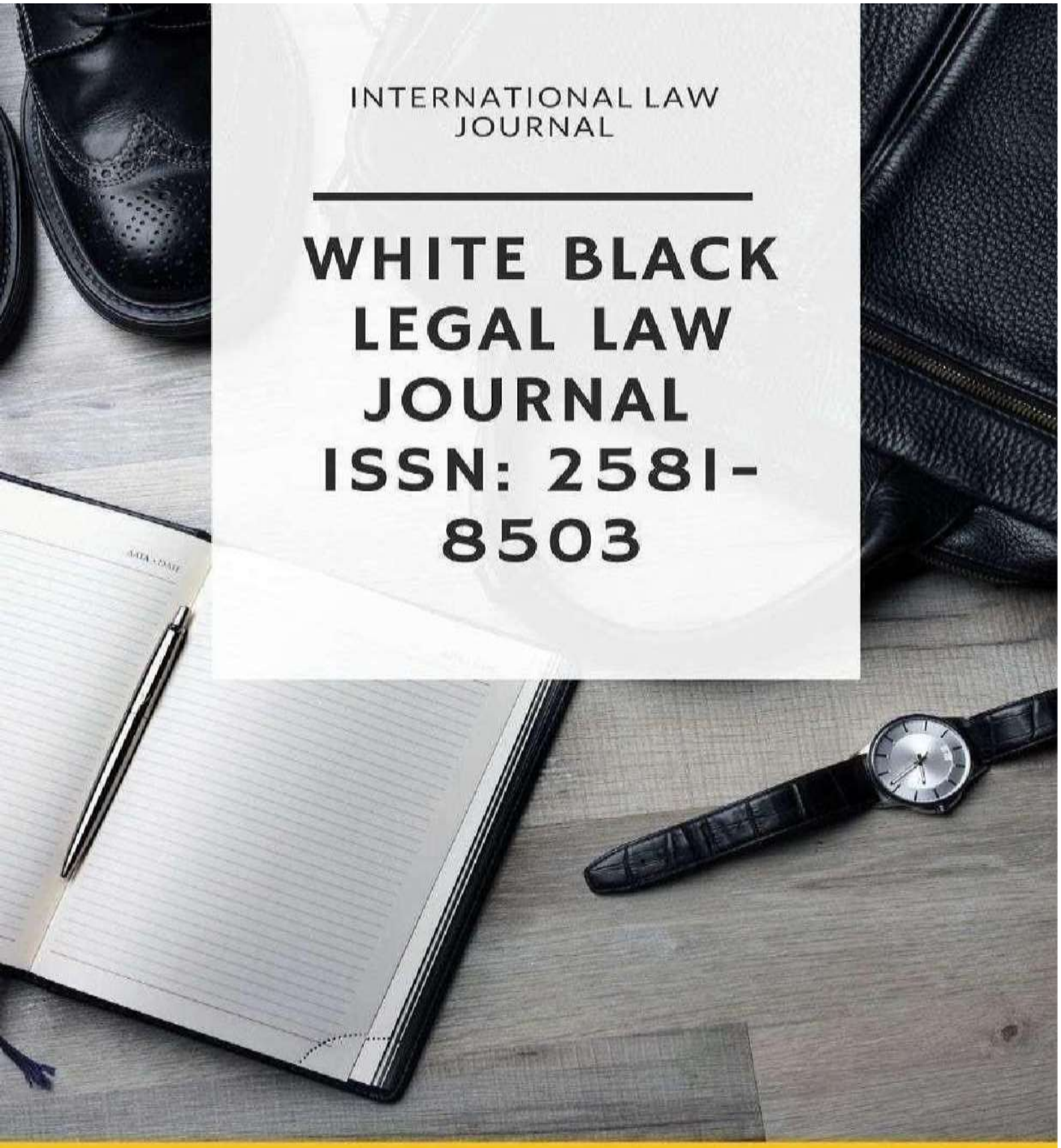

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

www.whiteblacklegal.co.in
Volume 3 Issue 3 | Jan 2026 ISSN: 2581-8503

FREEDOM OF SPEECH VERSUS HATE SPEECH REGULATION: A COMPARATIVE LAW PUBLIC INQUIRY

AUTHORED BY - SHIVANGI DUBEY
LLM
Dharmashashtra National Law University, Jabalpur, Madhya Pradesh

ABSTRACT

INTRODUCTION:

MUST A DEMOCRACY TOLERATE SPEECH THAT SILENCES OTHERS?

Must a constitutional democracy allow speech that humiliates, threatens, or dehumanizes vulnerable communities, in the name of freedom? One answer says yes: allowing even hateful or shocking expression is the cost of protecting dissent against government power. Another answer says no: when speech communicates that certain groups are less than fully human, it corrodes equal citizenship and frightens those groups out of public debate. Both answers appeal to democracy. The clash lies in what democracy is for.

At its best, free speech is the nervous system of constitutional democracy. It enables citizens to criticize leaders, expose corruption, mobilize around social causes, and imagine alternatives. It equalizes power by letting the weak speak truth to the strong. But hate speech often runs in the opposite direction. It is typically delivered by, or amplifies, dominant social voices against historically marginalized groups. Instead of inviting participation, it seeks to push certain people out of common space.

The central question, therefore, is not simply "should hate speech be banned?" but "how should a democracy respond when speech is used as a weapon to suppress the democratic standing of others?" This article argues that the answer

must be institutionally careful: criminal bans should be clear, proportionate, and procedurally safeguarded; civil and educational responses should carry much of the burden; and courts should insist on precision rather than sweeping moral panic.

FRAMING THE COMPARATIVE PUBLIC LAW QUESTIONS

A comparative public law approach forces us to specify what is actually being balanced. We can identify at least three recurring questions across jurisdictions. First, which harms justify limiting hateful expression—public order, protection of dignity, prevention of discrimination, or safeguarding full democratic participation? Second, what doctrinal tests apply—strict scrutiny in the United States, proportionality review in European systems, or the 'reasonable restriction' standard in India? Third, what institutional safeguards prevent governments from abusing hate speech laws to silence political opponents under the pretext of maintaining harmony?

These questions matter because speech regulation is always double-edged. A rule drafted to stop calls for ethnic violence today might be invoked tomorrow against artists or activists who criticise cultural majorities. Authoritarian governments routinely label dissent as 'hate' or 'insult to national identity'. Comparative constitutional review must therefore focus not only on whether regulation is morally appealing, but also on whether it can be consistently administered without collapsing into censorship.

We also need to clarify what we mean by 'hate speech'. In this article, the working definition is: expression that targets people on the basis of protected characteristics (such as race, caste, religion, ethnicity, gender, sexual orientation, disability) and that is intended or reasonably likely, in context, to incite discrimination, hostility, or violence against that group. This is narrower than "offensive speech," which covers satire, blasphemy, gallows humour, or harsh criticism, and which typically remains protected in liberal democracy.

ANALYTICAL FRAMEWORK: STATE PERSPECTIVES

From the perspective of the state, the justification for restricting hate speech usually takes one of three forms. The first is public order: hateful rhetoric can

escalate into mob violence, riots, or targeted attacks, particularly in societies with a history of communal tension. The second is equality and dignity: speech that relentlessly depicts a minority as unclean, criminal, or parasitic undermines their claim to be treated as full citizens. The third is democratic participation: when entire communities are terrorized into silence, elections and civic deliberation stop being meaningfully representative.

But state power is dangerous. The same government that promises to protect minorities today may later weaponize broadly worded statutes to silence whistleblowers or journalists. This is why the principle of legality—clarity and specificity in drafting—is non-negotiable. Vague bans on 'offensive' or 'insulting' speech are constitutionally suspect because they allow executive actors to punish speech they merely dislike, with almost no evidentiary burden. A constitutionally responsible state perspective therefore has two halves: (1) an obligation to prevent serious, imminent, or structurally corrosive harm, and (2) an obligation to draft and enforce restrictions so narrowly that the same rules cannot be misused against lawful dissent. When courts review hate speech laws, they are really reviewing whether the state has met both halves.

ANALYTICAL FRAMEWORK: INDIVIDUAL PERSPECTIVES

For individuals, free speech is both a shield and a sword. It is a shield because it lets ordinary citizens criticise the government without fear of reprisal. It is a sword because it empowers them to persuade others, organise, and demand structural change. When the state threatens criminal punishment for speaking, the individual rationally self-censors even if they would have ultimately won in court. This chilling effect is why civil libertarians are sceptical of hate speech bans.

At the same time, hate speech inflicts a different kind of chilling effect on its targets. Imagine a young student from a minority community who watches prominent voices publicly call her people 'vermin' or 'invaders' and demand their removal. Formally, she still has freedom of speech. Practically, she may decide it is unsafe to attend a demonstration, speak up in class, or run for student government. Her silence is not voluntary; it is coerced by a credible threat environment.

This reveals a deeper truth: unrestrained hate speech can suppress the speech of its targets. A mature free speech doctrine must acknowledge that liberty for some speakers can translate into intimidation for others. Individual rights therefore cut both ways: the right to speak and the right to participate without fear of violent retaliation grounded in identity. Any legitimate regulatory model must honour both dimensions.

ANALYTICAL FRAMEWORK: THE BALANCING TEST

Drawing from comparative practice, a workable balancing test can be expressed in four prongs. Prong One: Definition. The law must define prohibited hate speech in precise terms tied to advocacy of hatred against protected groups and aimed at, or likely to produce, discrimination, hostility, or violence. Prong Two: Legitimacy. The state must identify a constitutionally recognised aim—for instance, preventing incitement to violence or preserving equal citizenship—and must not rely on vague appeals to protecting public sentiment or national pride.

Prong Three: Necessity and proportionality. Regulators must demonstrate that a criminal or coercive response is necessary because less-restrictive alternatives (counter-speech, civil remedies, targeted police presence) are inadequate in that context. This is where many broad bans fail: governments often skip straight to criminalisation without first exhausting lower-impact tools. Prong Four: Procedural safeguards. Those accused of hate speech must receive notice, access to evidence, a chance to contest interpretation, and the right to independent review. Without these safeguards, even a tightly worded law becomes dangerous in practice.

Courts can apply this balancing test case by case. Instead of striking down all hate speech laws or rubber-stamping all restrictions, courts can ask: Are the definitions narrow? Is the aim legitimate? Is the measure necessary and proportionate? Are procedural safeguards real, not symbolic? This structured inquiry keeps constitutional review transparent and principled.

UNITED STATES: ROBUST PROTECTION WITH NARROW INCITEMENT AND TRUE-THREATS EXCEPTIONS

The United States adopts one of the strongest global protections for offensive and extremist speech. The basic rule is that government cannot restrict expression merely because it is racist, sexist, xenophobic, or degrading. Viewpoint discrimination—punishing speech because of the opinion it expresses—is presumptively unconstitutional. However, there are important carve-outs.

First, 'incitement to imminent lawless action' is not protected. For speech to fall into this category, it must be directed to producing imminent lawless conduct and be likely to produce such action. This is a deliberately high bar. General racist ranting, without a call for immediate violence, usually does not qualify. Second, 'true threats'—serious expressions of intent to commit unlawful violence—can be punished. The key element is that a reasonable person would perceive the statement as a genuine threat, not mere hyperbole or political rhetoric.

Third, the 'fighting words' doctrine theoretically allows punishment of face-to-face insults likely to provoke an immediate breach of the peace. In modern practice, courts apply this narrowly. The doctrine survives mostly in principle, not as a widespread criminal tool. The practical effect of these doctrines is that most hate speech remains protected unless it is tightly linked to imminent violence or targeted threats. Universities and employers therefore often rely on codes of conduct, anti-harassment rules, and anti-discrimination law—rather than criminal law—to police hateful expression within their institutions.

Critics argue that this model undervalues the structural silencing effect of hate speech. Defenders respond that granting the state broad censorship powers is historically dangerous, particularly for dissenters and minorities themselves. The American compromise, then, is to tolerate a high volume of ugly speech in public space while using civil rights law, anti-harassment norms, and private governance to mitigate its worst effects.

EUROPEAN HUMAN-RIGHTS SYSTEMS: PROPORTIONALITY AND DIGNITY

European systems, including those influenced by the European Convention on Human Rights and EU member state practice, are more willing than the United States to criminalise certain forms of hate speech. The justificatory logic is twofold. First, European constitutional culture treats human dignity and equality as central pillars of democratic order, not merely individual interests. Second, Europe's historical memory of genocide, ethnic cleansing, and authoritarianism informs a lower tolerance for propaganda that demonises protected groups.

In these systems, courts ask whether restrictions are prescribed by law (clarity), pursue a legitimate aim (such as protecting the rights of others or preventing disorder), and are necessary in a democratic society (proportionate). The proportionality inquiry is context-heavy. Judges examine the status of the speaker (public official or fringe agitator), the size and vulnerability of the audience, the social temperature at the time, and whether the message was likely to catalyse discriminatory conduct or violence.

One distinctive European feature is the willingness to consider certain kinds of hate speech as outside the core of protected political discourse. Holocaust denial laws, bans on glorifying extremist organisations, and prohibitions on incitement to racial hatred reflect a conviction that some narratives are themselves attacks on the foundations of democratic coexistence. Detractors warn that this approach risks sliding into overreach. Supporters reply that democracy has the right to defend itself against rhetorical projects that aim to destroy equal citizenship for segments of the population.

Overall, the European approach affirms that equality and dignity are not optional accessories to free speech; they are co-equal constitutional values. But it also underscores the need for careful drafting and rigorous proportionality review to avoid abuses.

INDIA: EQUALITY-COMPATIBLE FREE SPEECH

India's constitutional text protects freedom of speech and expression but allows 'reasonable restrictions' in the interests of, among other things, public order, decency, morality, and the rights of others. Indian criminal law contains provisions aimed at preventing the promotion of enmity between groups on grounds such as religion, race, or place of birth, and at penalising deliberate acts intended to outrage religious feelings. In principle, these provisions seek to prevent communal violence and preserve social harmony in an extremely plural society.

Courts in India have oscillated between deference to public order claims and scepticism toward vague, sweeping speech restrictions. On the one hand, they have upheld targeted prohibitions on speech that is likely to inflame immediate communal tension in volatile situations. On the other hand, they have struck down or read down overly broad laws—especially in the digital context— where the statutory language criminalised virtually any 'offensive' or 'annoying' online content. The message from the bench is increasingly that precision matters, even when the state invokes public order.

The Indian model illustrates a hybrid path. It recognises, like European systems, that hate speech can endanger equality and collective security. But it also borrows from U.S.-style speech anxiety by warning against vague, discretionary censorship regimes that chill dissent. The more India's courts demand clear mens rea requirements, imminent threat assessment, and procedural safeguards, the more credible hate speech regulation becomes as a constitutional project rather than a political weapon.

A further challenge in India is distinguishing between criticism of religion (which should remain protected) and vilification of a religious community as such (which may legitimately attract sanction if it amounts to incitement). This distinction is conceptually subtle but democratically vital: without it, blasphemy-style enforcement could smother reformist or feminist critique within religious traditions.

POLICY DESIGN: ELEMENTS OF A NARROWLY TAILORED LAW

Good hate speech law begins with definition. The statute should target only advocacy of hatred against protected groups that is intended or reasonably likely to incite discrimination, hostility, or violence. Vague terms like 'offend', 'insult', or 'hurt sentiments' should not appear in the operative offence. Those concepts may belong in civil defamation, campus conduct codes, or platform terms of service, but they are too malleable for criminal sanction.

The second element is mens rea. Criminal liability should ordinarily require intent, wilful blindness, or at least recklessness as to the risk of serious harm. Strict liability—punishing a speaker regardless of mental state—is incompatible with democratic speech values. The chilling effect would be immense because speakers could never predict whether a creative work, academic argument, or satirical performance would be reinterpreted as 'hate'.

Third, any criminal or coercive remedy should sit beside, not replace, non-penal responses. These include public counter-speech by elected leaders, rapid clarification of misinformation, targeted police presence to protect threatened communities, anti-discrimination enforcement in housing and employment, and restorative interventions (mediation, community dialogues, apologies). When governments skip these less-restrictive alternatives and jump directly to criminal prosecution, courts should doubt necessity and proportionality.

Fourth, periodic review and public reporting are essential. States should publish annual data: number of complaints, prosecutions, convictions, reversals on appeal, and demographic breakdowns of both complainants and accused. Transparency makes it harder to use hate speech laws selectively against political opponents while ignoring majoritarian abuse.

PLATFORMS AND INTERMEDIARIES: DUE PROCESS ONLINE

Modern speech flows through private intermediaries—social media platforms, messaging services, video hosts—whose moderation decisions effectively

determine who gets heard. Governments now pressure platforms to take down alleged hate speech quickly. While timely intervention can prevent violence, unreviewable takedown orders risk silent censorship at scale.

A constitutionally compatible approach requires due process online. That includes notice to the speaker explaining why content was removed; an accessible appeal path to a human reviewer; and transparency reports showing aggregate takedown numbers, reversal rates, and government requests. Without these safeguards, private platforms become de facto censors for the state, with almost no public accountability.

Another emerging tool is algorithmic down-ranking: instead of deleting hateful content that falls short of illegality, platforms can reduce its reach while elevating counter-speech and factual corrections. This approach is appealing because it targets virality, not mere existence. However, it must also be transparent enough to avoid secret, viewpoint-based manipulation of political discourse.

CHILLING EFFECTS AND OVERBREADTH

Any hate speech framework must take chilling effects seriously. If the law is vague, artists will self-censor, journalists will avoid reporting on extremist movements, scholars will hesitate to quote incendiary rhetoric even for critique, and comedians will drop sharp social commentary. This costs the democracy valuable information and cultural reflection.

The cure is narrow tailoring, not abandonment of regulation. By confining criminal penalties to incitement of violence, targeted threats, and advocacy of exclusionary discrimination, lawmakers can preserve robust space for harsh satire, ideological extremism, and even deeply offensive speech that does not cross into active harm. At the same time, parallel civil and educational tools can be deployed to counter hateful narratives and support targeted communities without threatening prison for controversial expression.

Overbreadth review is crucial. Courts should strike down or read down statutes that sweep beyond incitement and threats into nebulous bans on ‘hurting religious

feelings' or 'causing disharmony' without an objective risk assessment. Such language is a magnet for abuse, particularly against dissidents, religious reformers, or critics of dominant cultural actors.

COUNTER-SPEECH, EDUCATION, AND RESTORATIVE RESPONSES

Criminal law is a blunt instrument. It can deter the worst behaviour but it rarely builds solidarity. Counter-speech strategies aim to flood the zone with better narratives: rapid factual correction of rumours, public statements of solidarity by respected leaders, and visible support for communities under rhetorical attack. When done credibly, counter-speech can undercut the social status of hate-mongers by portraying them as unreliable, dangerous, or fringe.

Education is slower but deeper. Media literacy programmes help citizens recognise manipulation techniques, stereotype appeals, and false causality ('your economic struggles are because of this minority'). By teaching audiences to interrogate hateful messages rather than absorb them, education reduces the audience for demagogues without requiring bans.

Restorative responses aim to repair local harm through acknowledgement rather than punishment. In school and workplace settings, facilitated dialogues, apologies, and commitments to behavioural change can sometimes resolve incidents more constructively than formal sanction. Restorative models are not a cure-all—especially where hate is organised and violent—but they add a tool that does not depend on criminal law.

VULNERABILITY, POWER, AND CONTEXT

Hate speech harm is context-dependent. The same words can carry very different weight depending on who speaks them, to whom, and under what social conditions. A slur shouted by a police officer at a detained minority teenager communicates state-backed domination. The same slur quoted in a research paper about discrimination has a different social meaning and should not trigger criminal liability. Constitutional analysis must therefore be sensitive to power relations, not

just literal wording.

Courts in proportionality-based systems already consider context: Was the speaker a politician addressing a volatile rally? Was the audience already armed and angry? Was the target community historically subjected to persecution? Was violence likely in the days that followed? This fact-intensive inquiry is burdensome but necessary. It protects dissenters who criticise dominant groups while still allowing urgent intervention against actors who are deliberately stoking communal violence.

A purely text-based, context-blind approach to hate speech either over-punishes criticism of powerful groups or under-protects marginalised communities facing credible threats. Contextual review is not judicial activism; it is constitutional realism.

PROTEST, POLICING, AND SPEECH

Street protest is where political speech, public order, and identity-based hostility often collide. Police may be tempted to shut down demonstrations pre- emptively, citing the risk of hate speech. But pre-emptive bans can strangle democratic participation. Constitutionally, the default should be to allow protest subject to content-neutral time, place, and manner conditions—route changes, buffer zones, sound limits—designed to manage risk without erasing the message.

When hateful or violent rhetoric does emerge at a protest, the response should be targeted. Arrest the speaker who crosses the true-threat or incitement line, rather than dispersing the entire protest. Record evidence. Issue clear, narrow orders. This approach respects the expressive rights of peaceful demonstrators who share the forum but not the hateful message.

Independent oversight of protest policing is essential. Without accountability, police can disguise hostility toward certain movements as 'hate speech enforcement'. Oversight bodies, judicial review of prohibitions, and mandatory video documentation help ensure that hate speech controls do not become tools for suppressing inconvenient dissent.

THE ROLE OF COURTS

Courts serve as the constitutional circuit-breaker between state power and individual liberty. In the hate speech context, their role is not only to decide guilt or innocence after the fact, but to shape the doctrinal tests that police the legislature and executive in advance. When courts demand clarity, high mens rea thresholds, proof of contextual risk, and narrow tailoring, they are effectively writing a compliance manual for lawmakers.

Judicial techniques vary. Some courts strike down vague laws outright. Others 'read down' problematic statutes, interpreting them to apply only to incitement of imminent violence or to targeted threats, while discarding overbroad language about insult or offence. Still others apply structured proportionality analysis, explicitly weighing the value of the expression against the gravity and likelihood of the harm.

For courts to retain legitimacy, they must be even-handed. Selective outrage—striking down speech restrictions when used against majority voices but upholding them when used against minorities—destroys credibility. A principled judiciary will defend satire, critique, and dissent across the political spectrum while acting decisively against genuine incitement to harm.

COMPARATIVE SYNTHESIS

The United States, European systems, and India share a common anxiety: giving the state too much censorship power can boomerang against dissenters, yet leaving hate speech unchecked can let dominant groups terrorize minorities into silence. Their solutions diverge in emphasis but overlap in structure.

The U.S. sets the speech-protective extreme. It criminalizes only direct incitement to imminent lawless action, true threats, and a narrow band of fighting words. It relies heavily on counter speech and private institutional rules to handle bigotry. Europe sets the dignity-protective extreme. It accepts proportionate criminal bans on advocacy of hatred that threatens equality and public order, especially in light of its historical experience with mass atrocity. India sits between: it permits reasonable restrictions for public order and communal harmony, but its courts

increasingly insist that those restrictions be specific, proportionate, and procedurally reviewable.

From these comparisons we can infer a blended model. Define hate speech tightly around incitement to discrimination, hostility, or violence against protected groups. Demand proof of intent or recklessness. Preserve robust breathing room for satire, dissent, and criticism of religion or government. Require procedural safeguards and regular audits. Surround criminal law with civil, educational, and restorative tools. This model treats equality and expression as co-essentials of democracy, not zero-sum rivals.

MEASURING SUCCESS

How do we know whether a hate speech regime is working? Counting prosecutions is misleading. A spike in arrests could signal overreach rather than safety. The better metric is democratic participation: Are members of historically targeted communities reporting that they feel safer speaking in public forums, on campus, online, and in political meetings? Are violent hate crimes and coordinated harassment campaigns declining? Are appeals succeeding when police overreach? Another useful metric is transparency. Do governments and platforms publish regular, comprehensible data about takedowns, prosecutions, and appeal outcomes? Can civil society independently audit those numbers? Without transparency, neither citizens nor courts can tell whether the law protects the vulnerable or merely shields those in power from criticism.

Longer-term success is cultural. A democracy has matured when hate speech loses prestige. When openly bigoted rhetoric becomes socially costly—because peers, employers, and voters reject it—criminal law can retreat to the margins, reserved for the worst actors. The goal, ultimately, is to build a civic culture where pluralism is normal and dehumanisation is discredited.

ADDRESSING HARD CASES

Hard cases define the frontier. Consider artistic works that use slurs or shocking imagery to criticise oppression. If the law treats context and intent seriously, such works should remain protected unless they cross into direct incitement or targeted

threats. Another hard case is historical denialism. Some jurisdictions criminalise denial of genocide or crimes against humanity, viewing such denial as an attack on the dignity and security of survivor communities. Others worry that criminalising historical claims, even false or hateful ones, hands the state too much control over permitted narratives.

Satire also strains doctrine. Satire often exaggerates stereotypes to expose them. A blunt legal test risks misreading satire as endorsement of hatred. That is why procedural safeguards—notice, opportunity to explain context, independent review—are so important before imposing penalties. Free speech doctrine must retain room for abrasive art and dissent, especially from marginalised voices that invert dominant narratives through shock.

Finally, consider policing of majoritarian hate versus minority anger. When a dominant group calls for violence against a minority, the risk profile is extremely high. When a minority group uses harsh or even dehumanising language against a dominant group, courts must distinguish between cathartic rage and genuine incitement. The goal is not symmetry for its own sake, but context-sensitive protection of democratic participation and physical safety.

CONCLUSION AND RECOMMENDATIONS

Freedom of speech and protection from hate are not mutually exclusive. A constitutional order can defend both if it does three things well. First, it drafts hate speech laws narrowly, targeting only advocacy of hatred that is intended or likely to result in discrimination, hostility, or violence against protected groups. Second, it embeds high mens rea standards, contextual analysis, and procedural safeguards so that the same laws cannot be easily misused to jail dissenters or critics. Third, it invests in non-criminal strategies—counter-speech, education, support for targeted groups, online due process—so that the heavy hammer of criminal law is reserved for genuinely dangerous cases.

The recommendations that flow from this analysis are concrete. Legislatures should purge vague terms such as ‘annoying’ or ‘insulting’ from criminal statutes and replace them with precise incitement language. Courts should continue to

strike down overbroad restrictions or read them down to constitutionally acceptable cores. Platforms should adopt transparent takedown/appeal systems to avoid becoming unaccountable censors. Police should police violence, not dissent. And governments should publish regular impact reports so that the public can see whether hate speech controls are protecting the vulnerable or chilling democratic debate.

If these recommendations are implemented, democracies can move beyond the false binary of 'absolute free speech' versus 'speech policing'. Instead, they can cultivate an environment where robust, even abrasive, political disagreement thrives—while ensuring that no community is terrorised into silence simply because of who they are.

BIBLIOGRAPHY

1. Romesh Thappar v. State of Madras, AIR 1950 SC 124.
2. Brij Bhushan v. State of Delhi, AIR 1950 SC 129.
3. State of Madras v. V.G. Row, AIR 1952 SC 196.
4. Superintendent, Central Prison v. Ram Manohar Lohia, AIR 1960 SC 633.
5. K.A. Abbas v. Union of India, (1970) 2 S.C.C. 780.
6. Babulal Parate v. State of Maharashtra, AIR 1961 SC 884.
7. S. Rangarajan v. P. Jagjivan Ram, (1989) 2 S.C.C. 574.
8. LIC v. Manubhai D. Shah, (1992) 3 S.C.C. 637.
9. Raj Kapoor v. State, (1980) 1 S.C.C. 43.
10. Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana, (1988) 3 S.C.C. 410.
11. Kameshwar Prasad v. State of Bihar, AIR 1962 SC 1166.
12. Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1.
13. Subramanian Swamy v. Union of India, (2016) 7 S.C.C. 221.
14. Pravasi Bhalai Sangathan v. Union of India, (2014) 11 S.C.C. 477.
15. Amish Devgan v. Union of India, (2020) 11 S.C.C. 1.
16. Indibility Creative Pvt. Ltd. v. State of West Bengal, (2020) 12 S.C.C. 436.
17. Kaushal Kishor v. State of Uttar Pradesh, (2023) 4 S.C.C. 1.
18. S. Khushboo v. Kanniammal, (2010) 5 S.C.C. 600.
19. Aveek Sarkar v. State of W.B., (2014) 4 S.C.C. 257.

20. Sakal Papers (P) Ltd. v. Union of India, AIR 1962 SC 305.
21. Bennett Coleman & Co. v. Union of India, (1972) 2 S.C.C. 788.
22. M.P. JAIN, Indian Constitutional Law (8th ed. 2023).
23. H.M. SEERVAI, Constitutional Law of India (4th ed. 2013).
24. D.D. BASU, Commentary on the Constitution of India (9th ed. 2020).
25. GAUTAM BHATIA, Offend, Shock, or Disturb: Free Speech under the Indian Constitution (2016).
26. UPENDRA BAXI, The Future of Human Rights (3d ed. 2008).
27. FALI S. NARIMAN, India's Legal System: Can It Be Saved? (2006).
28. A.G. NOORANI, Constitutional Questions in India: The President, Parliament and the States (2000).
29. RAJEEV BHARGAVA, The Promise of India's Secular Democracy (2010).
30. T.K. VISWANATHA IYER, Fundamental Rights and the Indian Constitution (2012).
31. P.M. BAKSHI, Constitution of India (18th ed. 2022).
32. J.N. PANDEY, Constitutional Law of India (2021).
33. SUHRITH PARTHASARATHY, Free Speech and the Indian Constitution: Judicial Trends (Oxford Univ. Press 2021).
34. RAJ KUMAR, Freedom of Speech and Expression in India: Constitutional Perspectives (2018).
35. Gautam Bhatia, Hate Speech and the Indian Constitution, 5 NUJS L. Rev. 1 (2012).
36. Tarunabh Khaitan, Hate Speech Regulation and Democracy in India, 32 Oxford J. Legal Stud. 417 (2012).
37. Aparna Chandra, Proportionality in Indian Constitutional Adjudication, 2 Indian L. Rev. 265 (2018).
38. Rajeev Dhavan, The Right to Know: Freedom of Expression and the Press, 28 J. Indian L. Inst. 289 (1986).
39. Faizan Mustafa, The Constitutional Right to Freedom of Speech and Expression in India: A Critical Appraisal, 54 Indian Bar Rev. 125 (2020).
40. B. Sivaramayya, Freedom of Speech and the Limits of Public Order, 23 J. Indian L. Inst. 75 (1981).
41. Justice B.N. Srikrishna, Balancing Free Speech and Hate Speech in India, 4 Indian J. Const. L. 45 (2017).
42. Madhav Khosla, Speech and Democracy in India, 17 Sup. Ct. Cases (J) 1 (2010).

43. Pratap Bhanu Mehta, India's Judiciary and the Promise of Free Expression, 16 India Int'l Ctr. Q. 17 (2013).
44. Chinmayi Arun, Hate Speech Online and the Indian Legal Framework, 9 Indian J. Const. L. 101 (2019).
45. Alok Prasanna Kumar, Free Speech and Internet Regulation in India after Shreya Singhal, 11 Indian J. L. & Tech. 1 (2015).
46. A. Faizal Faruqui, The Indian Judiciary's Approach to Hate Speech: Between Tolerance and Suppression, 2 NALSAR L. Rev. 214 (2019).
47. Arghya Sengupta, Freedom of Speech, Hate Speech and Indian Democracy, 8 India L.J. 56 (2018).
48. Nidhi Suresh, The Politics of Hurt Sentiment: Speech and Identity in Indian Constitutionalism, 7 Indian Const. Stud. Rev. 33 (2021).
49. Aditya Sondhi, Public Order and Free Speech: Constitutional Conflicts in India, 3 Indian J. Const. L. 72 (2014).
50. Vanya Rathi, Hate Speech Regulation: An Indian Perspective, 11 Christ U. L. Rev. 110 (2020).
51. Justice A.P. Shah, Freedom of Expression and the Rule of Law in India, 1 Indian J. Const. L. 5 (2013).
52. Brandenburg v. Ohio, 395 U.S. 444 (1969).
53. Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).
54. R.A.V. v. City of St. Paul, 505 U.S. 377 (1992).
55. Virginia v. Black, 538 U.S. 343 (2003).
56. Snyder v. Phelps, 562 U.S. 443 (2011).
57. Beauharnais v. Illinois, 343 U.S. 250 (1952).