 1996 (USA) stipulates that no provider or user of an interactive computer service shall be deemed the publisher or speaker of any information supplied by another information content provider⁶. This grants platforms hosting such content immunity from all forms of liability for any unlawful material displayed on them. However, U.S. Courts have employed a “reasonable person” standard in cases of online hate speech, assessing whether threats are explicit or merely implied.

The UK’s Public Order Act stands as the key enactment prohibiting any visual or overt depiction of hateful matter, which covers hate speech online too. Complementing this, there are additional overarching regulations that oversee digital communication in UK. The Malicious Communications Act, 1988 imposes up to two years in prison for dispatching indecent, offensive, or knowingly false content electronically⁷.

The European Union member country Germany, introduced a dedicated law in October 2017 to strengthen compliance on social media platforms. Its goal is to regulate prohibited content by obliging networks to implement robust and open grievance procedures. The statute demands that social media companies delete “clearly illegal”

content as per German regulations within 24 hours. Meanwhile, Japan's the Hate Speech Elimination Act, 2016 prioritizes curbing discriminatory expressions against foreign residents⁸.

In France, the law punishes incitement to hatred, violence and discrimination on the basis of gender, caste, race, etc., on any platform.

These countries are taking active role in prohibition of online hate speech and inspired other world countries to take action of elimination of it for progressive societies. From the past few years onward the India also encounters significant volume of online hate speech instances. India has no comprehensive legislation regarding online hate speech. It regulates through the provisions of Constitution of India, Information Technology Act, 2000, BNS (earlier IPC) and other legislations. Hence, to harmonize the society, Indian government proposes Online Hate Speech (Prevention) Bill, 2024 as legal framework to control it.

The Constitutional Perspective

In India, the right to freedom of speech and expression stands as a fundamental right under Article 19 (1) (a) of Constitution. However, Article 19 (1) (a) of the Indian Constitution is reasonably limited by Article 19 (2) to safeguard the broader interests of India's populace. The provision in Article 19 (2) allows for judicious restraints by the State on free speech for grounds like public order and incitement, applied by courts to curb hate speech that threatens harmony. Hence, online hate speech falls under the grounds of Article 19 (2) because it threatens public order or incite harm to individuals or group of individuals. The Hon'ble courts in different cases explained about the India follows extremely cautious parameters to provide freedom of speech and its misuse to its citizens. In *State of Maharashtra v. Sangharaj Damodar Rupawate*⁹, the Supreme Court clarifies that curbs on freedom of expression must be exact, grounded in evidence and aligned with the grounds under Article 19 (2) such as public welfare rather than mere emotional upheaval, thereby limiting the scope of hate speech regulations. In *Pravasi Bhalai Sangathan v. Union of India*¹⁰, the Apex Court mandated guidelines for registering FIRs in cases of hate speech, underscoring the need to address police negligence in matters threatening public tranquility under Article 19

(2). In *Amish Devgan v. Union of India*¹¹, the Supreme Court outlined three-fold test for restricting hate speech: (a) intention (b) likelihood of harm and (c) public order disruption. One of the prominent case of hate speech in India is *Justice Yadav's Case (2025)*. It was the case where a judge in India encountering disciplinary trial for hate speech. The Hon'ble court is tested hate speech claim against officials, upholding article 19 (2) of the Indian Constitution limits on inflammatory remarks. Accordingly, the Hon'ble Courts in its numerous judgements explain that freedom of speech is important for a democratic country to survive, but with fast growing technologically advanced society, free speech now converts to online hate speech which can misbalance the peace of society. Thus, hate speech must be controlled on the both online and offline platforms with caution.

The Indian Legislative Framework

With innovation of internet, the growth and use of online platform social media increases in many fold. It is a popular tool not only disseminate information also hate speech across multiple online platforms. These internet based online platforms are open space for all where everyone can give their opinions and can criticize anything. Hence, it can make threat against safety of individuals or group of individuals and often has far reaching consequences for the victims. With fastest growing population, the number of internet online platform users are enhancement in multiple numbers in India. Because of it, there is high risk of online hate speech having potential to incite hatred, violence and intolerance against community or group of individuals and India already facing various circumstances relating to it. For example: in 2013, a footage showing two men being beaten to death-falsely captioned as Hindus killed by a Muslim mob-spread across online platforms and WhatsApp, inciting communal violence in Muzaffarnagar. Again in 2016, internet access was shut down by Haryana State Government for 12 days due to Jat community's agitations for reservations turns violent. Due to these businesses were highly been affected those who exclusively rely on internet platforms for business¹². Hate speech in India whether online or offline reasonably restricted under Article 19 (2) when one of fundamental rights of citizens of India, freedom of speech goes against sovereignty

and integrity of India, security of the State, public order , incitement to an offence, etc. Besides, hate speech is punishable offence according to Sections 196 (1), 299, 196 (2) of the Bharatiya Nyaya Sanhita (BNS), 2023 (formerly IPC sections 153A, 295A, 298, 505) and Sections 69A and 79 of the Information Technology Act, 2000 along with Rule 3 (1) (d) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Complementing these, there are provisions in the Representation of the People Act, 1951 namely Sections 8, 123 (3A) and 125-which also regulate such content. The provisions are as follows:

Section 196 (1) of BNS punishes acts that foster enmity between groups based on religion, race, or similar grounds, with up to 3 years imprisonment or fine.

Section 299 of BNS addresses intentionally insulting religious sentiments through words, gestures, or signs, carrying up to 3 years' imprisonment, fine or both.

Section 196 (2) of BNS targets statements likely to provoke public disorder or hostility, punishable by up to 3 years imprisonment or fine.

Section 69A of IT Act, 2000 authorizes the Central Government to block public access to online content via computer resource if it endangers sovereignty, integrity, security, public order or encourages offences- frequently invoked for hate speech.

Section 79 of IT Act, 2000: the section provides intermediaries (like social media, e-commerce sites, ISPs) will get exemption from liability for user-generated content only if they exercise due diligence, observing government notifications under 69A, and expeditiously remove hate speech upon actual knowledge through courts order and complaints.

Rule 3 (1) (d) of IT Rules, 2021: the rule states proactive content moderation for hate speech promoting enmity, required to remove it within 36 hours, with non-compliance leads to loss of safe harbor protection and will be prosecuted under BNS provisions aligns with Article 19 (2).

Section 8 of the Representation of the People Act, 1951 bars individuals from running in elections if convicted for offences involving the misuse of free speech and expression rights.

Section 123 (3A) and Section 125 the Representation of the People Act, 1951 forbid fostering enmity based on religion, race, caste or similar factors during elections, classifying it as corrupt practice.

The Apex Court of India through several cases focuses on prohibition of online hate speech by interpreting existing legislations along with provisions of Indian constitution. Some of them are as follows:

In *Shreya Singhal v. Union of India*¹³, the Supreme Court of India invalidated Section 66A of the Information Technology Act, 2000, which curbed online free speech-as unconstitutional. The court held it violated Article 19 (1) (a) of the Constitution, by mandating judicial oversight for content removal from online platform.

In *Ashwini Kumar Upadhyay PIL case*¹⁴, the Supreme Court seeking stringent laws and enforcement against hate speech, including online dissemination, to safeguard public order as per Article 19 (2) of the Constitution of India.

In *Shaheen Abdulla v. Union of India*¹⁵, The Supreme Court instructed state governments to proactively address online hate speech without waiting for individual petitions regardless of the speaker's religion or political stance and treat violations as contempt to protect constitutional values.

In *Kunal Kamra v. Union of India*¹⁶, the Bombay High Court affirmed that freedom of expression, including online speech, is protected under Article 19(1) (a), but limitations must strictly conform to Article 19(2).

Again in *Wazahat Khan v. Union of India*¹⁷, the Supreme Court examined viral hate content and clarified that while digital participation is protected speech, dissemination of hate or incitement violates Article 19(2) limits.

*India Court on X (formerly Twitter) v. Union of India*¹⁸, Karnataka High Court affirmed the government's blocking directives under section 69A of the Information Technology Act, 2000 against X (formerly Twitter) for tweets linked to hate speech, misinformation and public order threats during 2021 farmers' protests.

Recently in *Ranveer Allahabadi v. Union of India*¹⁹, in August 2025, the Supreme Court of India directed comedian and influencer

Ranveer Allahbadia, along with others like Samay Raina, to issue a public apology for making derogatory remarks against persons with disabilities on a televised web show titled “India’s Got Latent.” The Court stressed that Article 19 (1) (a)’s guarantee of free speech and expression does not shield commercial advertisements that undermine human dignity or marginalize vulnerable communities.

In spite of different legislations, India lacks robust in-depth legislation to prevent impact of online hate speech. Thus, Indian government submitted proposal of the Online Hate Speech (Prevention) Bill, 2024 to eliminate effect of online hate speech to maintain solidarity in the society. The bill will having key provisions as: (a) criminalize online content promoting religious enmity, hatred or violence against groups and for first offence it will punished with imprisonment up to 1 year or 50,000 fine and for repeat offence it will be enhanced, (b) intermediaries will have duties with 24 –hour removal, AI detection, user verification, monthly reports, awareness campaign; (c) there will be a Central Adjudicating Authority and Appellate Tribunal to deal with online hate speech. The Bill is not enforced yet, hence online hate speech will regularized through BNS and the Information Technology Act, 2000 till its implementation.

Conclusion

In the wake of technological development, with one click of mouse a single individual’s views can be broadcast to millions instantly. If the view gets positive response, outcome of the view is good. But if the opinions of individuals are discriminatory, malice and full of hatred towards others, the result will out as clashes, riots and violence. Then these opinions will considered as online hate speech. The impact of online hate speech is more than offline hate speech, because easy access enables rapid spread of it. Online hate speech profoundly affects individuals, communities and societies through heightened insecurity, societal splits and offline repercussions. The failure to control the hate speech, specifically online hate speech due to various reasons. Although the State and the internet based online platforms have frameworks to address online hate speech, these measures will have limited effectiveness in controlling it, until people awaken their conscience. True prevention of online hate speech

requires massive public sensitization drives teaching responsible digital consumption and the boundary between free expression and hate speech, while fostering discernment between hate-inciting fake news and democracy sustaining real news. The need for sensitization assumes greater significance in a country such as India, which is ethnically, religiously and linguistically diverse state. The best way to solve these problem start from grass root level of education system. Students in education institutions ought to be taught the values of tolerance and equality. Despite, its challenges, the judiciary must adopt a firm stance to eradicate online hate speech. Then the online platform intermediaries and the government have to take step for the elimination of impact of online hate speech.

References

1. Universal Declaration of Human Rights, 1948, Article 7.
2. International Covenant on Civil and Political Rights, 1966, Articles 19 (3) and 20.
3. International Covenant on Elimination of All Forms of Racial Discrimination, 1969, Articles 2 and 4.
4. United Nations High Commissioner for Human Rights, Annual Report on the Expert Workshops on the Prohibition of Incitement to National, Racial or Religious Hatred, A/HRC/22/17/Add.4 (11 January 2013)
5. UN Strategy and Plan of Action on Hate Speech, June 2019
6. The Communication Decency Act, 1996
7. The Malicious Communications Act 1988
8. Zachary Laub, Hate Speech on Social Media: Global Comparisons, <https://www.cfr.org/backgrounder/hate-speech-social-media-global-comparisons> (retrived on 10th January, 2026, at 4 pm)
9. (2010) 7 SCC 398
10. AIR 2014 SC 1591
11. AIR ONLINE 2020 SC 930
12. Dr. Priya Anand, “Growth of Hate Speech in Realm of Social Media: A Disturbing Trend”, in “Law & Media”, ed. Dr. Rattan Singh & Dr. Shruti Bedi, Allahabad Law Agency, 2022 p. 87.

A Study on Legislative Framework for Online Hate Speech in India

13. AIR 2015 SC 1523.
14. W.P. (C) No. 1072/2021.
15. W.P. (C) No. 940/2022
16. 2025 SCC OnLine Bom 100
17. W.P. (CrI.) No. 247/2025'
18. W.P. No. 13710/2022
19. W.P. (C) No. 460/2025