

6. Karnataka Hate Speech and Hate Crimes (Prevention) Bill, 2025- Polity

The Karnataka Hate Speech and Hate Crimes (Prevention) Bill, 2025, is India's first state-level law to specifically address hate speech

Background and Context

India has witnessed a sharp rise in identity-based hostility, both online and offline, manifesting in

1. Communal tensions.
2. Targeted online hate campaigns.
3. Localised violence, especially in sensitive regions such as coastal Karnataka.

Existing criminal provisions under the Bharatiya Nyaya Sanhita (BNS) largely treat hate speech as a public order problem, not as a distinct rights-based harm. Low conviction rates (below 21%) under older IPC sections (153A/295A, now BNS) highlight systemic enforcement failure, not merely legal gaps. In this context, Karnataka has attempted to enact a stand-alone, victim-centric hate speech and hate crime law, marking a significant sub-national legislative intervention.

Key Provisions of the Bill

Expansive Definition of Hate Speech and Hate Crime- The Bill defines hate speech and hate crime on a wide set of identity markers, including

1. Religion, race, caste, tribe, language.
2. Sex, gender, sexual orientation.
3. Place of birth, residence, disability.

This reflects a modern, intersectional understanding of vulnerability, closer to UN human rights discourse than traditional Indian criminal law.

Issue- Use of vague terms such as *"ill-will," "psychological harm,"* and *"disharmony"* lacks objective thresholds. This creates legal uncertainty, violating

1. Article 14 (non-arbitrariness).
2. Article 19(1)(a) (free speech).
3. Article 21 (due process).

Distinction Between Hate Speech and Hate Crime

Hate Speech- Any public expression (spoken, written, electronic, visual) intended to cause hatred or enmity.

Hate Crime- Either Communication or circulation of hate speech, or Any act promoting or attempting to promote such speech.

Critical Flaw- The Bill collapses the distinction between

1. Expression-based harm (speech).
2. Conduct-based harm (violence or physical acts).

Constitutionally, speech can only be restricted if it incites imminent violence, not merely because it is offensive.

Drastic Penal Architecture- Offences are

1. Cognisable (arrest without warrant).
2. Non-bailable.

Punishment

1. Minimum 1 year imprisonment.
2. Up to 10 years for repeat offences.
3. Fine up to ₹1 lakh.

Constitutional Concern- Violates the doctrine of proportionality, reaffirmed in *Kaushal Kishor v. State of Uttar Pradesh*. Criminalising speech with long, non-bailable sentences treats words on par with violent crimes.

Victim Compensation Framework

Introduces mandatory victim compensation, calculated on

1. Severity of harm.
2. Impact on dignity, livelihood, and psychological well-being.

Merit- Aligns with restorative justice principles. Recognises hate speech as a rights violation, not just law-and-order disruption.

Limitation- Compensation can already be implemented through state victim compensation schemes without creating a new criminal offence category.

Digital Content Takedown Powers

DSPs and Executive Magistrates can Directly order removal/blocking of content from digital platforms.

Serious Risk- Bypasses

1. Judicial oversight.
2. IT Act Section 69A safeguards.
3. Information Technology Rules, 2021.

Directly contradicts safeguards emphasised in *Shreya Singhal v. Union of India* and *Amish Devgan v. Union of India*.

Organisational and Collective Liability- Leaders or persons in control of organisations can be held liable for Speech or actions of members.

Constitutional Impact- Threatens Article 19(1)(b) (freedom of association). Creates strict liability without mens rea, which is alien to criminal jurisprudence.

Exemptions Clause

Exempts

1. Art, science, literature.
2. Academic works.
3. Bona fide religious or heritage expressions.

Practical Problem- In a system where offences are cognisable and non-bailable

1. Arrest precedes interpretation.
2. The process itself becomes the punishment.

Thus, exemptions offer illusory protection.

Merits of the Bill

Addressing Enforcement Gaps- Attempts to move beyond vague BNS provisions that

1. Focus on public order.
2. Ignore victim-centric harm.

Victim-Centric Orientation- Introduces

1. Compensation.
2. Dedicated investigation framework.

Reflects global best practices on bias-motivated harm.

Response to Ground Reality- Coastal Karnataka incidents and online hate campaigns demanded visible state action.

Major Constitutional and Governance Concerns

Overbreadth and Vagueness- Violates the void-for-vagueness doctrine. Directly conflicts with principles laid down in *Pravasi Bhalai Sangathan v. Union of India* and *Shreya Singhal v. Union of India*

Absence of "Imminent Violence" Threshold- Supreme Court jurisprudence requires Clear nexus between speech and imminent public disorder. Bill criminalises speech even without likelihood of violence, which is unconstitutional.

Chilling Effect on Free Speech- Fear of arrest discourages

1. Satire.
2. Political dissent.

3. Academic debate.

Mirrors misuse patterns seen under-

1. Sedition law.
2. UAPA.

Federalism and Legislative Overlap- Criminal law is a Concurrent List subject. The Bill risks-

1. Conflict with BNS.
2. Inconsistency with central IT framework.

Encourages regulatory fragmentation across states.

Hate Speech and Hate Crime – Conceptual Clarity

Hate Speech- Expression criminalised only when it incites violence or discrimination. Protected speech may be offensive but not unlawful.

Hate Crime- Always involves A base criminal offence (assault, murder, vandalism). Bias motive as an aggravating factor. BNS Section 103(2) already recognises this principle.

International Best Practices

UN Framework

Rabat Plan of Action (2012)- Six-part test- Context, intent, content, extent, likelihood, harm.

UN Strategy on Hate Speech (2019)- Emphasises education and counter-speech over criminalisation.

European Models

EU Digital Services Act- Platform accountability with transparency and user remedies.

Germany's NetzDG- Platform responsibility, not police-driven censorship.

Way Forward (Constitutionally Sound Approach)

Legislative Refinement- Refer Bill to a Select Committee. Adopt Law Commission (267th Report) definition focusing on incitement.

Mandatory Judicial Oversight- All arrests and takedown orders must require

1. Prior judicial approval.
2. Time-bound review.

Decriminalisation of Minor Speech Offences- Use

1. Civil penalties.
2. Apologies.
3. Mandatory counselling.

Reserve imprisonment for violent incitement and organised hate.

Strengthening Existing Framework- Improve

1. Police training.
2. Suo motu FIR registration.
3. Fast-track courts.

Enhance victim compensation under existing schemes.

Promote Counter-Speech and Media Literacy- Democratic societies defeat hate not by silencing speech, but by out-arguing it.

Other States Replicate This Model- No, not in its present form The Karnataka Bill

1. Adds legal risk.
2. Does not fix enforcement failure.
3. Threatens constitutional freedoms.

Other states should

1. Strengthen implementation of BNS and IT laws.
2. Focus on police reform, judicial efficiency, and education.

Conclusion

The Karnataka Hate Speech and Hate Crimes (Prevention) Bill, 2025 reflects noble intent but

flawed execution. By prioritising executive power over constitutional safeguards, it risks converting the fight against hate into a tool of censorship. A sustainable solution lies not in draconian criminalisation, but in precise laws, judicial oversight, strong enforcement, and robust counter-speech, ensuring that human dignity is protected without sacrificing democratic freedoms.

