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JUDICIAL STANDARDS AND LIMITS: RE-EVALUATING SUPREME COURT JURISPRUDENCE ON HATE SPEECH

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ABSTRACT

Freedom of speech and expression is one of the fundamental freedoms under the Constitution, but they are also subject to restriction as necessary to prevent hate speech that may jeopardize public order and human dignity. As hate speech has always been rampant before the time of independence, there is no legal definition of it in Indian law. Due to the persistent lack of statutory provisions, hate speech has become a matter of judicial interpretation. The development of judicial standards has gone through different phases over time, and this has given rise to several tests for determining hate speech in India. This paper critically examines the evolution of hate speech jurisprudence in India's Supreme Court from its inception to date.

Keywords: freedom of speech, public order, human dignity, hate speech, judicial interpretation.

Introduction

The problem of hate speech is definitely one of the most difficult problems that any democratic country has to face owing to the necessity to maintain an equilibrium between the freedom of speech and expression and equality and law and order. As regards India, the freedom of speech and expression is secured by the Indian Constitution in accordance with Article 19(1)(a); nevertheless, some reasonable limitations may be placed on this freedom in accordance with Article 19(2). Though these provisions exist in the Constitution of India, due to the non-definition of the term in the statute, the courts play an important part in its definition. Hate speech is distinct among the different types of restricted speech because of the damage it can do to the constitutional ideals of equality and fraternity, which are necessary for the very foundation of a pluralistic society.

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In India, over the years, the Supreme Court has built up a vast jurisprudence of hate speech through interpretation and judicial review of the Constitution. The evolving nature of the Supreme Court's stance has been driven by the emergence of new socio-technological contexts, especially those related to hate speech in online contexts and social media. In the absence of an adequate statutory framework regulating hate speech in the online sphere, it is the duty of the judiciary that has been left to handle these emerging problems. Through its decisions, the Supreme Court has tried to define the limits of speech under the Constitution. At different instances, the Court has taken a preventive stand by making directions to prevent communal violence and to protect vulnerable communities from hate speech. The jurisprudence of the Court in the recent past seems to demonstrate a clear move towards judicial restraint. Considering the doctrine of the separation of powers, the Supreme Court has refrained from framing detailed guidelines for regulating hate speech, because according to them, the current legal regime suffices, and the problem is not one of lack of legislation but one of its inadequate execution. This move from judicial activism to judicial restraint brings in new issues concerning the adequacy and effectiveness of judicial standards on hate speech. Within this context, the article revisits the standards and constraints that lie in the jurisprudence of the Supreme Court regarding hate speech. The article reviews the development of the Court's rationale and analyzes the change in its judicial approach.

Doctrinal Evolution of Judicial Standards

I. The Early era: malicious intent and public order nexus

The primary issue of constitutional jurisprudence in the realm of Indian free speech has been one of reconciling the right to freedom of speech and expression provided under Article 19(1)(a) with the "reasonable restrictions" that could be imposed under Article 19(2). During the post-independence period, the Supreme Court of India had to construe colonial-era laws including Section 295A of the IPC (which is now Section 299 of the Bharatiya Nyaya Sanhita (BNS), 2023) and Sedition under Section 124A to fit within democratic parameters. Instead of making these provisions prohibitive of all offensive speech, the early courts developed two limiting principles: a mens rea standard and a public order nexus standard.

1. Ramji Lal Modi Vs State of UP²

In the case of *Ramji Lal Modi vs. State of UP*, the Supreme Court examined the challenge to

² 1957 SCR 860.

section 295A of the Indian Penal Code. This section criminalizes the intentional act that outrages the religious feelings of any class of citizens.³ The court took a restrictive approach so that section 295A should not be misused against legitimate speech. The court explained that Section 295A is not an offense that covers all acts that may insult the religious feelings of any person; rather, it requires malice towards such feelings. The court introduced the concept of an aggravated form of insult as a threshold for limiting speech under the 19(2) public order exception. The court affirmed that section 295A applies only when the speech falls under the ambit of “calculated tendency” to disturb the public tranquility and concluded that for a speech to be constitutionally impermissible, it must possess both the subjective malicious intention and the objective tendency to provoke public disorder.

Proximity and Structural Hierarchy of Public Order

2. Ram Manohar Lohia v. State of Bihar - Establishing the "Concentric Circles" Framework

In *Ram Manohar Lohia v. State of Bihar*,⁴ the Court conducted a structural analysis of restrictions on speech under Article 19(2) by distinguishing among various levels of social disturbance. This was done by way of three concentric circles:

Law and Order (Outermost Circle): Deals with ordinary or local breach of peace or individual criminal acts which are not in any way disturbing the community as a whole.

Public Order (Middle Circle): Deals with disturbances of a wide nature which disturb the even pace of community life.

Security of the State (Innermost Circle): Deals with grave threats which threaten to overthrow the constitution and the Government itself.

According to the Court, for a restriction imposed under Article 19(2) for “public order,” a mere “hypothetical” or “remote” connection to an ordinary law and order case cannot be sufficient. For a restriction to be reasonable, there should be a proximate connection between the restriction and the public disorder anticipated by the latter.

3. Kedar Nath Singh case - The Incitement Threshold

In the case of *Kedar Nath Singh vs. State of Bihar*,⁵ the court followed the same principle in respect of Section 124A of the IPC (Sedition). Following the same principles as laid down in

³ Indian Penal Code, 1860, s. 295A

⁴ AIR 1966 SC 740.

⁵ 1962 AIR 955.

Ramji Lal Modi, it was held that even if there is an expression of hatred or harsh criticism against government policies, it does not constitute a criminal offense unless it involves incitement to violence.

II. The Direct Nexus Standard: Discussion, Advocacy, and Incitement

Expanding on the foundations laid out during the Early Era, where the judiciary incorporated subjective intention and proximity to public order as early forms of protection, this development also left open how the speech could be evaluated and the exact point at which the speech became harmful enough to be punishable. This led to the development of the constitutional standard of the direct nexus standard through key decisions of *Ramesh v. Union of India* (1988) and *Shreya Singhal v. Union of India* (2015).

1. *Ramesh v. Union of India* ⁶

The case of *Ramesh v. Union of India*, relating to the telecast of the TV serial “Tamas,” which depicted the communal riots before Partition, dealt with the challenge of evaluating a speech on the sensitive topics of history and communal relations. It was claimed in the petition that the portrayal of the communal conflict in the past would provoke communal unrest under Section 153A of IPC and violate public order. The rejection of this contention by the Court resulted in the establishment of two principles of doctrine: The Court rejected the claim that speech can be curtailed simply because it outrages individuals who are emotionally explosive, hypersensitive, or outrage-prone and also elucidated that the effect of sensitive speech should be determined from the standpoint of the ordinary, reasonable, strong-minded, and firm-minded person.

2. *Shreya Singhal v. Union of India* ⁷

In this case, the Supreme Court declared Section 66A of the Information Technology Act, 2000 unconstitutional. In order to distinguish between Article 19(1)(a) freedom of speech and Article 19(2) permissible limitations on speech, Justice R.F. Nariman gave the Tripartite Distinction:

Discussion: Any idea, opinion or criticism merely stated or exchanged

Advocacy: Any form of advocacy or propagation of any viewpoint, regardless of its unpopularity, offensiveness or disturbing nature.

⁶ 1988 AIR 775.

⁷ (2015) 5 SCC.

Incitement: Speech that exceeds a certain point and is bound to incite lawlessness or disturbance of public peace

The Court concluded that any debate or advocacy, however grossly offensive, irritating, or inconvenient, is entirely protected by Article 19(1)(a).⁸ The power of the State to impose limitations under Article 19(2) comes into play only after the speech passes the stage of incitement.⁹ Moreover, it must be noted that any restriction cannot be based on vague or remote possibilities. There must be a direct and immediate nexus between the expression and the expected harm to the public.

III. Dignity Paradigm Shift

While the Direct Nexus Standard articulated in the *Ramesh v. Union of India* case and the *Shreya Singhal* case protected individuals from state censorship through the imposition of an urgent necessity for a call to illegal actions, the standard's sole emphasis on physical unrest pointed to a doctrinal gap in light of the internet age. Hate speech in the digital space does not necessarily take the form of immediate violence; rather, it functions diffusely through stereotyping, virality through algorithms, and vilification based on identity. Aware of the doctrinal gaps that arise as a result of the strict adherence to "immediate disorder," the Supreme Court embarked on a paradigm shift in its jurisprudence: The Dignity Paradigm Shift. In this transition, the Supreme Court moved from a mere "public order" analysis to a normative approach based on Constitutional Fraternity (Preamble) and Human Dignity (Articles 14 and 21). Instead of viewing hate speech as a precursor to riots, the Court recast it as an assault on equal citizenship.

1. *Pravasi Bhalai Sangathan v. Union of India*¹⁰

The Supreme Court in *Pravasi Bhalai Sangathan v. Union of India* took an innovative approach towards analyzing hate speech. Rather than focusing on physical violence that might result from hate speech, the Court rethought its understanding of hate speech by deciding upon the petition that sought judicial guidance in regulating hate speech.

The Court concluded that hate speech cannot be judged based on its offensiveness or vulgarity alone. Its constitutional harm is the fact that it is capable of marginalizing the vulnerable

⁸ *Ibid*, para 44.

⁹ *Ibid*, para 13.

¹⁰ (2011) 11 SCC 477.

sections of society.¹¹

Hate speech constitutes a violation of the basic right to freedom provided under Articles 14, 19 and 21, as well as violates the principle of fraternity under the Preamble. The court was aware of the shortcomings of the legal framework in dealing with hate speech and therefore exercised judicial restraint while framing rules. Rather, the Court made a formal request to the Law Commission of India to define 'hate speech' and make recommendations to the Parliament, especially in relation to electoral offences.¹² As a result of which the 267th Law Commission report proposed to include sections 153C prohibiting incitement to hatred) and 505A(causing fear, alarm, or provocation of violence in certain cases) into the Indian Penal Code.¹³ However, these recommendations have not been accepted or implemented by the government, either in the Indian Penal Code or the new penal code, Barathiya Nyaya Sanhitha 2023.

2. *Amish Devgan v. Union of India*¹⁴

In *Amish Devgan v. Union of India*, where an allegation of offense to religious sentiments was made through a television broadcast, the Supreme Court adopted the Dignity Paradigm by providing for a specific judicial test that distinguishes between protected speech and criminal hate speech. There was a distinction drawn between political speech on one hand and vilification of individuals based on identities. Any speech that criticizes a particular government policy, action, or religious/ ideological dogmas shall be considered constitutionally protected in accordance with Article 19(1)(a),¹⁵ whereas any speech that tries to create or propagate "hatred against the target community or group based on identity" shall no longer enjoy constitutional protection.¹⁶

The judgment made clear the limitation of hate speech within the context of the Preamble and Part III of the Constitution, where Fraternity is an obligation in the Constitution that intends to promote political and social equality between various communities. Relying on Article 14 and Article 21, the Court noted that freedom of expression has limits in respect of the inherent equality and dignity of others. The act of hate speech amounts to a constitutional violation insofar as it denies the equality of the individuals targeted in a democracy. To avoid the overcriminalization of constructive criticism, it was emphasized again by Amish Devgan that

¹¹ *Ibid*, para 7.

¹² *Ibid*, para 28.

¹³ Law Commission of India, "267th report on Hate Speech" (March, 2017).

¹⁴ (2021) 3 SCC 306.

¹⁵ *Ibid*, para 56.

¹⁶ *Ibid*, para 54.

there should be an element of malice involved in order for any speech to qualify as hate speech.¹⁷ When it comes to the digital and broadcast media platforms, malice can be deduced from context, tone, and the territorial extent of influence.

IV. The Era of Judicial Interventionism

Having seen the creation of The Dignity Paradigm Shift that re-centered speech prohibitions in terms of Constitutional Fraternity and Human Dignity (*Pravasi Bhalai Sangathan, Amish Devgan*), the Supreme Court was left with another problem. Having managed to establish the elaborate framework of constitutional standards, there always remained the practical divide between the latter and executive implementation of the former. The provisions of substantive laws within the Indian Penal Code (IPC) such as Sections 153A, 153B, 295A, and 505 were constantly undermined by the lack of action and investigation, as well as biased prosecution. To fill the gap created by the practical difficulties, the Supreme Court initiated the Procedural & Interventionist Phase. Leaving the framework of passively ruling disputes behind, the judiciary turned into a supervisor, introducing the procedural requirements in *Tehseen S. Poonawalla v. Union of India*, *Shaheen Abdulla v. Union of India*, and *Kazeem Ahmed Sherwani v. State of U.P.*

1. *Tehseen S. Poonawalla v. Union of India*¹⁸

In the case of *Tehseen S. Poonawalla v. Union of India*, the Supreme Court deliberated upon the growing menace of mob lynching and vigilantism, taking into account its clear link with hate speech in the digital domain. In addition to this, the Court moved away from the concept of "traditional incitement" and took cognizance of the fact that in the age of technology, hate speech spreads via social media platforms, whereby the interplay of coded speech, viral videos, and rumours affects group behaviour leading to collective violence in the physical world.¹⁹ Taking into consideration the constitutional responsibility of the State to uphold law and order and protect human dignity, the Court provided a regulatory regime comprising of the following²⁰:

Preventive measures: Appointment of a Nodal Officer at district level to monitor hate speech and collect intelligence. Immediate and preventive measures to control the spread of

¹⁷ *Ibid*, para 68.

¹⁸ (2018) 9 SCC 501.

¹⁹ *Ibid*, para 24.

²⁰ *Ibid*, para 40.

inflammatory information on social media platforms.

Remedial measures: Jurisdictional limitations, mandatory compensation for victims, and speedy investigation and trials.

Punitive Measures: Define strict punishment for those in the police and administration who are negligent or inactive in stopping the hate-fueled mob violence.

Poonawalla case stands out as an important development in the regulation of digital speech in terms of its collective impact instead of the individual intent behind such speech, thereby setting up a legal precedent that the State has an affirmative constitutional responsibility to control hate speech.

2. Shaheen Abdulla v. Union of India²¹

In the case of *Shaheen Abdulla v. Union of India*, the Supreme Court addressed this problem of enforcement failure. The petition highlighted the problem of police inaction in taking action against inflammatory speeches against the Muslim community in violation of the statutory provisions under Sections 153A, 153B, 295A, and 505 IPC. Taking into account the constitutional responsibility of the Court to preserve secularism, the Court assumed an unprecedented proactive stance by directing state law enforcement authorities (Commissioner of police, New Delhi, Director General of Police, Uttarakhand, and Director General of Police, Uttar Pradesh) to take suo moto criminal action by registering FIRs against perpetrators of hate speech without any complaint from third parties. It was clarified that these instructions should be complied with irrespective of the religion of the offender or the victim, keeping in view the constitutional feature of secularism. To enforce these instructions and remove police hesitation, it was provided that any failure on the part of police to register FIRs would constitute contempt of court.

3. Kazeem Ahmed Sherwani v. State of U.P.²²

In this case, despite the allegations made against the physical assault and anti-religion abuse of a Muslim person, the police refused to register an FIR for a long time. Even after being compelled to do so by the Court, the Investigating Officer deliberately characterized the incident as a mere bodily/property offense case while completely overlooking Sections 153B and 295A IPC, which are critical hate crime sections. In view of the "gross misconduct" of the

²¹ Shaheen Abdulla v. Union of India, W.P.(C) No. 940 of 2022, order dated 21 October 2022 (SC).

²² Kazeem Ahmed Sherwani v. State of Uttar Pradesh & ors., W.P. (Crl.) No. 391 of 2021, Order dated 16 February 2026 (SC).

police and their attempt to hide from the court, the Supreme Court rejected the contention put forward by the State regarding the delay in seeking statutory sanction. According to the Court, the sanction of a statutory authority under Section 196 CrPC is a pre-requisite only at the judicial cognizance stage and therefore could not have been a valid reason for the police not to register hate crimes at the FIR stage. Taking recourse to a procedural corrective measure, the Court ordered the State to secure the case file from the trial court and to further investigate the case, including the required hate speech sections. Therefore, this particular case can be regarded as tangible evidence of the fact that the main problem with the Indian hate speech policy is not a legislative one but an executive one.

V. Re-establishing Institutional Boundaries

1. Ashwini Kumar Upadhyay v. Union of India²³

"The Era of Judicial Interventionism," which was marked by continuous judicial monitoring as per *Tehseen S. Poonawalla case* and interim orders of wide ambit as per *Shaheen Abdulla case*, the Supreme Court of India made a critical jurisprudential correction in the case of *Ashwini Kumar Upadhyay v. Union of India*. While disposing of a bunch of writ petitions demanding fresh, all-encompassing judicial guidelines for curbing hate speech, the Court formally ended the period of judicial interventionism.

Stressing the need for constitutional propriety, the Court moved from judicial activism to judicial restraint, underscoring that the key to criminal legislation and police enforcement lies within the legislature and the executive branches.

In this case, one of the critical planks in the petitioners' case was to provide guidelines for hate speech because of the legislative vacuum which needs to be supplemented by judicial intervention. This premise was expressly repudiated by the Court. The Bench, comprising Justices Vikram Nath and Sandeep Mehta, noted that this field was not one where there was no legislation. Indeed, Sections 153A, 153B, 295A, and 505 of the IPC and their counterparts in the Bharatiya Nyaya Sanhita, 2023 (BNS), constituted a complete statutory framework for punishing acts that threaten public order or offend religious feelings or foster enmity between different classes of people.²⁴ It was made clear that repetitive acts of hate speech could not be taken to mean that the law was silent on the matter, but it reflected merely a failure of

²³ Ashwini Kumar Upadhaya V. Union of India & Ors, W.P.(C) No. 943 of 2021, decided on 29th April 2026 (SC).

²⁴ *Ibid*, para 37.

enforcement of the existing laws by local police and administrative authorities.²⁵

Relying on the constitutional framework in the matter, the Court drew attention to the tight constraints on the institutions involved in light of the Doctrine of Separation of Powers. According to the Court, creation of new offenses, establishment of independent categories of hate speech, or amendment of existing statutory sanctions comes exclusively within the realm of the functions vested in Parliament and State Legislatures. Constitutional courts have the authority of interpreting statutes and giving interim orders for ensuring the enjoyment of fundamental rights under Article 32 and 226; however, they lack the capacity to legislate or to build alternate legal regimes.

Significantly, however, *Ashwini Kumar Upadhyay case* does not undermine or dilute the substantial constitutional jurisprudence laid down in previous landmark judgments. The Supreme Court advised petitioners not to initiate direct Writ Petitions under Article 32 concerning every localized incidence of hate speech. As stated by the Court, constitutional courts cannot keep track of every incident that occurs in the country. Those parties seeking remedies for individual incidents have been directed to seek remedy in the High Courts (Article 226) or through statutory remedies in Magistrate Courts.

Ashwini Kumar Upadhyay case completes the circle of the Supreme Court's jurisprudence on hate speech. Through its unwillingness to lay down any more general guidelines, the Court unequivocally transferred the responsibility of making laws back to Parliament and the responsibility of executing those laws to local institutions. Through this decision, the judiciary created a definite line, which is that even though the Constitution protects hate-based marginalization, the Rule of Law will be strictly maintained in the process.

Conclusion

From the case law provided, it is clear that the Court has established judicial standards to differentiate protected speech from speech that leads to discrimination, hostility, and violence. However, the decisions also demonstrate the inconsistency in the use of the above-mentioned standards, especially regarding new forms of hate speech in the modern era. Significantly, there is a shift in the approach adopted by the Court from judicial activism to judicial restraint, where the Court has refrained from laying down further guidelines due to the doctrine of separation of powers and the sufficiency of the current legal regime. Judicial restraint, while respecting the constitutional limits of judicial interference with legislative processes, highlights the

²⁵ *Ibid*, para 38.

shortcomings associated with the exclusive reliance on statutory laws in an age when social media platforms have made hate speech faster, wider and more effective. However, the Court decisions also suggest that the problem is not merely the lack of legislation but the inconsistent implementation of the laws already present. Therefore, the re-evaluation of the Supreme Court's approach to hate speech jurisprudence reveals that the regulation of hate speech does not lie in the law-making of the judiciary; rather, it needs an effective implementation of the existing laws. Additionally, it requires Parliament to amend the existing framework in view of technological advancements and also the findings of the 267th Law Commission Report.²⁶ While the intervention of the legislature might provide a better solution, judicial involvement is imperative in this regard.



²⁶ Ashwini Kumar Upadhaya V. Union of India & Ors.