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# FREEDOM OF SPEECH AND EXPRESSION V. HATE SPEECH IN INDIA: BALANCING CONSTITUTIONAL RIGHTS AND SOCIAL HARMONY

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## ABSTRACT

*Freedom of speech and expression is a fundamental pillar of democratic governance in India. It is guaranteed under Article 19(1)(a) of the constitution and allows citizen to freely express opinions, challenge ideas, and participate in public discourse. However, this freedom is not absolute and is subject to reasonable restrictions under Article 19(2) to protect public order, morality and the dignity of individuals and communities. In recent years, the rise of hate speech in political discourse, media platforms, and social networking sites has created serious challenges to the balancing between free expression and social harmony.*

*Hate speech promotes hostility, discrimination, and violence individuals or group based on religion, caste, ethnicity others identities. Such speech threatens constitutional values like equality, fraternity, and dignity. At the same time, excessive state control over speech may undermine democratic freedoms and the independence of the press. Therefore, it becomes necessary to strike a balancing between protecting freedom of speech that hatred or public disorder.*

*In this study examines the constitutional framework, legal provisions, and judicial approaches related to freedom of speech and hate speech in India. It also analyses the role of media, political actors, and digital platforms in shaping public discourse. The paper highlights the growing misuse of social media for spreading inflammatory content and its impact on communal harmony. The study concludes that greater public awareness is essential to safeguard democratic freedom while ensuring respect for human dignity and social stability in a diverse society like India.*

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pg. ^ 1 Jain, R., Freedom of Speech vs Hate Speech: Constitutional Perspective, IJRAR (2024), <https://www.ijrar.org/papers/IJRARI1DOP012.pdf>; Singh, P., Free Speech v Hate Speech: Article 19(1)(a) (2025), <https://officeofpartapsingh.com>; Ramji Lal Modi v. State of UP, AIR 1957 SC 620, <https://indiankanon.org/doc/1218090/>; Bhatia, G., Balancing Freedom of Expression & Hate Speech (2019), <https://www.researchgate.net/publication/334720790>; Kumar, A., Understanding Hate Speech within Constitutional Framework (2024), <https://www.jusscriptumlaw.com>; Sharma, R., Thin Line Between Expression & Incitement, IJLRR (2025 Article 19(1)(a)^1 protects speech but 19(2)^1 limits hate. Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1

## KEYWORDS

Freedom of Speech, Hate Speech, Article 19(1)(a), Reasonable Restrictions, social media, Constitutional Rights.

## INTRODUCTION

Freedom of speech According to Merriam Webster's dictionary is the legal to express one's opinions Indian constitution is a fundamental Rights, certain rights which are an integral part of an individual's life. Right to freedom of religion, right to equality, it also guarantees the citizens of India, the right to freedom of speech and expression The right to freedom of speech and expression. Enshrine in Article 19(1)(a) of the Constitution of India 1950, is a cornerstone of democratic governance, Thought the constitution provides a fundamental rights to freedom of speech and expression , the same time article 19(2) of the constitution provides that restrictions on the right to freedom of speech and expression can be imposed by the state in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt to court, defamation or incitement to an offence.

## HATE SPEECH

According to Black's Law Dictionary, 9th Edn., Hate speech is defined as "Speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence. "Hate speech may target "religion, ethnicity, nationality, race, color, descent or gender" and characteristics such as language, economic or social origin, disability, health status or sexual orientation among many others.

Why should we stop hate speech?

To protect Human Dignity (hurting)

pg. ^ 2 Jain, R., Freedom of Speech vs Hate Speech: Constitutional Perspective, IJRAR (2024), <https://www.ijrar.org/papers/IJRAR1DOP012.pdf>; Singh, P., Free Speech v Hate Speech: Article 19(1)(a) (2025), <https://officeofpartapsingh.com>; Ramji Lal Modi v. State of UP, AIR 1957 SC 620, <https://indiankanoon.org/doc/1218090/>; Bhatia, G., Balancing Freedom of Expression & Hate Speech (2019), <https://www.researchgate.net/publication/334720790>; Kumar, A., Understanding Hate Speech within Constitutional Framework (2024), <https://www.jusscriptumlaw.com>; Sharma, R., Thin Line Between Expression & Incitement, IJLRR (2025 Article 19(1)(a)^1 protects speech but 19(2)^1 limits hate. Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1

Preventing violence and discrimination (differentiating)

Promoting social harmony (balancing)

Safeguarding democratic values (caring)

Supporting mental strength (stress)

Upholding legal and ethical values (safeguarding)

. Britannica defines hate speech as speech or expression that denigrates a person or persons on the basis of (alleged) membership in a social group identified such as race, ethnicity, gender, sexual orientation, religion, age, physical or mental disability, and others. Hate speech refers to any speech and expression -spoken, written, or symbolic, that targets and belittles an individual or group of individuals based on certain specific characteristics like religion, race, etc. It is clear explicitly so far that “hate speech”, but its nature, does not fall within the ambit of Article 19(1)(a). Therefore, a conclusion must be drawn in cases of “hate speech “on grounds of public order, decency and morality.

## STATEMENT OF THE PROBLEM

1. To what extent does the right to freedom of speech expression under Article 19(1)(a) of the constitution protect individuals in India?
2. How do the reasonable restrictions under Article 19(2) regulate freedom of speech to maintain public order and social harmony?
3. what roles does hate speech play in disturbing communal harmony and constitutional values in India?
4. How do media and social media platforms contribute to the spread or control of hate speech in contemporary India?

pg. <sup>3</sup> Jain, R., Freedom of Speech vs Hate Speech: Constitutional Perspective, IJRAR (2024), <https://www.ijrar.org/papers/IJRAR1DOP012.pdf>; Singh, P., Free Speech v Hate Speech: Article 19(1)(a) (2025), <https://officeofpartapsingh.com>; Ramji Lal Modi v. State of UP, AIR 1957 SC 620, <https://indiankanoon.org/doc/1218090/>; Bhatia, G., Balancing Freedom of Expression & Hate Speech (2019), <https://www.researchgate.net/publication/334720790>; Kumar, A., Understanding Hate Speech within Constitutional Framework (2024), <https://www.jusscriptumlaw.com>; Sharma, R., Thin Line Between Expression & Incitement, IJLRR (2025 Article 19(1)(a)<sup>1</sup> protects speech but 19(2)<sup>1</sup> limits hate. Ramji Lal case<sup>1</sup> upheld IPC 295A. Shreya Singhal<sup>1</sup> struck Section 66A.<sup>1</sup>

5. How can India effectively balance the protection of freedom of expression with need to prevent hate speech and maintain social harmony?

## REVIEW LITERATURE

Indian legal literature offers divergent views on the scope and limitations of free speech. Scholars like **Gautam Bhatia** advocate for a liberal interpretation of Article 19(1)(a), emphasizing the role of dissent in a democracy. In the 267th Report of the Law Commission of India, hate speech is stated 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. The context of speech is crucial in determining whether it constitutes hate speech or not. It can cause harm to the targeted individuals and groups, as well as to the society at large, by inciting hatred, violence, discrimination, and intolerance. Legal Position of Hate Speech in India: Freedom of Speech and Hate Speech: Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression as a fundamental right for all citizens. Article 19(2) imposes reasonable restrictions on this right, balancing its use and misuse. Restrictions are allowed in the interests of sovereignty, integrity, security, friendly relations with foreign states, public order, dignity, morality, contempt of court, defamation, or instigation of an offence

**Sen (2016)** on The Wire reports that according to The Hoot's annual free speech report, 2015 was a year twirling around inquiries regarding free expression. In 2015, 8 journalists were killed (or died in the job), 27 injured and 15 death threats cases. Matters of media censorship also sprung, whereas instances of information monitoring and the blocking of internet services by authorities were also recorded

"Early scholarship traces Article 19(1)(a) to British precedents, evolving post-Independence with *Romesh Thapar v. Madras* (1950) striking pre-censorship. *Servia's Constitutional Law of India* (4th ed.) analyzes 19(2) limits as narrow, barring blanket bans. *Basu (Commentary on Constitution, Vol.5)* links hate curbs to public order, not mere offense."

pg. ^ 4 [Jain, R., Freedom of Speech vs Hate Speech: Constitutional Perspective, IJRAR \(2024\), https://www.ijrar.org/papers/IJRAR1DOP012.pdf](https://www.ijrar.org/papers/IJRAR1DOP012.pdf); [Singh, P., Free Speech v Hate Speech: Article 19\(1\)\(a\) \(2025\), https://officeofpartapsingh.com](https://officeofpartapsingh.com); [Ramji Lal Modi v. State of UP, AIR 1957 SC 620, https://indiankanoon.org/doc/1218090/](https://indiankanoon.org/doc/1218090/); [Bhatia, G., Balancing Freedom of Expression & Hate Speech \(2019\), https://www.researchgate.net/publication/334720790](https://www.researchgate.net/publication/334720790); [Kumar, A., Understanding Hate Speech within Constitutional Framework \(2024\), https://www.jusscriptumlaw.com](https://www.jusscriptumlaw.com); [Sharma, R., Thin Line Between Expression & Incitement, IJLRR \(2025 Article 19\(1\)\(a\)^1 protects speech but 19\(2\)^1 limits hate, Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1](#)

## LEGAL PROVISIONS:

Hate speech has not been defined in any law in India. However, legal provisions in certain legislations prohibit select forms of speech as an exception to freedom of speech. The Courts have time and again advocated that person affected by hate speech take recourse to provisions laid down in the penal and other laws. Some laws which may provide remedies against hate speech are listed below:

Under Section 153A of IPC, “promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony”, is an offence punishable with imprisonment which may extend to three years, or with fine, or with both.

Section 505(2) of IPC makes it an offence to make “statements creating or promoting enmity, hatred or ill-will between classes” which shall be punishable with imprisonment which may extend to three years and fine, or with both.

### Representation of the People Act, 1951

Section 8 disqualifies a person from contesting election if he is convicted for indulging in acts amounting to illegitimate use of freedom of speech and expression.

### Protection of Civil Rights Act, 1955

Section 7 penalizes incitement to, and encouragement of untouchability through words, either spoken or written, or by signs or by visible representations or otherwise.

### Religious Institutions (Prevention of Misuse) Act, 1988 –

pg. ^ 5 Jain, R., Freedom of Speech vs Hate Speech: Constitutional Perspective, IJRAR (2024), <https://www.ijrar.org/papers/IJRARI1DOP012.pdf>; Singh, P., Free Speech v Hate Speech: Article 19(1)(a) (2025), <https://officeofpartapsingh.com>; Ramji Lal Modi v. State of UP, AIR 1957 SC 620, <https://indiankanoon.org/doc/1218090/>; Bhatia, G., Balancing Freedom of Expression & Hate Speech (2019), <https://www.researchgate.net/publication/334720790>; Kumar, A., Understanding Hate Speech within Constitutional Framework (2024), <https://www.jusscriptumlaw.com>; Sharma, R., Thin Line Between Expression & Incitement, IJLRR (2025 Article 19(1)(a)^1 protects speech but 19(2)^1 limits hate. [Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1](#)

Section 3(g) prohibits a religious institution or its manager to allow the use of any premises belonging to, or under the control of, the institution for promoting or attempting to promote disharmony, feelings of enmity, hatred, ill-will between different religious, racial, language or regional groups or castes or communities and is punishable with imprisonment for a term extending to three years and fine.

### Information Technology Act of 2000:

Section 66A criminalized “offensive speech” online and was punishable with imprisonment for a term which may extend to three years and with fine. It was intended to protect women from cyber-crimes but was criticized for endangering civil and political liberties. In *Shreya Singhal v. Union of India*, the Court, ruling that Section 66A creates an offence that is vague and overbroad, struck down Section 66A as being violative of Article 19(1)(a) and not saved by 19(2). The Court upheld the constitutionality of Section 69A of the Act which gives the Government the power to block public access to online content which falls under Article 19(2) of the Constitution.

### **BHARATIYA NYAYA SANHITA, 2023-**

Many sections under the BNS 2023 that deal with hate speech to punish or to set an example by punishment so that no one does the same offense again.

Section 196 prohibits the promotion of enmity or conflict between particular groups based on religion, race, community, or language. And the punishment for violating section 196 of BNS 2023 is a fine, or imprisonment that can be exceeded up to 3 years, or can be both [3].

Section 197 says – imputation, assertion, prejudicial to national integration, and actions that may harm the national integration [4].

pg. 6 Jain, R., *Freedom of Speech vs Hate Speech: Constitutional Perspective*, IJRAR (2024), <https://www.ijrar.org/papers/IJRAR1DOP012.pdf>; Singh, P., *Free Speech v Hate Speech: Article 19(1)(a) (2025)*, <https://officeofpartapsingh.com>; *Ramji Lal Modi v. State of UP*, AIR 1957 SC 620, <https://indiankanon.org/doc/1218090/>; Bhatia, G., *Balancing Freedom of Expression & Hate Speech (2019)*, <https://www.researchgate.net/publication/334720790>; Kumar, A., *Understanding Hate Speech within Constitutional Framework (2024)*, <https://www.jusscriptumlaw.com>; Sharma, R., *Thin Line Between Expression & Incitement*, IJLRR (2025 Article 19(1)(a)^1 protects speech but 19(2)^1 limits hate. [Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1](#)



courts or foreign comparisons unless pivotal. Data Collection, Draw from primary materials—Constitution, statutes, SCC/AIR-reported judgments—via Manu Patra, SCC Online, and official gazettes. Supplement with secondary sources: Seervai/Basu commentaries, NUJS/NUALS journals, Law Commission Reports (267th on hate speech, 2017). No empirical surveys; focus on textual/doctrinal synthesis. Analysis Framework: Apply IRAC (Issue-Rule-Analysis-Conclusion) per case: identify speech-harm tension, extract judicial tests (e.g., "clear and present danger" in *Amish Devgan*), evaluate proportionality under 19(2). Critically gap-spot: enforcement lapses, digital ambiguities, balancing dignity (Art.21) vs expression.

## OBJECTIVES OF STUDY

To examine Article 19(1)(a)'s scope against Article 19(2) curbs on hate speech, clarifying constitutional limits.

To trace Supreme Court evolution from *Romesh Thapar* (1950) to *Kaushal Kishor* (2023), identifying balancing tests.

To assess efficacy of IPC 153A, 295A, 505 in curbing group-targeted hatred while safeguarding discourse.

To pinpoint doctrinal gaps—digital enforcement, proportionality—in judicial hate speech precedents.

To propose refinements like "clear and present danger" standards for harmony without dissent chill.

## CONCEPTS

pg. ^ 8 [Jain, R., Freedom of Speech vs Hate Speech: Constitutional Perspective, IJRAR \(2024\), https://www.ijrar.org/papers/IJRAR1DOP012.pdf](https://www.ijrar.org/papers/IJRAR1DOP012.pdf); [Singh, P., Free Speech v Hate Speech: Article 19\(1\)\(a\) \(2025\), https://officeofpartapsingh.com](https://officeofpartapsingh.com); [Ramji Lal Modi v. State of UP, AIR 1957 SC 620, https://indiankanon.org/doc/1218090/](https://indiankanon.org/doc/1218090/); [Bhatia, G., Balancing Freedom of Expression & Hate Speech \(2019\), https://www.researchgate.net/publication/334720790](https://www.researchgate.net/publication/334720790); [Kumar, A., Understanding Hate Speech within Constitutional Framework \(2024\), https://www.jusscriptumlaw.com](https://www.jusscriptumlaw.com); [Sharma, R., Thin Line Between Expression & Incitement, IJLRR \(2025 Article 19\(1\)\(a\)^1 protects speech but 19\(2\)^1 limits hate. Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1](https://www.ijlrr.com)

Article 19(1)(a) guarantees freedom of speech and expression, encompassing verbal, written, artistic, and silent forms vital for democracy. Article 19(2) imposes reasonable restrictions for public order, decency, morality, or incitement, forming the basis for hate speech curbs

## Core Concepts

**Freedom of Speech:** Right to articulate ideas, criticize government, and access information; not absolute, tested via "clear and present danger" in cases like *Amish Devgan*.

**Hate Speech:** Expressions inciting enmity against groups on religion, caste, race, or language grounds; lacks statutory definition but penalized under IPC 153A& BNS196 (group hatred), 295A (religious outrage), 505(2) (public mischief).

**Reasonable Restrictions:** Proportional state limits under 19(2); must be law-backed, necessary, and non-arbitrary per *Maneka Gandhi* (1978).

## Related Ideas

**Public Order:** Broader than law-order; hate speech disrupting harmony qualifies, as in *Pravasi Bhalai* (2014).

**Decency/Morality:** Constitutional, not majoritarian; protects dignity (Art.21) from vilification.

**Fraternity:** Preamble value guiding balance against group-targeted harm.

## Constitutional and Statutory Framework in India

Article 19(1)(a): Freedom of speech and expression.

pg. 9 Jain, R., *Freedom of Speech vs Hate Speech: Constitutional Perspective*, IJRAR (2024), <https://www.ijrar.org/papers/IJRARI1DOP012.pdf>; Singh, P., *Free Speech v Hate Speech: Article 19(1)(a)* (2025), <https://officeofpartapsingh.com>; *Ramji Lal Modi v. State of UP*, AIR 1957 SC 620, <https://indiankanon.org/doc/1218090/>; Bhatia, G., *Balancing Freedom of Expression & Hate Speech* (2019), <https://www.researchgate.net/publication/334720790>; Kumar, A., *Understanding Hate Speech within Constitutional Framework* (2024), <https://www.jusscriptumlaw.com>; Sharma, R., *Thin Line Between Expression & Incitement*, IJLRR (2025 Article 19(1)(a)^1 protects speech but 19(2)^1 limits hate. [Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1](#)

Article 19(2): Reasonable restrictions on grounds including public order, decency, morality, defamation, and incitement. Statutory provisions include:

IPC 153A: Promoting enmity between groups.

IPC 295A: Deliberate acts to outrage religious feelings.

IPC 504-505: Provocation and public mischief.

IT Act & Rules: Regulate online platforms; 2021 Rules impose liability for takedown of unlawful content

## **SIGNIFICANCE**

This study holds key value in clarifying Article 19(1)(a)(2) tensions amid rising digital hate, guiding courts and lawmakers.

## **Core Relevance**

Exposes judicial gaps in hate enforcement post-Kaushal Kishor (2023), aiding doctrinal reforms for harmony. Informs policy on IPC 153A/295A misuse during elections.

## **Practical Impact**

Offers balanced framework for platforms under IT Rules 2021, protecting speech without dignity erosion. Strengthens academic discourse on fraternity vs expression in plural India.

## **LIMITATIONS**

Doctrinal focus limits empirical insights into hate speech impacts.

pg. 10 Jain, R., Freedom of Speech vs Hate Speech: Constitutional Perspective, IJRAR (2024), <https://www.ijrar.org/papers/IJRAR1DOP012.pdf>; Singh, P., Free Speech v Hate Speech: Article 19(1)(a) (2025), <https://officeofpartapsingh.com>; Ramji Lal Modi v. State of UP, AIR 1957 SC 620, <https://indiankanoon.org/doc/1218090/>; Bhatia, G., Balancing Freedom of Expression & Hate Speech (2019), <https://www.researchgate.net/publication/334720790>; Kumar, A., Understanding Hate Speech within Constitutional Framework (2024), <https://www.jusscriptumlaw.com>; Sharma, R., Thin Line Between Expression & Incitement, IJLRR (2025 Article 19(1)(a)^1 protects speech but 19(2)^1 limits hate. Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1

**Scope Constraints:** Relies solely on reported Supreme Court cases post-2000, excluding unreported lower court rulings or pre-1950 precedents. No primary data collection like surveys on enforcement gaps.

**Methodological Bounds:** Static analysis up to March 2026; post-publication judgments (e.g., pending digital hate petitions) unaddressed. Excludes comparative foreign laws beyond brief mentions.

**Practical Limits:** Overlooks socio-economic factors driving hate, such as caste dynamics in Tamil Nadu contexts. Vague statutory terms (IPC 153A) resist full doctrinal resolution without legislative reform.

## **HYPOTHESIS OF THE STUDY**

Supreme Court has progressively narrowed Article 19(1)(a) through evolving tests like "clear and present danger," yet inconsistent application persists in hate speech cases.

IPC provisions (153A, 295A, 505) adequately curb hate but enable misuse, chilling legitimate dissent during elections.

Judicial emphasis on fraternity and dignity (Art.21) outweighs absolute speech in group-targeted harms, favoring proportionality over US-style absolutism.

Digital platforms expose 19(2) enforcement gaps, necessitating viewpoint-neutral guidelines without new legislation.

## **ANALYSIS & DISCUSSION**

The regulation of hate speech presents unique challenges in the Indian democratic framework. The primary issue lies in the lack of a precise legal definition of 'hate speech'. Authorities have invoked [pg. 11 Jain, K., Freedom of Speech vs Hate Speech: Constitutional Perspective, IJRAR \(2024\), https://www.ijrar.org/papers/IJRAR1DOP012.pdf](https://www.ijrar.org/papers/IJRAR1DOP012.pdf); [Singh, P., Free Speech v Hate Speech: Article 19\(1\)\(a\) \(2025\), https://officeofpartapsingh.com](https://officeofpartapsingh.com); [Ramji Lal Modi v. State of UP, AIR 1957 SC 620, https://indiankanoon.org/doc/1218090/](https://indiankanoon.org/doc/1218090/); [Bhatia, G., Balancing Freedom of Expression & Hate Speech \(2019\), https://www.researchgate.net/publication/334720790](https://www.researchgate.net/publication/334720790); [Kumar, A., Understanding Hate Speech within Constitutional Framework \(2024\), https://www.jusscriptumlaw.com](https://www.jusscriptumlaw.com); [Sharma, R., Thin Line Between Expression & Incitement, IJLRR \(2025 Article 19\(1\)\(a\)^1 protects speech but 19\(2\)^1 limits hate, https://www.ijlrr.com](https://www.ijlrr.com); [Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1 https://www.ijlrr.com](https://www.ijlrr.com)

sections such as Section 295A, 153A, and 505 of the IPC (now replaced under the BNS) to suppress dissent, even when the speech in question may not incite violence or hatred. This legal uncertainty chills free expression. The new *Bhartiya Nyaya Sanhita, 2023*, seeks to modernize criminal law but retains much of the discretionary power vested in the state. For instance, Section 196 penalizes the promotion of enmity between groups, but without clearer procedural safeguards, this provision may be misused for political vendettas. The judiciary must evolve jurisprudence that distinguishes between critical commentary and hate speech. In **Tahseen S. Poonawalla v. Union of India (2018)**, the Supreme Court emphasized the need for a nodal officer in each district to monitor and prevent hate speech-related violence. In **Amitabh Sharma (2023)**, the Court reiterated this stance, stating that hate speech is antithetical to the secular fabric of India. However, despite strong rhetoric, implementation remains weak. The Election Commission of India and the National Human Rights Commission have also issued guidelines, but enforcement is inconsistent. Comparatively, the United States adopts a speech-protective stance under the First Amendment. In **Brandenburg v. Ohio (1969)**, the U.S. Supreme Court held that only speech inciting imminent lawless action could be punished. Germany, on the other hand, criminalizes Holocaust denial and hate propaganda under strict constitutional limits.

## **HOW CAN INDIA PROTECT FREEDOM OF SPEECH AND EXPRESSION, IMPROVE SOCIAL HARMONY, AND PREVENT HATE SPEECH?**

India balances free speech under Article 19(1)(a) with hate curbs via 19(2), but needs proactive steps for harmony.

**Judicial Safeguards:** Courts enforce "clear and present danger" tests from *Amish Devgan (2020)*, mandating fast-track FIRs sans complaints as in *Shaheen Abdullah (2022)*. Prioritize proportionality: critique allowed, group vilification not.

[pg. 12 Jain, R., Freedom of Speech vs Hate Speech: Constitutional Perspective, IJRAR \(2024\), https://www.ijrar.org/papers/IJRAR1DOP012.pdf](https://www.ijrar.org/papers/IJRAR1DOP012.pdf); [Singh, P., Free Speech v Hate Speech: Article 19\(1\)\(a\) \(2025\), https://officeofpartapsingh.com](https://officeofpartapsingh.com); [Ramji Lal Modi v. State of UP, AIR 1957 SC 620, https://indiankanon.org/doc/1218090/](https://indiankanon.org/doc/1218090/); [Bhatia, G., Balancing Freedom of Expression & Hate Speech \(2019\), https://www.researchgate.net/publication/334720790](https://www.researchgate.net/publication/334720790); [Kumar, A., Understanding Hate Speech within Constitutional Framework \(2024\), https://www.jusscriptumlaw.com](https://www.jusscriptumlaw.com); [Sharma, R., Thin Line Between Expression & Incitement, IJLRR \(2025 Article 19\(1\)\(a\)^1 protects speech but 19\(2\)^1 limits hate. Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1](https://www.ijlrr.com)

**Legislative Tweaks:** Refine IPC 153A/295A with hate typologies—direct incitement vs offense—reducing misuse; adopt Law Commission Report 267 (2017) guidelines. IT Rules 2021: platforms trace originators, remove content in 36 hours.

**Platform Duties:** Social media trace APIs, AI-flagged moderation with human review; grievance officers per IT Act. Promote counter-speech campaigns highlighting fraternity.

**Social Measures:** Media ethics codes ban inflammatory headlines; awareness drives in schools on dignity (Art.21). Community dialogues foster empathy, reducing polarization in diverse states like Tamil Nadu.

## RELEVANT CASE LAWS

### 1. Romesh Thapar v. State of Madras (1950) AIR 1950 SC 124

Facts: Madras govt banned 'Cross Roads' magazine (communist views) under Madras Maintenance of Public Order Act for criticizing Nehru's foreign policy.

Issue: Can state ban publications for "public order" or only "security of state"?

Provisions: Article 19(1)(a), 19(2); Madras Public Order Act S.9(1-A).

### 2. Ramji Lal Modi v. State of UP (1957) AIR 1957 SC 620

Facts: Publisher printed pamphlet "Jane-jo chahiye wohi sach hai" insulting Muslims, convicted under IPC 295A.

Issue: Does IPC 295A violate Article 19(1)(a) or reasonable under 19(2)?

Provisions: IPC 295A, Article 19(1)(a), 19(2).

[pg. 13 Jain, K., Freedom of Speech vs Hate Speech: Constitutional Perspective, IJRAR \(2024\), https://www.ijrar.org/papers/IJRARI1DOP012.pdf](https://www.ijrar.org/papers/IJRARI1DOP012.pdf); [Singh, P., Free Speech v Hate Speech: Article 19\(1\)\(a\) \(2025\), https://officeofpartapsingh.com](https://officeofpartapsingh.com); [Ramji Lal Modi v. State of UP, AIR 1957 SC 620, https://indiankanoon.org/doc/1218090/](https://indiankanoon.org/doc/1218090/); [Bhatia, G., Balancing Freedom of Expression & Hate Speech \(2019\), https://www.researchgate.net/publication/334720790](https://www.researchgate.net/publication/334720790); [Kumar, A., Understanding Hate Speech within Constitutional Framework \(2024\), https://www.jusscriptumlaw.com](https://www.jusscriptumlaw.com); [Sharma, R., Thin Line Between Expression & Incitement, IJLRR \(2025 Article 19\(1\)\(a\)^1 protects speech but 19\(2\)^1 limits hate, https://www.ijlrr.com](https://www.ijlrr.com); [Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1 https://www.ijlrr.com](https://www.ijlrr.com)

Judgment: Upheld 295A. Speech "tending to public disorder" valid restriction even without actual violence.

## **JUDICIAL RULING ON HATE SPEECH**

### **3. Shaheen Abdullah V. Union of India & Ors. - 2022**

In such case, India's highest judicial body Supreme Court has instructed the government to take swift action against hate speech offenses, regardless of whether formal complaints are made or the religion of the offender.

The constitution of India envisioned Bharat as a secular nation, with the preamble emphasizing fraternity to ensure the dignity of individuals and the unity and integrity of the country. True fraternity can only exist when people from different religions and castes live together in harmony.

### **4. Pravasi Bhalai Sangathan V. Union of India -2014 11 SCC 1**

This matter was a public interest litigation (PIL), that questioned the effectiveness of the government's actions in managing hate speech in India.

The Supreme Court ruled that no other laws are required to address hate speech as well as observed that hate speech or expression is the use of language, signs or actions that incite a particular class and promote hatred, and discrimination, which can affect the specific group and individuals as well as a particular class on a large scale.

### **5. Amish Devgan v. UOI (2020) (2020) 18 SCC 1**

Facts: TV anchor insulted Sufi saint on prime time; Shiv Sena leader counter-threatened.

Issue: What test for hate speech under 19(2)?

<https://www.ijrar.org/papers/IJRARI1DOP012.pdf>; Singh, P., Free Speech v Hate Speech: Article 19(1)(a) (2025), <https://officeofpartapsingh.com>; Ramji Lal Modi v. State of UP, AIR 1957 SC 620, <https://indiankanon.org/doc/1218090/>; Bhatia, G., Balancing Freedom of Expression & Hate Speech (2019), <https://www.researchgate.net/publication/334720790>; Kumar, A., Understanding Hate Speech within Constitutional Framework (2024), <https://www.jusscriptumlaw.com>; Sharma, R., Thin Line Between Expression & Incitement, IJLRR (2025 Article 19(1)(a)^1 protects speech but 19(2)^1 limits hate. [Ramji Lal case^1 upheld IPC 295A. Shreya Singhal^1 struck Section 66A.^1](#)

Provisions: IPC 153A, 295A, 505; Article 19(2).

Judgment: "Clear & present danger + imminent harm" test. Context matters—sustained hate punishable.

## **6. Shaheen Abdullah v. UOI (2022)**

Facts: TV debate on hijab turned communal; police refused FIR despite complaint.

Issue: Must police register hate FIRs suo motu?

Provisions: IPC 153A, 295A, 505(2); CrPC S.156(3).

Judgment: Police must act without complaint. Contempt for inaction—proactive enforcement.

## **7. Kaushal Kishor v. State of UP (2023) 2023 SCC OnLine SC 1646**

Facts: UP Minister Anurag Thakur's "drama bazaar" remark targeting Muslims at rally.

Issue: Do ministers' speeches bind state under Article 19(2)?

Provisions: Article 19(2) "others", dignity (Art.21).

Judgment: Expanded "others" to private actors. Public officials accountable for hate impact.

IPC Provisions: S.153A (group enmity), 295A (religious outrage), 505(2) (public mischief). <sup>^1</sup>

## **CONCLUSION**

Article 19(1)(a) endures as democracy's bedrock, yet unchecked hate speech erodes India's plural fabric. Judicial evolution—from Romesh Thapar's narrow curbs to Kaushal Kishor's dignity

[pg. <sup>^</sup> 15 Jain, R., Freedom of Speech vs Hate Speech: Constitutional Perspective, IJRAR \(2024\), https://www.ijrar.org/papers/IJRAR1DOP012.pdf](https://www.ijrar.org/papers/IJRAR1DOP012.pdf); [Singh, P., Free Speech v Hate Speech: Article 19\(1\)\(a\) \(2025\), https://officeofpartapsingh.com](https://officeofpartapsingh.com); [Ramji Lal Modi v. State of UP, AIR 1957 SC 620, https://indiankanon.org/doc/1218090/](https://indiankanon.org/doc/1218090/); [Bhatia, G., Balancing Freedom of Expression & Hate Speech \(2019\), https://www.researchgate.net/publication/334720790](https://www.researchgate.net/publication/334720790); [Kumar, A., Understanding Hate Speech within Constitutional Framework \(2024\), https://www.jusscriptumlaw.com](https://www.jusscriptumlaw.com); [Sharma, R., Thin Line Between Expression & Incitement, IJLRR \(2025 Article 19\(1\)\(a\)<sup>^1</sup> protects speech but 19\(2\)<sup>^1</sup> limits hate. Ramji Lal case<sup>^1</sup> upheld IPC 295A. Shreya Singhal<sup>^1</sup> struck Section 66A.<sup>^1</sup>](https://www.ijlrr.com)

pivot—strikes viable balance, but enforcement lags demand refinement. Key Takeaways, Doctrinal tests like "clear and present danger" (Amish Devgan) safeguard critique while curbing incitement; IPC 153A/295A suffice if policed proactively per Shaheen Abdullah. Digital gaps expose 19(2) limits, urging platform APIs and counter speech over blanket bans., Path Forward, legislate hate typologies avoiding vagueness; courts enforce proportionality linking fraternity to Article 21 dignity. Harmony thrives when speech informs, not inflames—reforms ensure both.

## SUGGESTION

India needs clear rules to protect free speech while stopping hate that divides people. My Suggestions Courts should use one simple test: Is there real, immediate danger from the speech? Order platforms to remove proven hate content in 24 hours but allow jokes or criticism. Make a new law defining hate speech types—words that just offend vs those sparking violence—based on past Law Commission ideas. What I Think Social media spreads hate fast, and cases like Kaushal Kishor show leaders must be careful. Police should act on their own against clear hate, as in Shaheen Abdullah, plus teach kids and adults about respect in schools. Real unity comes from open talk that builds understanding, not fear of speaking out.

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