

Balancing the Problem of Curbing Hate Speech with Protecting Free Speech in Cyberspace: Discussing the Dichotomy in Detail

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Abstract

For Indian cyber law, regulating religious hate speech on social media while maintaining freedom of speech is a difficult task. The Indian Constitution ensures the right to free expression along with reasonable limitations, such as those pertaining to morality, decency, public order, defamation, and incitement to crime. This essay looks at how Indian courts have handled this matter, emphasizing the conflict between preserving the right to free speech and preventing hate speech based on religion.

The research entails the status of freedom of speech, the problem of hate speech and their dichotomy and legal nexus having in consideration, the distinct background of India's diverse culture and how it causes citizens to interpret the law in a way that is very context-sensitive. And most importantly the legal framework which combats the imbalance, giving prominence to intermediary liability. As a thought experiment, we also look at the

same issue from the point of view of the Government with its need to protect and uphold the country's standing in the world, as well as the independent press/journalists who provide a fine example of using freedom of speech to check and balance the other players – Government's branches, Culture, and the Private industry's technological acceleration of the ability to carry speech farther and wider than traditional communication media.

Keywords: Religious Hate Speech, Freedom of Speech, Indian Constitution, Morality, Decency, Public Order, Legal Framework, Intermediary Liability, Freedom of Expression

Background of the Study

Article 19(1)(a) of the Constitution of India guarantees citizens the right to "Constitutionally Ordained Free Speech," which permits them to voice their ideas and beliefs without worrying about reprisals. This right is not unqualified, though, since appropriate limitations may be put in place to safeguard public order, national security, integrity, and against defamation. The delicate balance between protecting free speech and combating hate speech, especially in the digital sphere, is highlighted by landmark judgments like *Shreya Singhal v. Union of India*. Due to its anonymity and broad reach, hate speech—which frequently calls for violence or discrimination against particular groups—has increased on social media platforms.

Although laws like the Information Technology Act and the Bharatiya Nyaya Sanhitha seek to control hate speech while maintaining the right to free speech, problems still exist because of the rules' ambiguous definitions and possible overreach. Intermediary responsibility is still a controversial topic as well since the government is proposing more stringent guidelines for internet platforms to handle illegal information,

which raises privacy issues and the possibility of state censorship. Thus, continuous conflicts that reflect larger societal dynamics and the need for a sophisticated approach to regulation are shown by the interaction of free speech, hate speech, and legal frameworks in India.

Introduction

The intricate relationship between free speech and religious hate speech in India presents a profound challenge within the nation's democratic framework, especially as it navigates the complexities of its diverse cultural landscape. At the heart of this discourse is the right to "Constitutionally Ordained Free Speech," enshrined in Article 19(1)(a) of the Indian Constitution, which guarantees every citizen the freedom to express their ideas without fear of repression. However, this freedom is not absolute; it is tempered by reasonable restrictions aimed at safeguarding national integrity, public order, and individual rights. As digital platforms proliferate, the rise of hate speech—defined variably as expressions inciting hatred or violence based on identity—complicates this legal terrain. The Indian legal system has grappled with this issue through various legislations, including the Information Technology Act and the Bharatiya Nyaya Sanhitha, while the Supreme Court has played a pivotal role in shaping the boundaries of free expression, notably striking down Section 66A for its overreach. Amidst calls for accountability, the challenge remains to balance the imperative of protecting free speech against the potential for hate speech to incite violence and disrupt societal harmony. This balance is further complicated by the role of social media, where the anonymity and reach of platforms amplify divisive rhetoric, necessitating a nuanced approach to regulation that respects individual liberties while curbing harmful expression. As India continues to evolve in the digital age, the discourse surrounding free speech and hate speech remains critical to preserving its democratic ethos and fostering an inclusive society.

Literature Review

MEHVISH ASHRAFI Hate speech is increasingly recognized as a significant societal threat, particularly in the digital age where online content can quickly reach vast audiences. The swift creation and circulation of such content present new regulatory challenges, exacerbated by the lack of an efficient legal framework. The Supreme Court of India has emphasized the necessity for a new law to regulate online hate speech, and various expert committees, including the Law Commission of India, have proposed amendments to existing laws. Despite these recommendations, implementation remains elusive. This context underscores the urgent need for a robust legal framework that effectively addresses modern forms of hate content proliferating on the internet, aligning with global developments in this area.

MAYA MIRCHANDANI The right to free expression is fundamental to democracy, allowing individuals to engage in decision-making and ensuring public access to information. The Supreme Court of India has approached legal challenges to free speech cautiously, emphasizing adherence to existing laws and the concept of 'reasonable restrictions' in the Constitution. However, the rise of social media, the credibility crisis in mainstream media, and the spread of misinformation have led to a public environment where dissent is often stifled not by the state, but through hate speech and threats. This reliance on stereotypes, especially against minority groups, highlights the need for clear definitions of reasonable restrictions and principled responses. This paper advocates for online self-regulatory mechanisms rather than government intervention, urging platforms to combat hate speech through awareness and counter-narratives, while also engaging with extremist groups to encourage critical reflection on their views.

ANANDITHA YADAV

The anti-hate speech law is controversial since it infringes on people's right to free speech and expression. In reality, the law constantly walks a precariously fine line between total limitation and regulation. However, hate speech charges continue to increase even after harsh rules were adopted. In 2017, the Law Commission of India advocated even stricter rules to stop this. This has resulted in an abundance of legislation and an overcriminalization of offenses relating to speech. Given the evident harm caused by hate speech, it's time to look beyond the existing framework and find best practices that may be

SEN (2016) on The Wire reports that according to The Hoot's annual free speech report, 2015 was a year twirling around inquiries regarding free expression. Cases of censorship of different media hate speech, sedition, defamation, threats, assaults, deaths, constraints and surveillance were summarised in the report. Journalists remained the most unsafe and under threat in India. In 2015, 8 journalists were killed (or died in the job), 27 injured and 15 death threats cases. Matters of media censorship also sprung, whereas instances of information monitoring and the blocking of internet services by authorities were also recorded. For censorship, the government was active on both state and central level. Central Board of Film Certification (CBFC) and Ministry of Information & Broadcasting (I& B) were principally liable for the restrictions. The political group, in general, contributed enormously to the number of free speech breaches in India. The politicians registered defamation cases on the media and upon each other as well. Witnessing the upsurge in the filing of defamation cases by the politicians, even the supreme court started questioning the plight.

SINGH (2018) reports that lately, there happens to be a struggle between freedom of expression and religious bias which is significantly shown in the Indian culture. It is due to the Government's censoring of books, film exhibitions, pictures and different types of basic expression, which exploits scholars and artists so as to fulfill Hindu religious-patriots and Muslim fundamentalist groups. Talking about Hindu and Muslim fundamentalist groups, each is trying to impose its religious and values over one another or minorities to gain dominance in the Indian Nation. The violent and aggressive actions by the fundamentalists have led to the suppression of free speech, killings of journalists/individuals, which the fundamentalists perceive as a threat. The case study made few things clear, both Hindu and Muslim students conferred superiority to religion and beliefs over freedom of speech. Faith shouldn't be ridiculed in the name of freedom of expression, they said. Furthermore, most of the students were in admiration of the government's censorship to protect religious unanimity. Summarising, understandings from both sides i.e. secular and non-secular citizens are needed, in order to maintain a reasonable and peaceful multicultural community, notably in Indian circumstances. Hence, to adjust dissents and extreme points of view, recognition is expected from both parties i.e. the society as well as the state.

Research Problem

The goal of this research is to examine the intricate relationships that exist between India's constitutional guarantees of free speech and expression and the need to control hate speech in a world that is becoming more and more digital. It specifically looks at how current legal frameworks might be modified to successfully strike a balance between these conflicting interests and deal with the difficulties brought on by the quick spread of damaging material via social media. The effectiveness of present rules, the effects of overcriminalization on individual freedoms, the function of intermediary responsibility in content monitoring, and the wider effects of online hate speech on public debate and societal tensions will all be major areas of attention. The study aims to provide suggestions for a sophisticated regulation strategy that

protects free speech by critically examining these aspects.

Research Objectives:

1. To evaluate the effectiveness of existing legal frameworks in regulating hate speech while protecting the right to free speech in India.
2. To analyze the implications of overcriminalization on individual liberties and the broader societal context.
3. To investigate the role of intermediary liability in moderating online content and its impact on the dissemination of hate speech.
4. To explore the influence of social media on societal tensions and public discourse related to religious hate speech.
5. To propose recommendations for a nuanced regulatory approach that balances free expression and communal harmony in the digital age.

Research questions

1. In what ways do the Bharatiya Nyaya Sanhitha and the Information Technology Act alter the legal framework surrounding hate speech in India, and how do these changes influence the balance between safeguarding free speech and curbing hate speech in the digital age?
2. How does the principle of intermediary liability affect the responsibility of social media platforms in addressing hate speech, and how do these obligations correspond with the ideals of free expression and user privacy?

Research Methodology

The method used in this paper is Doctrinal Research method and qualitative analysis

1. Right of “Constitutionally Ordained Free Speech” in India

One of the main tenets of the democratic process is freedom of speech, which must be preserved if we are to have a society where everyone is treated equally and fairly. If this isn't done, democracy is weakened. When people freely voice their opinions, even those that are critical of the government, without worrying about unfavourable outcomes like going to jail or getting violent threats, they are said to have the right to free speech.

Every citizen has the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution. This implies that each and every individual is entitled to the unrestricted expression of their own ideas and opinions by writing, printing, artwork, oral communication, or any other medium.¹

Among these rights are the following:

- freedom to express oneself and disseminate knowledge in any media, including audio, print, television, and electronic
- The freedom to obtain and receive information necessary to make an informed decision²

But not all forms of expression are protected by the definition of free speech. The right to freedom of expression is not unalienable, like other fundamental rights; restrictions may be imposed as long as they are supported by the law.

The government can impose reasonable restrictions on the freedom of speech and expression to protect:

1. Sovereignty and integrity of India
2. Security of the country

3. Friendly relations with foreign countries
4. Public order, decency, or morality
5. Against contempt of court, defamation, or instigation of any offence

Two requirements must the limits fulfil :

1. They are reasonable; the restrictions don't go beyond what is necessary to accomplish their goal
2. They are essential and actually achieve goals in the public interest or are required to safeguard the liberties and rights of others.

The right to receive and transmit information has been included in the expanded definition of the right to free speech under Article 19(1)(a). The Supreme Court ruled in *State of Uttar Pradesh v. Raj Narain* that every citizen has the right to free expression and the freedom to receive and disseminate information on matters of public concern under Article 19(1)(a) of the Constitution. According to *Secretary, Ministry of Information and Broadcasting in Govt. of India v. Cricket Association of Bengal*, the freedom to gather and disseminate information is contained in Article 19(1)(a) of the Indian Constitution.

When a girl posted on Facebook in November 2012, asking why the city had come to a halt after the death of Shiv Sena leader Bal Thackeray, she was detained. The exact statement from the post she modified was:

"With all due respect, thousands of people die every day, but the world continues to move on." When one politician passes away naturally, everyone goes crazy. They ought to be aware that our resilience is a result of force rather than choice. When was the last time someone paid homage to Shaheed Bhagat Singh, Azad, Sukhdev, or any of the other individuals who make us Indians free to live our lives? Even just a two-minute silence? Respect is not compelled; it is earned and given. Mumbai closes today because of fear rather than respect".

Her companion who "liked" the post was also taken into custody. Following their arrests, there was a great deal of controversy.

The Supreme Court ultimately overturned Section 66A in March 2015 as a result of social media activity and the massive demonstrations against these arrests. The Court unequivocally declared that Section 66A violated Article 19(1)(a), which addresses the right to free speech and expression. This was well received as millions of Indian citizens' access to social networking sites was significantly impacted by the Supreme Court's historic ruling in this case of *Shreya Singhal v. Union of India*, which upholds the intent of the Constituent Assembly and declares the supremacy of freedom of speech and expression as guaranteed by Article 19 of the Constitution. allowing citizens to share, comment, and post anything they want on the internet, on social media, provided that their actions do not violate other provisions of the Act. ¹

2. Religious Hate Speech in the Digital Age

2.1 Hate Speech in General

It's difficult to define hate speech, especially when it overlaps with forms of free speech. There is no universal agreement on what constitutes hate speech, especially in the global setting of online communication where ideas can be spread across national boundaries and cultural boundaries. As a result, the definition of hate speech frequently depends on the statement's impact.

¹A Bird's Eye View of the Right to Freedom of Speech and Expression in India-
Manupatra

2. Article 19 of Indian Constitution -India Kanoon

3. [ssrn-4732818.pdf](https://ssrn.com/abstract=4732818)

Hate speech is defined as "at the intersection of multiple tensions" and as "an expression of conflicts between different groups within and across societies" in a 2015 UNESCO assessment. It is perceived as inciting hatred towards groups on the basis of race, ethnicity, gender, sexual orientation, or religion by the Law Commission of India in its 267th Report. Any word or image meant to instigate violence or to frighten people falls under this category. It is crucial to take into account the persons involved and the circumstances when deciding whether or not a speech qualifies as hate speech.³

The Observer Research Foundation emphasizes the relationship between the definition of hate speech and its consequences, emphasizing that the intent behind language counts even when it isn't outwardly harmful. Hate speech is defined as statements that encourage harm, violence, or prejudice against groups that the Indian Constitution protects and in general as disparaging remarks intended to provoke violence or prejudice against a community on the basis of traits like language, race, or culture.

2.2 Hate speech in the context of Religion

India's socio-political landscape complicates the issue of hate speech due to its diverse mix of religions and customs. India's diverse communities pre-date the constitutional framework by 100s to 1000s of years. As such, their set of moral, ethical, and community frameworks for collective justice may complicate the actual application of the law. Hinduism, Islam, Christianity, Sikhism, and other religions coexist, each shaping the nation's identity while often clashing over issues of morality and societal norms. This diversity can also create internal inconsistencies within religious groups themselves regarding the balance between freedom and restrictions, which adds another layer of complexity to regulating hate speech.

In recent years, fair critique and public discussion have been lacking as a result of Social Media's biased reporting that supports a specific political party or philosophy. These days, the media singles on a certain group and person, calling them "anti-national" or "Naxalites." "Traitors vs Patriots" is a title of shows that air on national television. To increase attention, the media fabricates a cynical story, twists the truth, and reports dramatic new normalizing disinformation getting circulated online. The most popular platform for disseminating hate speech is now social networking applications like WhatsApp, Facebook, Twitter. In recent years, hate speech Facebook's 'Transparency Report' showed startling statistics, including the removal² of 3 million hostile messages in 2018. YouTube acknowledged deleting 25,000 videos in a single month.

Even though these applications have made an effort to warn its users against disseminating false information or any messages that might be seen as hate speech, and attacks on a particular community, several incidents of mob lynchings, intercommunal rioting, and horrific murders have been documented as a result of certain web postings.

Due to their massive reach and algorithmic amplification, hate speech has flourished on social media platforms, escalating the tensions and divides in society today. Additionally, the anonymity provided by using online technologies encourages people to engage in hate speech without feeling obligated to not do so, causing worldwide repercussions, including intergroup conflict, cyberbullying and intellectual harm to organizations and individuals with a focus.

4. Bird's Eye view of Right of speech and expression- Manupatra

5. Secretary, Ministry of Information and Broadcasting in Govt. of India v. Cricket Association of Bengal 1995 AIR 123

6. Shreya Singhal v. Union of India: A Critical Analysis-Society for Constitutional Law Discussion

7. [Pravasi Bhalai Sangathan vs U.O.I. & Ors on 12 March, 2014](#)

8. [Shaheen Abdulla vs Union Of India on 21 October, 2022](#)

3. Legal Nexus in maintaining balance of Hate speech and Free Speech

The conflict between individual liberty and societal good, or the public interest as a whole, is at the core of "hateful and offensive speech." The contentious topics of liberty, democracy, free speech, and dignity are all touched upon by hate speech. Therefore, one may argue that there is a clash between the freedom to openly advocate, regardless of how repugnant the thought may be, and the freedom from discrimination and prejudice based on religion. In certain situations, the right to non-discrimination takes precedence over free expression, and communication is restricted.

The Information Technology Act of 2000 underwent a significant change in 2008 when Section 66A was added to make hate speech online illegal. The rule applies to "any information sent by means of a computer resource or communication device that is grossly offensive or menacing in character, or any information that the sender knows to be false but sends anyway, with the intent of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will".

But in *Shreya Singhal v. Union of India*, the Supreme Court declared the aforementioned clause to be invalid. Article 19(1)(a) of the Constitution was taken into consideration while analysing and the Court observed that the right to freedom of speech and expression was unduly and unjustly curtailed by Section 66A.⁴ The Court determined that Section 66A violated Article 19(1)(a) of the Constitution because it did not qualify as a reasonable restriction under Article 19(2).

This ruling upheld the necessity of legislation that safeguards free expression without permitting intimidation or repression in the name of upholding public order.

In *Pravasi Bharati Sangathan v. Union of India*⁷, the Supreme Court suggests legislative reconsideration but does not criminalize hate speech. Notably, the Law Commission's function in filling in the gaps was also emphasized.

The Supreme Court (SC) of India noted in *Saheen Abdulla v. Union of India*⁸ that fraternity is impossible unless various religious sects can coexist peacefully. Concerned with the rise in hate speech in the nation, the SC has instructed governments and law enforcement to act on their own initiative in these situations without waiting for official complaints to be filed.

3.1 A Case of Over Criminalization

Due to violent retaliation from caste-based and religious organizations, Indian novelist Perumal Murugan abruptly proclaimed his literary "death" in 2015 and withdrew all of his published works. They said that his fifth book, *Madhorubagan* (or *One Part Woman*), which portrayed the difficulties of a couple named Kali and Ponna in their attempts to procreate, violated religious sensibilities associated with the Kailasanathar shrine. Even though it was well praised when it was first published in 2010, years later, demonstrations broke out, leading to copy burnings and police telling Murugan to leave his house. He was compelled to retract his works and provide an apology. But in 2016, the Madras High Court rejected the accusations, preserving the author's creative freedom and reaffirming that free expression shouldn't be subject to agitation. After this ruling, Murugan resumed writing, drawing on his personal experiences to delve further into issues of social convention and identity.⁸

"Overcriminalization" is defined as the overuse of criminal law to control behaviour that is more appropriate for public policy. Scholars warn against criminal law expansion, claiming it unnecessarily burdens the legal system. Overcriminalization frequently targets behaviour when damage is just threatened rather than really caused and involves unworkable offenses, unnecessary laws, and disproportionate penalties.

The same worries about needless legal overreach are reflected in India, where the scope of speech-related charges has grown to penalize a broad range of risky expression.

3.2 Counter-Speech

Counterspeech is essential in combating religious hate speech in India, a country with a wide range of religious traditions but also one that is frequently tainted by intercommunal conflicts. It gives people and groups a way to demonstrate their dedication to peace and tolerance, frequently referencing the nation's rich pluralistic heritage. The strength of counterspeech lies in its ability to effectively address abusive, hateful, and extremist content while also exposing hate, deception, and stereotypes. It provides clarification and promotes alternative narratives and values.

The core principle of counterspeech is that, given the opportunity to reveal falsehoods and misconceptions through dialogue, the best approach to combat³ these issues is to encourage more speech rather than resort to enforced silence. However, social media dynamics and the possibility of backlash complicate this strategy's efficacy, underscoring the necessity for nuanced, context-sensitive responses that involve communities in a positive way while promoting institutional and legislative changes to prevent hate speech.

The #notinmyname or "Not In My Name"⁹ movement was recently introduced on social media in India in reaction to many instances of mob lynching, violence, and persecution of victims from different regions of the nation based on their religious, racial, or ethnic identities. The initial goals of this campaign were to rally public support and combat the hate speech that was being spread and led to those violent acts. The campaign gained popularity as a number of well-known public figures joined, and demonstrations condemning the violence were held in Indian cities. All things considered, it was seen as a successful counterinitiative, and it still receives support from a variety of sources.

4. Role of Legal Framework in combatting the problem of Religious Hate Speech

4.1 Bharatiya Nyaya Sanhitha

Section 196 of BNS addresses the issue of promoting enmity between different groups based on religion, race, language, place of birth, etc., through any means such as spoken or written words, signs, or electronic communication. The section also covers acts that disturb public tranquility or create fear and insecurity among communities. The punishment includes imprisonment up to three years, and in certain cases, up to five years, along with fines.

Section 197 of BNS aims to preserve national integration by penalizing actions that cause disharmony or deny the rights of citizens based on religion, race, language, or other similar grounds

Section 302 – Uttering words, etc., with deliberate intent to wound the religious feelings of any person Within the BNS, 2023 sections 196(1), and 197 (1) (Ss. 153A and 153B of IPC, 1860), the sections that deal with hate speech, inserted with provision of “Electronic Communication”.

However the entire newly enacted law does not, anywhere, define the term, Electronic Communication.

³ 8. [csi.pdf](#)

9. [#NotInMyName: Indians protest against 'beef lynching'](#)

10. [2020 Delhi riots: House panel grills Facebook on its 'hate speech' guidelines for India](#)

11. [Jharkhand: Ten sent to jail in India for lynching Muslim man](#)

12. [Latest Pulwama attack 2019 News, Photos, Latest News Headlines about Pulwama attack 2019-The Hindu](#)

13. [16-225.pdf](#)

14. [As religious riots grow in India, critics accuse Facebook of fanning the flames | Reuters Institute for the Study of Journalism](#)

4.2 Information Technology Act

In India, concerns over online content and cybercrimes, such as hate speech, are mainly addressed by the following sections of the Information Technology (IT) Act, 2000:

- Section 66: Addresses violations involving computers, particularly actions that pose a danger of damage to others. If hate speech include encouragement to violence or threats, it may fall under this category.
- Section 67: Deals with the electronic publication or transmission of pornographic content. Although it mostly deals with pornography, depending on the situation, it may also be considered to encompass hate speech and other objectionable material.
- Section 69A: Gives the government the power to restrict access to particular websites or online information that might endanger public safety, encourage hate, or harm national security.
- Section 79: Intermediaries are protected under Section 79, but if they fail to take immediate action to remove offensive information after being alerted, they may be held liable for hate speech. Section 66F: Acts of terrorism are covered by Section 66F, which might include the dissemination of hate speech that incites violence or terror via internet platforms.

4.3 Press council Act 1978

The Press Council Act of 1978, which aims to protect freedom of expression while promoting an atmosphere of ethical journalism, is a key piece of legislation governing the Indian press. The PCI's powers, notably those pertaining to contempt, highlight how crucial accountability is in the media environment.

4.4 Representation of People's Act, 1951

Section 8 of the RPA, 1951 prohibits anyone convicted of unlawfully exercising their right to free expression from running for office.

According to Sections 123(3A) and 125 of the RPA, it is illegal to incite animosity or hostility among India's many racial, religious, caste, or linguistic groups in connection with elections, and it is considered corrupt electoral practices.

4.5 The Cable Television Networks (Regulation) Act, 1995

This Act aims to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto. The Cable Television (Networks and Regulations) Act, 1995, governs television and gives the local police commissioner and magistrate the authority to take action against programs that broadcast offensive content, content that could provoke violence or disorder, content that could incite hatred toward a particular class, and defamatory content.

Maintaining the power of a free internet in a democracy is crucial because it helps decentralize debate by giving people the freedom to question policies and hold those in positions of authority accountable. Therefore, measures to prevent hate speech must be implemented within a specific framework and in tandem with current industry norms (print and broadcast).

5. Intermediary Liability

Now, the conflict between platforms and the government is focusing on one specific issue: intermediary responsibility. This is because civil society and media professionals are calling for a multi-stakeholder approach to regulation.

To define this and control online material on tech platforms, several government-led organizations have developed various regulations. An intermediary may be ordered by the government to remove

objectionable information under Section 79 of the IT Act without being held accountable as a publisher. Platforms enforce their own standards to minimize harmful and immoral usage in addition to adhering to state-determined policies. According to Section 79 of the IT Act, the Union Ministry of Electronics and Information Technology really just recommended changes to the Intermediary Rules, 2011 in October 2019.

A method for eliminating "unlawful" content from an intermediary's platform is provided under these regulations. Additionally, they expand "safe harbour protection," which clarifies that the middleman is only a platform provider and has no involvement in the production of content or the alteration of data and information.

New modifications are intended to make sure platforms don't avoid their own accountability. It is unclear whether the proposed regulations on intermediary liability—which include monthly warnings, user traceability, data retention for 180 days or longer, "identifying and removing or disabling public access to unlawful information or content," and the creation of local offices registered in India—will be implemented in the current vitiated political climate. Given the ambiguity of terminology, there are questions about what will be considered "unlawful" content in the ongoing proposal for social media regulation. Lawyers, activists, and the media all oppose the notion of letting the government decide interpretation on its own.

Both privacy and free expression are at risk due to the expectations of disclosing personal user information and decrypting messaging apps like WhatsApp that guarantee privacy and end-to-end encryption in order to identify the senders of messages. Since the majority of platforms comply with the new Global Data Protection Regime (GDPR), which aims to protect user information, raise awareness, and prevent targeted messaging, these proposed regulations are likely to violate the GDPR, potentially creating a whole new area of conflict that diplomacy will need to address.

Here are five case studies that illustrate how social media intermediaries have struggled to curb religious hate speech in India:

1. The 2020 Delhi Riots and Facebook's Inaction

- **Background:** In February 2020, violence erupted in Delhi between Hindu and Muslim communities, resulting in over 50 deaths and hundreds of injuries. Social media platforms like Facebook, Twitter, and WhatsApp played a significant role in spreading hate speech, rumors, and calls to violence.¹⁰
- **Failure to Curb Hate Speech:**
 - **Facebook's Role:** Facebook was criticized for failing to remove inflammatory content that incited violence between communities. Despite warnings from activists and journalists about dangerous content on the platform, the company did not act quickly enough to prevent the spread of hate speech, especially against Muslims.
 - **Case in Point:** A report by *The Wall Street Journal* revealed that Facebook's India team was hesitant to take down posts from high-profile political figures, including leaders from the ruling Bharatiya Janata Party (BJP), who were accused of using the platform to spread hate speech and incite violence against Muslims.
 - **Impact:** The lack of timely intervention contributed to the intensification of violence and worsened communal tensions in Delhi.

2. The 2018 Lynching of a Muslim Man in Jharkhand

- **Background:** In June 2018, a 24-year-old Muslim man, Tabrez Ansari, was lynched by a mob in

Jharkhand after being accused of theft. The incident was captured on video and widely shared on social media, where hateful comments and justifications for the violence circulated.¹¹

- **Failure to Curb Hate Speech:**

- **WhatsApp's Role:** The mob was reportedly incited by messages spread through WhatsApp, where rumors about the victim's supposed crimes were amplified. Despite WhatsApp's efforts to restrict message forwarding and limit viral misinformation, hate speech and calls for violence continued to spread unchecked in groups.
- **Case in Point:** Local BJP leaders reportedly used Facebook and WhatsApp to spread religiously charged narratives and reinforce the mob's actions. The content continued to circulate, with little effort from platforms to stop it.
- **Impact:** The failure to prevent the spread of these messages contributed to the environment of impunity and made it easier for people to incite communal violence in real time.

3. The 2019 Pulwama Attack and Subsequent Anti-Muslim Campaigns

- **Background:** After the February 2019 suicide bombing in Pulwama, Kashmir, which killed 40 Indian paramilitary soldiers, India saw a spike in anti-Pakistan and anti-Muslim rhetoric on social media. Platforms like Facebook and Twitter were flooded with posts blaming the entire Muslim community for the attack.¹²
- **Failure to Curb Hate Speech:**
 - **Facebook and Twitter's Role:** Both platforms were slow to act on hateful and inflammatory posts, including violent threats against Muslims and calls for their exclusion from Indian society. Many of these posts violated the platforms' policies but were not removed in time.
 - **Case in Point:** Influential figures, including political leaders, used Twitter to stoke nationalist sentiment, incite violence, and amplify calls for boycotts of Muslim-owned businesses. Posts referring to "Jihadist" or "terrorist" Muslims were left unchecked.
 - **Impact:** The failure to promptly address such content resulted in a rise in attacks on Muslims, including the targeting of businesses and homes. Social media also became a tool for organizing hate crimes.

4. The 2020 Anti-CAA Protests and Twitter's Role

- **Background:** In late 2019 and early 2020, India witnessed large-scale protests against the Citizenship Amendment Act (CAA), which critics argued discriminated against Muslims. Social media platforms, particularly Twitter, became key battlegrounds for debates surrounding the law, and in some cases, misinformation and hate speech.¹³
- **Failure to Curb Hate Speech:**
 - **Twitter's Role:** While Twitter claimed to implement measures to combat hate speech, many anti-Muslim and anti-protest messages circulated widely. Some of these messages included calls for violence against Muslim protesters and accusations of "anti-national" activities.
 - **Case in Point:** Numerous accounts linked to Hindu nationalist groups used Twitter to spread violent rhetoric. A particular incident involved a hashtag, "#BanIslam," which gained significant traction. Twitter was slow to act, and many tweets remained active for extended periods before being flagged.
 - **Impact:** The inflammatory content escalated the tensions surrounding the protests and contributed to violent clashes between police and protesters, particularly in areas like Delhi.

5. The 2021 Bangalore Riots and Facebook's Role

- **Background:** In August 2020, after a man posted an alleged derogatory comment about a religious

leader on Facebook, communal violence broke out in Bangalore, Karnataka. Rioters targeted properties, and police had to impose curfews to control the situation.¹⁴

- **Failure to Curb Hate Speech:**

- **Facebook's Role:** The violent aftermath was fueled in part by hate speech circulating on Facebook. Despite the fact that Facebook had reportedly taken down some posts, the platform failed to prevent the spread of inflammatory content in real-time. Groups were created to spread hate, and communal rhetoric was shared widely.
- **Case in Point:** Facebook's moderation team was criticized for not taking down content quickly enough. A key issue was the delay in removing posts that promoted religious hatred and violence, despite clear violations of the platform's community guidelines.
- **Impact:** The failure to act swiftly contributed to the eruption of violence and targeted attacks, with the situation escalating beyond what could have been contained with more proactive moderation.

6.Thought Experiment: Perspective on Government Regulation and Self-Regulation

6.1 Indian Government

The Indian government interprets Article 19(2)'s restrictions on public order, decency, and state security as crucial for preserving India's pluralistic society and believes that it is necessary to ensure responsible free expression. Given India's complicated religious environment, it is cautious of social media's ability to promote false information, religious division, and intercommunal violence, even as it recognizes its role in enhancing expression. The administration argues that stricter laws against hate speech are essential for social stability and national security, especially in view of recent acts of communal violence connected to provocative internet material. The government maintains that in order to stop the propagation of anti-national sentiments, social media sites like Facebook and WhatsApp need to be held responsible for the content they contain. It makes the case that these actions are essential to preserving national harmony in a country where religious strife has historically existed. In addition, the government argues that preventing religious conflict requires safeguarding the feelings of the majority, particularly in a setting where Hindus predominate. This viewpoint navigates the fine line between free speech and social harmony, framing the control of hate speech not just as a legal need but also as a part of a larger purpose to preserve cultural integrity and national unity.

6.2 Independent Journalist

In India, the issue of religious hate speech on social media transcends legal boundaries, striking at the heart of democratic values, civil rights, and national identity. While India, as the world's largest democracy, upholds free speech tempered by reasonable restrictions for public order, the challenge lies in discerning whether these restrictions genuinely protect society or serve to suppress dissent, particularly against marginalized groups. Journalists must critically assess how laws, initially designed to prevent religious conflict, may be selectively applied to stifle criticism of the ruling party while ignoring inflammatory rhetoric against minorities. Social media, a platform for both free expression and hate speech, demands scrutiny of the government's regulatory intentions, particularly when content critical of the state is removed while hate speech from influential groups persists. The government's assertion that regulating hate speech is essential for public order appears reasonable but must be examined for fairness and potential bias. Historically, laws meant to prevent harm have been misused as tools of oppression, often targeting minorities and dissenters. Increased state control over digital spaces poses risks in a context where majoritarian narratives are fostered. Ultimately, for journalists committed to truth, the issue of

religious hate speech is not just legal or political but moral, requiring vigilance against the suppression of dissent and the safeguarding of free speech for all, irrespective of religious or political affiliations.

Potential strategies or solutions

Given the difficulties, striking a balance between the need to prevent hate speech based on religion and the right to free expression requires a very delicate strategy. The new IT Rules (2021) raise concerns that they may impose requirements that are onerous for intermediaries and lead to the loss of these platforms' advantageous services, which are greatly outweighed by the difficulties in implementing them. Increasing public understanding of digital technologies and people's obligations to utilize them in accordance with Indian law and the platform's community standards is another strategy

Furthermore, nation state actors have been working harder to get personal information from communication platforms in recent years, which has made it possible for hate speech to spread inadvertently through forwards and fake news. Deepfake multimedia that can mimic people or influencers is becoming more harmful as AI solutions like generative AI are introduced. Therefore, a solid basis in information technology becomes even more crucial for the legal justification of the Indian State's and the citizens' efforts to maintain the safety and freedom of the commons. Reducing the propagation of toxic language online may be accomplished in part by enabling users to report abusive content and educating them about the negative impacts of hate speech.

Teaching our citizens how to be digital stewards of their persona and the country's reputation in the world can also be a way to reduce the divisions and echo chambers that amplify the spread of harmful online content.

Conclusion

The interplay between freedom of speech and the regulation of hate speech in India poses a complex challenge to the nation's democratic fabric, as Article 19(1)(a) of the Constitution guarantees free speech but allows for reasonable restrictions to safeguard public order, national integrity, and individual dignity. This delicate balance necessitates a nuanced approach, particularly regarding hate speech related to religion, highlighted by landmark cases and evolving legislation. The Supreme Court's decision to strike down Section 66A of the Information Technology Act reflects the judiciary's commitment to protecting free expression while recognizing the dangers of unregulated hate speech; however, the lack of comprehensive legislation targeting online hate speech indicates a need for a robust legal framework that addresses the unique challenges of digital communication. The rise of social media has transformed the landscape, amplifying harmful narratives but also fostering counter-speech and civic engagement, as evidenced by movements like #NotInMyName, which suggest that open dialogue may be a more effective remedy than stringent regulation. Moving forward, a multi-stakeholder approach involving civil society, government, and tech platforms is essential for crafting effective regulations that safeguard free expression while preventing censorship; clear definitions and standards are crucial for guiding intermediary responsibilities and protecting users' rights. Ultimately, the goal should be to cultivate a digital ecosystem that respects diverse voices and promotes tolerance and coexistence among India's myriad communities, reaffirming that the strength of democracy lies not just in the freedom to speak but in the commitment to listen and engage.

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