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EDITORIAL ANALYSIS

Hate Speech Verdict: Where Courts End and Politics Begins

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Hate Speech Verdict: Where Courts End and Politics Begins

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INTERVIEW ANGLE

"Did the Supreme Court abdicate or recalibrate by stepping back from hate-speech policing?"

EDITORIAL SUMMARY:

The Indian Express examines the Supreme Court's recent decision to decline fresh directions on hate-speech prosecution, holding that the existing criminal-law framework is sufficient. The editorial reads the verdict as a deliberate judicial recalibration – shifting the burden of enforcement back to police and prosecutors, and the burden of legislative clarity back to Parliament.

A RECALIBRATION, NOT A RETREAT

For nearly a decade, the Supreme Court has been an active participant in the hate-speech debate. *Pravasi Bhalai Sangathan vs Union of India* (2014) flagged the inadequacy of existing law. *Tehseen S. Poonawalla vs Union of India* (2018) issued binding guidelines on the prevention and prosecution of lynching and hate crimes. *Shaheen Abdulla vs Union of India* (2022-2024) saw the Court direct states to register suo motu FIRs in hate-speech cases regardless of the religious identity of speaker or victim. The arc was one of expanding judicial supervision.

The latest decision – declining to issue fresh, generalised directions and holding that Sections 196 and 197 of the Bharatiya Nyaya Sanhita (BNS), 2023, along with Section 295A of the previous Indian Penal Code framework as carried over, are sufficient – closes a chapter of activism without overturning earlier directions.

THE STATUTORY MAP

India's hate-speech statute book is dense:

- **BNS Section 196** – promoting enmity between groups on grounds of religion, race, language, caste, community.
- **BNS Section 197** – imputations and assertions prejudicial to national integration.
- **Section 295A** – deliberate and malicious acts intended to outrage religious feelings.
- **Representation of the People Act, 1951, Sections 123(3A) and 125** – corrupt practice and offence by candidates appealing on religion.
- **Information Technology Rules, 2021 (as amended)** – intermediary obligations to remove content flagged as inciting communal disharmony.

Each provision exists. Each is invoked selectively. The Court’s view, in effect: the deficit is not in the statute – it is in enforcement.

THE COMPARATIVE FRAME

The contrast with the United States is instructive. In *Brandenburg vs Ohio* (1969), the US Supreme Court held that speech can be punished only when it incites “imminent lawless action” and is likely to produce such action. Indian jurisprudence, anchored in *Shreya Singhal vs Union of India* (2015), has converged towards a similar incitement-to-imminent-lawless-action threshold, but with a wider statutory net that includes harm to public order, morality and religious sentiment.

The Indian doctrine therefore polices more speech than American doctrine, but enforces less consistently than European hate-speech regimes (Germany’s NetzDG, France’s loi Avia). The Court’s reluctance to mandate uniform enforcement reflects awareness of this triangulated position.

THE FREE-SPEECH COST AND THE MINORITY-PROTECTION COST

Two opposing dangers now sharpen:

- **Over-policing risk:** Existing provisions, especially BNS 196 and Section 295A, are notoriously over-broad. Empowering local police to register cases without judicial filtering produces a chilling effect on dissent, satire, journalism and academic speech.
- **Under-protection risk:** Selective enforcement – prompt action against minority speakers, delayed action against dominant-group speakers – erodes the equal-protection promise of Article 14 and the secular character of the Constitution.

The Court’s verdict pushes both risks onto the executive and Parliament to resolve.

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Key arguments:

- Supreme Court has recalibrated from active hate-speech supervision (Poonawalla, Shaheen Abdulla) to deference to existing statute and enforcement institutions.
- BNS Sections 196 and 197 and Section 295A constitute a wide hate-speech net; the deficit is in enforcement consistency, not statutory gap.
- Indian doctrine sits between the US “imminent lawless action” test and European NetzDG-style intermediary mandates.

Counterarguments:

- Judicial retreat in the absence of statutory clarity risks emboldening selective enforcement.
- Without a uniform standard, minority-targeted speech remains unevenly prosecuted, undermining Article 14 equal protection.

Keywords: BNS Section 196, Section 197, Section 295A, Tehseen Poonawalla (2018), Shaheen Abdulla, *Pravasi Bhalai Sangathan*, *Shreya Singhal*, *Brandenburg v Ohio*, imminent lawless action, IT Rules 2021.

The Indian Express reads the verdict as the Court restoring a constitutional division of labour. Hate-speech regulation is, in essence, a political and prosecutorial responsibility – not a continuing writ jurisdiction. Whether the system can shoulder it without judicial supervision is the question the next two years will answer.

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