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Hate Speech Vs. Freedom of Speech And Expression

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Abstract

The tension between the freedom of speech and hate speech is one of the largest constitutional and democratic concerns in modern democracies. It is a common perception that people are born free so that people should always enjoy the freedom of speech since it is believed that people can present their views, question authority, debate in the open and find the truth without any fear of being censored. There are philosophical foundations, in particular, that have been published by John Stuart Mill, which stress that even controversial or offensive opinions should be protected, unless they literally harm anyone. Nevertheless, the rise of hate speech has complicated this principle and introduced the concerns of peace, equality, and dignity in the society. The two sides of the debate represented in the file, which were the protection of vulnerable populations against verbal harassment and the freedom of people, are harshly tested in the given research. The study uses comparative constitutional analysis to compare how the more balanced method used by India under Article 19(1)(a) and the reasonable restrictions provided under Article 19(2) compare with the well-established model of First Amendment speech protection used by the United States through exploring seminal cases as *Brandenburg v. Ohio*. In order to demonstrate the way in which international law seeks to reconcile the right to free speech and the prohibition of incitement to hatred and violence, the position of the International Covenant on Civil and Political Rights is also discussed. The study also evaluates both arguments supporting regulation to prevent discrimination, psychological harm, and radicalization and also arguments supporting widespread protection of free speech on the grounds of government overreach and significance of counter-speech. Therefore, it arrives at the conclusion that in the name of ensuring that freedom of expression remains relevant to all members of the society, democratic institutions should strike a fine balance between liberty and equality.

Keywords- Hate, Speech, Democracy, Institutionalisation, Equality, Liberty

I. INTRODUCTION

The concept of Freedom of Speech is hailed as the 'Counter stone of Democracy', while the rise of hate speech represents a threat to democracy.¹⁹⁵ There is a profound connection between political parameters and the factors of Freedom of speech and Hate speech. This debate took place over whether the state or authority should prioritise individual liberty or provide protection to vulnerable communities from any kind of verbal harm. There is a severe issue with the concept of hate speech, as many recognised institutes are not ready to accept hate speech as a 'Speech'; for example, the United Nations does not denote verbal abuse or harm as 'Speech'. The UN believes that hate speech gradually undermines human rights, individuality and dignity, which

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¹⁹⁵Bejan, T.M., 2019. Two concepts of freedom (of speech). *Proceedings of the American Philosophical Society*, 163(2), pp.95-107. <https://www.amphilsoc.org/sites/default/files/2020-03/attachments/Bejan.pdf>

can bring actual violence.¹⁹⁶ In diverse nations, like India, several people are live with a variety of cultures, traditions, religions, and mentalities.

As per the Indian Constitution, Article 19(2) allows for 'Restrictions on reasons'. It argued that hate speech should be regulated and suppressed; otherwise it can disrupt public order and violate basic human rights. Conversely, the US First Amendment argued that offensive, inappropriate or ugly speech should be protected to prevent government disruptions and censorship of dissent.¹⁹⁷ However, in the USA, it is believed that state-imposed regulations can not be a remedy for hate speech; rather, the 'marketplace of ideas' can be a good way to tackle hate speech. The current research study is focused on developing an argumentative analysis between Hate speech and Freedom of speech to understand their reliability and protection to improve human rights globally.

II. CONCEPTUAL UNDERSTANDING OF FREEDOM OF SPEECH

Freedom of speech is considered a fundamental right of a human being, regardless of concerns. In reality, hate speech is violence, and sometimes it becomes a question of social norms.¹⁹⁸ However, freedom of speech can be used by anyone to protect their rights. It is considered the most basic right and action of human society. It helps people to express their opinions, beliefs, thoughts, challenge authority, and participate in public debate without any fear or political censorship. Meanwhile, society struggles to manage hate speech- especially the expressions that create violence or incite hostility against an individual or a group based on their race, religion, cultures or traditions. The tension between hate speech and freedom of speech raises the most common question, which is highlighted in this research study: Where should the line is drawn? The majority of the arguments delivers that freedom of speech and expression is a human necessity and foundation of democracies, which is quite the right statement, as it is considered a basic human right in several countries.¹⁹⁹ It allows people to communicate with each other in public, exercise their religion, express their views, criticise the government practices, and create works of art without fear of censorship. In developed countries like the USA, freedom of speech is promoted by the Constitution. Renowned philosophers like John Stuart Mill were very firm in defending the freedom of speech, arguing in *On Liberty* that even unacceptable or wrong opinions must be allowed because they encourage dialogue and help in the pursuit of the truth. According to the arguing principle, which was put forward by Mill, only speech which causes direct harm to others should be suppressed, which profoundly indicates the concept of hate speech. It is the intellectual basis of much of the modern-day protection of free speech.

¹⁹⁶United Nations, 2026. Understanding Hate Speech. Available at: <https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech> [Accessed on 18th February 2026].

¹⁹⁷American Civil Liberties Union, 2026. What the First Amendment Really Protects. Available at: <https://www.aclu.org/news/free-speech/what-the-first-amendment-really-protects> [Accessed on 18th February 2026].

¹⁹⁸Krotoszynski, R.J., 2024. Free speech as civic structure: a comparative analysis of how courts and culture shape the freedom of speech. Oxford University Press. <https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=5133461>

¹⁹⁹Saqib, K.M., Asghar, M.S. and Mukhtar, H., 2022. FREEDOM OF SPEECH VS CENSORSHIP: STRIKING A DELICATE BALANCE. Russian Law Journal, 10(4), pp.193-201. <https://cyberleninka.ru/article/n/freedom-of-speech-vs-cens-orship-striking-a-delicate-balance/viewer>

III. CONSTITUTIONAL PROTECTION

Freedom of speech and human expression are not merely a conceptual concept but a constitutionally entrenched concern in different democratic systems. This privilege varies widely across jurisdictions, however, in terms of extent and limits. The mechanisms of achieving a balance between free speech and hate speech are demonstrated by comparing the constitutional provisions of the United States with those of India and the fact that they are subject to the provisions of international law in the form of the International Covenant on Civil and Political Rights (ICCPR).

The First Amendment to the U.S. Constitution contains a constitutional right to free speech, which indicates that Congress may not enact a law that will abridge the freedom of speech. This is one of the best free expression regimes in the world, as the U.S.A Supreme Court has ever justified its interpretation broadly in terms of expanding the needs of freedom. The test concerning the imminent lawless action was established by the Court in the case law of *Brandenburg v. Ohio*, which decreed that one can only restrict speech that is intended to provoke imminent lawlessness and is likely to provoke imminent lawlessness.²⁰⁰ This decision safeguards even the most offensive or extremist speech as long as it does not cross the border of direct incitement, significantly broadening the scope of acceptable boundaries. Similarly, the Court struck down hate speech in another case law, *R.A.V. v. City of St. Paul*. This case emphasised that the government has no authority to subject the speech to content-based limitations just because it is offensive.²⁰¹ Hence, hate speech is generally considered to be covered by the U.S. jurisprudence unless it falls under one of the limited, clearly delineated exceptions, including actual human threats, incitement, and obscenity.

Conversely, the Indian Constitution adopts a more balanced and restriction-based concept to protect freedom of speech. *Article 19(1)(a) of the Indian Constitution* guarantees to all natives the right to freedom of speech and human expression.²⁰² Nevertheless, this right is not absolute, as Article 19(2) permits the state to impose 'reasonable restrictions' on human expression for a certain period in the interests of sovereignty and human integrity of the nation. This article is applicable in terms of protecting state concerns, public order, basic public needs, decency, morality, humanity, defamation risks, incitement to an offence, and contempt of the court or jurisdiction. In this context, the Supreme Court of India has played a pivotal role in defining the limits of freedom of speech in the nation. For example, the case law of *Shreya Singhal vs. Union of India*, the jurisdiction struck down section 66A of the Indian Information Technology Act 2000, for being vague and overbroad, therefore reaffirming the need for rechecking and protecting virtual speech.²⁰³ Nevertheless, the court also defined that speech might be restricted in case of incitement or has a proximity link with public disorders. In prior times, the case law

²⁰⁰US Supreme Court (2019). *Brandenburg v. Ohio*, 395 U.S. 444 (1969). [online] Justia Law. Available at: <https://supreme.justia.com/cases/federal/us/395/444/> [Accessed 18 Feb. 2026].

²⁰¹US Supreme Court (2026). *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992). [online] Justia Law. Available at: <http://supreme.justia.com/cases/federal/us/505/377/> [Accessed 18 Feb. 2026].

²⁰²Constitution of India (2025). Article 19: Protection of certain rights regarding freedom of Speech, etc. [online] Available at: <https://www.constitutionofindia.net/articles/article-19-protection-of-certain-rights-regarding-freedom-of-speech-etc/> [Accessed 18 Feb. 2026].

²⁰³Global Freedom of Expression (2025b). *Shreya Singhal v. Union of India*. [online] Available at: <https://globalfreedomofexpression.columbia.edu/cases/shreya-singhal-v-union-of-india/> [Accessed 18 Feb. 2026].

of *Kedar Nath Sinha vs State of Bihar*, the court explained the constitutionality of the sedition law in India, but it limited its speech application that influenced violence or any type of public disruption.²⁰⁴ However, these judgements illustrate that Indian jurisdiction seeks to balance freedom of expression with emerging social interests, including communal concerns.

According to Article 19 of the International Covenant on Civil and Political Rights, the United Nations leverages the freedom of expression throughout the world.²⁰⁵ Under Article 19(2) is the right to seek, receive and publish information and ideas of any kind that helps nations to protect freedom of speech. In addition, Article 19(3) allows the restrictions as long as these are required by law and necessary to safeguard the rights or reputations of others and also to maintain the health, morals, order of the people or national security. However, Article 20(2) of the ICCPR requires countries to prohibit the propagation of hostility, violence, or discrimination based on national, racial, or religious grounds, as well as the propagation of hatred that evokes hatred. This depicts the general ideology that, as much as freedom of human expression is paramount, it should be accompanied by standards against harm that has been directed by hate. In a comparative perspective, India has constitutional limitations to uphold social harmony and civic peace, whereas the United States accentuates freedom and utilises a very speech-protective model. In order to evaluate the concepts of international law, the ICCPR framework seeks to strike a balance between the need to ban incitement to violence and hatred and the need to uphold expression. These differences of constitutional perspective are very significant in determining the understanding of hate speech and freedom of speech, and the various jurisdictions and their rules.

IV. DEFINING HATE SPEECH

On the condition that the concept of freedom of speech, which is not restricted, is connected with the concept of hate speech, it becomes controversial for society. Hate speech is a human expression that aims to disparage or incite hatred toward individuals or a group based on their race, religion, gender, ethnicity, sexual orientation or other identifying characteristics.²⁰⁶ Sometimes, hate speech raises huge human concerns, which might turn into violence, such as religious invasions. In religious countries like India, Pakistan or any other developed countries, comments regarding religion or tradition might be considered as hate speech, which can be a severe reason behind human outrages. Unlike ordinary offensive speech, hate speech attacks some of the most basic aspects of a person and may contribute to social ostracism, intimidation, and discrimination. It does not affect solely on a human emotional level, but it can also make the environment hostile, such that the marginalised groups may find it difficult to be fully involved

²⁰⁴Global Freedom of Expression (2025a). *Nath Singh v. Bihar*. [online] Available at: <https://globalfreedomofexpression.columbia.edu/cases/nath-singh-v-bihar/> [Accessed 18 Feb. 2026].

²⁰⁵United Nations (1966). *International Covenant on Civil and Political Rights*. [online] OHCHR. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [Accessed 18 Feb. 2026].

²⁰⁶Hietanen, M. and Eddebo, J., 2023. Towards a definition of hate speech—With a focus on online contexts. *Journal of Communication Inquiry*, 47(4), pp.440-458. <https://journals.sagepub.com/doi/pdf/10.1177/01968599221124309>

in society.²⁰⁷ The continual exposure to hate speech, and especially to social media, may reinforce social distinctions and legitimise bias.

History has given sufficient evidence that hate speech may end up in violence, which is not only restricted to the ground level but sometimes leads to invasions. For example, the propaganda of Adolf Hitler in Germany, which was a significant source of controversy, was a systematic dehumanisation of the Jews and other minorities, which contributed to the Holocaust, and it was a prime example of hate speech violence. This historical event proves that hate speech might act as a triggering factor of persecution, discrimination and even mass bloodshed. In these cases, religion casts doubt on the idea of equal protection of speech irrespective of its consequences. Different countries have different legal positions regarding the issue. The First Amendment usually protects hate speech in the US except in the event of imminent violence, real threat, and harassment. This approach greatly emphasises the freedom of speech on a large scale, since it is said that the most effective measure of dealing with dangerous thoughts is an open debate. Conversely, Hate speech has more severe legislation in various European countries and is considered illegal to utter statements which provoke racial hatred or evoke underestimation of past atrocities. The focus of these laws is to safeguard social harmony and human dignity, which is more balanced in terms of freedom and equality.

It is very hard to control hate speech even when one is trying to prevent harm. The cultural norms are different, and what can be considered hate speech in one context can be considered healthy criticism in a different one. Hence, defining hate speech can be a challenging task, in which governments risk using hate speech laws to suppress political activism or unpopular views.²⁰⁸ Unreasonably broad restrictions can stall academic investigation, parody, creative expression or productive criticism. Thus, to avoid the undermining of the principles of democracy, any law should be well executed and should be narrow in definition.

Advocates of free speech argue that any restrictions will make it easier to enhance censorship by authorities'.²⁰⁹ They argue that a better mode of inhibiting harmful ideologies is counter-speech, which is by way of education, discussion, and public denunciation rather than legislative prohibition. Nevertheless, the advocates of regulation emphasise that human dignity and safety should not be thrown away at the expense of free speech. They argue that the constant intimidation and assault on specific groups is effective in the reduction of the ability of these groups to exercise their right to free speech, therefore, breeding inequality in the political arena.

V. DEMOCRACY AND THE IMPORTANCE OF DEMOCRACY

Freedom of speech and expression is the basic right of people to be able to express their ideas, opinions, beliefs, and thoughts without any fear of censorship and punishment by the government. This right involves written and verbal communication, artistic expression, media

²⁰⁷Vergani, M., Perry, B., Freilich, J., Chermak, S., Scrivens, R., Link, R., Kleinsman, D., Betts, J. and Iqbal, M., 2024. Mapping the scientific knowledge and approaches to defining and measuring hate crime, hate speech, and hate incidents: A systematic review. *Campbell Systematic Reviews*, 20(2), p.e1397. <https://onlinelibrary.wiley.com/doi/pdf/10.1002/cl2.1397>

²⁰⁸Santuraki, S.U., 2025. Trends in the regulation of hate speech and fake news: A threat to free speech?. *Hasanuddin Law Review*, 5(2), pp.140-158. <https://scholarhub.unhas.ac.id/cgi/viewcontent.cgi?article=1113&context=halrev>

²⁰⁹Strossen, N., 2024. *Defending pornography: Free speech, sex, and the fight for women's rights*. NYU Press. https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1170&context=fac_books

coverage, scholarly discourse, political critique and digital communication²¹⁰. It is often protected by a legal or constitutional system and is often recognised as an essential human right in liberal societies. As an example, the First Amendment of the United States, which guarantees free speech, is based on the notion that individuals must be left to think what they want, even when their ideas are considered to be controversial or unpopular, without the government interfering.

Democracy requires freedom of expression since it encourages participation, responsibility, and openness. Democracy requires informed citizens who can engage in debate on policies, criticise leaders and demand changes.²¹¹ Unless people can challenge authority, governments can do whatever they wish, and this may lead to corruption or abuse of power. All these, including public protests, investigative journalism, and political opposition, are enabled by free expression and are needed to maintain a healthy democratic system. It also allows the minority views to be voiced, and these ensure that the democracy reflects a variety of opinions and not only the voice of one dominant opinion.

VI. ARGUMENTS FOR AN ABSOLUTE OR WIDER PERSPECTIVE OF FREE SPEECH PROTECTION

One of the best arguments in support of total protection of free speech is the slippery slope issue²¹². The opponents of speech control argue that as soon as the government is permitted to censor speech that can be deemed as harmful or hateful, the nature of these prohibitions can gradually expand. Dissenting politics, minority opinions and reproach of the powerful members can ultimately be encompassed in what initially begins as a ban prohibiting serious hate speech. This concern is particularly common in countries such as the US, where judges have repeatedly spoken out against the shorthand and broad speech regulations. It is feared that a free hand in defining what constitutes offensiveness will be a breach of democratic liberties, and free speech will be suppressed. This has an intimate relationship with the probability of being abused by the government. By allowing the government to filter speech, it will increase the chances that the government will misuse the power to suppress dissent, silence activists, or control the opinion of the people. It has been seen that in the history of authoritarian regimes, morality or civil order is another justification for censorship. Even democratic laws that are created to fight hate speech can be selectively used against political opponents or voices that are underrepresented. Thus, extensive defence of free speech is considered an essential balance to political authority and an insurance against state usurpation.

The other significant assertion is that counter-speech, rather than repression, is the best method of fighting dangerous ideas.²¹³ Proponents have argued that instead of being pushed into the ground by legal prohibition, the vile or radical opinions should be openly debated by discussion,

²¹⁰Baça, F., 2023. The Importance of Education for Democracy. International Society for Technology, Education, and Science. <https://www.annualreviews.org/docserver/fulltext/polisci/25/1/annurev-polisci-060820-060910.pdf?expires=1771428527&id=id&accname=guest&checksum=E2E04DBB3726679C839F524557146B5F>

²¹¹Gerring, J., Knutsen, C.H. and Berge, J., 2022. Does democracy matter?. Annual Review of Political Science, 25, pp.357-375. <https://files.eric.ed.gov/fulltext/ED654853.pdf>

²¹²Howard, J.W., 2024. Freedom of speech. <https://plato.stanford.edu/ENTRiES/freedom-speech/>

²¹³Whitten, S., 2023. A republican conception of counterspeech. Ethical Theory and Moral Practice, 26(4), pp.555-575. <https://link.springer.com/content/pdf/10.1007/s10677-023-10409-w.pdf>

teaching and public criticism. This view is that exposure makes society confront and annihilate harmful ideologies. Since it is presumed that democratic resilience lies in more speech, rather than less, judicial logic in such a case as the one of *Brandenburg v. Ohio* echoes this aspect by not restricting even radical speech unless that speech incites the looming violence²¹⁴. Finally, the freedom of the arts and of the mind is a major aspect of the wide protection of speech. Academics, researchers, authors and artists often discuss ideas that are controversial, disturbing and provocative. Speech laws that are too restrictive may retard satire, critical thought, and art. The fear of being punished by the law may be the cause of self-censorship that will hinder cultural and intellectual progress. In this perspective, even innovation, critical thought and sustainability of the democratic discourse rely on the broad protection of free speech.

VII. ARGUMENTS FOR RESTRICTING HATE SPEECH

Supporters of the limitation of hate speech, in turn, attach much importance to the protection of the vulnerable and marginalised groups. Hate speech has disproportionate targets, who are members of groups based on race, religion, caste, gender, ethnicity, or sexual orientation. This discourse can reinforce existing power dynamics and hierarchies in society when it is allowed to get out of control.²¹⁵ Hate speech can enhance intercommunal conflicts and undermine social cohesiveness in various societies, such as in India. Thus, limitations are reasonable because they ensure that all people have an opportunity to live in society on equal terms, with no fear or intimidation. Another good argument is the damage that hate speech inflicts on society and the minds of people. Constant exposure to offensive or insulting words may cause targeted groups to develop stress, worry, loss of self-esteem, and withdrawal. In addition to making people suffer, hate speech can justify discrimination and prejudice in society. Courts and scholars argue that when speech repeatedly dehumanises groups, it does not just amount to a mere outpouring of speech, but rather it becomes some form of social injury which warrants the justifiable restrictions in the name of the social order and decency.

Another point by the proponents of regulation is the prevention of violence and radicalization. Since hate speech socialises hate and makes specific groups appear as adversaries or threats, it might be the precursor to real violence. Past and present illustrations have documented how hate speech sustained over a period of time can escalate to become riots, hate crimes, or even result in mass violence.²¹⁶ The idea behind the laws that criminalise incitement to hatred is to intervene at an early stage and prevent speech that leads to actual harm. This justification is reflected in the international norms, such as Article 20 of the International Covenant on Civil and Political Rights, which mandates countries to outlaw any promotion of hatred that leads to violence or discrimination.

²¹⁴Bilyana Petkova (2025). The Evolution of Incitement Online: from *Brandenburg v. Ohio* to Depiction of Zwart Piet - MediaLaws. [online] MediaLaws. Available at: <https://www.medialaws.eu/the-evolution-of-incitement-online-from-brandenburg-v-ohio-to-depiction-of-zwarte-piet/> Accessed 18 Feb. 2026].

²¹⁵Peters, M.A., 2022. Limiting the capacity for hate: Hate speech, hate groups and the philosophy of hate. *Educational Philosophy and Theory*, 54(14), pp.2325-2330. <https://www.tandfonline.com/doi/pdf/10.1080/00131857.2020.1802818>

²¹⁶Negi Advocate, C., 2024. The rise of hate speech around the world. Available at SSRN 4719266. <https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=4719266>

VIII. CONCLUSION

As per the whole discussion, it can be concluded that the presence of freedom of speech should be balanced with other primary precepts such as equality, dignity, and non-discrimination. The freedom of speech of certain groups is limited to a mere theory when they are intimidated or suppressed by hate speech regularly. This balancing measure is apparent through the Indian constitutional theory that considers the possibility of unrestrained expression to compromise the equal rights of others by the idea of reasonable restrictions in Article 19(2). Hence, hate speech censorship is considered one of the methods of ensuring that freedom is meaningful and can be enjoyed by all members of society, rather than denying it.