



## **HATE SPEECH LAWS IN INDIA: EVOLUTION, LANDMARK JURISPRUDENCE & EMERGING CHALLENGES**

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In the deep Indian soil is embedded hate speech such as religious, caste, ethnic or identity-based and it is a deep-seated and constant concern. While the Constitution guarantees freedom of speech and expression under Article 19 (1) (a), this freedom is not absolute. Article 19(2) allows for reasonable restrictions in the interest of public order, security, decency, and morality. Yet the country lacks a standalone "hate speech" law. Instead, sporadic pieces of legislation in the Indian Penal Code (IPC) and the newly enacted Bharatiya Nyaya Sanhita, 2023 (BNS) work in isolation to regulate such speech. Indian courts, decades ago, have been instrumental in shaping the hate speech landscape, invoking suo motu action by the state and setting the framework for penalisation. The history of hate speech regulation in India is as antique as the colonial era and as new-fangled as the social media age, when one utterance can trigger nationwide debate.

India's roots in the judicial management of hate speech date to the colonial era, with the passage in 1927 of Section 295A IPC, criminalizing acts that are done with the intent to outrage religious feelings with malicious intent. Its genesis lies in controlling collective outbursts during British administration, and it remains on the statute books even today. The Supreme Court in *Ramji Lal Modi v. State of UP* (1957)<sup>1</sup> upheld its constitutional validity, with the ruling that only actions done with ill-will are contrary to law. In the combined reading of Section 295A and Section 153A IPC, there is a dodging of provocation of hatred among majority groups based on religion, caste, and/or language and stresses judicial balance between shielding vulnerable groups while also allowing healthy deliberation. Courts have confirmed that a solitary offensive remark is not sufficient; there has to be a real and substantial tendency to cause disturbance in public peace. This doctrine was reaffirmed in

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<sup>1</sup> *Ramji Lal Modi v State of Uttar Pradesh* (1957 ) SCR 860 (SC)

*Amish Devgan v. Union of India* (2021)<sup>2</sup> in which the Court articulated a test consisting of content, intent, and harm suffered to determine hate speech. Early judicial dicta like *Romesh Thappar v. State of Madras* (1950)<sup>3</sup> and *S. Rangarajan v. P. Jagjivan Ram* (1989)<sup>4</sup> set high standards of testing restraint, and the restrictions only in case there is a direct and proximate nexus between speech and public disturbance. But as Indian society grew more complicated, courts started viewing the state's duty to pre-empt violence as a response to hate. In *Tehseen Poonawala v. Union of India* (2018)<sup>5</sup>, the Supreme Court directed states to implement preventive, remedial, and punitive policies against hate speech and mob lynching. It told cops to file FIRs on their own when fiery talks threatened community peace. This firm legal stand shows we now get that unchecked hate talks can lead to actual damage. In *Shaheen Abdullah v. Union of India* (2022)<sup>6</sup>, the Court later broadened its earlier orders. It made it a must for states nationwide to act against hate speech right away, not waiting for official complaints. The web era has made this problem way harder to handle.

The Supreme Court's decision in *Shreya Singhal v. Union of India* (2015)<sup>7</sup> overturned Section 66A of the Information Technology Act. Section 66A made it unlawful to post offensive content on social media. The Court said that unclear and too-broad censorship hurt free speech. It confirmed that only speech meant to cause violence or disrupt public order could face punishment. Social media still provides a fertile ground to spread hate. The brutal *Bulli Bai* and *Sulli Deals* cases of 2022<sup>8</sup>, that were targeting Muslim women via applications, proved that the present laws were not sufficient to deal with hate campaigns on the internet. Although the police registered cases under Sections 153A and 295A of the Indian Penal Code and started the investigations, they got stuck due to technological problems and delays. The situation is not different even when the platforms are obliged to take some steps, as the enforcement is not regular. This has effects on intermediary liability and the tricky balance between controlling platforms and protecting users' rights. India's push to swap its colonial-era penal codes with the *Bharatiya Nyaya Sanhita*, 2023, has sparked debate once more.

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<sup>2</sup> *Amish Devgan v Union of India* [2021] 1 SCC 1 (SC)

<sup>3</sup> *Romesh Thappar v State of Madras* [1950] SCR 594 (SC)

<sup>4</sup> *S Rangarajan v P Jagjivan Ram* [1989] 2 SCC 574 (SC)

<sup>5</sup> *Tehseen S Poonawalla v Union of India* (2018) 9 SCC 501 (SC)

<sup>6</sup> *Shaheen Abdullah v Union of India* (2022) 1 SCC 1 (SC)

<sup>7</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1 (SC)

<sup>8</sup> *Niraj Dashrath Bishnoi v State of Maharashtra* Bail Appl No 437 of 2022 (Bom HC) (17 January 2022)

The BNS keeps and reshapes key hate speech rules. Section 196 (1) (a) makes it illegal to stir up hatred between groups; Section 299 covers acts meant to insult religious beliefs; and Section 152 bans speech that threatens the country's unity or independence. These laws can back up charges under the old IPC, but they don't bring big changes, say critics. The Kerala High Court complained about the weak punishments in the BNS for repeat hate speech offenders, asking Parliament to make penalties tougher to scare people off.<sup>9</sup> This worry from the court shows that even if laws have changed in form, they might still lack real power in practice. Previous decades have witnessed multiple cases filed against politicians, scholars, reporters and others who have gone just a bit too far trying to stop hate without infringing upon valid criticism.

Uttar Pradesh MLA Abbas Ansari was imprisoned under hate speech laws, while also losing his assembly seat in the year 2022. This shows that courts are becoming less and less tolerant of seditious political speech, thus striking a rightful balance between judicial duty and the right to speech. Just a few years later, episodes like the May 2025 arrest of academic Ali Khan Mahmudabad for comments deemed communal raised once again the issues of excessive tensions and silencing dissent. The Supreme Court intervened to grant him bail, warning, however, that academic discourse must avoid speech intended to disturb public harmony. Similarly, in the matter of cartoonist Hemant Malviya, the Court granted interim relief but observed that offending online posts remain a matter of serious concern in today's interconnected world. Such occurrences establish the judiciary's effort to accomplish a righteous sense of balance between hate speech and robust civic expression. The most important recent development was in May 2025, when the Supreme Court categorically decided that hate speech is not a right under Article 19 (1) (a). It reiterated the duty of the State to take optimistic procedures to help evade and penalize seditious speech, while being notified against general censorship. Two months later, in July 2025, the Court implored both citizens and platforms to exercise self-restraint with online speech to avoid inciting divisive content, observing that free speech should not have to be sacrificed. The message of the Court reflects the increasing challenge of policing speech in the viral social media post era, where one tweet or video can lead to countrywide uprisings. Despite such judicial advances, fundamental gaps persist in India's response to hate speech.

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<sup>9</sup> *P C George v State of Kerala* [2025] Bail Appl No 1874 (Ker HC) (21 February 2025) <https://www.livelaw.in/high-court/kerala-high-court/lack-of-mandatory-jail-sentence-for-hate-speech-crimes-serious-matter-284641> accessed 4 July 2025

Lack of a clear and unified definition of hate speech persists to atomise enforcement between various penal provisions. The legal vagueness enables perpetrators to find loopholes while denying victims timely redress. Enforcement is yet another concern of central importance. Despite unambiguous Supreme Court directives, police are reticent in acting suo motu, particularly when political leaders are implicated. Procedural impediments such as thresholds of sanction and administrative inertia also weaken the system. The internet poses unique challenges of velocity and volume, where inflammatory material spreads faster than legal reaction can keep pace. Modernization of the law to handle technological developments has been the repeated emphasis of the courts and the Law Commission. At the same time, careful attention should be paid to ensure that there is no chilling effect on free expression. Certainly, it is imperative to deal with those speeches that provoke violence or are a threat to communal harmony; however, the frontier between the obnoxious, unpopular, and harmful speeches becomes less clear. The Supreme Court, in the famous *Bhobishyoter Bhoot* case, has warned against the confusion of dissent and hate speech several times and has directed that the law should be executed cautiously so that there will be no hindrance to democratic dialogue<sup>10</sup>, while also connecting the phrase ‘dissent is the safety valve of democracy’.

We have to move ahead by creating a suitable legal framework and path that encompasses all several components pertaining to hate speech, both in person and online. This would include an entirely new piece in hate speech legislation that would set out levels of terminology, levels of punishment for repeat offenders, and create levels of expectations for online platforms and stakeholders, before completing this review with further training for our officers to be direct in the style they approach hate speech in the future. As well, we will also need to advance public awareness and get our members of the public to self-regulate their behaviours that will, in the end, produce a more educated and kinder community. Additionally, coaching people how to manage their behaviour and starting public awareness campaigns that promote responding to hate with words and understanding are also crucial. The Indian experience in the legal field regarding hate speech is similar to the country's efforts to find a balance between freedom and order in a diverse society. The road has been paved with judicial innovations and legislative hesitations, stemming from colonial laws to new challenges of the internet era. And now, with the courts calling for more rigorous enforcement and the governments promising new legislation, these will come true only if

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<sup>10</sup> *Indibility Creative Pvt Ltd v State of West Bengal* Writ Petition (Civil) No 306 of 2019 (SC) (11 April 2019)

they manage the two tasks simultaneously: safeguarding minority rights and keeping the democratic principle of free and fearless speech intact.