

# Speech-Related Offences in India with Special Reference to Hate Speech: A Comparative Analysis

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## Abstract:

Article 19(1)(a) of the Indian Constitution grants citizens the right to freely express their views and opinions in the public interest. However, this freedom is often misused to demean individuals, groups, communities, and even the state through derogatory statements, defamatory speeches, offensive remarks, and provocative comments. Such misuse can incite violence, including rioting, mob lynching, and sedition. Many people are unaware of the legal boundaries protecting free speech and the consequences of overstepping them. This article compares India's laws on sedition, defamation, criticism, insults, and hate speech, arguing for the necessity of hate speech laws despite existing sedition and defamation regulations. The authors highlight how ambiguity in understanding these laws leads to societal issues, inconsistent legal application, and weakened law and order. The paper assesses the current state of these laws, identifies gaps, and offers suggestions for improvement.

**Keywords:** Comparative analysis, Criticism, Defamation, Hate speech, Insult, Sedition

## 1. Introduction

Speech is a medium of communication that aims at conveying information, expressing thoughts or opinions, effectively communicating the intended message, and engaging the audience. The right to freedom of thought, speech, and expression is a fundamental human right, that is safeguarded under Article 19 of the Universal Declaration of Human Rights (1948) and enforced by all significant international and regional human rights treaties. States are obligated by international human rights legislation to ensure that individuals have the right to freely access, share, and receive information or ideas of any nature, using any media platform they like, without any restrictions based on frontiers. The right to free speech is not an unrestricted right. In certain cases, such as incitement to violence, hate speech, racism, Holocaust denial, and references to ideology, the state has the authority to limit this right according to international human rights law. However, any limitations on freedom of expression must be clearly defined and justified by a legitimate interest, and must be established by law. The freedom that is enshrined under Article 19 (1) (a) of The Indian Constitution for speech and expression is also not an absolute freedom. It doesn't cover any kind of offensive statement towards any individual. Hence, we have sedition laws, defamation laws, and certain other legal provisions in

different statutes to deal with criticism, insults and hate speech, indirectly. The study aimed at comparing all these laws in order to find out the similarities and differences among them so that, an effective conclusion can be drawn about what more steps are required to be taken to combat the issue of speech related offences that result in hate crimes and how hate speech has become the biggest threat to democracy in recent years.

## **2. Objectives**

The study's objectives are as follows:

- To study and analyse the meaning and definition of sedition, defamation, criticism, insult, and hate speech
- To make a comprehensive comparative analysis of such laws in India
- To identify the gaps in these laws
- To suggest effective solutions for combating speech-related offenses

## **3. Methodology and data collection**

The researchers intended to conduct a comparative analysis. The doctrinal research methodology has been applied here for a critical and qualitative analysis of legal materials collected through primary sources such as, statutes, cases, rules, and regulations, etc. in order to support the study. The researchers, first of all, collected data from various sources. Thereafter, they go for analysis, followed by discussions, findings, and suggestions. The data collected and the steps taken are as follows:

- Most of the data was collected through various journal articles, research papers, conference papers, and book chapters in order to conduct the literature review part.
- Thereafter, current updates relating to the matter get followed through newspapers, web browsers, blogs, and various internet sources.
- The legislative frameworks (statutes, cases, rules, and regulations) and the judicial interpretations were considered in order to give justice to the study.
- Finally, the necessary analysis of the data collected, was done in order to reach an effective conclusion with suggestions.

## **4. Concept and meaning:**

Speech is predominantly governed by three international treaties: the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, and the Convention on the Prevention and Punishment of the Crime of Genocide. The legal rules make it clear that speech deliberately encouraging genocide must be made illegal, while speech instigating violence may also be made illegal. On the contrary side of the spectrum, communication that is only annoying or frightening should not be considered a criminal offense. Within this lies offensive discourse that provokes animosity, enmity, or prejudice, yet does not promote violence against others. This is under a contentious grey area.

There are various speech related offences such as, Sedition, Defamation, Criticism, Insult, Hate Speech etc. The researchers have discussed them one by one here in below.

#### 4.1 Sedition

The term “Sedition” first used in 14th century.

The dictionary meaning of sedition is-

“Sedition refers to the act of speaking or writing words that have the potential to incite ordinary people to public disorder or insurrection”<sup>1</sup>. “Sedition is the use of speech, writing, or behaviour encouraging or inciting people to fight against or oppose the government.”<sup>2</sup>. “Sedition is the use of words or actions to influence others to rebel against their government.”<sup>3</sup>. “Sedition is an instigation to rebellion or revolt against legitimate authority.”<sup>4</sup>

The offence of sedition appears under the provision of 124A as enshrined under chapter VI of IPC dealing with “Offence against the State” (Section 152 of Bharatiya Nyaya Sanhita, 2023). The very section not only provided the definition of the offence but also provided the punishment for it and the exceptions of it. However, Sedition being a speech related offences does not reasonably restrict under Article 19(2) of the Constitution of India.

In May 2022, Supreme Court ordered for the retention of sedition law in new Bhartiya Nyaya Sanhita as Section 124A of the Indian Penal Code, which has been in effect for 152 years for a purpose. The government will have the opportunity to rethink the provision<sup>5</sup>. The borders of Section 124A were defined in the 1962 Supreme Court decision *Kedar Nath Singh vs. State of Bihar*<sup>6</sup>, which also supported the legality of the statute. The court upheld the constitutionality of Section 124A, but narrowed its scope to prohibit only acts that incite violence or public disorder. It sought to avoid abuse while preserving public order, and it stressed the freedom of citizens to criticize the government without fear of prosecution. To guarantee the correct administration of the law, this historic decision sought to strike a balance between governmental interests and people' rights to free speech and expression.

#### 4.2 Defamation

Defamation is the act of disseminating false comments about someone that cause damage to their reputation. Legal terminology classifies a remark as defamatory if it meets specific criteria outlined in the statute. The term defamation has both civil and criminal legal consequences.

In civil litigation, the defamed party seeks damages or compensation for the harm to their reputation.

In criminal litigation, the defamed party demands punishment from the offender for the harm to their reputation.

Classification:

Defamation may be classified into:

Libel, b) Slander, c) Innuendo

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<sup>1</sup> Oxford Dictionary

<sup>2</sup> Collins Dictionary

<sup>3</sup> Cambridge Dictionary

<sup>4</sup> Merriam-Webster Dictionary

<sup>5</sup> Vombatkere vs. UOI, 2022, SCC online SC 609

<sup>6</sup> Kedar Nath Singh vs. State of Bihar, AIR 1962 SC 955

**Libel:** The act of making permanent defamatory comments in writing or publishing form. This includes remarks disseminated through many mediums, such as newspapers, magazines, books, websites, social media postings, emails, or any other written or recorded form. Because of their intensity, people perceive libellous utterances as more grievous than slanderous, making them more detrimental to an individual's reputation.

**Slander:** It is the act of making false and damaging claims about someone, particularly through spoken or oral communication. This includes assertions made during discussions, interviews, or any other mode of spoken interaction. Despite being less durable than libel, slanderous words can still cause significant harm to a person's reputation, especially when they spread extensively.

Both libel and slander can have serious legal repercussions, and those who have suffered defamation can either file a civil lawsuit to recover damages to their reputation or file a criminal case to punish the offender with jail time and a fine.

**Innuendo:** In legal contexts, the term "innuendo" refers to an indirect reference or inference, usually carrying a negative connotation. It is a communication style that considers the intended meaning instead of explicitly expressing it. It signifies an implicit or underlying meaning in a statement that may not be immediately apparent to everyone, but those familiar with the context or circumstances can understand it. Innuendo refers to a situation in which a statement may not be considered defamatory when interpreted literally. However, it becomes defamatory when the audience understands it in the context of certain external facts or circumstances, which give the statement a negative meaning. Sometimes, the derogatory implication of a remark is evident only to those who possess knowledge of particular facts or circumstances, rather than the entire public. Identifying and demonstrating innuendo is crucial to conducting defamation proceedings. Courts are required to meticulously examine the surrounding facts, context, and possible implicit implications in order to determine if a remark meets the legal criteria for defamation.

The 22nd Law Commission has proposed that the new legal framework of *Bhartiya Nyaya Sanhita* should continue to include criminal defamation as an offence. The study of the Law Commission emphasises the significance of safeguarding an individual's reputation, as enshrined in Article 21 of the Constitution, which protects the right to life and personal freedom.

### **4.3 Criticism**

The term "criticism" is derived from the French word "critique" and has been in use since the 14th century.

The dictionary meaning of the term criticism is,

“Criticism refers to the act of expressing disapproval or making negative comments about something or someone, specifically highlighting their flaws or shortcomings”<sup>7</sup>. “Criticism refers to the act of expressing dissatisfaction towards someone or something, specifically highlighting their faults or negative features. A remark can clearly convey this disdain”<sup>8</sup>.

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<sup>7</sup> Cambridge Dictionary

<sup>8</sup> Oxford Learner's Dictionaries

Criticism is a rigorous examination of a subject or concept, encompassing activities such as interpretation, appraisal, analysis, evaluation of merits, expression of adverse viewpoints, and systematic investigation.

If criticism is framed as an equation,

**Criticism = Full Knowledge+ Proper Analysis + Perception+ public interest**

Fair criticism is the exception.

In the equation, the term “knowledge” is significant. In order to criticise something, proper prior knowledge of the particular matter is required to establish valid points in order avoid the legal consequences.

Recently, the Supreme Court has affirmed the freedom to express dissent, highlighting that criticism is not necessarily objectionable and is vital for the preservation of democracy. In a case involving negative remarks about the abolition of Article 370, the court dropped charges against a man, thereby upholding the constitutional protection of freedom of speech and expression. The court emphasised the need for police to be educated and made aware of these fundamental rights and democratic principles. The case concerned a Kashmiri professor who faced criminal charges for declaring August 5 as a "Black Day" for Jammu and Kashmir and celebrating Pakistan's Independence Day in a WhatsApp status. The court considered these remarks to be valid means of protest and acts of kindness, without any intention to provoke hostility. The statement emphasizes the need to use lawful methods to ensure respectable and purposeful existences, as protected by Article 21 of the Constitution. Nevertheless, the court underscored the importance of opposition being conducted within the framework of democratic principles without promoting violence or animosity among different groups.<sup>9</sup>

Furthermore, if we see, we can understand that, criticism falls within the scope of freedom of speech and expression, unless it involves inciting violence, riots, communal discord, or disrupting social harmony. There is no statutory provision for defining the term criticism or prescribing punishment for it. Criticism may either govern under the provisions of sedition law or defamation law, provided that it fulfils the essential ingredients of those offences.

#### **4.4 Insult**

According to the Cambridge dictionary, an insult is an offensive remark that hurts others feelings. Insults can be understood in many ways, depending on the person and the situation. While some may consider it to be a harmless kind of teasing, others may find it deeply unpleasant, offensive, and disrespectful. A speech or action that intentionally offends or diminishes someone's dignity, reputation, or emotions is known as an insult.

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<sup>9</sup> “Every Citizen Has Right to Criticise Any Decision of State: Supreme Court”, India News, Reported by Ashish Kumar Bhargava, Edited by Anindita Sanyal, Updated: March 07, 2024 11:03 pm IST

Insults can lead to legal repercussions in several jurisdictions, particularly if they meet certain criteria like defamation, harassment, obscenity, or hate speech. For instance, if an individual disseminates untrue remarks that damage another person's reputation in a defamation context, they may face legal repercussions. Insults in cases of harassment can be considered a manifestation of abusive conduct that contravenes laws against discrimination or bullying. Hate speech legislation, though not directly, may also ban derogatory remarks directed against particular attributes such as ethnicity, religion, or sexual orientation.

Courts play a crucial role in interpreting and applying legislation, considering factors such as the intent behind the insult, the context of its utterance, and the resulting harm. In essence, the primary objective of legal frameworks is to offer redress to those who have been subjected to insults, all while upholding fundamental rights such as freedom of speech.

#### **4.5 Hate Speech**

Hate speech encompasses any form of communication, including verbally spoken, written, or symbolic, that conveys feelings of hatred, bias, animosity, violence, or aggression towards a specific group or individual on the basis of their race, ethnicity, gender, nationality, religion, sexual orientation, disability, or other perceived qualities. Hate speech frequently aims to disparage, depreciate, intimidate, demean, or devalue certain persons or groups, and it has the potential to foster prejudice, societal fragmentation, and even instances of aggression.

Recently, around 400 individuals demanded that the Election Commission of India (ECI) take action against politicians who spew hate speeches at election rallies, with the slogan "Grow a spine or resign." A group of protestors, consisting of intellectuals, philosophers, and civil rights activists, convened in Santacruz, Mumbai, India, on Saturday, May 11, 2024, to express their opposition towards the chief election commissioner of India, Delhi, and advocate for the implementation of transparent and unbiased elections. Gathering in the intense heat and holding signs, the citizens lodged complaints with the ECI, demanding strict measures against politicians, particularly those affiliated with the BJP, for their hate speech. The complaint alleges that the Election Commission of India (ECI) has failed to take action against leaders of the Bhartiya Janata Party (BJP), including Prime Minister Narendra Modi, for soliciting votes by exploiting and making hate speech against caste, class, places of worship, and religion, which is in violation of the electoral code of conduct.<sup>10</sup>

Hate speech is an intricate and multifaceted problem that has extensive and perilous implications for human rights and the rule of law in a democratic society. Over the past few years, the internet has progressively emerged as a platform for the widespread dissemination of hate speech. The task of preventing and countering online hate speech is much more urgent because it is spreading rapidly worldwide in nanoseconds. Recognising that hate speech lacks protection under freedom of expression in several legal frameworks is crucial, as it has the probability to violate the rights and dignity of others. Nevertheless, the distinction between hate speech and the valid expression of opinion is ambiguous, and various legal systems may have divergent definitions and strategies for controlling it. Efforts to address hate speech commonly encompass educational initiatives, awareness campaigns, and legal

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<sup>10</sup> Sabah Virani, "Hate speeches at poll rallies: Citizen challenge ECI to 'grow a spine or resign'", Hindustan Times, May 12, 2024

actions that attempt to foster tolerance, diversity, and respect for human rights while also considering the essence of the right to freedom of expression.

## 5. Comparison:

### 5.1 General Comparison Among Sedition, Defamation, Criticism, Insult, Hate Speech

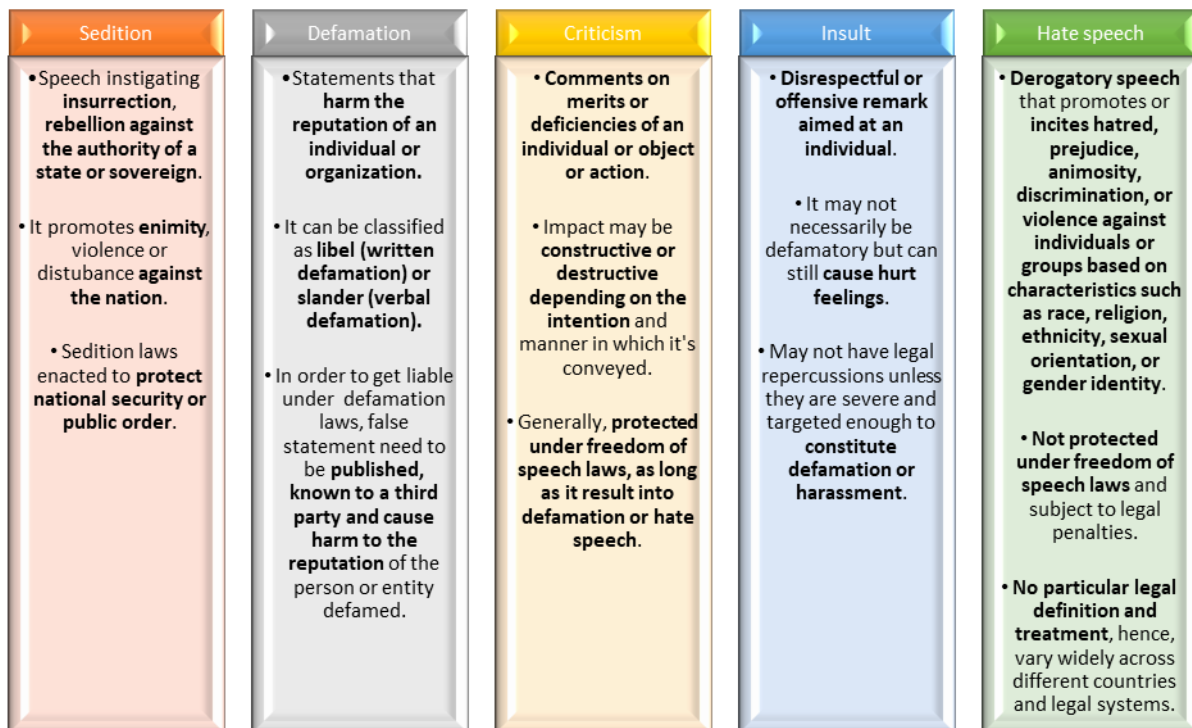


Figure 1: (General comparison of meaning and characteristics)

Figure 1 shows the general comparison regarding the meaning and characteristics of the speech related offences.

### 5.2 Statutory comparison

Table 1: (Comparative analysis of statutory provisions)

Sl. No.	Statutory comparison among speech related offences
1.	<p><b>Sedition</b></p> <p>1. <b>Legal definition-</b> <i>Any individual who intentionally or knowingly, through spoken or written words, signs, visual representations, electronic communication, financial means, or other methods, incites or attempts to incite secession, armed rebellion, or subversive activities, encourages separatist sentiments, or jeopardises the sovereignty, unity, and integrity of India, or engages in or perpetrates such acts, shall be deemed to have committed the offence of sedition.</i></p>

	<p>2. <b>Classification-</b></p> <ul style="list-style-type: none"><li>a) <i>Seditious words</i></li><li>b) <i>Seditious libel</i></li><li>c) <i>seditious conspiracy</i></li></ul> <p>3. <b>Legal provisions- Section 152 BNS (Section 124A IPC)</b></p> <p>4. <b>Punishment- Life Imprisonment, or Imprisonment up to seven years, and fine</b></p> <p>5. <b>Exceptions- Any comments that convey disapproval of government measures or actions, aimed at obtaining their modification through authorised ways without inciting the behaviours mentioned in this section, do not constitute offence under this section.</b></p>
2.	<p><b>Defamation</b></p> <p>1. <b>Legal definition- If any person by words (oral or written), signs, visible representation, cause harm to the reputation of others (any person, deceased or company) is said to commit the offence of defamation.</b></p> <p><b>Classification- I) Civil</b></p> <ul style="list-style-type: none"><li>a) <i>Libel</i></li><li>b) <i>Slander</i></li><li>c) <i>Innuendo</i></li></ul> <p><b>II) Criminal</b></p> <p><b>Legal provisions- 1. For civil- Law of Tort</b></p> <p>2. <b>For criminal- Section 356 BNS (Section 499 to 502 of IPC)</b></p> <p><b>Punishments- I) For civil- Compensation</b></p> <p><b>II) For criminal- In criminal defamation penalties vary between fine and imprisonment depending upon the severity of the offence</b></p> <p><b>Exceptions- For civil under law of tort-</b></p> <ul style="list-style-type: none"><li>1. <i>Justification of truth (Truth as a defence)</i></li><li>2. <i>Privilege (absolute and qualified privilege)</i></li><li>3. <i>Fair comment</i></li></ul> <p><b>For criminal – Ten exceptions as provided under section 356 BNS (section 499 IPC)</b></p>
3.	<p><b>Criticism</b></p> <p>1. <b>Legal definition- No particular legal definition, but any false statement with intent to harm reputation can cause defamation.</b></p> <p>2. <b>Legal provisions- No particular legal provision but can be dealt under other statutory provisions</b></p> <p>3. <b>Punishments- No particular punishment, but dealt under defamation</b></p> <p>4. <b>Exceptions- Fair criticism</b></p>
4.	<p><b>Insult</b></p> <p>1. <b>Legal definition- If any person intentionally insults any person (or any public servant) or insults women modesty, in order to lower the dignity of such</b></p>

	<p><i>person and provoke him to cause breach of public peace and damage place of worship is said to commit the offence of insult.</i></p> <p>2. Legal provisions- <i>Section 79, 267, 298, 352 of BNS</i></p> <p>3. Punishments- i) <i>As per section 79- three years imprisonment and fine</i>                  ii) <i>As per Section 267- six months imprisonment, up to five thousand fine or both</i>                  iii) <i>As per section 298- imprisonment for maximum period of two years, fine or both</i>                  iv) <i>As per section 352- imprisonment for up to two years, or fine, or both</i></p> <p>4. Exception- <i>No exceptions</i></p>
5.	<p><b>Hate Speech</b></p> <p>1. Legal definition- <i>No particular legal definition but as per UN hate speech is an offensive statement, whether verbal, written, or symbolic, that expresses hatred, or violence towards a particular group or individual based on characteristics such as race, ethnicity, religion, nationality, gender, sexual orientation, disability, or other perceived attributes.</i></p> <p>2. Legal provisions- <i>No particular legal provisions but dealt indirectly under scattered provisions of different statutes, such as, section 196, section 197 of BNS (section 153A, 153B of IPC), Peoples Representative Act etc</i></p> <p>3. Punishments- <i>As per the said sections of BNS and other statutes</i></p> <p>4. Exceptions- <i>No particular exception has been imposed</i></p>

Table 1 depicts the statutory comparison of the speech-related offences. It compares the factors of legal definitions, classifications, legal provisions, punishments, and exceptions (if any). Each of these elements must meet specific requirements to qualify as that specific offence. Failure to establish the required ingredients releases the accused person from sentence, a situation that warrants careful consideration.

### 5.3 Judicial interpretations

**Table 2: (Comparison based on judicial interpretations of the offences)**

SL. NO.	OFFENCES	JUDICIAL INTERPRETATIONS
1.	Sedition	SC understands sedition as per the definition provided under section 124A of IPC. However, the Court in the “ <i>Kedar Nath Singh v. State of Bihar</i> ” <sup>11</sup> (1962) case judgment emphasized that, only acts that involve instigation of aggression or violence or an intention to cause public unrest are considered as sedition. Merely criticizing the government is not deemed seditious unless it incites violence. According to SC, this view creates a harmonious equilibrium between upholding societal stability and

<sup>11</sup> Kedar Nath Singh vs. State of Bihar, AIR 1962 SC 955

		safeguarding the freedom of expression, as granted by the Constitution.
2.	<b>Defamation</b>	SC understands defamation as per the provisions provided under sections 499 to 502 of IPC and under tort. However, The Court provided clarification on the concept of defamation, stating that it pertains to statements that have the potential to damage an individual's reputation among rational people of the society. The Supreme Court, in the case of " <i>Subramanian Swamy v. Union of India (2016)</i> " <sup>12</sup> , ruled in favour of the constitutionality of the criminal defamation laws under Sections 499 and 500 of the IPC. The Court highlighted the significance of safeguarding an individual's reputation as a fundamental right enshrined in Article 21 of the Constitution and criminal defamation laws serve as a justifiable limitation on the freedom of speech and expression.
3.	<b>Criticism</b>	In <i>Prashant Bhushan Contempt Case (2020)</i> <sup>13</sup> , Lawyer Prashant Bhushan was found guilty of contempt of court for criticising judiciary and tweeting against the Chief Justice of India. The Supreme Court ruled that legitimate criticism of judicial functioning is allowed, but scandalizing or demeaning imputations are not. It shouldn't damage public trust in justice. In another recent <i>case of Prof. Javed Ahmad Hajam for abrogation of article 370 (2024)</i> <sup>14</sup> , where The Supreme Court quashed the FIR filed under Section 153-A of the IPC against the prof. for his WhatsApp posts describing the abrogation day as a "Black Day" and wishing Pakistanis on their Independence Day. The court emphasized that fair criticism and dissent are vital to democracy and protected under Article 19(1)(a) of the Constitution.  Where Prashant Bhushan found guilty for criticism, Javed Ahmad got released. The Supreme Court frequently emphasizes the significance of freedom of expression, including the act of criticizing, as a fundamental aspect of democracy. According to Supreme Court, preserving this right to criticism is of utmost importance, as long as it does not jeopardize public order or encourage violence. The intention behind the speech must be considered.

<sup>12</sup> Subramanian Swamy v. Union of India, AIR 2016 SC 2728

<sup>13</sup> Prashant Bhushan and Anr., The Supreme Court of India, Suo motu contempt petition (Crl.) No. 1 of 2020

<sup>14</sup> Javed Ahmad Hajam Vs. State of Maharashtra & Anr., (2024) 3 S.C.R.317: 2024 INSC 187

4.	<b>Insult</b>	<p>In the context of caste-based insults, the Supreme Court, in a case of <i>Ramesh Chandra Vaishya v. State of Uttar Pradesh</i><sup>15</sup>, (2023) pertaining to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, elucidated that for an insult to fall under Section 3(1)(x) of the Act, it must be explicitly connected to the victim's caste and uttered in a public environment. Insults that are not specifically linked to caste do not fulfil the requirements for this offense. In the case of <i>Keshav Baliram Naik vs. State of Maharashtra</i><sup>16</sup>, the Court held that insults must be intentional and directed at causing harm or offense to be actionable under criminal law while elaborating the scope of criminal intimidation and insult under the Indian Penal Code.</p>
5.	<b>Hate speech</b>	<p>India has no standardized definition of hate speech. The legal framework is undergoing continuous changes, and the interpretations made by the Supreme Court are of utmost importance. As to the Supreme Court of India, hate speech transcends beyond mere criticism and is intended to provoke violence or animosity towards a particular group based on criteria such as religion, race, or caste. When evaluating hate speech, the Supreme Court takes into account the circumstances in which the speech was made. However, the current rules in the Indian Penal Code (IPC) under sections 153A and 153B etc. are inadequate for effectively addressing hate speech. The Supreme Court of India has interpreted hate speech in various instances, trying for balancing right to free speech and expression with public order and human dignity. The Supreme Court highlighted the negative impact of hate speech on social cohesion and India's secular fabric in "<i>Pravasi Bhalai Sangathan v. Union of India (2014)</i>"<sup>17</sup>. The Court found that hate speech might encourage violence and public disorder, justifying its prohibition under Article 19(2) of the Constitution. The Court also stressed the necessity for clear hate speech rules, leaving it to the legislature to enact precise laws on it. The court addressed escalating mob violence and hate speech in "<i>Tehseen Poonawalla v. Union of India (2018)</i>"<sup>18</sup>. The Court reiterated that hate speech that incites violence and targets specific communities is not protected by free</p>

<sup>15</sup> Ramesh Chandra Vaishya v. State of Uttar Pradesh, 2023 SCC Online SC 668

<https://www.sconline.com/blog/post/2023/05/30/supreme-court-decides-what-constitutes-caste-based-insult/>

<sup>16</sup> Keshav Baliram Naik vs. State of Maharashtra, 1996 CRILJ 1111

<sup>17</sup> Pravasi Bhalai Sangathan v. Union of India, AIR 2014 SUPREME COURT 1591, 2014 (11) SCC 477

<sup>18</sup> Tehseen Poonawalla v. Union of India, AIR 2018 SUPREME COURT 3354

speech and must be curtailed to ensure public order. In 2022 and 2023, the Supreme Court ordered state governments to file hate speech charges even without a complaint. The Court indicated that delays in registering complaints would be considered contempt of court, highlighting the severity of hate speech. In the case of *Amish Devgan*<sup>19</sup>, the Court ruled that speech that incites hatred or violence against a community can be treated as hate speech and penalized. The Court seems to be indicating that, hate speech may not be violent itself but it must incite violence.

6. Analysis

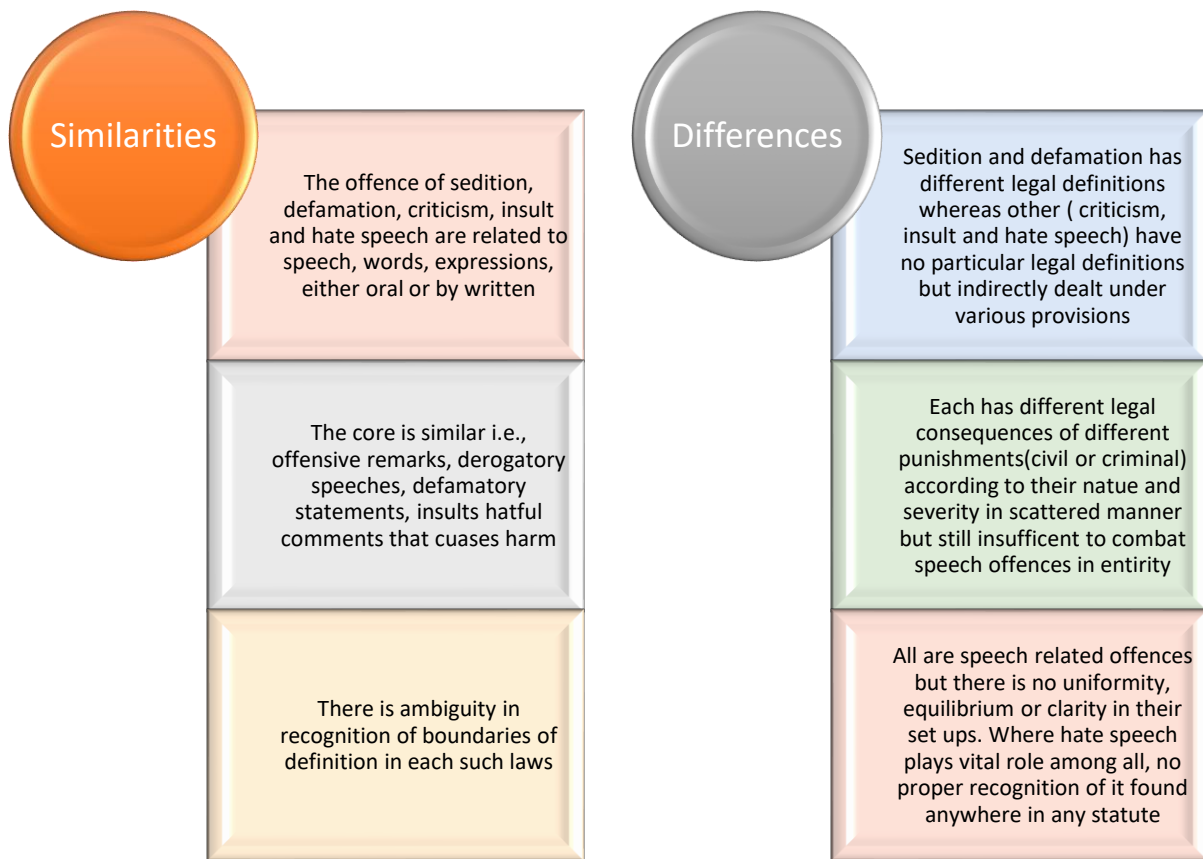


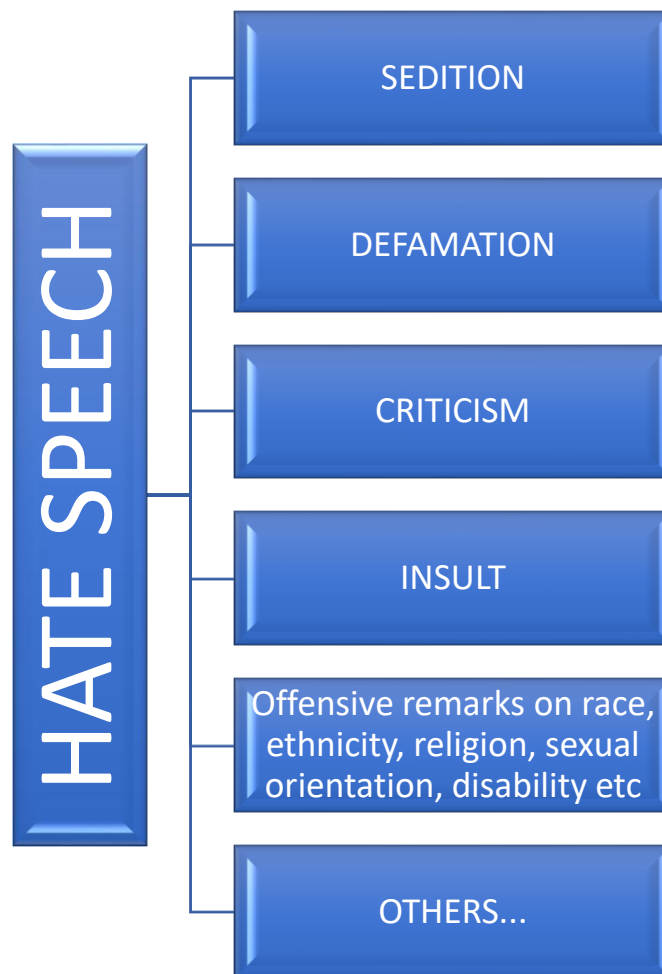
Figure 2: (Grounds of comparison)

After reviewing the aforementioned comparative studies, the analysis highlights the similarities and differences among speech-related offences, as illustrated in Figure 2. If we analyse the offences properly, we will understand that the ambiguity in the definitions of all such offences is a matter of concern. The study reveals that hate speech, posing a threat to democracy, may require greater focus and regulation to counteract all other speech-related offenses. The authors argue that hate speech does not necessarily lead to violence or the potential for violence. Hate speech has the potential to disrupt

<sup>19</sup> Amish Devgan vs Union of India, AIR ONLINE 2020 SC 930

the mental stability of targeted individuals, resulting in psychological and social issues. These consequences of hate speech, though not immediately visible, are undeniable and demand recognition. Under the 267th Law Commission Report, the Law Commission of India has opined for the necessity of a criminal law amendment with the incorporation of new stringent provisions addressing the issue of hate speech.

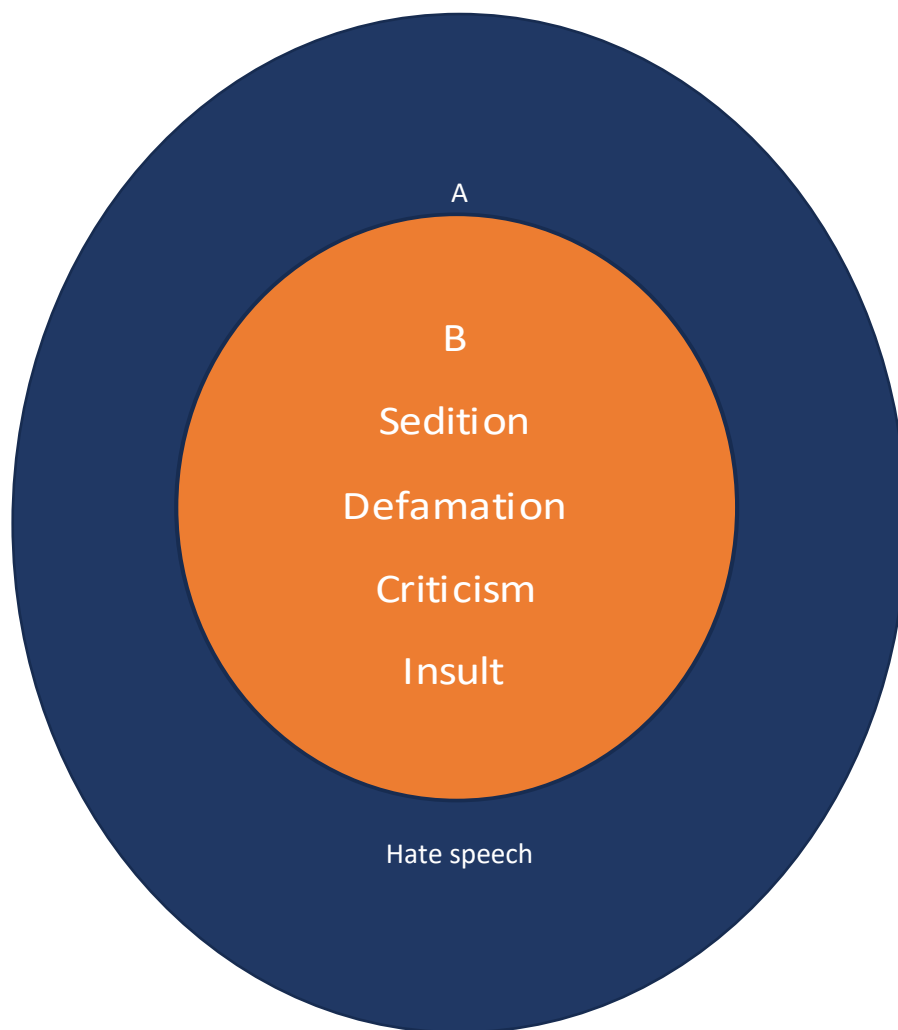
## 7. Findings



**Figure 3: (Hate speech in nutshell)**

From the above comparative analysis, the researchers found that, hate speech is a broader concept than all other speech related offences. All the speech-related offences fall under the purview of hate speech and, to some extent, under the scope of freedom of speech and expression in exceptional circumstances. However, the term "hate speech" does not fall under the umbrella of free speech. Hate speech originates from psychological factors in individuals and affects the psychology of others. Some may argue that we already have laws against sedition and defamation, so why do we still need laws against hate speech? This comparative analysis gives the answer to that: yes, we need stringent hate speech laws as soon as possible. The researchers found here that all types of speech-related offences are one type of hate speech only. The comparative analysis shows that sedition, defamation, criticism, and insult are branches of hate speech dealing with different sections only (Figure 3). Sedition deals with national

security and state affairs, whereas defamation deals with harm to individual dignity and reputation, criticism deals with merits and deficiencies (somehow protected under free speech), and insult deals with disrespectful remarks that never get protected under free speech as hate speech. Then comes hate speech, which targets any individual, or group, or community irrespective of their race, religion, caste, nationality, sexual orientation, ethnicity, etc., but on the grounds of the same.



**Figure 4: (Hate speech in Venn diagram)**

The researchers argue that any kind of offensive statement, derogatory comment, or ridicule remarks (online or offline) to anyone is hate speech, such as sediton, defamation, criticism, and insult.

If we put it in a Venn diagram, it shows that:

A is a superset of B, i.e.,  $(A \supset B)$ .

Here, A represents hate speech, and

B represents sediton, defamation, criticism, and insult (Figure 4).

The scattered provisions of all such speech-related offences need to be fulfilled by the ingredients that constitute a particular offence, which is the essence of the criminal justice system. But if any ingredients are not fulfilled, then the perpetrator gets released from being guilty for the offence committed by him, which is the lacunae as well as the threat to the justice delivery system. Therefore, if we implement strict laws against hate speech that contain the most reliable ingredients, we can immediately curb the majority of speech-related offences. But the irony is that hate speech neither has a particular legal definition to set its boundaries nor has any direct legal provisions for punishment, and the provisions under which it deals are insufficient to curb the menace.

## 8. Suggestion

- ✓ Legal frameworks should acknowledge the interconnectedness of prejudice that speech-related offences bring, along with hate speech, and should tackle the amplified impact of them.
- ✓ Ensuring a proper equilibrium between the protection of freedom of speech and the avoidance of harm is crucial when it comes to regulating hate speech. Hence, there should be transparency in the thin line between free speech and hate speech.
- ✓ To combat hate speech, India needs more stringent laws that set its boundaries.
- ✓ Along with that, India needs more technological laws to prevent the dissemination of hatred through online platforms in order to combat online hate speech.

## 9. Conclusion

Ultimately, this comprehensive analysis has offered valuable perspectives on the intricate nature of speech-related offences, specifically emphasising the issue of hate speech. Often, we emphasize or interpret speech-related offences solely through the lens of Article 19(1)(a), which pertains to freedom of speech and expression, neglecting the other rights of equality, liberty, and dignity. Hate speech is a serious threat to democracy as it has divisive characteristics. Hate speech not only negatively impacts the dignity and human rights of the targeted individual or group, but also negatively impacts others who belong to the same minority or group. Hate speech fosters perilous schisms within society, impairs the involvement and integration of all those targeted by it, and jeopardises democracy. Hate speech progressively marginalizes its recipients from society, forces them to withdraw from public discourse, and renders them voiceless. Historical evidence reveals the deliberate use of hate speech to incite people and communities against one another, aiming to instigate violent escalation, hate crimes, warfare, and genocide. Behind all the violence and war, hate speech lies. Right to free speech, as enshrined under the Constitution of India, neither safeguards hate speech nor provides any right to promote hatred through it in society. Hate speech is a negative term with a negative impact.

To address these challenges, the judiciary should adopt a more sophisticated approach, closely monitoring the current situation to determine the threshold at which offensive speech poses a threat. Furthermore, the Court should contemplate the need for defining the specific parameters used to detect hate speech and formulating explicit directives to deal with the prosecution of an offence of hate speech under a particular statute. This approach is consistent with the suggestions stated in Law Commission Report 267, highlighting the importance of a strong legal structure that effectively balances concerns regarding public order and safeguarding fundamental rights.

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## References

- [1] A. Brown, “What is hate speech? Part 1: The myth of hate”, *Law and Philosophy*, 36(4), (2017) 419–468
- [2] *Amish Devgan v. Union of India*, [2020] AIR ONLINE SC 930
- [3] Ashish Kumar Bhargava, Anindita Sanyal, 2024. “Every Citizen Has Right to Criticise Any Decision of State: Supreme Court”, *India News*, 07 March, 11:03 pm IST
- [4] B. Lokur Madan and D. Medha, “Navigating the Meaning of Hate Speech and Sedition in India”, *Torkel Opsahl Academic E-Publisher (TOAEP)*, ISBN: 978-82-8348-215-7
- [5] B. Parekh, “Hate speech. Is there a case for banning?”, *Public Policy Research*, 12(4), (2006) 213–223
- [6] *Bharatiya Nyaya Sanhita*, 2023
- [7] *Cambridge Dictionary*
- [8] *Collins Dictionary*
- [9] E. Bleich, “The rise of hate speech and hate crime laws in liberal democracies”, *Journal of Ethnic and Migration Studies*, 37(6), (2011) 917–934
- [10] *Indian Penal Code*, 1860
- [11] *Javed Ahmad Hajam v. State of Maharashtra & Anr.*, [2024] 3 S.C.R.317: 2024 INSC 187
- [12] *Kedar Nath Singh v. State of Bihar*, [1962] AIR SC 955
- [13] *Keshav Baliram Naik v. State of Maharashtra*, [1996] CRILJ 1111
- [14] LAW COMMISSION OF INDIA, 267th Report on: “Hate Speech”, 2017
- [15] *Merriam-Webster Dictionary*
- [16] N. Gorenc, “Hate speech or free speech: an ethical dilemma?” *International Review of Sociology*, 32(3), (2022) 413–425. <https://doi.org/10.1080/03906701.2022.2133406>
- [17] *Oxford Dictionary*
- [18] *Oxford Learner’s Dictionaries*
- [19] *Pravasi Bhalai Sangathan v. Union of India*, [2014] AIR SUPREME COURT 1591, 2014 (11) SCC 477
- [20] R. K. Misra, “Freedom of Speech and The Law of Sedition in India”, *Journal of the Indian Law Institute*, JANUARY-MARCH 1966, Vol. 8, No. 1, pp. 117-131,  
URL: <https://www.jstor.org/stable/43949872>
- [21] *Ramesh Chandra Vaishya v. State of Uttar Pradesh*, [2023] SCC Online SC 668  
<https://www.sconline.com/blog/post/2023/05/30/supreme-court-decides-what-constitutes-caste-based-insult/>
- [22] S. M. Gaïni, “The Individual Consequences of Hate Speech: A Comparison of Defamation and Hate Speech/Group Libel”, *Sofia Philosophical Review*, XV (1), (2022) 114-133. <https://sphr-bg.org/0/128/472.html>
- [23] Sabah Virani, 2024. “Hate speeches at poll rallies: Citizen challenge ECI to ‘grow a spine or resign’”, *Hindustan Times*, 12May.
- [24] *Subramanian Swamy v. Union of India*, [2016] AIR SC 2728
- [25] *Tehseen Poonawalla v. Union of India*, [2018] AIR SUPREME COURT 3354
- [26] *The Constitution of India*, 1950

- [27] V. Angila, “The Paradox of Hate Speech and Seditious Laws in India”, *Juris Centre Review (JCR)*, 14 March, 2023
- [28] V. Chandra. Rao, “A Brief Study of Criticism and Its Forms”, (2020)  
[https://www.researchgate.net/publication/339139621\\_A\\_Brief\\_Study\\_of\\_Criticism\\_and\\_Its\\_Forms](https://www.researchgate.net/publication/339139621_A_Brief_Study_of_Criticism_and_Its_Forms)
- [29] *Vombatkere v. UOI*, [2022], SCC online SC 609