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Gendered Hate Speech by Public Officials: Constitutional Morality, Dignitary Harm, and the Limits of Article 19(1)(a)

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This article examines a question that sits at the intersection of free speech law, constitutional morality, and the state's obligations toward women: whether elected public officials can invoke Article 19(1)(a) of the Constitution to shield statements that trivialise sexual violence. Drawing on four documented cases involving Mulayam Singh Yadav, Abu Azmi, K.R. Ramesh Kumar, and G. Parameshwara, the article argues that such statements fall outside constitutional protection under the doctrine of constitutional morality as articulated in Navtej Singh Johar v Union of India and Aparna Bhat v State of Madhya Pradesh. Integrating Jeremy Waldron's account of dignitary harm with Mari Matsuda's theory of authority speech, the article contends that when a person holding state power trivialises rape, they are not exercising a fundamental right but abusing it, deploying constitutional authority against the very citizens they are sworn to protect. The systematic failure to prosecute such statements is not a coincidence. It reflects an enforcement gap that is structural in nature and traceable to the absence of a doctrinal framework treating this harm as legally cognisable. Comparative analysis of South African, European, and American jurisprudence reinforces the argument and offers lessons for Indian law reform. The article concludes with targeted recommendations for judicial articulation, legislative codification, and institutional accountability.

Keywords: *constitutional morality, hate speech, sexual violence, public officials.*

INTRODUCTION

There is something that strikes as deeply troubling about the legal treatment of political speech on sexual violence in India, not just as a matter of policy, but as a constitutional one. The Supreme Court has said that, in no uncertain terms, the Constitution is built on a 'constitutional vision of morality' that is distinct from, and superior to, the shifting currents of popular opinion.¹ It has been said that this vision constrains all constitutional actors, not just Parliament. It has been argued that trivialising sexual violence in a judicial setting is antithetical to this morality and violates Articles 14, 15, and 21.² And yet, when elected officials, people who have sworn an oath to uphold the very Constitution from which this morality is derived, make statements that normalise and minimise rape, the legal system consistently looks away.

The facts are not in dispute. In 2014, a sitting Member of Parliament publicly questioned the death penalty for rape on the basis that gang rape was 'practically impossible,' and suggested women routinely file false complaints out of personal vengeance.³ In December 2021, a former Speaker of a state legislative assembly told the House that when 'rape is inevitable, lie down and enjoy it.'⁴ In April 2025, Karnataka's Home Minister responded to a documented sexual assault by saying such things 'take place here and there' in big cities.⁵ In each of these cases, the response from the legal system was the same: public outrage, an apology of varying degrees of sincerity, and no legal consequence. Not one conviction. In three of the four cases examined in this article, not even an FIR.

This article is to explain why that is, and why it should not be. The central argument is that statements by public officials trivialising sexual violence are not protected under Article 19(1)(a). The doctrine of constitutional morality, properly applied, withdraws that protection. The existing statutory provisions under the Indian Penal Code are capable of covering such statements. The enforcement gap is not a gap in the law. It is a failure to apply the law that

¹ Constitution of India 1950, art 19(1)(a)

² *Navtej Singh Johar and Ors v Union of India* Thr Secretary, Ministry of Law and Justice (2018) 10 SCC 1 [75]

³ *Aparna Bhat v The State of Madhya Pradesh* AIR 2021 SC 1492 [44]–[52]

⁴ Mohd Faisal Fareed, 'Mulayam's shocker: Boys will be boys, they make mistakes... Will you hang them for rape?' *The Indian Express* (11 April 2014) <<https://indianexpress.com/article/political-pulse/mulayam-singh-yadav-questions-death-penalty-for-rape-says-boys-make-mistakes/>> accessed 24 May 2026

⁵ Imran Qureshi, 'Karnataka: India lawmaker sorry for 'lie down and enjoy rape' remark' *BBC* (17 December 2021) <<https://www.bbc.com/news/world-asia-india-59694671>> accessed 25 May 2026

already exists, caused largely by the absence of a doctrinal framework that treats official speech normalising sexual violence as the serious constitutional harm that it is.

This article is concerned specifically with speech by persons holding elected or appointed state office. The argument does not extend to all political speech on sexual violence, and it does not engage the wider debate about hate speech regulation in India, though it is hoped the analysis will contribute to that debate. The particular constitutional position of public officials is, I argue, what makes their speech here a distinct legal problem: they are not merely citizens exercising a right, but constitutional custodians exercising state power.

THE CASES: DOCUMENTED STATEMENTS AND LEGAL OUTCOMES

Before turning to doctrine, it is worth establishing the factual record with some care. One of the problems in discussions of political speech is that statements tend to get paraphrased into abstraction. What was actually said matters, both for legal analysis and because the gap between what was said and what happened legally is itself part of the argument being made.

Mulayam Singh Yadav: Between April 2014 and August 2015, the then-Member of Parliament and former Chief Minister of Uttar Pradesh made a series of statements questioning both the severity of rape as a crime and the credibility of women who report it. In April 2014, he argued in a campaign speech against the death penalty for rape because 'boys make mistakes.' In August 2015, he went further: gang rape by four or five men was, in his words, 'practically not possible,' because only one person commits the physical act, while the others are named to 'settle scores.'⁶

The constitutional implications of this statement warrant closer examination. Yadav was not making a legal argument about the admissibility of evidence or the appropriate standard of proof; he was asserting, as a factual matter, that a commonly documented form of sexual violence essentially does not occur in the way the law recognises. This directly contradicts Section 376D IPC, which defines gang rape with reference to common intention, and which reflects considerable legal and forensic experience with how the crime operates in practice. FIR was eventually registered in Mahoba, Uttar Pradesh. Summonses were issued by the

⁶ "Was misunderstood": Karnataka Home Minister G Parameshwara apologises after massive row over sexual assault remarks' *Hindustan Times* (08 April 2025) <<https://www.hindustantimes.com/cities/bengaluru-news/bengaluru-sexual-assault-case-was-misunderstood-karnataka-home-minister-g-parameshwara-apologises-after-massive-row-101744090664734.html>> accessed 25 May 2026

Judicial Magistrate.⁷ Proceedings were subsequently stayed. No conviction has resulted. For a former Chief Minister of India's most populous state to face this level of legal consequence for these statements is, to put it plainly, insufficient.

Abu Azmi: In April 2014, Azmi, then Maharashtra State President of the Samajwadi Party, stated that any woman who 'goes along with a man, with or without her consent, should be hanged. Both should be hanged. He subsequently claimed to have been misquoted, a claim contradicted by reporting across multiple independent news organisations.⁸ The National Commission for Women issued show-cause notices. No FIR was registered. No criminal proceedings were initiated. The matter was treated as resolved. The significance of Azmi's statement extends beyond its offensiveness, not merely in its offensiveness but in its legal implications. He was, in effect, arguing that non-consensual sexual activity creates criminal liability in the victim, a position that is the precise opposite of what the law provides. That this statement attracted show-cause notices but no FIR reflects precisely the enforcement pattern this article is concerned with.

K.R. Ramesh Kumar: Ramesh Kumar's case is the most instructive in the dataset because it demonstrates, empirically, that apology-based responses do not work. In 2019, while serving as Speaker of the Karnataka Legislative Assembly, he compared his own political situation to that of a rape victim. He apologised when the comment attracted criticism. Two years later, in December 2021, while a sitting MLA, he told the same assembly: 'There is a saying, when rape is inevitable, lie down and enjoy it. That's exactly the position you're in. The statement was made in the Legislative Assembly itself. The Speaker did not intervene. Ramesh Kumar subsequently described it as an 'off-the-cuff remark' and issued another apology.⁹ What is significant here is not just the content of the statement, though that content is indefensible, but the recurrence. He had already apologised for substantially similar conduct in 2019. The 2021 incident is direct evidence that an apology in 2019 had no deterrent effect. No FIR was registered. No disciplinary proceedings were initiated by the House.

⁷ Indian Penal Code 1860, ss 376D, 153A and 505

⁸ Varun Singh, 'SHOCKING! Women having sex should be hanged, says Abu Azmi' *NDTV* (11 April 2014) <<https://www.ndtv.com/india-news/shocking-women-having-sex-should-be-hanged-says-abu-azmi-556973>> accessed 25 May 2026

⁹ 'When rape is inevitable, lie down and enjoy,' says Karnataka Congress MLA in Assembly; Speaker laughs it off' *The Financial Express* (17 December 2021) <<https://www.financialexpress.com/india-news/when-rape-is-inevitable-lie-down-and-enjoy-says-karnataka-congress-mla-in-assembly-speaker-laughs-it-off/2382058/>> accessed 25 May 2026

G. Parameshwara: In April 2025, a video went viral showing two women being sexually molested in a public area in BTM Layout, Bengaluru. The response from the state's Home Minister, G. Parameshwara, was to tell the public: 'In a big city like Bengaluru, incidents like this take place here and there.'

The constitutional significance of this statement is compounded considerably by who made it and in what capacity. Parameshwara was not speaking as a private citizen or even as an ordinary MLA. He was responding, as Home Minister of Karnataka, to a specific documented incident of public sexual assault. The Home Minister is directly and statutorily responsible for the state's law enforcement apparatus. His statement was an official communication about policing, and what it communicated, officially, was that this kind of thing is normal and unremarkable. He had separately been criticised for naming rape survivors in official communications, in violation of the anonymity protections under Section 228A IPC. The NCW called for a formal apology.¹⁰ Parameshwara claimed his words had been 'misunderstood and distorted.' No FIR was registered.

Institutional Pattern of Non-Enforcement: Taken together, these four cases span eleven years, three states, four different offices, and two political parties. What they share is a structure: a statement trivialising sexual violence is made in a public or official context; criticism follows; an apology of varying sincerity is offered; the legal system does not act. One FIR stayed, no conviction. Three cases with no FIR at all. This is not a series of isolated failures. It is a pattern, and patterns call for explanation.

THE CONSTITUTIONAL AND STATUTORY FRAMEWORK

Articles 19(1)(a) and 19(2): Article 19(1)(a) guarantees all citizens the right to freedom of speech and expression.¹¹ There is nothing in the text or the case law that excludes elected politicians from this right, and nor should there be; political speech is precisely the kind of speech that the guarantee was designed to protect. The Supreme Court in *Shreya Singhal v Union of India*¹² treated this right as foundational to democratic participation and to the free

¹⁰ Indian Penal Code 1860, s 228A

¹¹ 'NCW chief wants Parameshwara to quit over molestation remark' *Deccan Herald* (03 January 2017) <<https://www.deccanherald.com/content/589584/ncw-chief-wants-parameshwara-quit.html>> accessed 25 May 2026

¹² Constitution of India 1950, art 19(1)(a)

circulation of ideas. The starting point, then, is that the statements in question are presumptively protected.

But Article 19(2) immediately qualifies this. It permits the State to impose reasonable restrictions on Article 19(1)(a) on grounds that include 'public order, decency or morality' and 'incitement to an offence'.¹³ In *Chintaman Rao v State of Madhya Pradesh*,¹⁴ the Court held that such restrictions must be proportionate, not arbitrary, and must not extinguish the right entirely. In *Shreya Singhal*,¹⁵ it struck down Section 66A of the Information Technology Act as overbroad and insufficiently connected to the harms it purported to address. These cases set the framework: restrictions are permissible, but they must be justified with precision.

Statements that trivialise sexual violence are capable of falling within Article 19(2) on at least three grounds. They undermine 'morality' in the constitutional sense by normalising conduct that the state has declared a serious crime. They threaten 'public order' by eroding public confidence in law enforcement, particularly victim confidence in reporting. And they may constitute 'incitement to an offence' by signalling social acceptability of the conduct that is criminalised. The argument is not that any offensive speech can be restricted under these headings. It is that this specific category of speech, made by persons in this specific constitutional position, falls within them.

The Statutory Framework: Three IPC provisions are directly relevant. Section 153A prohibits promotion of enmity between groups on grounds including sex.¹⁶ Section 505 criminalises statements likely to cause public mischief, including statements that undermine public confidence in state institutions.¹⁷ Section 509 targets words, gestures, or acts intended to insult the modesty of women.¹⁸

The important point is that the gap here is not a gap in the statutory text. These provisions, on their face, are capable of covering the statements documented in Part II. What has been absent is the prosecutorial and institutional will to apply them. The Supreme Court

¹³ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [79]–[83]

¹⁴ Constitution of India 1950, art 19(2)

¹⁵ *Chintaman Rao v The State of Madhya Pradesh* AIR 1951 SC 118

¹⁶ *Shreya Singhal v Union of India* (2015) 5 SCC 1 [110]–[118]

¹⁷ Indian Penal Code 1860, s 153A

¹⁸ *Ibid* s 505

recognised in *Pravasi Bhalai Sangathan v Union of India*¹⁹ that the absence of prosecution under available provisions can itself be a legal problem when it reflects discriminatory non-enforcement. That observation applies with direct force here.

Constitutional Morality: The doctrine of constitutional morality is the most significant recent development in Indian free speech jurisprudence for present purposes. The doctrine holds that fundamental rights must be exercised consistently with the Constitution's own commitments to dignity, equality, and autonomy, rather than merely with whatever social morality prevails at a given time.

In *Navtej Singh Johar v Union of India*,²⁰ Chief Justice Deepak Misra drew a clear distinction between social morality and constitutional morality. Social morality, he observed, is contingent; it reflects popular attitudes, which can be wrong and have historically often been so. Constitutional morality is something else: it is a standard that the Constitution itself generates, derived from its foundational commitments to human dignity and equal treatment. His formulation was that constitutional morality is not the morality of the Constitution in the sense of being derived from a moral consensus outside the text, but rather 'a constitutional vision of morality', a standard internal to the document itself.²¹

In *Aparna Bhat v State of Madhya Pradesh*,²² The Court gave this doctrine direct application to sexual violence. It held that directions by judges to rape survivors to compromise with their attackers are 'antithetical to constitutional morality' and violate the dignity guarantees of Articles 14, 15, and 21.²³ What matters for present purposes is the Court's reasoning, not just its conclusion. The Court did not confine itself to saying the specific directions were wrong. It articulated a general principle: the constitutional commitment to women's dignity creates an affirmative obligation on all constitutional actors to refrain from conduct that structurally degrades that dignity. Judges are constitutional actors. So are elected officials.

This is the doctrinal foundation of the argument that follows. If constitutional morality is a positive standard governing the conduct of constitutional actors, and if statements trivialising sexual violence violate that standard, then the protection of Article 19(1)(a) does

¹⁹ *Ibid* s 509

²⁰ *Pravasi Bhalai Sangathan v Union of India and Ors* AIR 2014 SC 1591

²¹ *Navtej Singh Johar and Ors v Union of India* *Thr Secretary, Ministry of Law and Justice* (2018) 10 SCC 1

²² *Ibid* [75]

²³ *Aparna Bhat v State of Madhya Pradesh* AIR 2021 SC 1492

not extend to such statements when they are made by persons occupying constitutional office.

THE THEORETICAL CASE: WALDRON, MATSUDA, AND CONSTITUTIONAL DIGNITY

Waldron: Dignitary Harm and the Limits of Counter-Speech: The most obvious objection to restricting political speech on sexual violence is the one that defenders of broad free speech protections always make: the remedy for bad speech is more speech, not prosecution. Yadav's claim that gang rape is 'practically impossible' is wrong, but the answer is to say so publicly, not to criminalise it. I take this objection seriously, and I want to explain why I think it misidentifies the kind of harm at stake.

Jeremy Waldron's account in *The Harm in Hate Speech*²⁴ draws a distinction that is central to the argument. Waldron argues that the primary harm of hate speech is not the psychological distress it causes to individual listeners; if it were, the 'more speech' remedy might be adequate. The real harm, he argues, is the degradation of the social standing of the targeted group: their assurance, as members of society, that they are regarded as full and equal citizens. He calls this 'dignitary harm,' and he locates it at the level of the social environment rather than the individual encounter.

The implications for the cases under examination are significant. India has serious and ongoing problems with sexual violence and with the underreporting of it.²⁵ Women in India navigate a social environment shaped by these realities. When a Home Minister responds to a documented sexual assault by saying such things 'take place here and there,' the harm is not simply that women who hear the statement feel bad. The harm is that the statement contributes to an environment in which sexual violence is normal, in which victims should not expect the state to take their complaints seriously, and in which women's safety is not a priority for the people responsible for it. That environmental harm is structural and cumulative. It cannot be adequately addressed by counter-speech, because the people speaking are the state.

²⁴ *Ibid* [44]–[52]

²⁵ Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press 2014)

This analysis connects directly to Article 21. Since *Francis Coralie Mullin v Union Territory of Delhi*,²⁶ the Supreme Court has consistently held that the right to life encompasses the right to live with basic human dignity, not merely the right to physical existence. Statements that systematically degrade women's standing as members of society threaten this right. And when those statements come from the people constitutionally responsible for protecting it, they create a direct conflict with the state's own obligations.

Matsuda: The Significance of Official Authority in Speech: Waldron's framework tells us what kind of harm is being caused. Mari Matsuda's work tells us why the source of the speech matters to the analysis.

In her foundational essay, 'Public Response to Racist Speech: Considering the Victim's Story',²⁷ Matsuda argues that speech causes heightened harm when it is delivered from a position of social authority. The reason is not simply that authority figures have larger platforms, though that is part of it. It is that speech from a position of authority carries an implicit endorsement of the structural power that underlies the targeted group's vulnerability. When a private individual trivialises rape, it is one person's expression. When a Chief Minister or Home Minister does so, the statement is received, consciously or not, as a signal about what the state believes, about whether the state considers women's safety its responsibility.

The Parameshwara case makes this most visible. He was not speaking in a private or social capacity. He was responding, as Home Minister, to a specific documented public assault. His statement was an official response, and what it communicated officially was that this kind of thing happens in cities, it is not remarkable, and presumably it is not a priority. For the women involved, and for women in Bengaluru more broadly, this official signal is not merely offensive. It is a communication from the person responsible for their protection that their protection is not being taken seriously.

Indian constitutional law does not yet have an explicit doctrine of 'authority speech', speech that is treated differently because of the constitutional position of its source. But the logic is already present in the framework. Article 60 requires elected officials to take an oath to

²⁶ Ministry of Home Affairs, *Crime in India 2022* (NCRB, 2023) ch 5

²⁷ *Francis Coralie Mullin v The Administrator, Union Territory of Delhi and Ors* (1981) 1 SCC 608 [8]

uphold and defend the Constitution.²⁸ Aparna Bhat established that constitutional morality applies to the conduct of all constitutional actors.²⁹ Putting these together, the doctrinal tools for such a doctrine exist. They have not yet been applied to this specific context.

The Doctrinal Argument: The central doctrinal argument of this article can be put in three steps, each of which has direct support in existing Indian jurisprudence.

First, constitutional morality, as articulated in *Navtej Singh Johar*, requires that fundamental rights be exercised consistently with the Constitution's own commitments to dignity, equality, and non-discrimination.³⁰ A right exercised in a manner that structurally degrades the constitutional standing of an identifiable group cannot claim the Constitution's protection.

Second, even if such statements were treated as *prima facie* protected under Article 19(1)(a), Article 19(2) provides constitutionally available grounds for restriction based on 'morality,' 'public order,' and 'incitement to an offence.'³¹ These grounds have not been exhaustively defined, and there is no principled basis for reading them in a way that excludes official statements normalising a serious crime.

Third, public officials are not simply citizens who happen to hold office. They are constitutional custodians who have sworn to uphold the Constitution, and their speech acts carry the institutional authority of the offices they hold. Constitutional morality, already applied by the Court to judicial officers in *Aparna Bhat*, applies to executive and legislative officers with at least equal force.

THE ENFORCEMENT GAP: DOCTRINAL AND INSTITUTIONAL CAUSES

The Enforcement Record: The enforcement record across the four cases has already been described: one FIR, stayed, no conviction; three cases with no FIR at all. In each instance, the operative response was to accept an apology and treat the matter as resolved. This consistency across different states, different years, and different parties is not accidental. It

²⁸ Mari J Matsuda, 'Public Response to Racist Speech: Considering the Victim's Story' (1989) 87(8) Michigan Law Review 2320 <<https://repository.law.umich.edu/mlr/vol87/iss8/8/>> accessed 25 May 2026

²⁹ *Aparna Bhat v State of Madhya Pradesh* AIR 2021 SC 1492

³⁰ *Navtej Singh Johar and Ors v Union of India* Thr Secretary, Ministry of Law and Justice (2018) 10 SCC 1

³¹ Constitution of India 1950, art 19(2)

reflects a settled institutional assumption that political speech on sexual violence, however offensive, is not something the law deals with.

Limitations of Apology as a Mechanism of Legal Accountability: The acceptance of apology as a sufficient response deserves examination as a matter of principle, not just policy. An apology is a moral acknowledgement of a moral wrong. In the right context, apologies matter. But an apology is not legal accountability; it does not restore the harm caused to the community to which the statement was directed, and it does not constitute a deterrent in the legal sense.

Ramesh Kumar's case demonstrates this empirically. He apologised in 2019. He made a substantially identical statement in 2021. Whatever the 2019 apology was supposed to achieve, it did not prevent recurrence. The Court in Aparna Bhat recognised this logic in the judicial context, holding that unconstitutional conduct by judges in sexual violence cases cannot be excused by subsequent correction. The same reasoning should apply to executive and legislative officers. Accountability that does not deter recurrence is not functioning as accountability at all.

Structural Causes of Non-Enforcement: Why does this pattern persist? Part of the answer is political. But there is a specifically legal cause worth identifying: the absence of a doctrinal framework that compels institutional actors to treat official speech trivialising sexual violence as a legally cognisable constitutional harm.

Gautam Bhatia, in *Offend, Shock or Disturb*,³² argues that the Indian free speech framework has historically lacked a coherent account of what constitutional harm would justify consistent enforcement. This creates a system that is simultaneously over-inclusive in some respects and under-inclusive in others. The enforcement gap documented here is the under-inclusive side: harm that is demonstrable is not being treated as legally cognisable because there is no established doctrinal framework that requires it to be.

The connection to victim reporting matters here. NCRB data consistently documents persistently low conviction rates for sexual violence alongside patterns of significant underreporting. Research on victim behaviour finds that confidence in state institutions

³² Gautam Bhatia, *Offend, Shock or Disturb: Free Speech Under the Indian Constitution* (OUP 2016)

significantly determines whether survivors report sexual violence at all. Official statements trivialising rape operate directly on this variable. They communicate to potential victims that the state does not take their complaints seriously. The harm is not just symbolic; it has measurable consequences for the effectiveness of the law enforcement system that is supposed to address sexual violence.

COMPARATIVE PERSPECTIVES

Looking at how other constitutional systems have handled this question is useful, though the argument of this article is that the Indian Constitution already provides the doctrinal resources needed. The comparative analysis is meant to demonstrate that the approach being proposed is neither radical nor unprecedented.

South Africa: Constitutional Exclusion: South Africa's Constitution is the closest comparator. Section 16(1) protects freedom of expression, while Section 16(2) explicitly excludes from that protection 'advocacy of hatred based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.' The Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (PEPUDA) gives this exclusion statutory form, establishing both civil and criminal liability for hate speech.³³

In *Qwelane v South African Human Rights Commission*,³⁴ decided by the Constitutional Court in 2021, the Court upheld PEPUDA's hate speech provisions while noting that public figures bear heightened responsibility because of the amplifying effect of their social authority, a point that maps directly onto Matsuda's framework.

Two lessons are worth drawing. First, constitutional protection for free expression is fully compatible with the exclusion of speech that structurally degrades groups defined by gender. Second, the judicial work required does not need a constitutional amendment; it needs doctrinal development. India's Article 19(2) already contains the relevant grounds.

European Convention on Human Rights: The European Court of Human Rights has consistently held that Article 10's protection for free expression does not extend to hate speech. In *Vejdeland and Others v Sweden*,³⁵ the Court held that criminal sanctions for hate

³³ Promotion of Equality and Prevention of Unfair Discrimination Act 2000

³⁴ *Qwelane v South African Human Rights Commission* [2021] 6 SA 579 (CC)

³⁵ *Vejdeland and Others v Sweden* Application No 1813/07 (ECtHR, 09 February 2012)

speech did not violate Article 10, given the legitimate aim of protecting the rights and dignity of others.

In *Dicle v Turkey*,³⁶ the Court drew a distinction between speech that genuinely contributes to political debate, which the Convention strongly protects, and speech that merely uses a political context as cover for statements that degrade identifiable groups. This distinction is one that Indian jurisprudence urgently needs. The statements documented in Part II were not contributions to a debate about rape law or criminal justice policy. They were statements that trivialised the crime itself. The political setting does not convert them into protected political speech.

United States: The Limits of Brandenburg: The American First Amendment framework under *Brandenburg v Ohio*³⁷ protects even advocacy of unlawful action unless it is directed to inciting and likely to produce imminent lawless action. This is the most speech-protective standard in any major constitutional system, and it is of limited use for present purposes. The Indian constitutional text explicitly provides grounds for restriction that have no First Amendment equivalent.

However, Catharine MacKinnon's critique of the *Brandenburg* framework is relevant. MacKinnon argues that the standard treats the harm of hate speech as prospective and contingent when, in fact, it is structural and present: it operates by constituting the social conditions under which subordination is reproduced. This is Waldron's point, applied to American law. The harm of Parameshwara's statement does not depend on proving that someone will watch it and commit an assault. The harm is in what it communicates about the state's regard for women's safety, and that harm is immediate and structural.

RECOMMENDATIONS FOR CONSTITUTIONAL AND INSTITUTIONAL REFORM

The following recommendations are addressed to different institutional actors and are complementary rather than alternatives, because the enforcement gap has multiple causes.

Judicial Articulation: The most important step is for the Supreme Court to clarify, through a constitutional bench, that constitutional morality as articulated in *Navtej Singh Johar* and

³⁶ *Dicle (no 2) v Turkey* Case No 46733/99 (ECtHR, 11 April 2006)

³⁷ *Brandenburg v Ohio* [1969] 395 US 444

Aparna Bhat applies to the exercise of Article 19(1)(a) rights, and that statements by public officials trivialising sexual violence do not attract constitutional protection. This does not require a new constitutional provision. It requires the Court to extend to the executive and legislative branches the principle it has already applied to the judiciary.

The Court should further specify that constitutional morality requires official speech to be consistent with Articles 14, 15, and 21; that public apologies do not extinguish legal liability; and that legislative bodies, law enforcement, and prosecutorial authorities bear constitutional duties to enforce this standard, failure to do which may be subject to writ jurisdiction.

Legislative Reform: Parliament should amend Section 153A IPC,³⁸ or enact a standalone provision, to establish that public officials who make statements trivialising, minimising, or victim-blaming sexual violence commit a cognisable offence, defined with reference to statements inconsistent with established legal or medical understanding of sexual violence.

The Representation of the People Act 1951 should be amended to provide for disqualification from office upon conviction.³⁹ Currently, the political cost of making such statements is limited to short-term reputational damage, evidently insufficient, as Ramesh Kumar's recidivism demonstrates.

Institutional Accountability: Legislative bodies should adopt standing rules requiring that statements by members trivialising sexual violence be referred to a privileges committee with powers to recommend suspension. Law enforcement agencies should establish designated units for hate speech by public figures, with mandatory investigation timelines and quarterly reporting obligations. Non-prosecution decisions should be subject to judicial review on the grounds of discriminatory non-enforcement.

A Statutory Civil Remedy: Parliament should consider enacting a statutory civil remedy, modelled on South Africa's PEPUDA, allowing affected individuals and civil society organisations to seek damages and injunctions for official hate speech. Civil remedies operate

³⁸ Indian Penal Code 1860, s 153A

³⁹ Representation of the People Act 1951

independently of prosecutorial willingness, creating an enforcement track that does not depend entirely on government institutions policing themselves.

CONCLUSION

When a Home Minister tells his state that sexual assault is routine and unremarkable, something more than offence has occurred. He has exercised the voice of the state to communicate that women's protection is not a priority. When a Member of Parliament tells the country that gang rape is 'practically impossible,' he is using the authority of his office to cast doubt on the experiences of survivors and on the validity of their complaints. These are not exercises of a fundamental right. Under the doctrine of constitutional morality, they are abuses of constitutional authority, and the Constitution does not protect them.

This article has argued that the Indian constitutional framework already contains the tools to address this problem. Constitutional morality provides the limiting principle. Article 19(2) provides the constitutional permission. The IPC provides the statutory vehicle. What has been missing is a doctrinal framework that brings these elements together and compels institutional actors to treat official speech normalising sexual violence as the constitutional harm it is. Waldron shows why the harm is real and structural. Matsuda shows why it is amplified when it comes from authority. Aparna Bhat shows that the Court has already taken the first step.⁴⁰ What remains is to take the next one.

The four cases documented in this article span more than a decade and two major national parties. They are not aberrations. They are evidence of a settled institutional tolerance for official speech that trivialises sexual violence, grounded in an implicit assumption that the law does not apply here. That assumption is wrong. The recommendations proposed in Part VII are not radical; they ask the Court to extend a principle it has endorsed, Parliament to codify a protection the Constitution implies, and institutions to enforce a standard that already exists.

India faces a serious and ongoing problem of sexual violence. No legal reform will resolve it alone. But it is a basic precondition of any serious institutional response that the people entrusted with state power do not themselves contribute to the problem. Until that

⁴⁰ *Aparna Bhat v State of Madhya Pradesh* AIR 2021 SC 1492

precondition is met, the Constitution's promise of equality and dignity for women remains, in this important respect, a promise that the state has not kept.