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DIGITAL DISSENT OR HARMFUL HATE? **REEVALUATING FREEDOM OF SPEECH IN THE** **CONTEXT OF CYBER HATE SPEECH**

AUTHORED BY - HIMANSHU JAISWAL¹

Abstract

The rapid growth of digital communication has transformed the exercise of the right to freedom of speech and expression, introducing both democratizing opportunities and profoundly dangerous challenges. While the Constitution of India guarantees free speech under Article 19(1)(a), it simultaneously allows reasonable restrictions via Article 19(2), especially in the context of hate speech. This research examines the conflict between digital free speech and the judicial/governmental regulation of hate speech in India. Special focus is placed on the 2025 Supreme Court ruling in Imran Pratapgarhi v. State of Gujarat, which clarified important thresholds in cyber hate speech jurisprudence and redefined the test for criminal liability in poetic dissent. Through doctrinal analysis, case law survey, comparative perspective, statutory critique, and institutional policy review, this study offers a detailed academic critique of India's legal framework and the future of digital rights.

1. Introduction

1.1. The Importance of Free Speech in a Democracy

Freedom of speech and expression is the cornerstone of any thriving democracy and forms the bedrock of India's constitutional ethos. Enshrined under Article 19(1)(a) of the Constitution of India, the right empowers citizens to participate in political discourse, cultural life, and intellectual development. Hon'ble Justice Patanjali Sastri famously stated in *Romesh Thappar v State of Madras* that "freedom of speech lays at the foundation of all democratic organisations" and without free political discussion "no public education, so essential for the proper functioning of the processes of popular government, is possible."²

This freedom, however, is not absolute. The Constitution, through Article 19(2), allows the State to impose "reasonable restrictions" in scenarios involving sovereignty, state security,

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² *Romesh Thappar v State of Madras* AIR 1950 SC 124.

public order, decency, morality, or incitement to offence.³ This balance creates a legal landscape where speech is constitutionally protected but can be curtailed under defined, justified circumstances.

1.2 From Public Debate to Digital Expression

The turn of the millennium brought a data revolution. Social and technological advances have shifted much of public deliberation from traditional spaces (print, public meetings) to digital ones (Twitter/X, WhatsApp, YouTube, etc.). While this digitisation has democratised access to speech by removing institutional gatekeepers, it has also amplified certain risks — especially misinformation, incitement of violence, and targeted hate speech.⁴

Anonymity, algorithmic amplification, micro targeting, and jurisdictional evasion have challenged traditional legal frameworks that regulate speech. In the cyber context, state responses often oscillate between authoritarian overreach and legislative ambiguity.⁵ Therefore, a contextual analysis of freedom and its limitation in the digital world becomes imperative.

1.3 The Rise of Hate Speech in the Cyber Era

While hate speech existed long before the internet, the digital age has accelerated its visibility, virality, and impact. Online speech can reach millions instantly, cross national boundaries effortlessly, and escape moderation due to technical complexity or legal leniency.⁶

Furthermore, the challenge arises in distinguishing “offensive” yet lawful expression (satire, dissent, criticism) from hate speech that incites violence or discrimination. The absence of clear legislative definitions and the rise of vague penal action (like invoking sedition or obscenity laws for social media posts) adds to confusion. As the 267th Law Commission Report (2017) noted, the absence of a statutory definition of hate speech in India complicates the regulation of harmful online discourse.⁷ Simultaneously, global precedents—like the Brandenburg test in the US or NetzDG regime in Germany—highlight other pathways, providing context for comparative analysis.

³ Constitution of India 1950, art 19(2).

⁴ Naresh and Dr Suresh Kumar, ‘Freedom of Speech vis-à-vis Hate Speech in India’ (2025) 6(1) Law Audience Journal 230.

⁵ Tarunabh Khaitan, ‘Free Speech and Democratic Integrity in the Digital Age’ (2022) 14 NUJS L Rev 103.

⁶ Law Commission of India, ‘267th Report on Hate Speech’ (March 2017) para 2.4.

⁷ Ibid, para 8.1.

1.4 Imran Pratapgarhi Case (2025): A Constitutional Flashpoint

In a landmark judgment, the Supreme Court quashed the FIR, reaffirming the centrality of intent, context, and constitutional protection for artistic and political expression—even in digital formats.⁸ The ruling provided clarity on lawful dissent and drew strong boundaries against arbitrary prosecution.

2. Constitutional Foundations of Free Speech in India

2.1 Constitutional Status of Freedom of Speech

Article 19(1)(a) of the Constitution of India declares:

“All citizens shall have the right to freedom of speech and expression.”

This freedom is widely interpreted to encompass verbal expression, written content, symbolic gestures, artistic works, media, and—most relevant in today’s era—digital communication platforms. The framers of the Constitution believed that democracy would collapse without robust speech rights.⁹

2.2 The Reasonable Restrictions Clause: Article 19(2)

The right to free speech is not unrestricted. Article 19(2) allows the State to introduce “reasonable restrictions” on grounds such as:

- The sovereignty and integrity of India
- The security of the state
- Friendly relations with foreign states
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence¹⁰

In *Romesh Thappar v State of Madras*, the Supreme Court ruled that public order was not initially part of Article 19(2), and only subsequent constitutional amendments expressly incorporated such grounds.¹¹

⁸ *Imran Pratapgarhi v State of Gujarat* 2025 INSC 410 (SC).

⁹ *Romesh Thappar v State of Madras* AIR 1950 SC 124

¹⁰ Constitution of India 1950, art 19(2).

¹¹ *Ibid*; see also Constituent Assembly Debates, Vol VII, 1949.

2.3 Judicially Evolved Standards

The Indian judiciary has evolved layered tests to examine restrictions on speech. The prominent ones include:

- i. Proximity/Nexus Test - Established in *Superintendent, Central Prison v. Ram Manohar Lohia*, this test states that the law must show a “proximate” and not a “remote” connection between speech and disorder to justify restriction.¹²
- ii. Clear and Present Danger
Borrowing from US jurisprudence, this test states that speech must pose an immediate, substantive threat to be curtailed.¹³ For instance, a call for boycott may be provocative but constitutionally permissible unless clearly inciting violence.
- iii. Reasonable Classification
Under Article 14 principles, restrictions must not be overbroad or disproportionate. Laws cannot criminalise all forms of critique or sarcasm—especially in the cyber domain—even if some sections perceive it as offensive.
- iv. Chilling Effect Doctrine
As per *Shreya Singhal v Union of India*, laws must not deter lawful expression by being vague or arbitrarily applied.¹⁴ The Court held that Section 66A of the IT Act was unconstitutional partly for this reason.

2.4 Constitutional Morality and Digital Discourse

Constitutional morality—an evolving concept in Indian jurisprudence—urges that the Constitution itself, and not prevailing majority sentiment or State preference, guide the adjudication of rights.¹⁵ The internet often tests this principle by exaggerating majoritarian views or amplifying polarised opinion.

The Supreme Court has emphasised that speech—especially in the digital medium—must not be criminalised merely because it provokes discomfort or disagreement. In the absence of intent to incite harm or hatred, digital expression, even if unpopular or critical of the State, remains protected.

¹² *Ram Manohar Lohia v State of Bihar* AIR 1966 SC 740.

¹³ *Brandenburg v Ohio* 395 US 444 (1969).

¹⁴ *Shreya Singhal v Union of India* (2015) 5 SCC 1.

¹⁵ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1, para 130.

3. Understanding Hate Speech in Digital Contexts

3.1 Introduction: Contextualising Hate Speech in Cyberspace

In the age of the Internet and algorithmic communication, hate speech no longer confines itself to fringe corners of society — it lives, mutates, and multiplies across digital forums, messaging groups, memes, and more.

In India, the lack of a statutory definition for “hate speech” has generated legal uncertainty, fostering both under- and over-enforcement. Social media platforms and digital intermediaries are now major players in the speech regulation ecosystem — moderating content algorithmically, sometimes with opaque standards and questionable efficacy. While online hate can fracture communities, arbitrary restrictions can equally suppress speech vital to dissent, journalism, or marginalised identities.

3.2 What Constitutes “Hate Speech” ? Theory and Thresholds

“Hate speech” has no universally accepted legal definition. However, internationally, it is broadly understood as:

“Any kind of communication that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.”¹⁶

In India, the Law Commission (267th report) suggests focusing on speech that targets vulnerable groups and creates “an imminent risk of violence, hostility, discrimination or social disharmony.”¹⁷ The Commission warns that overbroad definitions — criminalising offense to sentiments — diminish both constitutional free expression and the credibility of hate regulation.

Scholars also distinguish:

- Offensive speech: May hurt sentiments but doesn’t incite violence.
- Dangerous speech: Poses a high risk of prompting action, especially in periods of social tension.¹⁸

¹⁶ United Nations Strategy and Plan of Action on Hate Speech (2019), para 5, www.un.org.

¹⁷ Law Commission of India, ‘267th Report on Hate Speech’ (March 2017), paras 3.4–3.8.

¹⁸ Susan Benesch, ‘Dangerous Speech: A Proposal to Prevent Mass Violence’ (2012) www.dangerousspeech.org.

3.3 Elements of Hate Speech in the Cyber World

In cyberspace, hate speech manifests in fluid and hybrid forms across a variety of online expressions, including:

- Text (comments, articles, tweets)
- Multimedia (memes, music videos, manipulated images)
- Non-verbal cues (emoji abuse, hashtags like #KillX, white space coding)

Key Features:

- **Virality:** Amplification via forward chains and trending algorithms.
- **Anonymity:** Trolls, fake handles, and burner accounts often disseminate hate while avoiding accountability.¹⁹
- **Memetic Packaging:** Hate is often encoded in humour, parody, or satire, complicating enforcement.
- **Linguistic Complexity:** Use of slang, code-switching, and regional dialects makes identifying hateful content difficult, especially algorithmically.²⁰

3.4 Legal Framework Governing Digital Hate Speech

3.4.1 The Information Technology Act, 2000

Historically, Section 66A criminalised sending messages “grossly offensive” or causing “annoyance.” Declared unconstitutional in *Shreya Singhal* (2015), the judgment cautioned against vague, subjective thresholds.

Currently, the IT Act’s Section 69A allows blocking of content on grounds of “public order” and “security,” but is subject to procedural safeguards — which are often bypassed.²¹

3.4.2 BNS 2023 (Updated Penal Framework)

Under the *Bharatiya Nyaya Sanhita* (BNS):

- Section 196: Targets hate that promotes enmity between groups.
- Section 299: Penalises statements intended to outrage religious feelings.
- Section 353: Criminalises speech that incites violence or causes threats to national unity.²²

3.4.3 IT Rules 2021 (Intermediary Guidelines)

The Intermediary Guidelines and Digital Media Ethics Code (2021) impose duties on

¹⁹ Naresh & Dr Suresh Kumar, ‘Freedom of Speech vs. Hate Speech’ (2025) 6(1) Law Audience Journal 238.

²⁰ Tarunabh Khaitan, ‘Free Speech and Algorithmic Bias’ (2020) 12 Indian J L & Tech 45.

²¹ Information Technology Act 2000, s 69A.

²² *Bharatiya Nyaya Sanhita* 2023, ss 196, 299, 353.

“significant social media intermediaries” (SSMIs) to:

- Act on complaints within 72 hours
- Remove “unlawful content” on government order
- Enable tracing of content origins²³

Critics see the rules as overbroad and prone to misuse, particularly against political dissenters or journalists. Platforms are caught between liability and compliance pressure, often suppressing lawful speech due to opaque definitions.

4. Bhartiya Nyaya Sanhita, Cyber Law & Digital Regulation

4.1. Introduction

Indian law responds to hate speech in the digital world through a medley of penal provisions, regulatory frameworks, and platform-centred obligations. The approach is both patchwork and evolutionary—comprised of legacy provisions from the Indian Penal Code (now the Bharatiya Nyaya Sanhita BNS), dedicated sections of the Information Technology Act, and policy interventions such as the Intermediary Guidelines 2021. This chapter details how various statutes address online hate, their strengths and lacunae, and the way enforcement unfolds in practice.

4.2. Bharatiya Nyaya Sanhita (BNS) 2023: Key Provisions

The major penal code for India’s criminal justice system, the BNS (replacing the Indian Penal Code in 2023), includes several provisions relevant to both offline and cyber hate speech:

- Section 196: Criminalises acts by “whoever makes, publishes or circulates any statement, rumour or report... likely to promote enmity, hatred or ill-will between different groups on the grounds of religion, race, place of birth, residence, language, caste or community.”
- Section 199: Addresses statements causing fear or alarm to the public.
- Section 299: Focuses on “intentional outrage of religious feelings” by words (spoken, written), visible representations, or other means.
- Section 353: Punishes those who incite violence against the state or public tranquility.²⁴

While these provisions create a deterrent normative standard, they derive much of their text (and judicial interpretation) from pre-digital era statutes, raising concerns regarding their

²³ IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, rr 3–5.

²⁴ Bharatiya Nyaya Sanhita 2023, ss 196, 199, 299, 353.

adequacy for the subtleties of online hate: virality, anonymity, and non-verbal digital expression.

4.3. Information Technology Act, 2000 (IT Act) & Section 66A

The IT Act sought to bring India's legal regime in line with the needs of a digital economy and cybercrime prevention:

- Section 66A: Once penalised sending “grossly offensive” or “menacing” messages electronically. However, in *Shreya Singhal v Union of India*, the Supreme Court held the provision vague and unconstitutional—primarily for limiting lawful dissent and chilling free speech.
- Section 69A: Authorizes the government to block public access to content in the interest of “sovereignty, integrity, security, public order, decency, or morality.” However, real-world usage of these powers has often ignored safeguards for procedural fairness and transparency.²⁵

4.4. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

Key Duties of Intermediaries:

- Due diligence obligations: Platforms must act within 72–96 hours on flagged illegal content, preserve traceability records, and remove problematic material upon receipt of a court/government order.
- Traceability: “Significant social media intermediaries” are required to enable tracing originators of contentious or unlawful information, raising concerns about user privacy and over-compliance (to avoid liability).
- Voluntary verification: Platforms may “voluntarily” verify user accounts.
- Expedited takedown: For sexual content or deepfakes, takedown must happen within 24 hours once notified.²⁶

Critics worry these rules threaten encrypted messaging (e.g., WhatsApp), overburden small platforms, and empower the government to suppress lawful criticism in the name of controlling hate.²⁷

²⁵ IT Act 2000, s 69A; see also Internet Freedom Foundation, ‘Transparency of Government Takedown Orders’ (2024).

²⁶ IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, rr 4(8), 3(2).

²⁷ SFLC.in, ‘India’s Intermediary Rules: Death Knell for Free Speech?’ (2023).

4.5. Law Commission and National Policy Stance

The 267th Law Commission Report (2017) recommended:

- Inserting new sections (153C, 505A IPC) to specifically address hate speech that incites violence or discrimination.
- Avoiding criminalisation of mere insult or the causing of offense—only clear incitement or group-based defamation should be penalised.²⁸
- Periodic review of intermediary content moderation to ensure consistency with rights and due process.

However, as of 2025, Parliament has not substantially implemented these reforms; states have sometimes acted unilaterally, and the central government's approach oscillates between overbroad shutdowns and under-enforcement.

4.6. The Role of State-Level Legislation

Some states (e.g., Karnataka in 2025) have introduced proposals to criminalise hate speech with stringent penalties, paralleling or sometimes exceeding central codes. These bills frequently raise constitutional questions: Does free speech protection under the Constitution override state regulatory zeal? Will national uniformity be weakened by legal patchwork?²⁹

5. Judicial Responses to Online Hate Speech

5.1 Introduction

India's judiciary has played a pivotal role in defining the limits of free speech and the scope of hate speech regulation, especially in the digital domain. While legislation often lags behind technological change, clear and rights-sensitive standards established by the courts have set crucial guideposts for police, lawmakers, and digital intermediaries. This chapter examines the Supreme Court and High Court jurisprudence—from foundational post-Independence rulings to the doctrinal breakthroughs of Shreya Singhal and Imran Pratapgarhi—that now collectively serve as a touchstone for determining the constitutionality and legitimacy of restrictions imposed on digital expression.

5.2 Early Constitutional Jurisprudence

A. Romesh Thappar v State of Madras (1950)

Recognized as one of the earliest free speech test cases, the court ruled that vague restrictions

²⁸ Law Commission of India, '267th Report on Hate Speech', paras 8.3–8.7

²⁹ Karnataka Hate Speech and Hate Crimes (Prevention and Control) Bill, 2025.

in the name of “public safety” were unconstitutional unless backed by substantive, reasonable grounds.³⁰ The judges noted that freedom of speech is the “ark of the covenant of democracy” and restrictions must pass strict scrutiny.

B. Ram Manohar Lohia v State of Bihar (1966)

This case introduced the “proximity” or “nexus” test: State action to curtail speech must prove a direct and immediate link between expression and threatened public disorder.³¹ Laws criminalising vague prophecy of danger, remote harm, or hypothetical anarchy are unconstitutional.

5.3 Media, Cinema, and Symbolic Expression: S Rangarajan v P Jagjivan Ram (1989)

This judgment set out that “anticipated danger should not be remote, conjectural or far-fetched. There should be a direct and proximate nexus between the expression and threatened danger.”³² The judiciary thus demanded a high bar for censoring artistic, journalistic, or symbolic speech.

5.4 Shreya Singhal v Union of India (2015): Online Speech Crystallized

Section 66A of the IT Act, 2000, had become notorious for abuse—used to jail political cartoonists, detain social media critics, and silence satire on “grossly offensive” or “annoying” grounds.³³

The Supreme Court’s unanimous verdict:

- Struck down S.66A as unconstitutionally vague, as definitions of “annoyance” or “offence” are subjective and liable to abuse.
- Held that online speech stands “on the same pedestal as other forms of speech and expression.”
- Distinguished discussion and advocacy (protected) from incitement (punishable). Only incitement to disorder, violence, or hate can justify curbing online speech.³⁴
- Stressed that overbroad laws create a “chilling effect” antithetical to democracy.
- Impact: Shreya Singhal remains the most cited cyber speech verdict, routinely

³⁰ Romesh Thappar v State of Madras AIR 1950 SC 124.

³¹ Ram Manohar Lohia v State of Bihar AIR 1966 SC 740, para 16.

³² S Rangarajan v P Jagjivan Ram (1989) 2 SCC 574, para 19.

³³ SFLC.in, ‘Section 66A and its Aftermath’ (2024) p 6.

³⁴ Shreya Singhal v Union of India (2015) 5 SCC 1, paras 36–44.

relied on to dismiss or quash criminal complaints arising from online commentary, satire, or dissent.

5.5 Amish Devgan v Union of India (2020): Clarifying Hate and Hurt

This case involved a news anchor accused of hate speech for derogatory remarks about a Sufi saint. The Supreme Court drew the crucial distinction:

- Article 19(1)(a) protects the right to offend and debate, but not hate speech that “spreads disharmony, enmity, hatred, or violence”.
- “Intent, content, context, and impact” must all be assessed.³⁵ The mere fact that someone takes offence is insufficient—there must be a real risk to public order or the dignity of a target group.
- The importance of “constitutional morality” was reiterated, meaning that majoritarian sentiment alone cannot warrant penal action under hate speech statutes.

5.6 Pravasi Bhalai Sangathan v Union of India (2014): Judicial Restraint and Legislative Duty

Though the court recognized the dangerous proliferation of communal hate speech (including online), it declined to lay down hard guidelines, leaving comprehensive definition and regulation to Parliament.³⁶ The case, however, stressed the urgency and gap in the statutory response to new modes of digital speech.

5.7 Judicial Responses to Digital Hate: Case Law Survey

a. High Court Rulings on WhatsApp, Facebook, and Social Media Offences

- *Ameena Begum v State of Andhra Pradesh* (2022): Telangana High Court demanded unbiased, prompt law enforcement action against digital hate regardless of the accused’s political or social affiliation, highlighting the risks of police selectivity.³⁷
- *Faizan Qureshi v State of MP* (2021): MP High Court quashed FIRs where social media postings attracted criticism but posed no risk of violence or public disorder.³⁸

³⁵ *Amish Devgan v Union of India* (2020) 20 SCC 692, para 63.

³⁶ *Pravasi Bhalai Sangathan v Union of India* AIR 2014 SC 1591, para 51.

³⁷ *Ameena Begum v State of Andhra Pradesh* 2022 SCC OnLine TS 99

³⁸ *Faizan Qureshi v State of MP* 2021 SCC OnLine MP 2093.

5.8 The Landmark: *Imran Pratapgarhi v State of Gujarat (2025)*

Background: Congress MP and poet Imran Pratapgarhi uploaded a poem on X (Twitter) and Instagram, which was alleged (in FIRs) to outrage religious feelings, promote enmity, and threaten communal harmony under BNS sections 196, 299, and 353. The Gujarat High Court refused to quash the FIR, stating lawmakers should foster harmony. Pratapgarhi appealed to the Supreme Court.

Supreme Court Ruling:

- Poetry as dissent: The bench held that the poem was an act of artistic and political speech, not hate speech. Context and intent were crucial—no group was incited against, and violence was neither provoked nor intended.³⁹
- No “subjective offence”: The Court warned that law enforcement cannot trigger criminal prosecution solely because a section of the public, however vocal or offended, dislikes or disagrees with content.
- Prior inquiry: Police must conduct a preliminary inquiry before registering FIRs on online speech, unless prima facie evidence exists of incitement, threat, or violence.
- Judicial reminders: Art, satire, and legitimate criticism must not be criminalised under penal hate speech clauses. “Vague allegations and subjective hurt do not meet constitutional standards for restricting online speech.”
- Precedent value: Legal standards set in *Imran Pratapgarhi* now require all courts to closely examine intent, context, and potential for harm when determining the threshold for hate speech prosecutions in digital contexts.

5.9 Significance for Regulation of Digital Speech

The judiciary has thus constructed a legal firewall between lawful dissent—even if it offends majoritarian sensibilities—and genuine hate speech that incites group-based violence or discrimination.

- Due process and proportionality are the guiding standards.
- Mere “subjective hurt” or outrage is insufficient for criminal prosecution.
- Judicial scrutiny and preliminary inquiry are required prior to FIR registration, reducing misuse and selective prosecution.

³⁹ *Imran Pratapgarhi v State of Gujarat 2025 INSC 410 (SC)*, paras 27-31.

- Expressive rights for artists, poets, and political commentators gain robust constitutional shelter, aligning Indian practice with UN and European standards.

6. Institutional & Platform Responsibilities – Tech, Law, and Society

6.1 Introduction

No regulatory solution to cyber hate can succeed without effective, rights-respecting institutional mechanisms and meaningful action from technology platforms, law enforcement, the judiciary, and civil society. In an environment where online speech traverses national boundaries, languages, and cultures in real-time, every actor has a unique and crucial role to play: platforms as frontline moderators, police as enforcers, courts as constitutional guardians, and public as both watchdogs and targets of digital harms.

6.2 The Role of Social Media and Tech Companies

6.2.1 Platform Moderation Models

Most platforms deploy a mix of algorithmic and manual moderation due to the sheer volume, speed, and linguistic diversity of content.⁴⁰ While AI can rapidly flag and filter obviously abusive materials, it often struggles with nuance, sarcasm, regional dialects, or context. Manual moderation is vital, yet prone to error, delay, and cultural insensitivity—especially when moderation hubs are located outside India.

- Transparency reporting is becoming standard: Companies such as Meta, Google, and X regularly publish the number of flagged, removed, and restored pieces of content, broken down by country and type of violation.
- Appeals and redressal: The IT Rules 2021 require intermediaries to implement time-bound grievance mechanisms, yet practical experience suggests delays and opacity, especially for marginalized users.⁴¹

6.2.2 Challenges for Platforms

- Volume and Virality: Millions of daily posts; effective “pre-emptive” moderation is virtually impossible at scale.
- Language Gaps: India’s linguistic complexity means less-resourced languages receive far less effective or timely moderation.⁴²

⁴⁰ Sahana Udupa, ‘Automated Moderation and India’s Digital Publics’ (2023) 48(3) Media, Culture & Society 321.

⁴¹ IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, rr 4(8).

⁴² Facebook Transparency Centre, ‘India: Language and Moderation Data’ (2025).

6.2.3 Indian Regulatory Pressure

The Indian government's approach is increasingly assertive:

- Compelling intermediaries to take down content within 24-72 hours.
- Requiring “traceability” of message originators (raising free speech and privacy concerns).
- Threatening safe harbour removal for “non-compliance.”

This balancing act can lead to inconsistent and heavy-handed removals, particularly for content critical of the government or powerful majority interests.⁴³

6.3 Law Enforcement and Prosecution

6.3.1 Police and Prosecution Barriers

- Capacity Deficit: Most local police units lack digital forensics training or legal understanding of cyber hate laws.⁴⁴
- Political Influence: FIRs and prosecutions are frequently used to target political opponents, activists, or marginalized voices—resulting in over-enforcement in some cases and neglect in others.
- Pendency and Delays: Slow investigation, forensic bottlenecks, and overburdened courts undermine deterrence and faith in justice.

6.3.2 Need for Specialized Cells

In major cities, cybercrime cells and digital squads are being set up to investigate tech-based offences. However, most are focused on financial or sexual offences; digital hate and hate-driven mob campaigns often fall through the cracks unless a case achieves media prominence.

6.4 Judicial Oversight

India's higher courts have repeatedly stepped in to protect both digital dissent and public order.

Notable interventions include:

- Directions for preliminary inquiry (Imran Pratapgarhi): FIRs for “offensive” digital content now require checking for prima facie intent to incite violence, not just public outrage.⁴⁵
- Quashing of mala fide prosecutions: Courts frequently invoke Shreya Singhal to dismiss vague or malafide hate speech FIRs.⁴⁶

⁴³ SFLC.in, ‘Intermediary Liability and Online Censorship in India’ (2024) p 14.

⁴⁴ Law Commission of India, ‘267th Report: Hate Speech’ (2017), para 10.6.

⁴⁵ Imran Pratapgarhi v State of Gujarat 2025 INSC 410 (SC), para 29.

⁴⁶ Shreya Singhal v Union of India (2015) 5 SCC 1, para 93.

- Safeguards for vulnerable groups: Courts uphold expedited platform takedown mandates for sexual, gender, or child abuse-related hate.

Despite these advances, routine lower court practice often lags, with bail and trial delays exacerbating chilling effects.

6.5 Civil Society and Media

Civil society organizations (SFLC.in, Internet Freedom Foundation) and media outlets play a vital watchdog role. Investigative journalism has brought to light:

- Systemic under-moderation of hate in certain regional languages.
- Recurrent use of hate campaigns during elections and crises, often targeting minorities and dissenters.
- Government censorship or pressure to suppress or “balance” coverage, sometimes labelling exposure of hate as itself incitement.

International watchdogs (Reporters Without Borders, Article 19) frequently rate India poorly on digital freedom and safety from online hate.⁴⁷

6.6 Recommendations for Effective Institutional Response

1. Capacity Building: Train law enforcement, lower judiciary, and platform staff in nuanced, context-aware digital hate analysis.
2. Transparency & Reporting: Mandate regular publication of removals—including origin, language, and appeals outcomes—with external audits.
3. Regional Moderation: Ensure human review and dedicated staff for vernacular languages and marginalized digital communities.
4. Independent Redressal: Empower an independent digital ombudsman/body for user complaints, free from police or platform control.
5. Public Education: Invest in digital/media literacy drives, particularly for at-risk groups and youth, to encourage counter-speech and responsible participation.

7. Challenges, Gaps & Critique of the Existing Framework

7.1 Introduction

Despite progressive Supreme Court precedents and evolving statutory frameworks, the fight against hate speech in India’s cyber world is stymied by deep-seated gaps, ambiguities, and

⁴⁷ Reporters Without Borders, ‘World Press Freedom Index 2024 – India’ (2024).

practical enforcement failures. This chapter provides a critical analysis of the persistent challenges—doctrinal, institutional, technological, and sociopolitical—that continue to jeopardize both free speech and social harmony in India’s vibrant but vulnerable digital ecosystem.

7.2 Ambiguity in Statutory Language

“Reasonable restrictions” under Article 19(2) and the related BNS/IT Act provisions are worded broadly and sometimes vaguely, e.g., “promotes ill-will,” “outrages religious feelings,” or “public order.” Such terms endow law enforcement with wide discretionary power, resulting in arbitrary or politicized application, especially at the local police level.⁴⁸

7.3 Absence of a Cyber-Specific Statutory Definition

India’s lack of a clear, cyber-appropriate statutory definition of hate speech (despite Law Commission recommendations) leaves crucial legal gray zones. This void is felt most acutely:

- When dissent or satire online is mischaracterized as hate if it challenges the dominant narrative.
- When marginalized groups are disproportionately targeted, yet legal response is absent due to social or official neglect.

7.4 Selectivity and Misuse in Enforcement

- Political Overtones: FIRs are often filed against journalists, artists, and activists whose posts or content are merely critical of state or majoritarian interests—while actual hate propagandists evade action due to protection or selective inaction.⁴⁹
- Chilling Effect: Threat of criminal liability, long-drawn investigations, and trolling leads to self-censorship across digital platforms, especially for vulnerable voices.⁵⁰
- Pendency: India’s slow-moving justice system means even successful judicial challenges (quashing of FIRs/bails) come after prolonged harassment and reputational damage.

⁴⁸ Law Commission of India, ‘267th Report on Hate Speech’ (2017), para 8.2.

⁴⁹ SFLC.in, ‘Free Speech Tracker: Arrests and Detentions for Online Speech’ (2024).

⁵⁰ Tarunabh Khaitan, ‘The Chilling Effect and Indian Digital Speech’ (2023) EPW 31.

7.5 Inadequate Platform Regulation and Transparency

- **Opaque Moderation:** Platform “community guidelines” are often ambiguous, inconsistently enforced, or biased toward protecting influential accounts.⁵¹
- **Lack of Regional Modelling:** Algorithms and human moderation barely cover vernacular content, enabling viral hate in non-English spaces to go unchecked.⁵²
- **Traceability Threats:** Rules requiring platforms to break encryption or reveal originators risk undermining digital privacy and endangering activists and whistleblowers.⁸

7.6 Law Enforcement Capacity and Political Independence

- **Skill Gaps:** The vast majority of local police units lack cyber forensics, legal interpretation skills, and sensitivity to freedom of expression doctrines.
- **Political Pressure:** Law enforcement is sometimes pressured (by political leaders or religious groups) to file or withdraw cases not on law, but on expediency or appeasement, undermining judicial process and equal protection.
- **Delayed Justice:** Courts often intervene late in the process, after the chilling of speech or reputational harm is irreversible.

7.7 Platform-State Tensions and the Future of Tech Regulation

- **Platform Defiance:** Tech giants sometimes resist government requests for takedown, citing global norms—while at other times, capitulate to avoid business disruption.
- **State Overreach:** Blanket internet shutdowns or mass content takedown orders, frequently issued during communal unrest or protests, harm not only hate perpetrators but journalists, first responders, and the right to information.

7.8 Gaps Exposed by High-Profile Cases

The Imran Pratapgarhi judgment exemplifies how legal ambiguities and law enforcement zeal can threaten both speech and justice. While the Supreme Court quashed prosecution, routine protection is still elusive for countless others facing similar accusations in less publicized circumstances. Other cases (e.g., wrongful bookings for memes deemed “anti-national,” arbitrary detentions for WhatsApp forwards) illustrate:

⁵¹ Facebook Transparency Centre, ‘Content Moderation: India’ (2025).

⁵² Sahana Udupa, ‘Automating Hate Detection: The Indian Challenge’ (2024) *Media, Culture & Society* 48(3).

- An urgent need to distinguish digital dissent from digital hate, both in police practice and judicial review.
- The limits of “judicial remedy after the fact,” given the viral, reputational, and chilling harms that occur instantly online.

7.9 The Risk of Over-Correction

Some proposed reforms—such as the Karnataka Hate Speech Bill’s stiff penalties and extended definitions—risk recreating the vagueness and overbreadth the Supreme Court condemned in Shreya Singhal.

Mass surveillance and mandatory traceability, while aimed at curbing genuine hate, may erode privacy and democratic dissent if not rigorously circumscribed.

7.10 Civil Society and Counter-Speech Deficits

While innovative, homegrown civil society efforts exist (fact-checking collectives, vernacular counter-hate campaigns), they are dwarfed by the magnitude, funding, and algorithmic reach of organized hate networks.⁵³

Counter-speech and civic engagement are further hampered by trolling, doxxing, and targeted digital violence (especially against women and minorities).

8. Recommendations for Legal and Policy Reform

8.1 Introduction

After critically analyzing doctrinal, statutory, and enforcement challenges facing regulation of hate speech in India’s cyber world, this chapter presents structured recommendations to build a more effective, constitutionally compliant, and technologically attuned framework. These proposals balance the imperative of protecting digital dissent and free speech with the urgent need to prevent incitement, group hatred, and violence exacerbated by online virality and impunity.

8.2 Legislative Reforms

8.2.1 Statutory Definition Based on Incitement and Group Harm

⁵³ Internet Freedom Foundation, ‘Digital Literacy and Counter Speech in India’ (2024)

- Enact a precise, cyber-aware statutory definition of hate speech: The definition should center on intentional incitement to violence, discrimination, or hostility against protected groups (religion, caste, gender, ethnicity, sexuality), as distinct from offense or distress.⁵⁴
- Implement Law Commission proposals for new BNS/IPC sections: Sections similar to proposed 153C/505A can clearly distinguish criminal hate from protected dissent, satire, or criticism. Existing vague language (e.g., “outrageous” or “ill-will”) should be struck out or narrowed.⁵⁵

8.2.2 Due Process and Judicial Oversight

- Mandatory preliminary inquiry before FIR registration, as clarified in Imran Pratapgarhi: Police must first assess context, intent, and content, moving beyond mere subjective complaint.

8.2.3 Harmonizing Central and State Laws

- Ensure all new hate speech laws—especially at state level—conform to constitutional standards and central protections, avoiding confusion, duplication, or regional overreach.⁵⁶

8.3 Platform Governance and Tech Accountability

8.3.1 Robust Multilingual Moderation

- Invest in vernacular moderation: Mandate large platforms to develop and deploy context-sensitive moderation for all major Indian languages and dialects, supported by regional experts.⁵⁷

8.3.2 Transparency and Redressal

- Regular public reporting: Platforms to publish country- and language-specific moderation, appeals, restoration, and takedown data.
- Independent digital ombudsman: For platform moderation appeals and user complaints, detached from both government and company interests.

8.4 Law Enforcement and Judicial Capacity Building

8.4.1 Training and Sensitization

- Mandatory digital literacy and constitutional law training for all police and

⁵⁴ Law Commission of India, ‘267th Report: Hate Speech’ (2017), Recommendations.

⁵⁵ Ibid; Bharatiya Nyaya Sanhita 2023, draft s 153C.

⁵⁶ Karnataka Hate Speech and Hate Crimes (Prevention and Control) Bill, 2025.

⁵⁷ Facebook Transparency Centre, ‘Indian Language Moderation Report’ (2025).

judicial officers handling hate speech/online speech cases.

- Resourcing cybercrime cells: Specialized teams focusing on hate, not only economic or sexual offences, with proper forensic and linguistic expertise.

8.4.2 Fast-Track and Sensitive Adjudication

- Expedited bail and quashing hearings for digital speech FIRs, curbing prolonged injustice and reputational harm.
- Special protocols for protection of vulnerable litigants (e.g., journalists, minority groups, women) facing online hate.

8.5 Public and Civic Engagement

8.5.1 Digital Literacy and Counter-Speech

- Integrate digital/media literacy curricula at school and university levels, focusing on distinguishing dissent from hate and nurturing ethical participation.⁵⁸
- Support civic counter-speech initiatives: Grants and civic cooperation to empower fact-checking, counter-hate campaigns, and bystander interventions in online forums.

9. Conclusion

9.1 Summary of Findings

The digital revolution has recast the meaning and exercise of freedom of speech and expression in India, creating both unparalleled opportunities and grave threats. While the Constitution robustly protects speech, the rise of hate campaigns, algorithmic virality, and global audiences require the law to evolve rapidly—without undermining democracy’s core guarantees.

This Paper reveals that:

- Constitutional jurisprudence, as reaffirmed in cases from Romesh Thappar to Imran Pratapgarhi, has established that restrictions on speech must be precise, limited, proportionate, and anchored to demonstrable risk of incitement or violence—not mere offense or outrage.
- Statutory and regulatory responses to online hate (BNS, IT Act, Intermediary Rules) remain fragmented and technologically outdated, often leaning on

⁵⁸ Internet Freedom Foundation, ‘Digital Literacy in Indian Schools’ (2024).

ambiguous definitions that risk both under- and over-enforcement.

- Judicial intervention (notably Shreya Singhal and Imran Pratapgarhi) has shielded digital dissent and artistic creation from arbitrary prosecution, emphasizing context, intention, and constitutional morality.
- Practical enforcement is limited by inadequate police training, political pressures, opaque platform moderation, and lack of redressal for ordinary citizens. Efforts to empower civil society and multilingual, context-aware moderation have yet to achieve scale.

9.2 Reflections

The Imran Pratapgarhi judgment stands as a constitutional beacon, reminding State and society that democracy demands space for disagreement, criticism, and provocation—within the threshold drawn by incitement, not subjective offense. Digital India’s future lies in resisting the twin dangers of majoritarian censorship and viral group hate. Only with statutory lucidity, institutional accountability, and a living commitment to rights can digital speech become both free and fair.

9.3 The Path Forward

The recommendations in Chapter 9 must be seen not as endpoints but as evolving standards, sensitive to both technological dynamism and social change. Statutory definition and platform accountability; police and judicial education; strong, independent user redressal; and public investment in literacy and counter-speech—these pillars will furnish India with a twenty-first-century framework worthy of her constitutional promise.

In the end, defending freedom in the digital age requires vision, vigilance, and above all a conscious, perpetual balancing of the values for which India’s republic stands.