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The Social Life of Free Speech: Who Gets to Speak and Express?

*Anurag Bhaskar**

I. INTRODUCTION

Freedom of speech is considered a core component of any democratic framework, which allows citizens to express themselves, comment on government actions, and make their voices heard.¹ In global rights frameworks, free speech is acknowledged as essential for allowing a person to determine the type of life they desire to lead.² However, the concept of free speech has not been considered absolute and has been subjected to certain limitations.³ These limitations may vary across jurisdictions.⁴

Under the Indian Constitution, freedom of speech and expression can be curtailed by the State by imposing ‘reasonable restrictions’ through any law ‘in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.’ The Supreme Court of India has examined the restrictions imposed on free speech through various judgments.⁵

* Assistant Professor of Law at Jindal Global Law School, Sonipat. I am grateful to the anonymous reviewers for their insightful comments. I also thank the journal’s editorial team, especially Rushil Batra, for their efficient and seamless handling of the entire process. I am indebted to Siddharth Narrain and Disha Wadekar for engaging with the initial ideas that shaped this paper. I also thank Vrishti Shami and Manushree Nair for their careful proofreading of an earlier draft.

¹ David Beetham, ‘The Quality of Democracy: Freedom as the Foundation’ (2004) 15 *Journal of Democracy* 61; Arnfinn Haagensen Midtbøen, Kari Steen-Johnsen and Kjersti Thorbjørnsrud, ‘Boundary-Making in the Public Sphere: Contestations of Free Speech’ in Arnfinn Haagensen Midtbøen, Kari Steen-Johnsen and Kjersti Thorbjørnsrud (eds), *Boundary Struggles: Contestations of Free Speech in the Norwegian Public Sphere* (Palgrave Macmillan 2017); Susan J Brison, ‘The Autonomy Defense of Free Speech’ (1998) 108 *Ethics* 312.

² Pekka Hallberg and Janne Virkkunen, *Freedom of Speech and Information in Global Perspective* (Palgrave Macmillan 2017); Martin H Redish, ‘The Value of Free Speech’ (1982) 130 *University of Pennsylvania Law Review* 591.

³ Elise Gabrielle Sweeney, ‘Freedom of Speech: Protections and Limitations’ (2004) 5 *Georgetown Journal of Gender and the Law* 77; Denis Muller, ‘Free Speech: Rights and Limitations’ in John M Flinn (ed), *Journalism and the Future of Democracy* (Springer International Publishing 2021).

⁴ Oreste Pollicino and Marco Bassini, ‘Free Speech, Defamation and the Limits to Freedom of Expression in the EU: A Comparative Analysis’ in Andrea Stazi (ed), *Research Handbook on EU Internet Law* (Edward Elgar Publishing 2014); Anne R Colrick, ‘A Comparative View on the Restrictions of Free Speech in the United States and Europe’ (2019) *Rutgers University Law Review Commentaries* 1; Adrienne Stone, ‘The Comparative Constitutional Law of Freedom of Expression’ in Tom Ginsburg and Rosalind Dixon (eds), *Comparative Constitutional Law* (Edward Elgar Publishing 2011).

⁵ *K.A. Abbas v. Union of India*, (1971) 2 SCR 446; *Superintendent, Central Prison v. Ram Manohar Lohia*, AIR 1960 SC 633; *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955; *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

The existing scholarship on free speech in India primarily analyses judicial rulings that establish tests for determining the scope of Article 19(1)(a).⁶ Discussions on free speech are often framed with the State as a central factor, analysing the relationship between the State and the citizen. These discussions explore how the State regulates or restricts free expression and examine the broader implications of State authority on individual rights. Melkonian observed that current approaches are either limited to political communication or centred on individual well-being.⁷

This narrow view has been widely contested by scholars from sociology,⁸ feminist theory,⁹ critical race theory,¹⁰ and queer theory,¹¹ who argue for a more contextual and inclusive understanding of free speech. These perspectives emphasise that legal rights, including free speech, cannot be examined in isolation from social, historical, and structural inequalities. In this understanding, free speech is not merely a political right that is occasionally restricted by external limitations. Instead, the very contours of free speech and the discourse surrounding it are socially constructed, shaped by historical narratives, cultural norms, and systemic inequalities.

Social perspectives are also crucial because ‘within countries, individuals with lower income and lower education levels benefit most from free speech’.¹² Free speech has ‘an empowerment effect for those with fewer resources in society’.¹³ Even if ‘[p]eople with fewer resources may need to prioritise basic needs more than ‘luxuries’ such as free speech’, this right ‘offers the

⁶ For instance, Gautam Bhatia’s book on free speech is ‘about the laws that govern the freedom of speech and expression in India, and how those laws have been understood and applied by the wing of the State that is responsible for their interpretation: the Indian courts’; See Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (Oxford University Press 2016). Similarly, Abhinav Chandrachud’s book broadly focuses of the judgments of the Supreme Court on free speech; See Abhinav Chandrachud, *Republic of Rhetoric: Free Speech and the Constitution of India* (Penguin Random House India Private Limited 2017). Two other recent books dealing specifically with sedition and free speech include Chitranshul Sinha, *The Great Repression: The Story of Sedition in India* (Penguin Random House India Private Limited 2019); Rohan J Alva, *A Constitution to Keep: Sedition and Free Speech in Modern India* (Harper Collins 2023).

⁷ Harry Melkonian, *Freedom of Speech and Society* (Cambria Press 2012).

⁸ John Michael Roberts, ‘Outline of a Critical Sociology of Free Speech in Everyday Life: Beyond Liberal Approaches’ (2025) 73 *The Sociological Review* 697, 698.

⁹ Judith Butler, *Excitable Speech: A Politics of the Performative* (Routledge 2021).

¹⁰ Mari J Matsuda, et al, *Words that wound: Critical race theory, assaultive speech, and the first amendment* (Routledge, 2018).

¹¹ Luke A Boso, ‘Anti-LGBT Free Speech and Group Subordination’ (2022) 21 *Dukeminier Awards: Best Sexual Orientation & Gender Identity Law Review* 1; Gust Yep and others, *Queer Theory and Communication: From Disciplining Queers to Queering the Discipline(s)* (Routledge 2014).

¹² Diana Voerman-Tam, Arthur Grimes and Nicholas Watson, ‘The Economics of Free Speech: Subjective Wellbeing and Empowerment of Marginalized Citizens’ (2023) 212 *Journal of Economic Behavior & Organization* 260.

¹³ *ibid.*

poor and the marginalised a greater opportunity to voice their concerns publicly and to influence decisions.’¹⁴

Building on this framework, I argue that in the Indian context, caste remains the central axis of the social structure and therefore plays a decisive role in the boundaries of permissible speech. The caste system has historically shaped social hierarchies, hegemonising the voices of those at the top while suppressing those of communities at the bottom of the caste pyramid. The discourse on the right to free speech in India should thus be analysed through the lens of how caste structures have influenced and continue to shape societal dynamics. What is deemed ‘offensive’, ‘obscene’, ‘immoral’, or ‘threatening to public order’ (reasonable restrictions under Article 19) is often dictated by oppressor-caste norms and sensitivities, reinforcing existing social hierarchies.

Part II explores the contours of free speech in a heterogeneous and hierarchical society. Part III, while heavily relying on the writings of Dr. B.R. Ambedkar, focuses on how caste hierarchies shape what is considered an acceptable expression, determining whose voices are amplified and whose are silenced. It further examines how anti-caste literature, art, and social movements have challenged dominant narratives of social order, thereby redefining the boundaries of free speech. Further, Part IV of the article highlights the structural barriers that hinder oppressed castes from fully exercising their right to free speech and dissent. To better understand these obstacles, they can be categorised into four key areas. *First*, social policing and stigmatisation deter oppressed communities from expressing their views or asserting their identities publicly. *Second*, physical violence, including threats, social boycotts, and caste-based hate crimes, creates an environment of fear and suppression. *Third*, legal restrictions, wherein existing penal laws are used to suppress anti-caste voices, and narrow interpretations dilute the intent of protective legislation. *Fourth*, epistemic barriers, where academic institutions and media perpetuate caste hierarchies through their narratives, limiting representation and reinforcing systemic exclusion. In conclusion, I state that free speech jurisprudence in India cannot be understood without acknowledging its entanglement with caste-based power dynamics, historical oppression, and the broader socio-political realities.

II. FREE SPEECH IN AN UNEQUAL SOCIETY

A. Sociological and Structural Perspectives: Context and Power

¹⁴ *ibid.*

The classical liberal model of democracy ‘presupposes a sharp dichotomy between state and citizen’.¹⁵ Liberty is equated with ‘limited government’.¹⁶ In this model, free speech is interpreted as ‘absence of governmental interference’.¹⁷ The image of the State is represented as the ‘policeman’.¹⁸ However, this traditional understanding of liberty and free speech does not take into account the social structures which can ‘reproduce historical relations of inequalities and oppression between historically proscribed social identities’.¹⁹ Instead, it idealises the public sphere as a ‘marketplace of ideas’,²⁰ while bracketing out the structural barriers that inhibit participation by marginalised voices.²¹

In contrast, the sociological approach to law argues that the scope of free speech is ultimately determined by broader ‘social forces, culture, and institutional practices’.²² Maussen and Grillo highlight the importance of the context in which speech is articulated.²³ Roberts similarly urges a reconceptualisation of free speech ‘in terms of the social’, locating it within historically situated systems of domination and dispossession.²⁴ These social structures, far from being neutral, can ‘silence certain groups and opinions while amplifying others’.²⁵ Mondal termed this as ‘politics of free speech’.²⁶ Further in this perspective, Melkonian contends that freedom of expression is crucial as ‘a group right’, emphasising its significance not only as an individual benefit but also as a fundamental societal right.²⁷

What emerges from these perspectives is an understanding of free speech as a relational practice, in which its boundaries and contestations must be examined across ‘different contexts’ and from the perspectives of groups with varying levels of ‘formal and informal power’.²⁸ These contexts are: ‘between institutions and individuals, between different groups and

¹⁵ Owen M Fiss, ‘Free Speech and Social Structure’ (1986) 71 Iowa Law Review 1405, 1413-14.

¹⁶ *ibid* 1414.

¹⁷ *ibid*.

¹⁸ *ibid* 1410.

¹⁹ John Michael Roberts (n 8) 700.

²⁰ The term ‘marketplace of ideas’ is often credited to Justice Oliver Wendell Holmes Jr., who discussed the phrase ‘free trade in ideas’ in his dissenting opinion in *Abrams v. United States* 250 U.S. 616 (1919) in 1919. For academic discussion, see also Vincent Blasi, ‘Holmes and the Marketplace of Ideas’ (2004) *The Supreme Court Review* 1.

²¹ John Michael Roberts (n 8) 700.

²² Anshuman A Mondal, ‘The Shape of Free Speech: Rethinking Liberal Free Speech Theory’ (2018) 32 *Continuum* 503, 509.

²³ Marcel Maussen and Ralph Grillo, ‘Introduction: Regulation of Speech in Multicultural Societies’ in Marcel Maussen and Ralph Grillo (eds), *Regulation of Speech in Multicultural Societies* (Routledge 2017) 4.

²⁴ John Michael Roberts (n 8) 698.

²⁵ Arnfinn Haagenes Midtbøen, Kari Steen-Johnsen and Kjersti Thorbjørnsrud (n 1).

²⁶ Anshuman A Mondal (n 22).

²⁷ Harry Melkonian (n 7).

²⁸ Arnfinn Haagenes Midtbøen, Kari Steen-Johnsen and Kjersti Thorbjørnsrud (n 1).

organisations in society, and as reflexive processes within individuals who are exposed to or challenge them.’²⁹

In relatively homogeneous societies, there may exist shared traditions and values, which offer a common moral belief.³⁰ Hence, there may be greater consensus around the limits of expression. In such cases, free speech standards may appear stable. However, in heterogeneous societies, where multiple social groups with differing values, beliefs, and historical experiences coexist, the dominant social forces and cultural narratives play a decisive role in determining what constitutes acceptable behaviour.³¹ Here, social morality is far from objective, as it reflects the values and anxieties of those in power. As a result, ‘[t]he more mainstream, traditional, orthodox, and popular the speech is, the more it will be unrestricted by the government.’³² These dominant forces within the social structure can influence and control institutions, including administrative agencies,³³ and can reproduce their biases in decision-making and institutional conduct.³⁴

Social hierarchies operate as powerful mechanisms of regulation, shaping individual behaviour and expression in subtle but pervasive ways. In this sense, society and private citizens can pose as significant a threat to free speech as the ‘policemen’.³⁵ Social mechanisms and processes can produce behavioural changes, such as ‘perceived pressure, self-censorship, exclusion and stigma’.³⁶ The boundaries of free speech, thus, are ‘not (primarily) defined through judicial paragraphs’, rather are ‘set by and experienced through the everyday activity and interaction of ordinary people.’³⁷

Furthermore, in stratified societies, different socio-political groups compete to establish their perspectives as the ‘hegemonic truth’.³⁸ Dominant social forces can ‘keep certain topics and opinions away from the public debate, and groups at the margins may feel excluded from and

²⁹ *ibid.*

³⁰ Emile Durkheim, *The Division of Labor in Society* (first published 1893, Nation Press 2025) 70-110.

³¹ Steven Vago, *Law and Society* (Prentice Hall 2011); see also, Anurag Bhaskar, ‘The Myth of ‘Collective Conscience’: Revisiting the Death Penalty in India’ (2020) 55 *Economic and Political Weekly* 30, 31, where I argued: ‘in societies premised upon discrimination, punishment may be used to maintain social hierarchy and perpetrate revenge against a particular group.’

³² Kathleen M Sullivan, ‘Two Concepts of Freedom of Speech’ (2010) 124 *Harvard Law Review* 143, 149.

³³ Owen M Fiss (n 15) 1420.

³⁴ Richard Delgado and Jean Stefancic, *Must We Defend Nazis?: Why the First Amendment Should Not Protect Hate Speech and White Supremacy* (NYU Press 2018) 8.

³⁵ Owen M Fiss (n 15) 1414.

³⁶ Arnfinn Haagenen Midtbøen, Kari Steen-Johnsen and Kjersti Thorbjørnsrud (n 1) 16.

³⁷ *ibid* 16-17.

³⁸ John Michael Roberts (n 8) 700.

stigmatised in mainstream society.’³⁹ This is because ‘counter-hegemonic discourses’ are ‘rendered as being “incompetent” and “unspeakable” by dominant powers in a field’.⁴⁰ This captures a broader process wherein individuals internalise dominant expectations, fearing that their views may antagonise powerful or mainstream interests.⁴¹ These self-imposed boundaries may vary ‘with different social positions’.⁴²

B. The Asymmetry of Harm: Critical Race and Feminist Interventions

Critical race theorists and feminist scholars challenge the neutrality of free speech discourse by revealing how power and harm intersect in expression. Critical race theorists contend that when the government does not regulate speech, ‘[a]ngry and intolerant majorities could prevent unpopular minorities from using public facilities, rendering the right of free speech illusory’.⁴³ The powerful can suppress marginalised voices, not only through overt intimidation, but also by disseminating harmful stereotypes that erode the dignity and perceived credibility of historically oppressed groups.⁴⁴ Anticipating backlash or exclusion, many individuals from these communities may choose silence over expression.⁴⁵ Even if they speak, ‘they may end up with no audience or with an audience that sharply discounts their testimony’.⁴⁶ Words uttered by the dominant may lead to psychological harm to the marginalised, further discouraging their participation in public discourse.⁴⁷

Feminist approaches to free speech draw attention to bigoted humour, discriminatory media portrayals, and the everyday speech that reinforces the subordination of women and other marginalised groups.⁴⁸ As Bell argues, ‘because bigoted speech causes direct harm to individuals, and plays a central role in maintaining and perpetuating institutional oppression and injustice, it causes not merely subjective unpleasant mental states or offense, but also serious harms that usually remain unrecognised both in law and in public discussion’.⁴⁹ In fact, ‘[m]embers of historically marginalised social groups suffer tangible, concrete harms both

³⁹ Arnfinn Haagenes Midtbøen, Kari Steen-Johnsen and Kjersti Thorbjørnsrud (n 1) 17.

⁴⁰ John Michael Roberts (n 8) 703.

⁴¹ Anshuman A Mondal (n 22) 511-12.

⁴² Arnfinn Haagenes Midtbøen, Kari Steen-Johnsen and Kjersti (n 1) 18; Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan tr, Pantheon Books 1977).

⁴³ Mari J Matsuda (n 10).

⁴⁴ Melina Constantine Bell ‘John Stuart Mill’s harm principle and free speech: expanding the notion of harm’ *Utilitas* 33, (2021)2, 162-179, at p 163.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ *ibid* 169.

⁴⁹ *ibid* 168.

directly from exposure to bigoted speech, and indirectly because of the hostile social environment, discrimination, and oppression that result'.⁵⁰ In relation to women, sexist humour can alone lead to direct harms such as depression, eating disorders, disruption of focused attention, appearance anxiety, and body shame, and indirect harms such as stereotypes of inferiority, and discrimination.⁵¹ Geronimus coined the term 'weathering' to describe the effects of systemic oppression on marginalised people's bodies.⁵²

In any scenario, '[b]igoted insults' cannot be seen 'as opinions or viewpoints', because the purpose is to reinforce 'the speaker's social power over the person insulted as a member of a socially stigmatised group'.⁵³ As Delgado and Stefancic argue, '[r]acial insults and remarks are among the most pervasive means by which discriminatory attitudes are imparted, communicating the message that distinctions of race are ones of merit, dignity, status, and personhood'.⁵⁴ Repeated exposure to unsubstantiated statements and bigoted stereotypes can lead listeners to develop biases unconsciously.⁵⁵ As Bell observes, these verbal assaults 'are targeted at particular individuals just as a physical blow would be', serving as 'an important weapon to help those in power retain their privilege, whether or not they are used deliberately for this purpose'.⁵⁶

Yet, despite their pervasive effects, the harm caused by bigoted speech is often 'not widely recognised as part of an oppressive system'.⁵⁷ Instead, such incidents are frequently dismissed as 'a series of unrelated incidents', stripped of their structural and political context.⁵⁸ This is because 'dominant majority built social institutions around a paradigm sensitive to, and suited to, their own needs and interests'.⁵⁹ Free speech is 'neither applied in a way that is racially equal nor produces racially equal effects'.⁶⁰ Thus, the doctrine of free speech, when stripped of

⁵⁰ *ibid.*

⁵¹ *ibid* 169; As Bell notes, 'Examples included a skit about "good wife school," a man telling a woman "you're an attractive waste of time" at this party "unless you want to sleep with me", and a Daniel Tosh skit about women being able to do what men can do "except" a long catalogue of tasks'.

⁵² Arline T Geronimus, *Weathering: The Extraordinary Stress of Ordinary Life in an Unjust Society* (Back Pay Books 2024).

⁵³ Melina Constantine Bell (n 44) 174-175.

⁵⁴ Richard Delgado and Jean Stefancic (n 34).

⁵⁵ *ibid* 8.

⁵⁶ Melina Constantine Bell (n 44) 175.

⁵⁷ *ibid.*

⁵⁸ *ibid* 176.

⁵⁹ *ibid.*

⁶⁰ A Vats and M J Dutta, 'Locating Freedom of Speech in an Era of Global White Nationalism' (2020) 54(2) First Amendment Studies 156.

its social context, risks legitimising a discourse in which inequality is reproduced through the very language of liberty.

C. The Powerless Cannot Harm the Powerful

The failure to recognise the structural nature of harm also enables the continued defence of even the most egregious forms of hate-filled expression under the guise of free speech.⁶¹ However, free speech absolutists conveniently ignore the fact that such speech is rarely intended to promote debate or democratic deliberation. Hate-filled speech undermines the very conditions necessary for a free and open exchange of ideas.⁶² As Roberts observes, '[r]acists in America have burnt crosses in neighbourhoods not to elicit debate and discussion around the politics of ethnicity, but to terrorise black families and often to try to drive them out from certain communities'.⁶³ As a result, racial or religious minorities tend to 'feel more fearful of receiving further racist abuse when venturing into other public spaces'.⁶⁴ In fact, the harm caused by hate speech in an unequal society, as Delgado contends, operates on three levels: *first*, it degrades and disempowers its targets; *second*, it erodes the moral integrity of those who engage in it; and *third*, it damages society as a whole by legitimising and reinforcing discrimination (such as racism), along with the social, economic, and political inequalities it upholds.⁶⁵ In other words, when words are used to *wound* rather than to reason, freedom of speech ceases to be a democratic virtue and becomes a mask for power and domination.

Therefore, the burden of countering bigoted hate speech cannot be on 'the shoulders of historically disadvantaged groups who are experiencing hate speech in the first place'.⁶⁶ This is because the fear of ridicule compels many among the oppressed to internalise feelings of self-doubt, often silencing their own voices and diminishing their ability to express themselves freely or engage in dialogue across different communities.⁶⁷ At the same time, the anxiety of being judged through the lens of the oppressor discourages them from associating even with members of their own community, as they seek to avoid social scrutiny.⁶⁸ It is the society at

⁶¹ Melina Constantine Bell (n 44) 176.

⁶² Kimberly A Gross and Donald R Kinder, 'A Collision of Principles? Free Expression, Racial Equality and the Prohibition of Racist Speech' (1998) 28 *British Journal of Political Science* 445, 448.

⁶³ John Michael Roberts (n 8) 701.

⁶⁴ *ibid.*

⁶⁵ Richard Delgado, 'Words that Wound: A Tort Action for Racial Insults, Epithets and Name Calling' in Mari J Matsuda and others, *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (first published 1993, Routledge 2018) 89-110.

⁶⁶ John Michael Roberts (n 8).

⁶⁷ Richard Delgado (n 65) 91.

⁶⁸ *ibid.*

large, especially those in positions of privilege and power, that must unequivocally condemn such hate speech and take collective responsibility for creating an inclusive public sphere.

Furthermore, criticism of historically oppressive structures or symbols cannot be termed as *reverse discrimination*, as there is asymmetry in social power and historical oppression.⁶⁹ Insults directed at marginalised communities carry a particular historical and structural weight, invoking legacies of exclusion, violence, and systemic discrimination.⁷⁰ In contrast, comparable words against dominant groups, such as white, heterosexual, oppressor castes, or cisgender individuals, lack the capacity to inflict equivalent harm, as they do not draw upon the same histories of subjugation.⁷¹ Unfortunately, the legal system's assumption of symmetrical vulnerability across identity categories flattens these power differentials.⁷²

Consequently, the lived experiences of oppressed groups are often excluded from legal standards of harm, reinforcing a system that fails to fully account for the differential impact of identity-based speech.⁷³ What it means to be 'a member of the community, is to be protected against the gross offense of racism, misogyny, and homophobia, even when that offense is only in the verbal expression'.⁷⁴ Freedom of speech, in this sense, 'is a value that must be balanced against equally, if not more, values, namely non-discrimination, multiculturalism'.⁷⁵

D. Epistemic Injustice, State Responsibility, and the Digital Public Sphere

⁶⁹ Melina Constantine Bell (n 44) 172.

⁷⁰ *ibid.*

⁷¹ *ibid.* For an Indian context, see Weinstein, Liza and Pranathi Diwakar, 'Brahmins are the new Jews of India? Here's why that's utterly wrong' (*Scroll*, 27 November 2018) <<https://scroll.in/article/903542/why-it-is-utterly-wrong-to-call-brahmins-the-new-jews-of-india>> accessed on 23 October 2025.

⁷² There are numerous examples of rejection of asymmetric experiences of communities. For instance, see the discussion around OBC reservation within the quotas for women in Parliament. See Gurmeet Kaur, 'Addressing OBC exclusion in India's Women Reservation Bill' (*LSE Blog*, 26 February 2025), <<https://blogs.lse.ac.uk/humanrights/2024/02/26/addressing-obc-exclusion-in-indias-women-reservation-bill/>> accessed on 23 October 2025. See also, the reasoning of the Supreme Court of India in upholding quotas for economically weaker sections (EWS) excluding Scheduled Castes, Scheduled Tribes, and Other Backward Classes in *Janhit Abhiyan v. Union of India* (2023) 5 SCC 1; For a critique of EWS judgment, see M P Singh, 'Constitutional Approach to Equality through Reservations: Reflections on 75 Years of the Supreme Court of India' in Anurag Bhaskar and Vasudev Devadasan (eds), *Justice for the Nation* (Thomson Reuters 2024); Furthermore, the majority reasoning of the U.S. Supreme Court in *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023), which struck down race-based affirmative action, reflects a similar commitment to a formally symmetrical conception of equality. In the context of crimes against women, Disha Wadekar has criticised the courts' adoption of a symmetrical standard that discredits women's testimonies of victimhood if they do not conform to certain expected patterns of behaviour after the crime: Disha Wadekar, 'Rejecting Ideal Victimhood' (2021) 56 Economic and Political Weekly 9.

⁷³ Melina Constantine Bell (n 44) 177.

⁷⁴ Rhoda E Howard-Hassmann, 'Canadians Discuss Freedom of Speech: Individual Rights Versus Group Protection' (2000) 7 International Journal on Minority and Group Rights 109, 137.

⁷⁵ *ibid.*

The persistence of *unequal* free speech, Miranda Fricker argues, can be traced to the phenomenon of ‘epistemic injustice’.⁷⁶ In simple words, ‘epistemic injustice’ refers to ‘a wrong done to someone in their capacity as a knower’, specifically through the denial or devaluation of their knowledge or credibility.⁷⁷ She identifies two forms of epistemic injustice: ‘testimonial injustice’, when a listener (from an oppressor group), due to their prejudices, assigns a reduced level of credibility to views and experiences of a speaker (from an oppressed group); and ‘hermeneutical injustice’, where the dominant group’s control over knowledge and language forces marginalised individuals to struggle in making sense of their own lived experiences, keeping them in a state of interpretive subjugation.⁷⁸ Both of these are systemic injustices and exclude the perspectives of the oppressed from shared knowledge.⁷⁹ In other words, the problem is not merely about who is allowed to speak, but whose knowledge is acknowledged as legitimate and whose experiences are rendered unintelligible within dominant frameworks.

Recognising these epistemic exclusions raises a further question: what role, if any, should the State play in correcting such imbalances within the public sphere? Owen Fiss challenges the libertarian suspicion of State intervention by urging us to recognise the dual role of the State: it may threaten speech, but it can also protect and nurture the conditions necessary for meaningful public debate.⁸⁰ For him, the integrity of public discourse is not self-sustaining. It must be actively preserved by the State, especially against structural inequalities that would otherwise skew whose voices are heard. His call is not for censorship, but for substantive conditions that enable democratic self-determination, recognising that freedom of speech is not meaningful without equity in access, credibility, and visibility.⁸¹ Teaching against the harms of bigoted speech and the falsity of stereotypes, especially during early socialisation, is one such measure that can help prevent the normalisation of hate.⁸²

The issue becomes even more urgent in the context of digital communication, where technological platforms have fundamentally altered how speech is produced, disseminated, and regulated. The internet and social media have democratised the ability to speak publicly, enabling marginalised voices to bypass traditional media filters.⁸³ However, this has also led to

⁷⁶ Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford University Press 2007).

⁷⁷ *ibid* 1.

⁷⁸ *ibid*.

⁷⁹ Melina Constantine Bell (n 44) 172.

⁸⁰ Owen M Fiss (n 15) 1415-16.

⁸¹ *ibid* 1425.

⁸² Melina Constantine Bell (n 44) 179.

⁸³ Arnfinn Haagenen Midtbøen, Kari Steen-Johnsen and Kjersti Thorbjørnsrud (n 1) 15.

a diffusion of responsibility and the erosion of editorial standards, resulting in the proliferation of disinformation, hate speech, and polarisation. Algorithmic amplification dilutes accountability mechanisms, making boundary-setting far more complex in online environments.⁸⁴ Ongoing debates over safeguarding free speech and defining the boundaries of acceptable expression, particularly in discussions on religion and immigration, are increasingly shaped by these digital dynamics.⁸⁵ On the fragmented space of the internet, individuals and communities are often left to police hate speech through informal collective action, in the absence of direct state intervention.⁸⁶

In summary, classical liberal frameworks of free speech often focus on protection from State interference. However, the practice of free speech calls for a more context-sensitive, structural, and responsibility-oriented approach. Scholars discussed in this part emphasise that neutrality in the face of inequality amplifies injustice. Maintaining a healthy public sphere now requires a plurality of interventions, from education and civil campaigns to regulatory reforms and platform governance. As the boundaries of speech are increasingly contested in digital, global, heterogeneous, and hierarchical spaces, the evolving discourse points toward a post-liberal model of free speech, which places power, harm, and equity at the core of how liberty is understood and protected.

III. ANTI-CASTE PERSPECTIVE ON FREE SPEECH

Unfortunately, despite the existence of a body of comparative scholarship that critically examines the social, cultural, and structural dimensions of free speech, such nuanced analysis remains largely absent in Indian legal and academic discourse. In India, discussions around free speech have predominantly focused on constitutional protections, State censorship, and legal limitations, with relatively little attention paid to how caste, religion, gender, sexuality, disability, and class influence access to speech and its social consequences.

This omission, whether deliberate or not, limits our understanding of how inequality operates through both expression and silence, and underscores the urgent need to rethink free speech in India through a more power-sensitive lens. However, in my view, a critical tradition that disrupts the liberal and State-centric framing of free speech in India can be found in the anti-

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ Marlene Kunst et al, 'Do "Good Citizens" Fight Hate Speech Online? Effects of Solidarity Citizenship Norms on User Responses to Hate Comments' (2021) 18 *Journal of Information Technology & Politics* 258.

caste constitutional thought of Dr. Ambedkar, who is popularly regarded as the chief architect of the Indian Constitution.

A. Caste System, Liberty, and Free Speech

The anti-caste understanding of free speech finds its most explicit articulation in Dr. Ambedkar's writings on democracy and liberty. Democracy, in his analysis, is 'primarily a mode of associated living, of conjoint communicated experience'.⁸⁷ It is 'a social organisation free from rigid social barriers', 'incompatible and inconsistent with isolation and exclusiveness, resulting in the distinction between the privileged and the unprivileged'.⁸⁸ For Dr. Ambedkar, liberty was not merely an individual right protected from State interference, but a social condition made possible through mutual recognition, respect, and dignity in everyday life.⁸⁹

Dr. Ambedkar offered a foundational critique of the caste system by exposing its deep incompatibility with the conception of liberty.⁹⁰ He challenged narrow liberal notions that equate liberty solely with the protection of life, limb, and property, yet remain silent on the systemic inequalities of caste.⁹¹ This denial reveals a contradiction: liberty is endorsed only so long as it does not disrupt entrenched social hierarchies. He argued that liberty must include the autonomy to choose one's profession and life path.⁹² Under the caste system, this freedom is systematically denied through hereditary occupational roles that strip individuals of agency, suppress choice, and perpetuate inherited subjugation.⁹³ The caste system envisions that '[t]hey have no life of their own to live, and no right to develop their own personality'.⁹⁴ Coercion by society, he argued, is not liberty, but 'to perpetuate slavery'.⁹⁵ He redefined slavery not merely as a legal condition but as a social reality, where individuals are compelled to live under 'purposes' imposed by others.⁹⁶

⁸⁷ BR Ambedkar, 'Annihilation of Caste' in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 1, 57.

⁸⁸ BR Ambedkar, 'Ranade, Gandhi and Jinnah' in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 1, 222-23.

⁸⁹ BR Ambedkar, 'Annihilation of Caste' in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 1, 57.

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ BR Ambedkar, 'Ranade, Gandhi and Jinnah' in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 1, 219.

⁹⁵ BR Ambedkar, 'Annihilation of Caste' in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 1, 57.

⁹⁶ *ibid.*

Dr. Ambedkar argued that in a deeply unequal socio-economic order, mere non-intervention by the State does not yield freedom for all. Rather, it enables the powerful, such as landlords, capitalists, and employers, to dominate the weak, particularly workers and marginalised communities.⁹⁷ In such a context, liberty becomes the freedom of the strong to exploit, not the freedom of the vulnerable to live with dignity.

Without State regulation, private power fills the vacuum, leading not to democratic freedom, but to what Dr. Ambedkar calls the ‘dictatorship of the private employer.’⁹⁸ Liberty, in his anti-caste constitutional vision, must be grounded in the dismantling of oppressive social structures, not merely the absence of legal constraint.⁹⁹ He also argued that the caste system has continued by imposing penalties (social and economic) on those who object or violate it,¹⁰⁰ thus restricting their liberty and free speech.

Dr. Ambedkar’s analysis finds parallels in the later developments in critical race theory and constitutional sociology, which similarly situate constitutional law within the context of social structures.

B. Caste, Coercion, and the Silencing of Speech

Similar to the discussion in the previous part of this article, I argue that the restrictions on free speech imposed by the caste system have manifested in both direct and indirect forms. The dominance of oppressor castes in the public sphere can result in the further marginalisation of already oppressed communities, subjecting them to tyranny, discrimination, and denial of equality before law and equal opportunity in public life.¹⁰¹

Dr. Ambedkar further argued that ‘society can practise tyranny and oppression against an individual in a far greater degree than a [g]overnment can.’¹⁰² In his analysis, no punishment in the penal code can match the magnitude or severity of social boycott or excommunication.

⁹⁷ BR Ambedkar, ‘States & Minorities’ in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 1, 410.

⁹⁸ *ibid.*

⁹⁹ *ibid* 410-411.

¹⁰⁰ BR Ambedkar, ‘Annihilation of Caste’ in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 1, 61.

¹⁰¹ BR Ambedkar, ‘Thoughts on Linguistic States’ in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 1, 168.

¹⁰² BR Ambedkar, ‘Ranade, Gandhi and Jinnah’ in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 1, 217.

This extra-judicial method of coercion, deployed particularly when marginalised castes assert their dignity or challenge caste norms, operates on two levels: social and economic.¹⁰³

The social dimension of the boycott enforces complete ostracism by denying individuals access to essential services and social interaction, thereby isolating them from communal life.¹⁰⁴ Even the most basic acts of daily living, haircuts, laundry, food supply, become impossible, rendering survival itself precarious.¹⁰⁵ Simultaneously, the economic dimension involves severing business ties, barring the targeted individuals from buying or selling goods, effectively crippling their livelihood.¹⁰⁶ Therefore, Dr. Ambedkar argued for the restructuring of social arrangements in a way that ensures every individual has the freedom and opportunity to pursue any role they are capable of fulfilling, so long as that role serves a socially constructive purpose.¹⁰⁷

Dr. Ambedkar further propounded that ‘rights’, including free speech, ‘are protected not by law but by the social and moral conscience of society’.¹⁰⁸ In his view, constitutional guarantees are hollow in a social order that remains intolerant, hierarchical, or hostile to dissenting voices.¹⁰⁹ He stated, ‘(l)aw can punish a single solitary recalcitrant criminal. It can never operate against a whole body of people who are determined to defy it’.¹¹⁰ Building on this analysis, Dr. Ambedkar contended that safeguards must be provided in the Constitution to protect these vulnerable groups from the dominance, discrimination, and aggression of hostile social forces.¹¹¹

Thus, the hierarchical logic of the caste system permeates every aspect of life, including the basic ability to express oneself. For centuries, marginalised communities were denied access to formal education, significantly diminishing their capacity to engage in political, social, and economic discourse. This exclusion extended to public speech. Voicing dissent or questioning caste norms was not only discouraged but punished, often through social ostracism, boycott, or violence. Speaking out was treated as a transgression, and silence became a means of

¹⁰³ BR Ambedkar, ‘What Congress and Gandhi Have Done to the Untouchables’ in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 9, 43.

¹⁰⁴ *ibid* 167.

¹⁰⁵ *ibid*.

¹⁰⁶ *ibid*.

¹⁰⁷ BR Ambedkar, ‘Evidence Before the Southborough Committee’ in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 1, 251.

¹⁰⁸ BR Ambedkar, ‘What Congress and Gandhi Have Done to the Untouchables’ in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 9, 204.

¹⁰⁹ *ibid*.

¹¹⁰ *ibid* 222.

¹¹¹ *ibid* 204.

survival. This produced a deep internalisation of caste hierarchies. As Dr. Ambedkar observed, '[t]he idea that they have been born to their lot is so ingrained in their mind that it never occurs to them to think that their fate is anything but irrevocable'.¹¹² Social behaviour thus aligns with the dominant morality.¹¹³

In a caste society, morality and speech become performative acts shaped by one's place in the social order, with oppressed-caste individuals often suppressing their voices to conform to oppressive expectations. This self-silencing, rooted in fear and social conditioning, is intentionally characterised by dominant castes not as resistance but as inefficiency.¹¹⁴ Over time, such perceptions crystallise into entrenched stereotypes that dismiss lower-oppressed-caste expression as unrefined or unintellectual. Caste-based stereotypes on the legitimacy of speech and expression have functioned as a form of expressive exclusion. Furthermore, in colonial India, the courts upheld caste-based customs, which even allowed restricting the liberty of the oppressed castes.¹¹⁵ This contributed to a culture where the oppressed had no right to liberty. This history reveals that the right to free speech in a caste society has never been equally distributed. The denial of voice to the oppressed was thus integral to the maintenance of caste order, transforming silence in the face of oppression into an instrument of social control and a mechanism of governance.

Having examined how caste has historically constrained the freedom to speak, be heard, and participate in public discourse, I now turn to the voices and movements that have actively resisted this silencing.

C. Shifting the Boundaries of Free Speech

Across Indian history, anti-caste movements have functioned as sites of resistance, contesting the hegemonic narratives that legitimised caste oppression and restricted free expression for all, thereby reorienting the discourse toward equality, dignity, and justice. Some of the earliest expressions of egalitarian thought in the Indian subcontinent can be traced to the Buddhist traditions, which emphasised equality, and later to the Bhakti movement, which sought to

¹¹² BR Ambedkar, 'Evidence Before the Southborough Committee' in Vasant Moon (ed), *Babasaheb Ambedkar: Writings and Speeches* (Government of India 2019 Reprint) 1, 255-56.

¹¹³ Reena Cheruvalath, 'The Role of Sociality in Deciding the Morality Involved in Personal and Professional Relationships: With Special Reference to Indian Culture' (2016) 39 *Journal of Comparative Literature and Aesthetics* 113.

¹¹⁴ Anurag Bhaskar, 'Reservations, Efficiency, and the Making of Indian Constitution' (2021) 56 *Economic and Political Weekly* 42.

¹¹⁵ Marc Galanter, 'Law and Caste in Modern India' (1963) 3 *Asian Survey* 544; Marc Galanter, 'Untouchability and the Law' (1969) 4 *Economic and Political Weekly* 131.

challenge caste distinctions.¹¹⁶ In modern history, social reformers such as Jotirao and Savitribai Phule challenged the dominant social hierarchies and cultural norms that upheld caste and gender inequality, articulating a vision of justice rooted in equality and education.¹¹⁷ In post-colonial India, scholars and activists from the Ambedkarite tradition have contributed to a radical rethinking of the social order.¹¹⁸ They have analysed caste discrimination from various disciplines.¹¹⁹

In addition to academic contributions, anti-caste art, music, and literature have provided a powerful avenue for expressing the lived realities of caste oppression and contesting hegemonic narratives.¹²⁰ The works of anti-caste writers, poets, and artists, often influenced by Dr. Ambedkar's teachings, have contributed to a cultural shift where the marginalised use their *expression* to articulate their struggles, challenging the invisibility of their issues in mainstream discourse.¹²¹ For instance, Dhanda challenges the moral stigma attached to 'runaway

¹¹⁶ Gail Omvedt, *Dalit Visions: The Anti-Caste Movement and the Construction of an Indian Identity* (Orient Blackswan 2006).

¹¹⁷ Shailaja Paik, 'Forging a New Dalit Womanhood in Colonial Western India: Discourse on Modernity, Rights, Education, and Emancipation' (2016) 28 *Journal of Women's History* 14.

¹¹⁸ Vivek Kumar, 'How Egalitarian is Indian Sociology?' (2016) 51 *Economic and Political Weekly* 33; Gopal Guru, 'How Egalitarian are the Social Sciences in India?' (2002) 37 *Economic and Political Weekly* 5003; Gaurav J Pathania and K Kalyani, 'Contextualizing the Emergence of Dalit Studies in Indian Academia' in João M Paraskeva (ed), *Critical Perspectives on the Denial of Caste in Educational Debate* (Routledge 2023).

¹¹⁹ It is not possible to list the hundreds of academic articles. As a suggestive list, see Soma Mandal, 'Brahminical Sisterarchy and Violence of a Caste Democracy: Anti-Caste and Dalit Feminist Ambedkarite Politics as Critical Resistance' (2025) *Dalits and Dalit Lives in 21st Century India: Towards a New Politics* 55; Vidhu Verma, 'Reinterpreting Buddhism: Ambedkar on the Politics of Social Action' (2010) 45 *Economic and Political Weekly* 56; Padma Velaskar, 'Education for Liberation: Ambedkar's Thought and Dalit Women's Perspectives' (2012) 9 *Contemporary Education Dialogue* 245; Arun Kumar, Hari Bapuji and Raza Mir, 'Educate, Agitate, Organize: Inequality and Ethics in the Writings of Dr Bhimrao Ramji Ambedkar' (2022) 178 *Journal of Business Ethics* 1; Shailaja Paik, 'Dalit Feminist Thought' in Anuja Agrawal (ed), *Routledge Handbook of Gender in South Asia* (Routledge 2021); Shailaja Paik, 'Amchya Jalmachi Chittarkatha (The Bioscope of Our Lives): Who Is My Ally?' (2009) 44 *Economic and Political Weekly* 39; Sukhadeo Thorat, 'Ambedkar's Emancipatory Constitutionalism' (2024) 5 *CASTE: A Global Journal on Social Exclusion* 27; Damni Kain, 'How the Absence of Caste in Curriculum Aids the Presence of Caste in Pedagogy' (2024) 16 *Contemporary Voice of Dalit* 323; Yashpal Jogdand, 'Ground Down and Locked in a Paperweight: Toward a Critical Psychology of Caste-Based Humiliation' (2023) 11 *Critical Philosophy of Race* 33.

¹²⁰ Pramod K Nayar, 'Bama's *Karukku*: Dalit Autobiography as *Testimonio*' (2006) 41 *The Journal of Commonwealth Literature* 83; Saptarshi Mandal, 'Dalit Life Narratives as Ethnographies of Justice' (2008) *Three Studies on Law, and The Shifting Social Spaces of Justice* 15; K Kalyani, 'Music as an Anti-caste Counterpublic: Notes from North India' (2024) 54 *Social Change* 229; K Kalyani, 'Music as the Language of the Bahujan Movement: Locating the Social History of the Dali Shoshit Samaj Sangharsh Samiti' (2023); Dhaneswar Bhoi, 'Caste and Everyday University Life: Psycho-emotional Experiences of Dalit Students' in Dhaneswar Bhoi and Hugo Gorringe (eds), *Caste in Everyday Life: Experience and Affect in Indian Society* (Springer Nature Switzerland 2023); Jadumani Mahanand, 'When They Know Us: Do Dalit Lives Matter?' (2024) 47 *South Asia: Journal of South Asian Studies* 1.

¹²¹ Prashant Ingole, 'Intersecting Dalit and Cultural Studies' (2020) 1 *CASTE: A Global Journal on Social Exclusion* 91; V Geetha and Uma Chakravarti, 'Dalit Studies as Pedagogical Practice: Claiming More Than Just a 'Little Place' in the Academia' in V Geetha and Uma Chakravarti (eds), *Dalit Counter-publics and the Classroom* (Routledge India 2024); Vinay Dharwadker, 'Dalit Poetry in Marathi' (1994) 68 *World Literature Today* 319; Heinz Wessler, 'From Marginalisation to Rediscovery of Identity: Dalit and Adivasi Voices in Hindi Literature' (2020) 92 *Studia Neophilologica* 159; Laura R Brueck, *Writing Resistance: The Rhetorical Imagination of Hindi*

marriages’, arguing that when women marry outside their caste or by personal choice, they are exercising an act of freedom and self-expression.¹²² She states that such marriages are a defiance of social norms, thus ‘a silent revolution’.¹²³

These cultural productions not only reimagine the boundaries of free speech but also demand recognition for the historical injustices faced by marginalised communities.¹²⁴ These writings give voice to the anguish, anger, and resilience of the oppressed castes’ experience, critiquing the caste system while highlighting the need for radical change.¹²⁵ This form of literature is a direct challenge to the social order that has long defined what is considered acceptable speech.

These discourses highlight the essential link between social equality and the exercise of free speech, arguing that caste-based oppression and the suppression of speech are intrinsically linked. Through these efforts, the anti-caste discourse continues to contest and redefine the boundaries of speech in Indian society, advocating for a future where all voices, especially those from marginalised communities, are heard and valued. This shift challenges the perception that critiques of caste violate public morality or incite unrest. Instead, it asserts that it is the ‘silence’¹²⁶ on caste-based oppression that genuinely erodes public morality and constitutional principles.

However, the assertion of speech by oppressed communities has never been without consequence. Even as Dalit and anti-caste thinkers challenge the boundaries of the social discourse, their voices are met with resistance, from subtle delegitimisation to overt repression.

Dalit Literature (Columbia University Press 2014); ‘Nidhin Shobhana: A Scholar Spreading Ambedkarite Discourse Through His Drawings’ (*Round Table India*, 9 September 2019) <<https://www.roundtableindia.co.in/nidhin-shobhana-a-scholar-spreading-ambedkarite-discourse-through-his-drawings/>> accessed 26 October 2025.

¹²² Meena Dhanda, ‘Runaway Marriages: A Silent Revolution?’ (2012) 47 *Economic and Political Weekly* 100.

¹²³ *ibid.*

¹²⁴ Joël Cabalion and Julien Jugand, ‘Bhim Geet and the Ambedkarite Movement: The Genesis of a Cultural Field of Protest’ (2023) 31 *South Asia Multidisciplinary Academic Journal* <<https://journals.openedition.org/samaj/9312>> accessed 26 October 2025; Kalyani Kalyani, ‘Resistance in Popular Visuals and Iconography: A Study of Dalit–Bahujan Calendar Art in North India’ (2022) 8 *Journal of Social Inclusion Studies* 64; Kalyani Kalyani, ‘Emergence of Dalit Art Entrepreneurs: Exploring Anti-caste Songs as the New-Creative Industry in North India’ (2022) 3 *Local Development & Society* 59.

¹²⁵ Mukesh Yadav, ‘An Expression of Resilience Against Oppression in Bama’s *Karukku*’ (2021) 20 *Ilkogretim Online* 4068; Bianca Cherechés, ‘The Rhetoric of Dalit Psychological Suffering in Meena Kandasamy’s *The Gypsy Goddess* (2014)’ (2024) 5 *CASTE: A Global Journal on Social Exclusion* 143.

¹²⁶ Murzban Jal, ‘Epistemological Untouchability: The Deafening Silence of Indian Academics’ in João M Paraskeva (ed), *Critical Perspectives on the Denial of Caste in Educational Debate* (Routledge 2023); Snehanjali Chrispal, Hari Bapuji and Charlene Zietsma, ‘Caste and Organization Studies: Our Silence Makes Us Complicit’ (2021) 42 *Organization Studies* 1501.

The ‘institutional murder’ of Rohith Vemula is emblematic of this reality.¹²⁷ It is within this context that we must turn to the structural barriers that continue to inhibit free speech for historically oppressed castes. These barriers are systemic and sustained across multiple domains of public life.

IV. STRUCTURAL BARRIERS: IMPEDING FREE SPEECH FOR OPPRESSED CASTES

In this part, I identify four primary categories of structural barriers that restrict and constrain the ability of oppressed castes to fully exercise their right to free speech. Building on the discussion to date, I argue that these barriers are deeply ingrained in societal, legal, and institutional frameworks, limiting the scope and effectiveness of critical voices in public discourse.

A. Social Policing & Stigmatisation

Social policing and stigmatisation deter oppressed communities from expressing their views or asserting their identities publicly. As Dr. Ambedkar stated, ‘The governing class in India does not merely refuse to surrender its power and authority; it never loses an opportunity to pour ridicule on the political demands’ of the oppressed communities.¹²⁸ The oppressor castes ‘give the impression that the members of the servile classes are perverse if not idiotic in making such demands’.¹²⁹ These cultural strategies of ridicule and dismissal are mechanisms to delegitimise the aspirations of the marginalised.

As Cheruvalath notes, ‘[t]he moral standards for people belonging to lower social strata are defined by the upper strata’.¹³⁰ These standards manifest in everyday restrictions, such as being barred from drinking at the same tea stalls, drawing water from shared wells, or even wearing shoes in the presence of oppressor castes.¹³¹ These norms are rooted in the idea that individuals from oppressed castes are ‘impure’ or ‘lesser’.¹³² Such norms undermine the agency of marginalised communities, depriving them of the ability to make even the smallest decisions

¹²⁷ Syamprasad, K. V., ‘Rohith Vemula: The Antecedents and Aftermaths of his Institutional Murder’ (*Round Table India*, 2016) <<https://www.roundtableindia.co.in/rohith-vemula-the-antecedents-and-aftermaths-of-his-institutional-murder/>> accessed 23 October 2025.

¹²⁸ BR Ambedkar, ‘What Congress and Gandhi Have Done to the Untouchables’ in Vasant Moon (ed), Babasaheb Ambedkar: Writings and Speeches (Volume 9, Government of India 2019 Reprint) 226.

¹²⁹ *ibid* 228.

¹³⁰ Reena Cheruvalath (n 113).

¹³¹ *ibid*.

¹³² *ibid*.

that affect their lives. This denial of agency leaves them powerless to assert their rights and shape their futures.

A critical aspect of how caste hierarchies shape free speech lies in the everyday mechanisms of silencing. Individuals from oppressed castes may experience constant policing of their speech, either through subtle forms of prejudice or direct forms of social exclusion.¹³³ The microaggressions enforce a form of caste-based social discipline, where people are expected to know their place.¹³⁴ Any speech or expression that challenges this is penalised, if not overtly, then through social exclusion and ridicule.¹³⁵

For instance, the destruction or opposition to the installation of Dr. Ambedkar statues is a frequent occurrence.¹³⁶ However, it goes beyond mere vandalism or symbolic defiance.¹³⁷ It carries a socio-political message aimed at diminishing the dignity, rights, and identity of lower-caste communities.¹³⁸ It is a deliberate effort to degrade the moral and psychological standing of lower-caste communities, making them feel invisible or less deserving of recognition in society.¹³⁹ As Schellini noted, ‘the issue extends beyond endangered statues; in fact, what has

¹³³ P Anbarasan, ‘Discursive Practices-Led Marginalisation: The Context of Caste-Based Spiral of Silence’ in R Saravana Raja and B William Dharma Raja (eds), *Marginality in India* (Routledge India 2023); Dhaneswar Bhoi and Hugo Gorringer, ‘Caste in Everyday Life: Experience and Affect in Indian Society’ in Dhaneswar Bhoi and Hugo Gorringer (eds), *Caste in Everyday Life: Experience and Affect in Indian Society* (Springer Nature Switzerland 2023); Ernesto Noronha, ‘Caste and Workplace Bullying: A Persistent and Pervasive Phenomenon’ in Eddy Ng and others (eds), *Dignity and Inclusion at Work* (Edward Elgar Publishing 2021); Vivek Kumar, ‘Situating Social Exclusion in the Context of Caste: A Case of Dalits in India’ in Paramjit S Judge (ed), *Mapping Social Exclusion in India: Caste, Religion and Borderlands* (Cambridge University Press 2014); Prem Pariyar, Bikash Gupta and Ruvani W Fonseka, ‘When I Tell Them My Caste, Silence Descends’ (2022) 3 CASTE: A Global Journal on Social Exclusion 189.

¹³⁴ Bharat Rathod, ‘Caste-based Discrimination in Higher Education: An Application of Microaggression Theory in Indian Context’ (2017) 9 Contemporary Voice of Dalit 171; Akanksha Rani and Ors, ‘Microaggression and Its Impact on Lower Caste Women with Psychiatric Disorders in India’ (2025) 12 Violence and Gender 35.

¹³⁵ Shayeri Das, ‘Disparagement Humour as a Means for Social Exclusion: Examining the Day-to-Day Casteism in Indian Stand-Up Comedy’ in Bhaswati Bhattacharya (ed), *Politics of Recognition and Representation in Indian Stand-Up Comedy* (Springer International Publishing 2024).

¹³⁶ Many statues of Dr. Ambedkar are vandalized every year in different parts of the country. For instance, see ‘Ambedkar statue vandalism in Amritsar triggers outrage’ (*The Hindustan Times*, 27 January 2025), <<https://www.hindustantimes.com/cities/chandigarh-news/ambekar-statue-vandalism-in-amritsar-triggers-outrage-101737963698684.html>> accessed 9 November 2025; ‘An Ambedkar statue is at centre of escalating standoff at Madhya Pradesh High Court’s Gwalior Bench’, (*The Indian Express*, 17 May 2025), <<https://indianexpress.com/article/india/ambekar-statue-centre-escalating-standoff-madhya-pradesh-high-courts-gwalior-bench-10011454/>> accessed 9 November 2025.

¹³⁷ Pramod K Nayar, ‘Desecration and the Politics of ‘Image Pollution’: Ambedkar Statues and the ‘Sculptural Encounter’ in India’ (2020) 11 Celebrity Studies 116.

¹³⁸ Manash Firaq Bhattacharjee, ‘Behind the Demolition of Ambedkar’s Statues Lies a Fear of Justice’ (*The Wire*, 9 April 2018) <<https://thewire.in/caste/behind-the-demolition-of-ambekars-statues-lies-a-fear-of-justice>> accessed 26 October 2025.

¹³⁹ Anurag Bhaskar, ‘Ambedkar’s Constitution’ (2021) 2 CASTE: A Global Journal on Social Exclusion 109, 120-23.

been threatened is the very freedom of political expression in public spaces'.¹⁴⁰ By targeting Dr. Ambedkar's statues, oppressor castes seek to erase a powerful symbol of resistance and to undermine the core values of liberty, equality, and fraternity for which he relentlessly fought.¹⁴¹

Similarly, oppressor caste groups protested against the criticism of caste discrimination portrayed in the biopic made on the anti-caste social reformers, Jotiba Phule and Savitribai Phule.¹⁴² The protests reflect the deep-seated resistance to confronting uncomfortable truths about caste. Likewise, academic discussions and mobilisations led by student organisations from marginalised communities have increasingly become targets of surveillance, prohibition, and institutional backlash across campuses.¹⁴³ This social policing creates an invisible barrier to free speech, making it more difficult for oppressed communities to assert their rights, speak in public, or express dissent. In many cases, marginalised individuals pre-emptively censor their own voices.¹⁴⁴ Years of social conditioning produce a psychological environment in which the fear of reprisal, judgment, or exclusion silences individuals even before they speak.

One of the most insidious forms of social policing occurs through humour, particularly casteist jokes that mock Dalit leaders, reservation policies, or Dr. Ambedkar himself. Derogatory depictions or memes on Dr. Ambedkar,¹⁴⁵ jokes on politicians from Dalit community,¹⁴⁶ and *quota-wala* punchlines circulate widely in both offline and online spaces.¹⁴⁷ While often dismissed as harmless satire, these jokes function as tools of symbolic domination:

¹⁴⁰ Marcelo Schellini, '(Un)Touchable: The Caged Statues of the Chennai–Bangalore Expressway and the Landscapes of Resilience' (2025) 11 *Society and Culture in South Asia* 155.

¹⁴¹ Anurag Bhaskar (n 139). See the section titled 'Anti-Caste Constitutionalism', 120-123.

¹⁴² 'Bollywood Film About Anti-caste Icons Delayed After Protests From Brahmins' (*The Independent*, 11 April 2025) <<https://www.independent.co.uk/arts-entertainment/films/phule-pratik-gandhi-brahmins-protests-release-postpone-b2731488.html>> accessed 26 October 2025.

¹⁴³ A Mahananda, 'Emergence of Dalit-Bahujan Students' Movement: A Study of University Campuses in Western Odisha' (2023) *Contemporary Voice of Dalit* <<https://journals.sagepub.com/doi/full/10.1177/2455328X231168545>> accessed 26 October 2025; Gaurav J Pathania, *The University as a Site of Resistance: Identity and Student Politics* (Oxford University Press 2018).

¹⁴⁴ Yashica Dutt, *Coming Out as Dalit: A Memoir of Surviving India's Caste System* (updated edn, Beacon Press 2024).

¹⁴⁵ 'Dalits in Telangana Launch Campaign to Remove Instagram Page Abusing the Community' Minute' (*The News Minute*, 20 July 2018) <<https://www.thenewsminute.com/telangana/dalits-telangana-launch-campaign-remove-instagram-page-abusing-community-85099>> accessed 26 October 2025.

¹⁴⁶ Sankul Sonawane, 'Indian Comics & Casteist Jokes: Punching Down on the Marginalised' (*The Quint*, 27 May 2021) <<https://www.thequint.com/entertainment/celebrities/abish-mathew-atul-khatri-neville-shah-indian-comics-casteist-jokes-punching-down-on-marginalised>> accessed 23 October 2025.

¹⁴⁷ Shreyashi Ganguly, 'Laughing About Caste: An Analysis of How Caste Considerations Find Representation in the Genre of English Stand-Up Comedy on the Internet in India' (2020) 1 *Connections: A Journal of Language, Media and Culture* 43; Shayeri Das, 'Disparagement Humour as a Means for Social Exclusion: Examining the Day-to-Day Casteism in Indian Stand-Up Comedy' in Bhaswati Bhattacharya (ed), *Politics of Recognition and Representation in Indian Stand-Up Comedy* (Springer International Publishing 2024).

delegitimising the oppressed-caste presence in public life and sustaining the myth of oppressor-caste meritocracy.¹⁴⁸

Sociologist Satish Deshpande incisively captures the contemporary dynamics of caste and identity in public life. Reflecting on a widely circulated joke that contrasts ‘astronauts’ with ‘quota-walas’, he writes, ‘upper [oppressor] caste identity is such that it can be completely overwritten by modern professional identities of choice, whereas lower caste identity is so indelibly engraved that it overwrites all other identities and renders them illegible, along with the choices that they may represent’.¹⁴⁹ Deshpande terms this ‘the central predicament of caste today – its hypervisibility for the so-called lower castes and its invisibility for the so-called upper castes’.¹⁵⁰ Caste becomes a permanent lens through which speech, competence, and legitimacy are judged.

While social policing operates through ridicule, exclusion, and internalised control, the suppression of free speech among oppressed communities also takes more overt and violent forms.

B. Violence, Harassment, and Hate Speech

In India, caste-based violence has remained a persistent and deeply entrenched form of social control.¹⁵¹ This violence manifests in a variety of forms, ranging from threats and social ostracism to brutal acts of physical violence, including caste-based hate crimes.¹⁵² Such violence is not only an individual act of aggression but is often part of a broader social and political strategy aimed at silencing dissent and maintaining caste hierarchies.¹⁵³ The very threat of violence prevents marginalised individuals from speaking out or participating in public discourse, as the repercussions of doing so are too severe.

As Narula notes, ‘[i]n India’s perennial struggle between the rule of law and the rule of caste, violence is the trump card that ensures the rule of caste always wins out. Violence against Dalits in India has reached epidemic proportions’.¹⁵⁴ When individuals or communities from

¹⁴⁸ Sonawane (n 146).

¹⁴⁹ Satish Deshpande, ‘Caste and Castelessness: Towards a Biography of the ‘General Category’’ (2013) 48 *Economic and Political Weekly* 32, 32.

¹⁵⁰ *ibid*.

¹⁵¹ GC Pal, ‘Caste and Consequences: Looking Through the Lens of Violence’ (2020) 1 *CASTE: A Global Journal on Social Exclusion* 95, 101.

¹⁵² *ibid* 101-102.

¹⁵³ Smita Narula, ‘Equal by Law, Unequal by Caste: The Untouchable Condition in Critical Race Perspective’ (2008) 26 *Wisconsin International Law Journal* 255, 306.

¹⁵⁴ *ibid* 305.

oppressed castes raise their voices against caste oppression or challenge the status quo, they often face collective exclusion from social, economic, and political activities.¹⁵⁵ The fear of being ostracised, which can result in the loss of livelihood, social status, and even basic human dignity, creates a chilling effect, where marginalised communities are deterred from advocating for their rights, speaking in public, or even engaging in the political process.

Moreover, caste-based hate crimes, such as mob lynchings, rapes, hate speeches, and physical assaults are often motivated by a desire to maintain caste purity. As Dutt noted, ‘This practice of unconscious and unpunished [hate] speech occurring casually in unsuspecting familial settings perhaps stands out in its greatest potential to damage, disrupt, cause a permanent mind change and ingrain and invigorate social apartheid’.¹⁵⁶ Furthermore, hate speech also ‘impacts a protected group’s ability to respond to the substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy’.¹⁵⁷

The daily atrocities inflicted upon Dalits are numerous and unrelenting.¹⁵⁸ Dalits are killed for acts as simple as growing a moustache,¹⁵⁹ watching dances,¹⁶⁰ owning and riding a horse,¹⁶¹ or simply defying a social order that denies them their basic humanity. Falling in love with someone from an oppressor-caste background,¹⁶² doing inter-caste marriages,¹⁶³ or participating in wedding processions¹⁶⁴ have led to murders. Even the smallest forms of

¹⁵⁵ *ibid* 306.

¹⁵⁶ Payel Rai Chowdhury Dutt, ‘Examining Hate Speech as an Abiding Threat to Justice: The Case of Scheduled Castes and Scheduled Tribes in India’ (2019) 11 *Contemporary Voice of Dalit* 219.

¹⁵⁷ *Pravasi Bhalai Sangathan v. Union of India* (2014) 11 SCC 477.

¹⁵⁸ *Indian Young Lawyers Association v. State of Kerala* (2019) 11 SCC 1.

¹⁵⁹ ‘Dalit Boy Stabbed for Sporting Moustache; Third Attack in a Week in Gujarat Village’ (*The Indian Express*, 4 October 2017) <<https://indianexpress.com/article/india/dalit-teen-stabbed-for-sporting-moustache-third-attack-in-a-week-in-gujarat-village-4873228/>> accessed 26 October 2025.

¹⁶⁰ ‘Dalit Killed for Watching Upper Castes-Organised Garba’ (*The Hindu*, 3 October 2017) <<https://www.thehindu.com/news/national/other-states/dalit-killed-for-watching-garba/article19787036.ece>> accessed 26 October 2025.

¹⁶¹ ‘For Riding Horse, Upper Caste Men Kill Dalit Youth in Gujarat’ (*The Indian Express*, 31 March 2018) <<https://indianexpress.com/article/india/for-riding-horse-upper-caste-men-kill-dalit-youth-in-gujarat-5117872/>> accessed 26 October 2025.

¹⁶² ‘Dalit Man Beaten to Death Over Intercaste Relationship: Police’ (*Hindustan Times*, 10 January 2025) <<https://www.hindustantimes.com/india-news/dalit-man-beaten-to-death-over-intercaste-relationship-police-101736450159747.html>> accessed 26 October 2025; ‘Nanded honour killing: Woman weds corpse of Dalit lover Saksham Tate after family murders him’ (*India Today*, 2 December 2025) <https://www.indiatoday.in/india/video/nanded-honor-killing-woman-weds-corpse-of-dalit-lover-saksham-tate-after-family-murders-him-ytvd-2829136-2025-12-02> accessed 9 December 2025.

¹⁶³ ‘Dalit Man Killed by In-laws for Marrying Upper-caste Woman in Uttarakhand’ (*India Today*, 3 September 2022) <<https://www.indiatoday.in/india/uttarakhand/story/dalit-man-killed-by-in-laws-for-marrying-upper-caste-woman-in-uttarakhand-1995901-2022-09-03>> accessed 26 October 2025.

¹⁶⁴ ‘Dalit Man Beaten Up at Wedding for Eating Alongside ‘Upper Caste’ Men, Dies in Uttarakhand’ (*The Hindu*, 6 May 2019) <<https://www.thehindu.com/news/national/other-states/dalit-man-beaten-up-at-wedding-dies-in-uttarakhand/article27041740.ece>> accessed 26 October 2025.

expression, such as setting a ringtone dedicated to Dr. Ambedkar become reasons for caste-based murders.¹⁶⁵ Other trivial acts, like riding a bullet bike or touching a water bottle or public water tap, can also make them targets.¹⁶⁶

Dalits are subjected to cruel and degrading practices, such as having their heads shaved in public,¹⁶⁷ being forced to wear garlands made of shoes,¹⁶⁸ or being made to eat human excreta¹⁶⁹ or drink urine¹⁷⁰ as a means of humiliation. These forms of social cruelty are common in many villages, where Dalits are made to carry shoes or endure other forms of degradation.

Even bureaucrats and police officers are not spared, with some requiring police protection to take their wedding processions through areas dominated by casteist attitudes.¹⁷¹ The office of the Chief Justice of India itself became a target of caste prejudice when an elderly lawyer, invoking his religion, attempted to hurl a shoe at Chief Justice B.R. Gavai (now retired), who comes from the Dalit community, in open court.¹⁷²

¹⁶⁵ 'Dalit Youth Killed for Keeping Ambedkar Song as Ringtone' (*The Hindu*, 2 August 2016) <<https://www.thehindu.com/news/national/other-states/dalit-youth-killed-for-ambedkar-song-ringtone-article-7232259.ece>> accessed 26 October 2025.

¹⁶⁶ 'Dalit Student Thrashed by School Principal for Drinking Water From Bottle in Uttar Pradesh' (*The Hindu*, 13 February 2023) <<https://www.thehindu.com/news/national/other-states/dalit-student-thrashed-by-school-principal-for-drinking-water-from-bottle-in-uttar-pradesh/article66503039.ece>> accessed 26 October 2025; 'Dalit Boy Beaten to Death for Touching Water Pot | NCPCR Asks Rajasthan Government to Take Strict Action' (*The Hindu*, 16 August 2022) <<https://www.thehindu.com/news/national/other-states/dalit-boy-beaten-to-death-for-touching-water-pot-ncPCR-asks-rajasthan-government-to-take-strict-action/article65774943.ece>> accessed 26 October 2025; 'Dalit Student's Hands Hacked by Caste Hindu Men for Riding a 'Bullet' in Tamil Nadu's Sivaganga' (*The New Indian Express*, 13 February 2025) <<https://www.newindianexpress.com/states/tamil-nadu/2025/Feb/13/dalit-students-hands-hacked-by-caste-hindu-men-for-riding-a-bullet-in-tamil-nadu-sivaganga>> accessed 26 October 2025.

¹⁶⁷ 'Dalit Man Assaulted, Paraded Half-naked with Forcibly-shaved Face in Ludhiana Village; 1 Held' (*Hindustan Times*, 6 July 2025) <<https://www.hindustantimes.com/india-news/dalit-man-assaulted-paraded-half-naked-with-forcibly-shaved-face-in-ludhiana-village-1-held-101751812033242.html>> accessed 26 October 2025.

¹⁶⁸ 'Dalit Man Thrashed, Humiliated With Shoe Garland in Rajasthan's Sirohi District' (*The Times of India*, 25 November 2022) <<https://timesofindia.indiatimes.com/city/jaipur/dalit-man-thrashed-humiliated-with-shoe-garland-in-rajasthans-sirohi-district/articleshow/95770365.cms>> accessed 26 October 2025.

¹⁶⁹ 'Two Persons Held for Forcing Dalit Man to Eat Human Excreta' (*The Hindu*, 8 May 2019) <<https://www.thehindu.com/news/national/tamil-nadu/two-persons-held-for-forcing-dalit-man-to-eat-human-excreta/article27062544.ece>> accessed 26 October 2025.

¹⁷⁰ 'Dalit Man Held Captive, Thrashed, Made To Drink Urine In Madhya Pradesh: Cops' (*NDTV*, 5 August 2024) <<https://www.ndtv.com/india-news/dalit-man-held-captive-thrashed-made-to-drink-urine-in-madhya-pradesh-cops-6270536>> accessed 26 October 2025.

¹⁷¹ 'In Rajasthan, Dalit IPS Officer's Wedding Procession Held Under Police Watch' (*Hindustan Times*, 18 February 2022) <<https://www.hindustantimes.com/india-news/inrajasthan-dalit-ips-officer-s-wedding-procession-held-under-police-watch-101645209465267.html>> accessed 26 October 2025.

¹⁷² Sarayu Pani, 'The Casteist Attack on CJI Gavai Is an Ideological Assault on the Public Imagination of the Supreme Court' (*The Wire*, 10 October 2025) <https://thewire.in/law/supreme-court-public-imagination-cji-gavai-casteist-attack-shoe> accessed 9 December 2025; 'After shoe-hit bid, attacks on CJI Gavai continue online; demand for action on lawyer Rakesh Kishore grows louder' (*Hindustan Times*, 2 December 2025) <https://www.hindustantimes.com/india-news/after-shoe-hit-bid-attacks-on-cji-gavai-continue-online-demand-for-action-on-lawyer-rakesh-kishore-grows-louder-101759925958197.html> accessed 9 December 2025.

These atrocities reveal that even the most basic expressions of free speech or individual agency by Dalits are met with violent retaliation, while acts of defiance by oppressor-caste individuals often go unnoticed or even celebrated. This underscores the deeply entrenched nature of caste-based discrimination, where Dalits' fundamental rights to dignity and freedom are persistently violated.

The culture of impunity that surrounds caste-based violence further exacerbates this oppression.¹⁷³ Often, perpetrators of caste-related violence are not held accountable for their actions, due to a variety of reasons.¹⁷⁴ Police and legal institutions may either turn a blind eye to these crimes or actively protect the perpetrators, particularly when they belong to powerful oppressor-caste groups.¹⁷⁵ In one case, the police forcibly cremated the body of a Dalit teenager, who had been gang-raped and murdered, despite her family's objections.¹⁷⁶ Dignity was denied even in death.

The lack of accountability perpetuates a cycle of violence and fear, making it nearly impossible for individuals from oppressed castes to seek justice or publicly speak out against their abuse.¹⁷⁷ The failure of the justice system to provide redress for victims of caste-based violence sends a message that their lives and voices are less valuable than those of the oppressor castes, further marginalising their attempts to exercise their basic rights, including the right to free speech.

The contemporary caste order continues to manifest not only in physical spaces but also within digital platforms and public institutions, where caste-based silencing operates in both explicit and implicit ways.¹⁷⁸ These mechanisms restrict the freedom of expression of historically marginalised communities through online hate speech, inadequate legal recognition, algorithmic biases, and the differential legitimacy granted to caste-based protests.¹⁷⁹ Emerging research shows 'extensive use of caste-based hate speech on Facebook, including derogatory

¹⁷³ GC Pal, 'Caste and Consequences' (2020) 1 CASTE: A Global Journal on Social Exclusion 95, 102.

¹⁷⁴ *ibid.*

¹⁷⁵ Alison Saldanha and Chaitanya Mallapur, 'Crimes Against Dalits Rose 746% in 10 Years & the Police Are Half as Likely to Help' (*The Print*, 6 April 2018) <<https://theprint.in/india/governance/over-a-decade-crime-rate-against-dalits-rose-by-746/47516/>> accessed 26 October 2025.

¹⁷⁶ 'Hathras Gang Rape | Victim Cremated Without Consent, Says Family' (*The Hindu*, 28 November 2021) <<https://www.thehindu.com/news/national/other-states/up-police-forcibly-cremating-hathras-rape-victim-at-night-allege-kin/article61700743.ece>> accessed 26 October 2025

¹⁷⁷ Sukhadeo Thorat, 'Political Economy of Caste Discrimination and Atrocities' in Anand Teltumbde and Suraj Yengde (eds), *The Radical in Ambedkar: Critical Reflections* (Penguin Random House 2018).

¹⁷⁸ Dhyan Singh, 'Dalits' Encounters with Casteism on Social Media: A Thematic Analysis' (2025) 28 Information, Communication & Society 1.

¹⁷⁹ Prashanth Vijayaraghavan and Ors, 'Decaste: Unveiling Caste Stereotypes in Large Language Models Through Multi-dimensional Bias Analysis' (arXiv preprint arXiv:2505.14971, 2025) <<https://arxiv.org/abs/2505.14971>> accessed 26 October 2025; For algorithmic biases, see, Anupam Chander, 'The Racist Algorithm' (2016) 115 Michigan Law Review 1023.

references to caste-based occupations such as manual scavenging'.¹⁸⁰ Memes targeting Dalits, Dr. Ambedkar, the Scheduled Castes and Tribes (SC/ST) Act, and affirmative action policies are widely circulated among upper-caste groups.¹⁸¹ These often include terms such as 'Aarakshanjeevi' (a person who survives on reservation), 'Bheemta' (a slur against Ambedkarites), and traditional casteist slurs such as 'Chamar' and 'Bhangi'.¹⁸² In contrast, oppressor castes call themselves Buddhijeevi (Intellectual).¹⁸³

Despite the commitments made by major platforms to curb hate speech, a study reveals that only 3% to 5% of caste-hate content is taken down.¹⁸⁴ This highlights a glaring gap in enforcement and reflects a failure to account for the cultural specificity and systemic nature of casteism. Algorithmic moderation often fails to recognise the nuanced ways in which caste is expressed or weaponised. Although caste is increasingly being recognised as a protected category, moderation practices still lack the sensitivity and specificity required for the Indian socio-political context.¹⁸⁵ Thus, the persistence of casteist speech online mirrors the offline social order, where historically dominant groups control the narrative and marginalise dissent. The liberal legal framework that distinguishes between permissible and impermissible speech remains inadequate to recognise the harms of casteist expression.¹⁸⁶

C. Expansive Criminal Laws, Narrow Protective Legislation

Having explored the role of social policing and violence in silencing oppressed voices, we now turn to the legal frameworks that contribute to this systemic suppression.¹⁸⁷ In pursuance of the constitutional abolition of untouchability and caste discrimination, several protective legislations, such as the Protection of Civil Rights Act 1976 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, were enacted. Ideally, it is expected that there should be proper implementation of the protective legislation. However, it is seen that

¹⁸⁰ Devanshu Sajlan, 'Hate Speech Against Dalits on Social Media: Would a Penny Sparrow Be Prosecuted in India for Online Hate Speech?' (2021) 2 CASTE: A Global Journal on Social Exclusion 77.

¹⁸¹ Manish Kumar, 'Caste-Based Hate Speech Moderation on Facebook (Meta) and Twitter (X)' (2024) 3 <<https://escholarship.org/content/qt170845t6/qt170845t6.pdf>> accessed 26 October 2025.

¹⁸² *ibid.*

¹⁸³ *ibid.*

¹⁸⁴ *ibid.* 8.

¹⁸⁵ *ibid.* 12-13.

¹⁸⁶ K Satyanarayana, 'Caste Violence: Free Speech or Atrocity?' in Crispin Bates and Ritanjan Das (eds), *Violence in South Asia* (Routledge India 2019).

¹⁸⁷ For a broader critique of liberal legal frameworks, see Disha Wadekar, 'Redefining Justice: Legal Scholarship in Critical Caste Studies' (2024) 5 CASTE: A Global Journal on Social Exclusion 18.

there is targeting of members from marginalised castes under various colonial-era or modern laws.¹⁸⁸

General penal laws, which should serve to protect citizens from hate speech and caste-based violence, often fail to deliver justice when it comes to oppression.¹⁸⁹ In some cases, the laws themselves have been misused to curtail the freedom of expression of those who challenge the caste system.¹⁹⁰ Anti-caste speeches and criticisms of casteist religious practices are sometimes booked as hurting religious sentiments under the penal code, previously Section 153A, which criminalises acts that promote disharmony or enmity between different groups.¹⁹¹ For instance, criticisms of the Manusmriti, a socio-legal and religious code that was burnt by Dr. Ambedkar, have led to criminal complaints.¹⁹² Protesting against the statue of Manu¹⁹³ is treated as a criminal offence.¹⁹⁴ By using these laws to target anti-caste voices, the State reinforces the status quo and prevents genuine social change from occurring.

Additional legal frameworks, such as anti-conversion laws, environmental and forest regulations, and wildlife protection laws, can reinforce entrenched hierarchies. When Dalit, Adivasi, or nomadic communities organise protests against land acquisition,¹⁹⁵ engage in

¹⁸⁸ In *Amanatullah Khan v. Commissioner of Police, Delhi* 2024 INSC 383, the Supreme Court of India took *suo motu* cognizance of the institutional practices based on pre-conceived notions that often render the oppressed communities as ‘invisible victims’ due to prevailing stereotypes associated with their communities, which may often impede their right to live a life with self-respect. The Court noted, ‘the police authorities in other States and Union Territories may also consider the desirability of ensuring that no mechanical entries in History Sheet are made of innocent individuals, simply because they happen to hail from the socially, economically and educationally disadvantaged backgrounds, along with those belonging to Backward Communities, Scheduled Castes & Scheduled Tribes.’

¹⁸⁹ K Satyanarayana (n 186).

¹⁹⁰ ‘Kancha Illaiah Booked for Hurting Religious Sentiments’ (*The Times of India*, 26 May 2016) <<https://timesofindia.indiatimes.com/city/hyderabad/kancha-illaiah-booked-for-hurting-religious-sentiments/articleshow/52455944.cms>> accessed 26 October 2025.

¹⁹¹ ‘Udhayanidhi Stalin’s Comments Against ‘Sanatana Dharma’ Amount To Hate Against Specific Community: Madras High Court’ (*Live Law*, 7 March 2024) <<https://www.livelaw.in/high-court/madras-high-court/madras-high-court-sanatana-dharma-remark-udayanidhi-stalin-lack-of-understanding-of-hinduism-251498>> accessed 26 October 2025; ‘Two FIRs Registered Against Jitan Ram Manjhi for Comments on Brahmins’ (*Deccan Herald*, 20 December 2021) <<https://www.deccanherald.com/india/two-firs-registered-against-jitan-ram-manjhi-for-comments-on-brahmins-1062906.html>> accessed 26 October 2025.

¹⁹² ‘Manusmriti row: VCK leader Thirumavalavan booked for comment’ (*The News Minute*, 24 October 2020) <<https://www.thenewsminute.com/tamil-nadu/manusmriti-row-vck-leader-thirumavalavan-booked-comment-136039>> accessed 26 October 2025.

¹⁹³ Manu was the ancient law-giver who supposedly wrote the Manusmriti, which prescribes discrimination against oppressed groups.

¹⁹⁴ ‘Manu statue’s defacement shifts focus on long controversy’ (*The Hindu*, 20 October 2018) <<https://www.thehindu.com/news/national/other-states/manu-statues-defacement-shifts-focus-on-long-controversy/article25275559.ece>> accessed 24 October 2025.

¹⁹⁵ Aripitha Kodaveri, ‘Criminalizing Rights and Policing Futures’ (*Law and Other Things*, 19 February 2023) <<https://lawandotherthings.com/criminalizing-rights-and-policing-futures/>> accessed 24 October 2025.

forest-based livelihoods,¹⁹⁶ or choose to convert to another religion as an act of self-determination,¹⁹⁷ their actions have sometimes been framed as criminal conduct. This illustrates how the legal regime can operate as a tool of caste-based control, even when cloaked in ostensibly neutral terms.

The structural silencing of oppressed communities also extends to the domain of protest. While Article 19(1)(b) of the Indian Constitution guarantees the right to assemble and protest, Dalit-led movements and expressions of dissent are often met with criminalisation and repression.¹⁹⁸ Protests calling for justice in cases of caste-based atrocities have been treated as threats to public order.¹⁹⁹ In contrast, mobilisations led by oppressor-caste communities are more likely to be legitimised and accommodated as ‘peaceful’ within the mainstream of politics and the media.²⁰⁰ In fact, such protests against affirmative action for backward classes carry casteist slogans.²⁰¹ For instance, Uma Chakravarti recalls that during the anti-Mandal agitation at Delhi University, oppressor-caste students vandalised public property and staged protests for media attention.²⁰² Despite claiming to oppose casteism, the protests featured blatantly casteist graffiti and posters, including one depicting Dalit and OBC leaders with dog collars drinking blood from a pierced map of India. Chakravarti notes, ‘Not a single person, not even the university teachers backing the students’ movement from the sidelines, objected to the deeply offensive casteism of the poster’.²⁰³ This discrepancy reveals a deeper caste bias in how the state and civil society interpret dissent.²⁰⁴ As a result, the right to protest is not equally distributed.

¹⁹⁶ Ranjan Chatterjee and Saumya Seal, ‘Empowering or Encumbering?: An insight into the impact of the Wildlife (Protection) Act of 1972 on Denotified, Nomadic, and Semi-Nomadic Tribes of India’ (Conference Paper, July 2024) <<https://www.researchgate.net/publication/382274745>> accessed 26 October 2025.

¹⁹⁷ Rahul Sonpimple, ‘Dalit conversions: An act of rebellion against caste supremacy’ (*Al Jazeera*, 14 June 2018) <<https://www.aljazeera.com/opinions/2018/6/14/dalit-conversions-an-act-of-rebellion-against-caste-supremacy>> accessed 24 October 2025.

¹⁹⁸ Swati Kamble, ‘Bhima Koregaon and Dalit Bahujan Movement’ (*Round Table India*, 14 February 2018) <<https://www.roundtableindia.co.in/bhima-koregaon-and-dalit-bahujan-movement/>> accessed 24 October 2024.

¹⁹⁹ ‘Hathras case: Delhi Police registers case against protesters at Jantar Mantar for violating prohibitory orders’ (*The Indian Express*, 3 October 2020) <<https://indianexpress.com/article/cities/delhi/hathras-rape-case-delhi-police-jantar-mantar-protests-6672045/>> accessed 24 October 2025.

²⁰⁰ ‘Madhya Pradesh: Rally against quota, SC/ST Act change in Bhopal’ (*The Indian Express*, 1 October 2018) <<https://indianexpress.com/article/india/rally-against-quota-sc-st-act-change-in-bhopal-5380538/>> accessed 24 October 2025; ‘Madhya Pradesh upper castes’ protest against SC/ST Act largely peaceful; Section 144 imposed, mobile internet shut down’ (*The Firstpost*, 6 September 2018) <<https://www.firstpost.com/india/madhya-pradesh-upper-castes-protest-against-scst-act-largely-peaceful-section-144-imposed-mobile-internet-shut-down-5130901.html>> accessed 24 October 2025.

²⁰¹ Uma Chakravarti, ‘Afterword The Burden of Caste: Scholarship, Democratic Movements and Activism’ in Anupama Rao and others (eds), *Dalit Women* (Routledge India 2017) 339-40.

²⁰² *ibid.*

²⁰³ *ibid* 340.

²⁰⁴ Disha Wadekar, ‘Understanding civil liberties from an Ambedkarite perspective’ (*The Leaflet*, 14 April 2022), <<https://theleaflet.in/leaflet-specials/understanding-civil-liberties-from-an-ambedkarite-perspective>> accessed 24 October 2025.

One of the key ways legal restrictions impact free speech is through the inadequate enforcement of laws aimed at protecting Dalits and other marginalised communities from caste-based violence and discrimination.²⁰⁵ Faulty police investigations, complicity with the oppressors, and indifference from the prosecution often result in cases not being registered or investigated thoroughly, and perpetrators of caste-based violence frequently escape punishment.²⁰⁶ The tipping point came when the Supreme Court of India introduced ‘safeguards’ to the Prevention of Atrocities Act, including mandatory preliminary inquiry and prior approval for arrests, on the *assumption* that the Act was being misused.²⁰⁷ This effectively diluted the Act’s deterrent purpose by lending judicial legitimacy to the narrative of its alleged misuse. After protests, the Supreme Court recalled its directions, terming them ‘discriminatory’.²⁰⁸ The episode underscored how courts may fail to appreciate the structural realities that necessitate such protections in the first place.

Another aspect of the legal barriers to free speech is the narrow interpretation of protective legislation. Courts may fail to interpret the law expansively enough to account for the social, economic, and cultural forms of exclusion that marginalised communities face, partly because of a formalist approach that prioritises textual fidelity over social context, and partly due to negative perceptions created against the legislation.²⁰⁹ For instance, casteist abuse in ‘private’ spaces has been condoned.²¹⁰ As a result, when Dalits speak out against injustice or discrimination, they may not find the legal protections they need, as the application of the law is limited to more overt forms of caste violence. This leaves those who challenge the caste system vulnerable, both legally and socially, in certain situations.

The legal process itself can become a barrier to free speech, as the delay in justice or failure to prosecute caste violence leads to further alienation and disillusionment among marginalised

²⁰⁵ Sandhya Fuchs, *The Fragile Life of the Atrocities Act: Seeking Justice Against Caste Crimes* (Navayana 2024).

²⁰⁶ In *Hariram Bhambhi v. Satyanarayan*, (2021) 10 SCR 855, the Supreme Court itself noted: ‘[M]any perpetrators of caste-based atrocities get away scot-free due to shoddy investigations and the negligence of prosecuting advocates. This results in low conviction rates under the SC/ST Act giving rise to the erroneous perception that cases registered under the Act are false and that it is being misused. On the contrary, the reality is that many acquittals are a result of improper investigation and prosecution of crime, leading to insufficient evidence. This is evident from the low percentage of cases attracting the application of the provisions of the Penal Code relating to false complaints as compared to the rate of acquittals.’

²⁰⁷ *Subhash Kashinath Mahajan v. State of Maharashtra*, (2018) 6 SCC 454.

²⁰⁸ *Union of India v. State of Maharashtra*, AIR 2019 SC 4917.

²⁰⁹ See, the chapter ‘When Judges Let Off Mass Killers’ in Manoj Mitta, *Caste Pride: Battles for Equality in Hindu India* (Context 2023).

²¹⁰ ‘Casteist slurs made on mobile phone not an offence under SC/ST Act: HC’ (*Times of India*, 31 May 2020), <<https://timesofindia.indiatimes.com/india/casteist-slurs-made-on-mobile-phone-not-an-offence-under-sc/st-act-hc/articleshow/76114703.cms>> accessed 24 October 2025.

groups.²¹¹ In such a system, speaking out against caste injustice becomes an exercise fraught with the risk of not only facing physical violence but also institutional neglect. The legal process can be so slow and cumbersome that many marginalised individuals are discouraged from pursuing justice or raising their voices against caste-based discrimination.²¹² Legal battles, which can take years, drain the resources of those already living on the margins of society, making it less likely that they will pursue legal action.²¹³ For individuals or communities already facing social, economic, and political exclusion, the daunting legal process becomes an additional barrier to the exercise of their right to free speech.

The combination of inadequate legal protection, misapplication of protective laws, and legal barriers discourages many from speaking out or taking action against caste-based oppression. As such, the lazy legal system becomes an integral part of the broader structural forces that silence dissent and perpetuate the marginalisation of oppressed castes in India.

D. Epistemic Violence

While many silencing mechanisms, discussed earlier in this article, operate through direct control and coercion, epistemic barriers work by denying oppressed communities the space to narrate their own histories and truths.²¹⁴ These barriers manifest in the way knowledge is produced, disseminated, and consumed in society, particularly through academia and the media.²¹⁵ By controlling the narratives around caste, these institutions become instrumental in maintaining caste-based inequalities and limiting the space for anti-caste discourse.

Critical race scholars have articulated that ‘polite and polished colleagues’ from oppressor groups are also responsible for creating narratives against marginalised communities.²¹⁶ Words

²¹¹ Javed Iqbal Wani and L David Lal, ‘Dearer Caste and Cheaper Lives: The SC and ST (Prevention of Atrocities) Act and the Double Violence of Law in India’ (2024) 18 *History and Sociology of South Asia* 198.

²¹² ‘How to fix India’s sclerotic justice system’ (*The Economist*, 22 May 2025), <<https://www.economist.com/asia/2025/05/22/how-to-fix-indias-sclerotic-justice-system>> accessed 24 October 2025; Johari, Aarefa, ‘The Indian justice system is too slow, too complex and too costly, says new study’ (*Scroll*, 24 January 2018) <<https://scroll.in/article/866158/the-indian-justice-system-is-too-slow-too-complex-and-too-costly-says-new-study>> accessed 24 October 2025.

²¹³ Avadhesh Akodia, ‘Loans, Debt, Land Sold: A Father’s Fight To Get Justice for Daughter Who Was Raped’ (*The Wire*, 13 October 2021) <<https://m.thewire.in/article/caste/bikaner-dalit-teenager-rape-murder-justice-father-fight/amp>> accessed 24 October 2025.

²¹⁴ Kristie Dotson, ‘Tracking Epistemic Violence, Tracking Practices of Silencing’ (2011) 26 *Hypatia* 236.

²¹⁵ Harshul Singh and Ahlam Fathima, ‘We Write, We Resist, In Our Own: Decolonising Knowledge and Resisting Casteist Epistemic Hegemony through Dalit and Muslim Realities’ (2025) 1 *South Asia Journal for Minorities* 1; Anukriti Dixit, ‘Caste(d) Knowledges: (Self)-Problematising Epistemic Impunity and Caste-Privilege in Academia’ (2025) 32 *Organization* 377; Murzban Jal, ‘Epistemological Untouchability: The Deafening Silence of Indian Academics’ in João M Paraskeva (ed), *Critical Perspectives on the Denial of Caste in Educational Debate* (Routledge 2023).

²¹⁶ Mari J Matsuda (n 10) 14.

like ‘merit, rigor, standards, qualifications, and excellence’ have been developed to target the inclusion of marginalised communities in educational campuses.²¹⁷ The ‘language of freedom struggles’ has been appropriated by ‘those who are resisting change’.²¹⁸ They further state, ‘Words like intolerant, silencing, McCarthyism, censors, and orthodoxy are used to portray women and people of colour as oppressors and to pretend the powerful have become powerless’.²¹⁹ If institutions such as academia ‘erode’ or become complicit in oppression, the scope and meaning of free speech can also ‘shrink’.²²⁰

In Indian academia, epistemic barriers are deeply embedded in the structures of knowledge production.²²¹ The scholarship has been dominated by oppressor-caste scholars and intellectuals who have shaped the discourse around caste in ways that reflect and reinforce their own social positions.²²² The exclusion of anti-caste perspectives from mainstream academic frameworks has led to the perpetuation of caste-based stereotypes and biases.²²³ In many Indian universities, the curriculum and the narratives promoted in social sciences, literature, and history often overlook the lived experiences of marginalised castes or portray them in a patronising or condescending light.²²⁴

The marginalisation of Dalit-Bahujan voices in academia is further compounded by the limited representation of lower-caste scholars in higher education and academic institutions.²²⁵ This lack of representation in both the teaching faculty and the research community leads to a dearth of critical scholarship on caste from the perspective of those directly affected by it.²²⁶ Dalit scholars and activists who attempt to challenge caste-based norms within academia often face

²¹⁷ *ibid.*

²¹⁸ *ibid.*

²¹⁹ *ibid.*

²²⁰ Andrew Koppelman, ‘Veil of Ignorance: Tunnel Constructivism in Free Speech Theory’ (2012) 107 Northwestern University Law Review 647, 710.

²²¹ Anukriti Dixit, ‘Caste(d) Knowledges: (Self)-Problematising Epistemic Impunity and Caste-Privilege in Academia’ (2025) 32 Organization 377; Bharat Rathod, *Dalit Academic Journeys: Stories of Caste, Exclusion and Assertion in Indian Higher Education* (Routledge India 2022); Anurag Kumar, ‘Unequal Spaces: An In-depth Analysis of Caste Discrimination in Indian Universities’ (2024) Contemporary Education Dialogue.

²²² *ibid.*

²²³ Damni Kain, ‘How the Absence of Caste in Curriculum Aids the Presence of Caste in Pedagogy’ (2024) 16 Contemporary Voice of Dalit 323.

²²⁴ *ibid.*

²²⁵ Rahul Kumar, ‘SC, ST, OBC representation in Indian education is dismal, upper-caste nexus persists’ (*The Print*, 24 March 2021) <<https://theprint.in/campus-voice/sc-st-obc-representation-in-indian-education-is-dismal-upper-caste-nexus-persists/627217/>> accessed 24 October 2025; Santhosh J and Benish Ali, ‘Missing or Excluded?’ (*Round Table India*, 5 September 2023) <<https://www.roundtableindia.co.in/missing-or-excluded/>> accessed 24 October 2025.

²²⁶ *ibid.*

resistance, exclusion, or even professional ostracism.²²⁷ Their research might be labelled as ‘scholactivist’,²²⁸ dismissed as irrelevant, or attacked as politically motivated.

At present, the equality agenda is frequently viewed as a separate, niche concern rather than a shared responsibility that should permeate all aspects of an institution.²²⁹ On many campuses, equality issues are relegated to the margins, often treated as the domain of a few faculty members or staff who are seen as advocates for marginalised groups.²³⁰ At the same time, equality issues are often co-opted by experts (belonging to dominant groups/castes), who tend to treat themselves as the ultimate authority on discrimination and equity.²³¹ These *insiders*, despite often having little lived experience or exposure to the issues they address, adopt the role of *saviours* or so-called *neutral mediators*, presenting themselves as the ones with the answers to complex social inequalities.

Shankar targets this phenomenon of ‘saviourism’ by highlighting its connection with the complicity of the oppressor castes in maintaining social inequalities.²³² He critiques the dominance of *savarna* ‘brown saviors’ in academia, who obscure their caste privilege by

²²⁷ Anurag Kumar (n 221).

²²⁸ For a general reading, see Tarunabh Khaitan, ‘On Scholactivism in Constitutional Studies: Skeptical Thoughts’ (2022) 20 International Journal of Constitutional Law 547. In response, Martin Scheinin wrote: ‘My final comment relates to Khaitan’s normative preference of slow-paced scholarship that includes presenting drafts at workshops and publishing only in (best) peer-reviewed journals. Yes, these mechanisms are often conducive to high-quality outcomes. But they should not be thought of as a straitjacket for research that passes the normative test of full academic integrity. Academic freedom entails that scholarly outputs must be assessed for the substantive contributions they make. Workshop conveners and journal editors exercise significant power as academic gatekeepers. Their decisions should not be seen as the standard for research contributions or academic integrity by other academics who may or may not subject themselves to their authority.’ See Martin Scheinin, ‘“Activism” Is Not the Problem: A Response to Tarun Khaitan’ (*VerfBlog*, 24 August 2022) <<https://verfassungsblog.de/activism-is-not-the-problem/>> accessed 26 October 2025.

²²⁹ Toni M Massaro, ‘Equality and Freedom of Expression: The Hate Speech Dilemma’ (1990) 32 William and Mary Law Review 211, 263-64.

²³⁰ *ibid*.

²³¹ Interestingly, Sthabir Khora states: ‘upper caste scholars’ theorisation of caste has to be moderated by *Dalit* scholars’ theorisation. Lower castes are affected by upper caste scholars’ theorisation... When confronted with such charges, the upper caste scholars often take resort to the shield of “objectivity” and “impartiality”. However, Sen advocates for “open impartiality” and “transpositional objectivity” guided by “positional illumination”... Many upper caste scholars on caste do not mention their “delineated somewhere” and project as if they are writing from ‘the view from nowhere’. The attempt is to suppress the positional illusion.’ See Sthabir Khora, *Caste, Reservation, Atrocity Law and Discrimination* (Taylor & Francis 2024) 44-45. As an example of ‘upper caste scholars’ theorisation’, which Khora highlights, one may look at Madhav Khosla and Pratap B Mehta, ‘Caste Formalism: The Law and Politics of Equality in India’ (2025) 87(3) Law and Contemporary Problems 205. Khosla and Mehta express scepticism about the State’s capacity to conduct a caste census objectively, questioning whether government machinery can gather reliable data free from political or bureaucratic bias. However, while raising concerns about state-led enumeration, they offer no viable alternative for generating such data. If the State, which is the only institution with the logistical reach and constitutional mandate to do so, does not undertake this exercise, it is unclear who else possesses the authority or capacity to collect it. In the absence of a credible alternative, their argument risks collapsing into abstraction and personal assumption, overlooking the practical necessity of State involvement in any meaningful attempt to measure caste-based inequality.

²³² Arjun Shankar, *Brown Saviors and Their Others: Race, Caste, Labor, and the Global Politics of Help in India* (Duke University Press 2022).

adopting postcolonial or cosmopolitan identities.²³³ He observes that *savarna* (oppressor caste) scholars frequently neglect critical engagement with their own caste locations, choosing instead to focus on Dalit experiences in ways that obscure *savarna* complicity in sustaining caste hierarchies.²³⁴ As he notes, ‘Complicity makes us [as *savarnas*] sweat because it forces us to acknowledge that the capital we’ve accrued has come at the expense of others’.²³⁵ ‘Complicity requires’, Shankar notes, that *savarna* scholars cast aside the ‘conceit of innocence’ which often accompanies their academic positioning, and, even more uncomfortably, it demands that they ‘tell the story in a way that reveals’ their own role in sustaining caste hierarchies and their ‘potential culpability’ within structures of oppression they claim to critique.²³⁶ However, such introspection is often avoided to preserve material capital, thereby reproducing caste supremacy under the guise of scholarly ‘reflexivity’.²³⁷ This not only distances equality work from the heart of the academic and professional institutions, but also marginalises the voices of those most affected by inequality.²³⁸ Therefore, the question is no longer whether the ‘subaltern’²³⁹ can speak, but whether others are willing to listen.²⁴⁰

Furthermore, oppressor caste academicians have appropriated research and funding on social justice projects.²⁴¹ Such funds are frequently appropriated to position dominant-caste individuals as experts on the very issues that directly affect oppressed groups. For instance, the Government of India awarded a grant to Columbia University to establish a Chair in Constitutional Law in the name of Dr. Ambedkar.²⁴² However, no scholar from a marginalised community has ever been appointed to this Chair. While the Chair and its associated funding

²³³ *ibid* xvi.

²³⁴ *ibid*.

²³⁵ *ibid* xv.

²³⁶ *ibid*.

²³⁷ *ibid* xvi.

²³⁸ Gibu Sabu M, Ruchi Singh and J Santhosh, ‘Quotidian Language Practices as Silent Enforcers of Caste Discrimination in India’ (2024) 16 *Contemporary Voice of Dalit* 245.

²³⁹ Gayatri Chakravorty Spivak, ‘Can the Subaltern Speak?’ in Peter J Cain and Mark Harrison (eds), *Imperialism* (Routledge 2004).

²⁴⁰ ‘Chief Justice Gavai's “Brutal Truths Of Caste” Speech at Oxford University’ (*NDTV*, 11 June 2025) <<https://www.ndtv.com/india-news/chief-justice-gavais-brutal-truths-of-caste-speech-at-oxford-university-8639974>> accessed 25 October 2025.

²⁴¹ Nidhi S Sabharwal, Emily F Henderson and Roma Smart Joseph, ‘Hidden Social Exclusion in Indian Academia: Gender, Caste and Conference Participation’ (2020) 32 *Gender and Education* 27; Ajantha Subramanian, ‘Making Merit: The Indian Institutes of Technology and the Social Life of Caste’ (2015) 57 *Comparative Studies in Society and History* 291, 315.

²⁴² Embassy of India, Washington DC, ‘Press Release on the visit of Ambassador to Columbia University, NY’ (*Embassy of India*, 1 April 2010) <<https://www.indianembassyusa.gov.in/ArchivesDetails?id=1232>> accessed 26 October 2025.

are used to organise conferences and lectures, there is little to no active inclusion or representation of scholars from oppressed communities in India.

In many academic institutions, the exclusionary and discriminatory environment created by dominant caste groups has been so oppressive, and the institutional support so absent, that it has tragically pushed some students from marginalised communities to take their own lives.²⁴³

This exclusionary academic structure has led to a scenario described by Gopal Guru as ‘theoretical Brahmins and empirical Shudras’,²⁴⁴ where oppressor-caste scholars construct theories about oppressed caste experiences, without granting the latter the agency to represent or theorise their own realities. This denial of agency, both in expressing oneself and in shaping one’s own scholarship, violates the actual right to free speech and undermines the ethical integrity of academic discourse. The marginalisation of oppressed castes in Indian academia, whether within the country or abroad, reflects a deep-seated resistance to epistemic justice and continues to silence voices that have long been denied their rightful place in knowledge production.²⁴⁵

In addition to academia, the media plays a similarly critical role in reinforcing caste hierarchies by shaping public perceptions and discourse. Freedom of the press and media is part of the larger right to free speech.²⁴⁶ However, mainstream media outlets, controlled largely by oppressor-caste elites and comprising mostly of them, have historically marginalised issues related to caste and presented them in a way that minimises the significance of caste-based oppression.²⁴⁷ News stories that focus on caste violence, discrimination, or atrocities are often underreported or sensationalised in ways that distort the reality of these issues.²⁴⁸ When caste-

²⁴³ N Sukumar, *Caste Discrimination and Exclusion in Indian Universities: A Critical Reflection* (Routledge India 2022).

²⁴⁴ Gopal Guru (n 118).

²⁴⁵ Arjun Shankar, *Brown Savors and Their Others: Race, Caste, Labor, and the Global Politics of Help in India* (Duke University Press 2022) xv-xvi.

²⁴⁶ *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal* (1995) 2 SCC 161.

²⁴⁷ ‘90% of leadership positions in Indian media occupied by upper caste groups: report’ (*The Hindu*, 14 October 2022) <<https://www.thehindu.com/news/national/90-of-leadership-positions-in-indian-media-occupied-by-upper-caste-groups-report/article66010136.ece>> accessed 25 October 2025; Sudipto Mondal, ‘Indian media wants Dalit news but not Dalit reporters: Caste privilege and domination in newsrooms must end.’ (*Al Jazeera*, 2 June 2017) <<https://www.aljazeera.com/opinions/2017/6/2/indian-media-wants-dalit-news-but-not-dalit-reporters>> accessed 26 October 2025.

²⁴⁸ Nandini Maya Krishnan, ‘Caste-ing Gender Violence in The Times of India, 1970-2020’ (MA thesis, University of Chicago 2022) <<https://knowledge.uchicago.edu/record/3699?v=pdf>> accessed 26 October 2025; Prasanna Dasari, ‘Bias, Sensationalism, and Inclusion: Media’s Double-Edged Role in Caste and Gender Issues’ (*SSRN* 2024) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5038699> accessed 26 October 2025; Gowri Niranjana, ‘Problematizing Sexual Assault Against Dalit Women: An Analysis of Media Reports in the Hathras Rape Case’ (PhD thesis, IISER Pune 2022) <<http://dr.iiserpune.ac.in:8080/jspui/handle/123456789/6938>> accessed 26 October 2025

related issues are covered, they are frequently framed as isolated incidents rather than part of a larger systemic problem rooted in centuries of social, political, and economic exclusion.²⁴⁹

The representation of caste in the media is also shaped by deep-seated stereotypes and biases.²⁵⁰ Oppressed-caste individuals and communities are often depicted in ways that perpetuate negative stereotypes.²⁵¹ Acts of atrocities are misreported by media or are dismissed even before the court verdict.²⁵² In many cases, media portrayals of Dalit activism are framed negatively, with Dalit protests or movements being depicted as disruptive.²⁵³ In exercise of their freedom of the press, journalists have ridiculed Dalit²⁵⁴ and OBC politicians²⁵⁵ openly. A television journalist, in his show, made derogatory remarks on an elected Chief Minister from the Scheduled Tribe community.²⁵⁶ Celebrities casually use the term ‘bhangi’.²⁵⁷ This hostile portrayal diminishes the legitimacy of the oppressed community, but also creates an atmosphere where it becomes difficult for them to openly challenge the caste system without facing media backlash or public vilification.

The narratives created by the media are often aligned with the interests of the oppressor-caste elite, ensuring that issues affecting oppressed-caste communities remain on the periphery of

²⁴⁹ Disha Wadekar, ‘Redefining Justice: Legal Scholarship in Critical Caste Studies’ (2024) 5 CASTE: A Global Journal on Social Exclusion 18; Pranjali Kureel, ‘Indian Media and Caste: Of Politics, Portrayals and Beyond’ (2021) 2 CASTE: A Global Journal on Social Exclusion 97.

²⁵⁰ Smita Patil, ‘Violence of Silence: Brahmanic Media Constructions of Caste and Gender’ (2011) 17 Women's Link 15.

²⁵¹ Swadesh Singh, ‘Portrayal of Dalits in the Media’ in Sudha Pai and others (eds), *Dalits in the New Millennium* (Cambridge University Press 2023); V Ratnamala and P Govindaraju, ‘Status of Dalits in Indian News Media’ (2012) 6 Mass Communicator: International Journal of Communication Studies 20.

²⁵² In an alleged incident of a dalit boy being beaten to death by his school teacher, see the headline here: Basu, Mohana, ‘No separate water matka, boy had ear infection — doubts arise over Jalore Dalit’s death’ (*The Print*, 17 August 2022) <<https://theprint.in/india/missing-matka-ear-infection-dalit-familys-allegations-against-jalore-teacher-not-adding-up/1085192/>> accessed 25 October 2025.

²⁵³ Ali Saha and Samanthi Gunawardana, ‘Paradoxical Inclusion of India’s Ex-untouchables in New Casteist Media’ (2022) 44 Media, Culture & Society 863.

²⁵⁴ Sevanti Ninan, *Headlines from the heartland: Reinventing the Hindi public sphere* (Sage 2007) 218-22; Stuti Srivastava and Avinash Bucha, ‘Body, Beauty and other Manifestos - A Critical Analysis of Media Representation of Women in Politics’ in *Indian Politics: Status Quo and the Future Ahead* (Swaranjali Publication, 2020).

²⁵⁵ ‘Senior journalist trolled for remark on Rabri Devi’s tweet’ (*Business Standard*, 3 May 2019) <https://www.business-standard.com/article/pti-stories/senior-journalist-trolled-for-remark-on-rabri-devi-s-tweet-119050301425_1.html> accessed 26 October 2025.

²⁵⁶ ‘Soren in jail like Adivasis in jungle: Complaint against Sudhir Chaudhary for comments against Soren’ (*NewsLaundry*, 2 February 2024) <<https://www.newsLaundry.com/2024/02/02/soren-in-jail-like-adivasis-in-jungle-complaint-against-sudhir-chaudhary-for-comments-against-soren>> accessed 26 October 2025.

²⁵⁷ ‘[Bhangi Remark] No Intention To Insult But Word Used In Derogatory Sense’: P&H HC Grants Partial Relief To Yuvraj Singh’ (*Live Law*, 9 February 2022) <<https://www.livelaw.in/news-updates/bhangi-remark-no-intention-insult-word-derogatory-sense-ph-hc-grants-partial-relief-yuvraj-singh-192298>> accessed 26 October 2025; ‘Taarak Mehta’s Munmun Dutta issues an apology for her ‘bhangi’ comment in recent video’ (*Times of India*, 10 May 2021) <<https://timesofindia.indiatimes.com/tv/news/hindi/taarak-mehtas-munmun-dutta-issues-an-apology-for-her-bhangi-comment-in-recent-video/articleshow/82521866.cms>> accessed 26 October 2025.

national discourse. For this reason, India's press culture has been termed as 'restrictive'.²⁵⁸ In their analysis of how Hindi media covered the murder and rape of a 'lower caste' woman in rural India, Paul and Palmer found how the sociological realities of casteism and patriarchy merged with self-censorship to enable media cover up of the rape case.²⁵⁹ They argue that 'a combination of structural, ideological, and historical conditions has limited the growth of press freedom in India'.²⁶⁰

The lack of representation in media outlets means that the concerns, struggles, and demands of marginalised communities are rarely given the attention they deserve. The dominance of oppressor-caste voices in the media further marginalises the perspectives of Dalits and other marginalised groups. Consequently, Dalit voices remain unheard, their criticisms dismissed, and their activism ignored, reinforcing the epistemic barriers that prevent these communities from fully exercising their right to free speech.

The intersection of caste and media representation becomes even more pronounced in the digital age. While the internet has provided marginalised groups with new platforms to speak out and organise, it has also introduced new challenges. The anonymity of the internet can lead to the amplification of caste-based hate speech, with Dalits and other marginalised groups facing online harassment and abuse for speaking out against caste oppression.²⁶¹ Narayan notes that the 'political assertion of Dalits has resulted in a backlash from the privileged jati groups, which has extended to social media where Dalits have carved a space to talk about their discrimination and for assertion of their rights'.²⁶²

Despite the potential of digital platforms to democratise discourse, the pervasive caste-based prejudice that exists in offline spaces continues to shape online interactions, limiting the full potential of these platforms for marginalised communities.²⁶³ Therefore, the exercise of free

²⁵⁸ Subin Paul and Ruth Palmer, 'The View from the Hinterland: Caste, Gender and Press Freedom in Hindi News Reporting' (2022) 32 *Asian Journal of Communication* 200.

²⁵⁹ *ibid.*

²⁶⁰ *ibid.*

²⁶¹ Nayana Kirasur and Shagun Jhaver, 'Understanding the Prevalence of Caste: A Critical Discourse Analysis of Caste-based Marginalization on X' (2025) <<https://shagunjhaver.com/research/articles/kirasur-2025-caste/kirasur-2025-caste.pdf>> accessed 26 October 2025.

²⁶² Shivangi Narayan, 'You are Un-Welcome: Caste-based hate speech online' in Roderick S Graham and Ors (eds), *The Routledge International Handbook of Online Deviance* (Routledge 2025).

²⁶³ Palashi Vaghela and Ors, 'Caste Capital on Twitter: A Formal Network Analysis of Caste Relations among Indian Politicians' (2022) 6(CSCW1) *Proceedings of the ACM on Human-Computer Interaction* 1.

speech ‘will depend on the design of the technological infrastructure that supports the system of free expression and secures widespread democratic participation’.²⁶⁴

To overcome these epistemic barriers, it is essential to create spaces within academia and the media where the voices of marginalised castes are included. It also involves creating opportunities for marginalised scholars to participate in the intellectual discourse on caste and social justice. In the media, it is crucial to give more visibility to Dalit voices, issues and perspectives, ensuring that caste-based violence and discrimination are accurately and comprehensively reported. Acknowledging the role of caste in shaping both academic knowledge and media narratives is the first step in dismantling the epistemic barriers that continue to stifle free speech for marginalised communities.²⁶⁵

The epistemic barriers that persist in academia and the media are central to understanding why caste-based oppression continues to be reinforced, and why the voices of marginalised communities remain excluded. These institutions do not merely reflect public opinion. They shape it. To fulfil the constitutional promise of free speech for all, India must confront and dismantle these epistemic inequalities.

V. CONCLUSION

This article highlights the limitations of the existing free speech framework in adequately recognising the concerns of marginalised communities. By focusing on caste, this article has developed a framework that demonstrates how free speech is not a binary interaction between the State and the citizen, but rather a socially embedded phenomenon shaped by deeply entrenched power hierarchies. What appears as a universal right in formal legal terms often functions unequally in practice, depending on the speaker's caste, class, gender, religion, or sexuality. In this sense, free speech must be understood not simply as a matter of constitutional text, but as one mediated by institutional norms, public discourse, and social prejudice.

The framework offered here, developed through an analysis of caste, can be extended to understand the expressive exclusions faced by other marginalised groups such as women, religious minorities, sexual minorities, and persons with disabilities.²⁶⁶ In each of these

²⁶⁴ Jack M Balkin, ‘Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society’ in *Law and Society Approaches to Cyberspace* (Routledge 2017) 325 (originally published as (2004) 79 *New York University Law Review* 1).

²⁶⁵ Charles Stangor and Ors, ‘Ask, Answer, and Announce: Three Stages in Perceiving and Responding to Discrimination’ (2003) 14 *European Review of Social Psychology* 277.

²⁶⁶ Exaggerated and fake narratives such as Corona jihad or a rise in crime by women as the new norm have been propagated by the media.

contexts, what is said, who says it, and how it is received, are governed by unequal access to platforms, legitimacy, and protection. This reveals that freedom of expression is not merely an individual liberty, but a site of contestation shaped by systemic inequalities.

The Indian judiciary has, in certain decisions, articulated an expansive vision of free speech. For instance, it has held that ‘the creative freedom of the filmmaker’ under Article 19(1)(a) ‘could not include the freedom to lampoon, stereotype, misrepresent or disparage those already marginalised’.²⁶⁷ Privacy, as an aspect of free speech and expression, ‘recognises the ability of the individual to control vital aspects of his or her life’.²⁶⁸ Importantly, it has also been held that, ‘[n]otions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not co-extensive’.²⁶⁹

Yet these progressive articulations stand in tension with judicial pronouncements that reinforce majoritarian sentiment or caste-based hierarchies. Critiques of *Manusmriti* have been construed as hurting religious sentiments, leading to criminal prosecution under Sections 295A and 153A IPC.²⁷⁰ In another context, the Supreme Court had dismissed the rights of sexual minorities as belonging to a ‘minuscule minority’.²⁷¹ Similarly, Scheduled Tribes have been described in degrading terms, including as a ‘human zoo’ or as living ‘primitive culture’.²⁷² At the same time, the Court continues to dilute the effect of the anti-atrocities law on caste.²⁷³

Such contradictions illustrate the selective deployment of constitutional protections: while certain forms of speech, often emanating from dominant caste or class locations, are granted full legal protection, dissent from the margins is either silenced, criminalised, or delegitimised. The judiciary must recognise that the right to free speech cannot be divorced from questions of power, status, and access.²⁷⁴

²⁶⁷ *Nipun Malhotra v. Sony Pictures Films India Private Limited* 2024 INSC 465.

²⁶⁸ *Justice KS Puttaswamy v. Union of India* (2019) 1 SCC 1.

²⁶⁹ *S. Khushboo v. Kanniammal* AIR 2010 SC 3196.

²⁷⁰ ‘Manusmriti Row: VCK Leader Thirumavalavan Booked for Comment’ (*The News Minute*, 24 October 2020) <<https://www.thenewsminute.com/tamil-nadu/manusmriti-row-vck-leader-thirumavalavan-booked-comment-136039>> accessed 26 October 2025.

²⁷¹ *Suresh Kumar Koushal v. Naz Foundation* AIR 2014 SC 563. This judgment was overturned by a constitution bench in *Navtej Johar v. Union of India*, AIR 2018 SC 4321.

²⁷² *Chebrolu Leela Prasad v. State of Andhra Pradesh* (2021) 11 SCC 401.

²⁷³ *Subhash Kashinath Mahajan v. State of Maharashtra* (2018) 6 SCC 454.

²⁷⁴ In this regard, Manoharan argues, ‘In hierarchical societies, reformers challenge the status quo with provocative and uncivil speech. Accusing them of hate speech is ill-intentioned’. See, Karthick Ram Manoharan, ‘Did Periyar Call for a Genocide of Brahmins?’ (*Frontline*, 29 March 2024) <<https://frontline.thehindu.com/politics/periyar-genocide-brahmins-tm-krishna-sangita-kalanidhi-music-academy-madras-carnatic/article67997754.ece>> accessed 26 October 2025.

To fulfil the constitutional promise of equality, dignity, and fraternity, Indian free speech jurisprudence must adopt a substantive equality approach.²⁷⁵ This requires the law to actively dismantle the structural, discursive, and institutional barriers that inhibit the voices of the marginalised. As Dawood notes, ‘democracies should seek to incorporate both the libertarian and the egalitarian approaches within constitutional law’.²⁷⁶ Only then can free speech become an inclusive constitutional value, rather than a privilege of the powerful.

I therefore argue that the commonly accepted exceptions to free speech, such as public order, decency, morality, defamation, and incitement, must not be treated as abstract or neutral categories. In practice, these concepts serve as socially mediated determinants that define the actual scope of free speech. Prevailing power structures shape their interpretation and enforcement, and they often reflect the sensitivities and norms of dominant social groups. Terms like ‘public order’ and ‘morality’ are not fixed legal standards but contested and historically contingent constructs, frequently invoked to suppress dissent from marginalised communities. Courts must therefore interpret these ‘restrictions’ with conscious awareness of social hierarchies, particularly caste, and ensure that they are not weaponised to silence the very voices that constitutional protections are meant to uplift.

Without addressing the social context and structural asymmetries that shape the conditions of expression, Indian constitutional law remains ill-equipped to confront the full scope and harm of casteist speech. To make freedom of expression substantively inclusive and democratically relevant, it is essential to interrogate how caste hierarchies determine whose voices are amplified, whose are ignored, and whose are criminalised. The legal system must move beyond formal guarantees and recognise the structural barriers that undermine equal access to the constitutional promise of free speech.

²⁷⁵ Sandra Fredman, ‘Substantive Equality Revisited’ (2016) 14 International Journal of Constitutional Law 712.

²⁷⁶ Yasmin Dawood, ‘Democracy and the Freedom of Speech: Rethinking the Conflict between Liberty and Equality’ (2013) 26 Canadian Journal of Law & Jurisprudence 293.