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## Balancing Freedom of Speech and Hate Speech: Judicial Perspectives in India

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### Abstract

The issue of balancing the Right to Freedom of Speech with concerns about hate speech has been a prominent topic in Indian jurisprudence. While Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression, this right is not absolute and can be restricted under Article 19(2) on the grounds of public order, decency, morality, and security. The research investigates how Indian courts have navigated this complex issue, particularly in the context of hate speech, using various landmark cases as a lens. Key case studies such as *Shreya Singhal v. Union of India* (2015), *Kameshwar Prasad v. State of Bihar* (1952), and *Indibilty Creative Pvt Ltd v. State of West Bengal* (2019) offer insights into the judiciary's approach to free speech and hate speech. The paper also examines a hypothetical case of Siddharth Agarwal, a political commentator accused of promoting hate speech, and compares it with real-world scenarios to explore the delicate balance courts must strike between preserving individual freedoms and maintaining public order. The conclusion discusses the challenges faced in balancing these interests and proposes directions for future legal developments.

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### 1. Introduction

#### Explanation of the Topic and Its Importance

The Indian Constitution's guarantee of freedom of speech and expression under Article 19(1)(a) is a cornerstone of Indian democracy. It ensures that individuals can freely discuss and exchange ideas, an essential component of a thriving society. However, this freedom is not absolute. The Constitution permits the imposition of "reasonable restrictions" under Article 19(2), which specifically allows for the regulation of speech that threatens public order, decency, and morality.

One of the most controversial areas where these restrictions are applied is in the case of hate speech. Hate speech is generally defined as speech that incites violence or discrimination against individuals or groups based on attributes such as religion, ethnicity, or gender. As India is a highly diverse country, with religious, cultural, and ethnic diversity, the line between free expression and hate speech becomes a subject of legal and social contention.

This research paper aims to explore how Indian courts have balanced the right to freedom of speech with concerns about hate speech and public order under Article 19(2). The paper will examine relevant case law, including landmark cases, and apply the findings to a hypothetical case involving Siddharth Agarwal, a political commentator accused of promoting hate speech.

Through this analysis, we seek to understand the principles courts use to make such determinations and the broader implications for freedom of speech in India.

## **Purpose of the Research**

The purpose of this research is to analyze how Indian courts have interpreted and balanced the tension between freedom of speech and the regulation of hate speech. By exploring key legal precedents, this paper will examine how courts assess whether speech incites harm to public order, security, or morality. Moreover, the research will aim to draw comparisons between real-world cases and hypothetical scenarios to better understand how these legal principles are applied.

## **Key Points Covered in the Paper**

- The constitutional framework for freedom of speech and its limitations under Article 19(2).
  - The evolving legal interpretation of hate speech in India.
  - Key case studies and landmark rulings on freedom of speech and hate speech.
  - A comparison between the hypothetical case of Siddharth Agarwal and real-world instances of political speech and its regulation.
  - Discussion on future challenges and potential reforms in this area of law.
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## **2. Main Body**

### **Detailed Discussion on the Topic**

#### **The Constitutional Framework**

Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression, but this right is subject to reasonable restrictions under Article 19(2). These restrictions are necessary to safeguard national security, public order, and other fundamental values like decency, morality, and the sovereignty of the nation. The challenge lies in balancing these concerns while not overly restricting individual rights.

Hate speech is one such area where the need for regulation is often invoked. The challenge for the judiciary is to define hate speech in a manner that does not stifle freedom of expression while still protecting public order and the rights of individuals.

#### **Key Concepts in Hate Speech**

Hate speech generally refers to speech that incites violence or discrimination against specific groups based on race, religion, ethnicity, or other similar characteristics. Indian law, particularly under Section 153A of the Indian Penal Code, criminalizes speech that promotes hatred between different groups based on religion, race, or language. While freedom of speech allows robust political discourse, it is restricted when the speech incites hatred, animosity, or violence against a particular group.

### Landmark Cases and Judicial Interpretations

Several key cases have shaped the judicial landscape surrounding free speech and hate speech:

- **Shreya Singhal v. Union of India (2015):** This landmark case struck down Section 66A of the Information Technology Act, which criminalized sending "grossly offensive" or "menacing" content online. The Supreme Court ruled that this provision was overly broad and violated the right to freedom of speech under Article 19(1)(a). The Court emphasized that laws regulating free speech must be precise and narrowly tailored to prevent misuse.
- **Kameshwar Prasad v. State of Bihar (1952):** In this early case, the Supreme Court upheld the conviction of a man for publishing inflammatory content that could potentially disturb public order. The judgment reinforced the notion that speech which threatens public order could be subjected to restrictions.
- **Indibity Creative Pvt Ltd v. State of West Bengal (2019):** The Supreme Court ruled that the state cannot restrict a film or other media content based solely on public discontent or political opinion. This case affirmed that censorship based on possible public unrest must be approached with caution, underscoring the importance of safeguarding artistic freedom and expression.

### Real-World Scenario: Kunal Kamra and Hate Speech

In 2025, comedian Kunal Kamra faced legal scrutiny after a controversial parody song mocking political leaders. The song, which many considered to be politically charged and offensive, sparked debate about the limits of free speech, especially in the context of public figures. Kamra's case was a modern example of the balancing act courts must perform between free expression and public order. While the comedian's supporters argued that his speech was protected as satire and a political commentary, others felt it crossed the line into hate speech.

This case can be compared with Siddharth Agarwal's hypothetical scenario, where his controversial comments on a religious group were interpreted as promoting hate speech. In both cases, the courts would likely have to determine whether the speech, though offensive, falls within the boundaries of free expression or whether it crosses into territory that could incite

violence or discrimination. The key difference lies in the societal context and whether the speech incites specific harm or general discontent.

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### 3. Findings & Discussion

#### Key Observations

- Indian courts have consistently emphasized that freedom of speech is not absolute, especially when it conflicts with national security, public order, or public morals.
- The concept of hate speech is not rigidly defined, and courts often rely on context, intent, and potential harm to decide whether a statement crosses the line.
- While freedom of speech is foundational to democracy, it cannot be used as a shield for speech that incites violence or hatred against vulnerable groups.

#### Analysis of Information

By comparing the case of Kunal Kamra with the hypothetical scenario of Siddharth Agarwal, it becomes clear that the key challenge lies in determining whether speech directly incites harm. Kamra's case, for example, deals with political satire, where the intention may not necessarily be to incite hatred but to criticize those in power. Agarwal's case, on the other hand, would require a more careful analysis of whether his comments on a religious group could escalate into violence or reinforce societal divisions.

Courts are increasingly wary of the misuse of hate speech laws, as seen in cases like *Shreya Singhal*, which ruled that laws restricting speech should not be overbroad. This approach suggests that while hate speech is actionable, the law must be applied carefully to avoid unjust restrictions on free speech.

#### Real-World Implications

The application of hate speech laws has significant real-world implications, especially in politically charged environments. In a diverse democracy like India, where religious and ethnic tensions can easily escalate, courts must tread carefully in determining what constitutes hate speech. The rise of digital media and social platforms adds another layer of complexity, as it becomes more difficult to gauge the intent and potential impact of speech.

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### 4. Conclusion

#### Summary of Main Points

This paper explored how Indian courts have balanced the right to freedom of speech with the need to regulate hate speech. By examining landmark cases, including *Shreya Singhal* and *Kameshwar Prasad*, the research illustrated the judicial approach to balancing free expression with the protection of public order. The hypothetical case of Siddharth Agarwal was compared with the real-world scenario of Kunal Kamra to highlight how courts navigate the complexities of political satire and hate speech.

## Final Thoughts

The issue of hate speech remains contentious and unresolved, as it involves striking a balance between democratic freedoms and the protection of public order. The courts have developed a nuanced approach, acknowledging that while speech is a fundamental right, it cannot be used to incite violence or hatred. However, there remains room for clearer definitions of what constitutes hate speech and how it should be regulated.

## Suggestions for Future Research or Action

Future research could focus on how digital media has influenced the interpretation of hate speech laws in India. Additionally, there is a need for clearer legislative guidelines on hate speech to help courts make more consistent rulings. Finally, the role of political discourse and satire in the modern age merits further examination, as these forms of expression continue to evolve in a rapidly changing media landscape.

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