

Protecting the Status Quo: Patterns of Hate Speech Regulation in Asia

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Abstract

Asia's dozens of countries are highly diverse, but the region as a whole is characterised by weak democratic institutions, underdeveloped national and regional human rights regimes, and powerful religious and ethnic identities. As a result, Asian societies tend to interpret and address the problem of hate speech in ways that deviate from international human rights norms. Through a critical review of current legislation as well as the human rights situations on the ground, this chapter demonstrates how most Asian states frame hate speech not primarily as a threat to equality, but as a law-and-order issue. Domestic and international pressures have had some success in defending minority rights, but legal and political frameworks remain largely at the service of dominant interests. The chapter shows how this plays out in different political systems. In autocratic systems such as China, hate speech regulation is enmeshed in a wider, statist agenda. India, Malaysia, and several other jurisdictions have laws dating back to the British colonial period that punish offence of dominant communities' feelings while overlooking discrimination against minorities. Indonesia and Pakistan consider their anti-blasphemy laws to be a response to hate speech, but these are mostly used to preserve the hegemony of religious majorities while repressing minorities' religious freedoms. The chapter also shows how tensions have surfaced in international debates over internet regulation, with Asian states objecting to internet platform companies' global application of American and European standards.

Asia's dozens of countries are highly diverse, but the region as a whole is characterised by weak democratic institutions and underdeveloped national and regional human rights regimes. Most have strong religious or ethnic identities that trump their constitutional principles of equal rights for all citizens. While regional human rights systems in Africa, the Americas, and Europe articulate and enforce standards related to hate speech, there is no equivalent regional mechanism in Asia. For all these reasons, Asian countries tend to interpret and address the problem of hate speech in ways that deviate from international human rights norms.

This chapter will not attempt a comprehensive review of what is arguably the world's most diverse set of jurisdictions. Instead, via a critical review of legal frameworks as well as the human rights situations on the ground, it highlights three traits or family resemblances found among Asian countries. First, legacy instruments dominate the letter and spirit of hate speech regulation. Pre-dating the modern human rights approach, these mechanisms prioritise the state's interests in maintaining order over the protection of minorities. Asian states thus tend to frame hate speech not primarily as a threat to equality, but as a law-and-order issue. Regulators often side with the status quo, thwarting progressive reforms to protect minorities' rights.

Second, states in some cases are not only a regulator but also an enabler—or even a major generator—of hate propaganda. Analyses of hate speech regulation must be set against this wider political backdrop. In the absence of strong constitutional protections for minorities, the rule of law, and the political will to build inclusive societies, hate speech regulation tends to be weaponised against regime critics and unpopular minorities. Third, in response to civil society mobilisation and the influence of universal norms, there have been attempts, varying in effectiveness, to reform hate speech regulation in line with international standards. Global internet platforms are a major influence on domestic hate speech regulation, since they import standards that are distinct from national legislation. Global concern about the use of online disinformation for hate propaganda has also influenced policymaking in Asian countries. But the domestication of these global forces is not straightforward, since they are often mediated by authoritarian states with their own agendas.

While this chapter cites examples from several Asian countries, it pays special attention to the Indian case, which has special significance because of both the size of the country and the institutionalisation of extreme hate discourses in the life of the polity.¹ Even in an era of global democratic backsliding, India stands out as the venue for probably the largest, most systematic programmes for instituting majoritarian hegemony,² a programme in which hate propaganda is not a bug but a feature.

The premium on order

The human rights approach to hate speech, articulated in the 2012 Rabat Plan of Action, requires a high threshold for state intervention.³ Criticism that merely provokes, offends, or insults must enjoy free speech protection under Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Legal restrictions on hate speech are required only when it amounts to incitement to harmful conduct, in line with Article 20 of the ICCPR. While restrictions are also permissible if speech violates the rights of others, human rights law is clear that people have no right to be protected from speech that may cause them to feel offended. The Rabat principles also require consideration of intent and likely impact, such that criminal sanctions are applied narrowly to deter deliberate incitement that would cause observable harms to vulnerable groups in society, without restricting other speech that may be merely provocative or even offensive.

Alex Brown has observed diverse normative justifications for hate speech laws around the

world. One set of justifications includes incitement of hatred and other harms that speech can inflict on vulnerable groups such as ‘negative stereotyping’ and ‘group defamation’.⁴ These rationales are present in Asian legislation, but it is another category of principles, which Brown calls ‘threats to public order’, that better explains what passes for hate speech law in Asia. These tend to have a majoritarian and statist bias, weakening their utility in protecting minority rights, which is the core concern of the human rights perspective on hate speech.

Most Asian states achieved national sovereignty in the wave of decolonisation following the end of the Second World War and the formation of the United Nations. Their founding constitutions therefore tend to rhyme with the language of inherent dignity and equality found in the UN Declaration of Human Rights (UDHR).⁵ Most are also state parties to the ICCPR; China has signed, though not ratified, the treaty.⁶ The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)—which under Article 4 prohibits racist propaganda and incitement to racial discrimination and violence—enjoys even wider support. However, accessions to human rights treaties are poor proxy indicators of Asian states’ commitment to the protection of minority rights. Singapore, which has not signed the ICCPR, treats racial and religious equality as a key pillar of its national identity and constitutional order.⁷ It is vigilant and relatively even-handed in its hate speech prohibitions, often at the expense of freedom of expression.⁸ Conversely, many Asian ICCPR signatories have a poor record in protecting vulnerable groups from hate speech.⁹ Their constitutional protections of human rights contain large loopholes or are weakly enforced. In some cases, discriminatory principles are built into the constitution, as when an official religion is afforded special rights that can be wielded against other belief systems.¹⁰

Thus, most hate speech legislation in Asia is not ICCPR-compliant. Instead, regulation often falls back on principles originally promulgated in pre-democratic times for reasons other than human rights protection. They tend to reflect statist concerns with public order and maintaining the status of dominant groups. In several cases, this tendency dates back to European colonial rule. The population centres governed by Europeans were highly plural in ethnicity, religion, language, and immigrant status. Competition among these groups occasionally turned violent. London and other imperial capitals, however, had no interest in promoting a sense of unity among the subjects of each of its territories, since any resulting solidarity would accelerate nascent independence movements. Nor did London wish to export liberal democracy to its colonies.¹¹ The empire’s administrative and legislative response to the multicultural reality of its colonies was to divide and rule, and then manage the extreme symptoms of communal distrust by criminalising the promotion of any intergroup antagonism that could disrupt order.¹²

Accordingly, in 1898, colonial authorities added a new Section 153(A) to the Indian Penal Code, criminalising attempts to promote enmity between different groups. The government added new provisions in 1927 to prohibit the religious outrage of a group (Section 295A) or an individual (Section 298).¹² Thus, the colonial state not only heightened the status and influence of native communal actors but also turned offence-taking and the performance of victimhood into a legal weapon that these and other domestic elites could use against their political opponents. Many colonial laws were therefore ported over when countries arrived at independent statehood through a managed transition (as with most British colonies) as opposed to revolution or post-war occupation (Indonesia or Japan, for example). Since

inherited offence laws served the interests of major political actors, they were often retained or even hardened, as in the case of the blasphemy law in Pakistan.¹⁴ They are present in some form not only in South Asian jurisdictions, but also in Brunei, Malaysia, and Singapore—former Southeast Asian colonies where the Indian Penal Code held sway.¹⁵

With their emphasis on maintaining order, these laws' role in regulating hate speech can be both too much and too little, by human rights standards. On the one hand, they enable and encourage excessive state interventions. India's Section 153A (Section 196 in the new criminal code, *Bharatiya Nyaya Sanhita*, which took effect in 2024) does not apply the incitement threshold. It is concerned with expression that causes 'disharmony or feelings of enmity, hatred or ill-will'. Similarly, Section 299 (295A until 2024) deals with outraging 'religious feelings' of a community and 'insult' of their religion. Section 302 (previously 298) extends this protection to the 'religious feelings of any person'.¹⁶

Furthermore, these provisions make no distinction between vulnerable communities at risk of being harmed by speech and dominant communities whose status and safety are less likely to be diminished by vilification. Indeed, many Asian jurisdictions conflate hate speech with seditious libel, as was common in pre-liberal Europe—the law is especially sensitive to expressions of hostility against rulers. Thailand's *lèse majesté* law (Article 112 of its Criminal Code) punishes defamation or insult of the king, queen, or heir apparent, with terms of imprisonment of 3–15 years.¹⁷ As with blasphemy laws, the highly subjective nature of *lèse majesté* allows political actors to perform outrage to trigger police action against opponents alleged to have caused intolerable offence. Political actors use it to settle political scores or win points with their supporters. Dominant groups have successfully interpreted these laws as giving them a right to be protected from feeling offended. While the manufacture of indignation and the performance of victimhood is a common political tactic the world over, jurisdictions that criminalise offence and insult allow these stunts to be turned into powerful weapons of censorship, intimidation, and repression of dissidents and minorities.¹⁸

While states armed with such laws frequently over-regulate speech to protect feelings to an extent that should be unnecessary in an open democracy, they simultaneously under-regulate speech that a human rights lens would view as requiring intervention. Regulations focused on public order overlook the plight of groups so marginalised and unpopular that attacks on them result in no breach of peace. An example is hate speech against Rohingya refugees in Malaysia, which went unchecked despite the country's low tolerance for offensive speech against its main ethnic groups.¹⁹ Even when disturbances to public order are likely, the authorities may weigh the costs and benefits of intervention based on the relative size and ferocity of each side's mobs, placing minorities at a disadvantage.²⁰ When the government has a strong majoritarian bias, it is even less likely that it will apply the law fairly. For example, Section 197 of the *Bharatiya Nyaya Sanhita* (Section 153B of the old Indian Penal Code) prohibits public imputations that belonging to a religious or other identity group prevents Indians from being loyal citizens, or asserting that they should be denied rights as citizens. Yet, opinion leaders of the Hindu Right assert with impunity that Muslim Indians cannot be trusted and belong in Pakistan.²¹

The majoritarian biases in hate speech laws are also found in many Asian jurisdictions beyond

former British colonies. The Indonesian Criminal Code of Suharto's New Order regime (1966–98) was adapted from the Dutch colonial era. Its Section 156 criminalises expressions of hatred or contempt against groups, regardless of whether they amount to incitement. The next sub-section, 156A, known as Indonesia's blasphemy law, protects Indonesia's religions from expressions of 'hostility, hatred or contempt' against a religious group, even if such speech has no impact beyond wounded feelings. A Presidential Decree from 1965 criminalises deviant interpretations of religion.²² Indonesia has no established state religion; it is officially a multi-religious country that recognises several world religions. However, Muslims make up some 87 per cent of the population, making Indonesia home to the world's largest number of Muslims. Therefore, while Indonesia's blasphemy laws protect all institutionalised religions on paper, in practice, they are used mostly to protect the feelings of conservative Muslims. In one high-profile case, the Christian-Chinese governor of Jakarta was sentenced to two years' jail when he questioned opponents' suggestion that the Quran forbids Muslims from voting for a non-Muslim.²³ Meanwhile, Shia Muslims and the Ahmadiyya community remain targets of hate speech and hate crimes with little protection from the law.²⁴

The statist orientation of Asia's hate speech laws is also clearly evident in the People's Republic of China. The country's constitution proscribes discrimination based on race, nationality, religion, or gender, and upholds the equal legal status of all citizens.²⁵ Article 249 of the Chinese Criminal Code regulates the provocation of ethnic hatred or discrimination, with prison sentences of up to ten years. It protects the dominant Han Chinese and ethnic minorities. Article 250 deals with publication of materials that discriminate against or insult the customs and traditions of ethnic minorities, with punishments of up to three years in prison. However, rather than regulating hate speech by balancing equality rights and speech rights, both are subordinate to national security considerations as defined by the state.²⁶ For example, the prominent civil rights lawyer Pu Zhiqiang was convicted in 2015 of inciting ethnic hatred because of social media posts sharply critical of Han Chinese hegemony as reflected in the state's conduct in Xinjiang and Tibet.²⁷

Racial or religious hate speech is censored under China's National Security Act and Cybersecurity Act when such speech is deemed threatening to national security. Administrative regulations for internet platforms bundle incitement to discrimination against ethnicities together with extremism, terrorism, and other threats to national unity. This securitisation of hate speech regulation can result in the suppression of minorities' speech, when those minorities are restive. Thus, ethnic minorities facing the most serious discrimination—especially Uyghurs and Tibetans—are among the most censored. Authorities have also tried to silence feminist and LGBTQ groups, claiming that their attempts to speak up against discrimination and hate are a result of foreign interference threatening to national stability.²⁸

Prosecutors as persecutors

Discussions about hate speech regulation are meaningless if they do not confront the reality that, in some jurisdictions, states and their allies are themselves major producers or enablers of the harmful expression that democratic values and human rights norms require them to control. In the extreme case of Myanmar, anti-Rohingya hate speech was generated by

Buddhist nationalists with the tacit approval or active support of the military, which also used dehumanising language in its propaganda against ethnic minorities engaged in armed rebellion.²⁹ Between July and December 2017, the period of peak violence against Rohingya, more than 10,000 posts amounting to hate speech were found on a network of 43 Facebook pages with clear ties to the military.³⁰ Afghanistan's misogynistic policies under the Taliban has been associated with a spike in online hate against women.³¹ In Iran, state actors are major producers of hate speech against Jews, Baha'i, and sexual minorities.³²

Some state and non-state actors that generate or abet injustices domestically condemn discrimination beyond their shores. They wrap their rhetoric in decolonisation discourse, seeking a more balanced global order in which the Global South is treated with more respect.³³ China has adopted this geopolitical posture as a way of positioning itself as the leader of the Global South in resisting western hegemony. Speaking at the United Nations on the occasion of the International Day to Combat Islamophobia in 2024, China's representative called on all countries to adopt a zero-tolerance attitude and take concrete measures to combat discrimination and violence against Muslims. Free speech was no excuse for government inaction against anti-Muslim hate speech, he said. China would work with all countries to uphold 'openness and inclusiveness' together.³⁴ This stand contrasts with the Chinese state's collective punishment of Xinjiang's Uyghurs and policies to assimilate them into ethnic Chinese culture. State media's framing of Xinjiang unrest makes it a purveyor, even if unintentional, of Islamophobia.³⁵

A similar contradiction was evident in Muslim countries' unsuccessful efforts to insert into international law a 'defamation of religions' exception for free speech, which would have in effect legitimated laws prohibiting blasphemy.³⁶ The campaign by the Organisation of Islamic Cooperation, in which Pakistan played a leading role, was a response to rising Islamophobia against Muslims in North America and Europe, especially after the 9/11 attacks on the United States. The campaign intensified after 2005, when a Danish newspaper published with legal impunity cartoons deliberately mocking the Prophet Mohammed. Many of the states that lobbied for this change in international law, however, had poor domestic records in protecting minorities' freedom of religion and belief. Domestic blasphemy laws have been used against innocuous activities of minority faiths. Successive governments of Pakistan have tried to appease Islamist elements at the expense of minorities. Despite decades of appeals by human rights groups, the country's blasphemy law continues to be abused, with minorities suffering the consequences.³⁷

In Indonesia, similarly, state actors play a major role in dialling up or down the levels of hate speech in the country. Susilo Bambang Yudhoyono's presidency (2004–14) saw Islamists use the instruments of government to advance their cause.³⁸ A re-energised anti-deviancy agency under the public prosecutor's office called for a national ban on activities of the minority Ahmadiyya sect, a position later advocated by the minister for religion. A few months later, in 2011, three Ahmadis were attacked and killed by a mob. In Pakistan, Indonesia, and other countries, even if the state's use of discriminatory rhetoric is merely performative, its pronouncements are often received as a licence for vigilante action.³⁹ In that sense, regulatory and administrative acts that frame minorities as deviant can themselves be treated as a powerful form of hate speech.

At the time of writing, India is probably the world's most active state sponsor of hate propaganda, as it is in the midst of a revolutionary project to overturn the republic's secular foundations.⁴⁰ Since gaining power in 2014, the Bharatiya Janata Party (BJP) has made Hindu majoritarianism a state enterprise. Its allied organisations use hate violence as a key means of expressing the majority community's newfound power and intimidating minorities and dissenters into submission.⁴¹ Leading politicians associate themselves with extremists inciting violence, either by sharing rally stages with them or boosting their online posts. In a sign of the Hindu Right's growing sense of impunity, Prime Minister Narendra Modi characterised Muslims as 'infiltrators' in a rally speech at the start of the 2024 general election campaign. The BJP's online machinery has been impossible to document fully, as it is heavily reliant on the private messaging platform WhatsApp, but hate speech against Muslims is known to be a major theme of its content.⁴² WhatsApp has 500 million users in India. In 2018, the company set new limits on message forwarding and mass messaging in India after complaints that the app was contributing to the proliferation of dangerous speech. However, the BJP has enough volunteers to render such dampeners irrelevant. By decentralising its cyber operations, it is able to dominate the social media space with its hateful messaging. As with China, there is a global dimension to India's state-backed discrimination. Hindu nationalists in the Indian diaspora have leveraged their position as minorities in the West, riding their host countries' multiculturalism wave to gain sympathy as a marginalised, peaceful minority even as they contribute materially and symbolically to the Hindu Right's hate campaigns in India.⁴³

The influence of global norms

Asian jurisdictions have not been completely insulated from the spread of democratic norms.⁴⁴ The fact that states are highly sensitive to criticisms of their human rights records is one clear sign that they recognise equal human dignity as a universal value, contrary to their claims from the 1990s of competing 'Asian values'.⁴⁵ Many civil society and opposition groups in Asia have adopted the language of rights in their struggles for equality and justice.⁴⁶ In some cases, lawmakers have responded by introducing hate speech legislation that is more ICCPR-compliant. Courts influenced by global norms sometimes thwart governments' and other political actors' attempts to abuse sweeping insult laws to attack critics and minorities. Another major set of actors shaping the regulatory landscape is internet platform companies, which are mostly US-based. These tend to import the regulatory norms of their home countries and main markets. These winds of change tend not to overturn the regulatory regime for hate speech. Instead, the result is often an inconsistent and unpredictable patchwork of responses to hate speech.

In India, civic organisations and public intellectuals have been campaigning against increasingly flagrant hate propaganda by politicians. The Supreme Court has also grown more impatient. In 2014, the court opined that the problem was not a shortage of laws. 'The problem is that these laws are not being effectively executed or effectively implemented', it said.⁴⁷ Nevertheless, in the same ruling, it asked the Law Commission to consider defining hate speech and making legislative recommendations to Parliament. The Law Commission, a non-statutory research body set up by the government, duly published a report on hate speech in 2017.⁴⁸ It referred to not only Indian cases but also the ICCPR and the jurisprudence of the

European Court of Human Rights, Canada, South Africa, and other countries. It also cited the 2015 Jakarta Recommendations on Freedom of Expression in the Context of Religion, which were based on the Rabat Plan of Action. It proposed a new Section 153C, introducing language more consistent with human rights norms, dealing with anyone who ‘advocates hatred’ that ‘causes incitement to violence’. The proposed sub-section would also introduce a new hate speech offence, the use of ‘gravely threatening words’ to cause ‘fear or alarm’. Equivalent additions were recommended to Section 505.

The Law Commission’s concern about the intimidation of vulnerable groups appears to have been influenced by Canadian jurisprudence and the work of legal scholar Jeremy Waldron, both of which its report cited when making the case that hate speech undermines equal dignity and democratic participation. Also noteworthy about these proposed amendments was that they tried to lengthen the list of explicitly named identity groups requiring protection: sex, gender, sexual orientation, and disability were added to the existing categories of religion, race, place of birth, residence, language, caste, or community. The government did not act on the Law Commission’s recommendations. The new penal code, Bharatiya Nyaya Sanhita, maintains the wording of the old Sections 153A and 505 in the new Sections 194 and 351.

The Supreme Court, however, has shown an interest in evolving India’s approach to hate speech, including entertaining dignity-based justifications for regulation. In a 2020 ruling, for example, it said that the aims of criminalising hate speech included protecting dignity from the ‘loss of self-esteem, economic or social subordination, physical and mental stress, silencing of the victim and effective exclusion from the political arena’, and ‘ensure political and social equality between different identities and groups regardless of caste, creed, religion, sex, gender identity, sexual orientation, linguistic preference etc’.⁴⁹ The court has also pressed the authorities to take a more active role in policing hate speech, not sit back and wait for complaints.⁵⁰

Alarm about hate speech in India heightened after a Hindu supremacist event in late 2021. The religious assembly (‘dharam sansad’) in Hardwar, in the BJP-controlled state of Uttarakhand, featured leaders who called for genocide of Muslims. Open letters from civil society leaders, public intellectuals, media chiefs, and sections of the establishment—including former public servants and armed forces commanders—urged stronger action from government and the courts.⁵¹ When more events were planned featuring known hatemongers, petitioners persuaded the Supreme Court to issue warnings to local authorities that they would be held responsible for any hate speech. The Uttarakhand government got the message and refused permission to the organisers of another dharam sansad. It also deployed a heavy police presence, which deterred the organisers from proceeding with their plans.⁵² The Supreme Court also issued preventive orders against individual rallies in Maharashtra state. It directed the state police to use their powers of preventive arrests if the rallies went ahead.⁵³ However, there is no sign that regulation is catching up with India’s merchants of hate. Furthermore, what remains unaddressed are the fundamental flaws of legislation that in effect gives intolerant actors the right to be protected from feeling offended—legislation that is routinely weaponised to silence critics and minority voices.⁵⁴

While India is an extreme case, what it shares with other Asian jurisdictions is its reactive and

piecemeal approach to plugging gaps in hate speech regulation. In Japan, the state was spurred into action by xenophobic campaigns against Korean residents that escalated in the 2000s. Citing ICERD, the Japanese Supreme Court in 2014 recognised the illegality of hate speech on the basis of race or nationality for the first time, when it upheld a Kyoto District Court ruling in favour of the Kyoto Korean Elementary School in the school's lawsuit against a xenophobic activist group, Zaitokukai.⁵⁵ The district court had ordered Zaitokukai to pay damages and prohibited further demonstrations in the school's vicinity. Continued international pressure led to the passage in 2016 of Japan's first hate speech law, known as the Hate Speech Elimination Act.⁵⁶ This legislation deals only with unfair discriminatory speech against persons originating from outside Japan—not other identity groups. Furthermore, it does not provide for penalties but simply charges central and local governments with the responsibility of tackling hate speech. In contrast, in 2022, Japanese lawmakers significantly increased maximum penalties for the crime of online insult against individuals, from one month's detention to one year in jail, and from 10,000 yen in fines to 300,000 yen.⁵⁷ This followed the suicide of a celebrity victim of cyberbullying. The Diet's willingness to clamp down on insult reflects the importance given to personal honour in Japanese culture, while the relatively soft approach to identity-based vilification of groups may be due to the American imprint on Japan's post-war constitution.⁵⁸ Nevertheless, the 2014 Supreme Court decision shows the potential of using civil litigation to combat hate groups in Japan.⁵⁹

In Indonesia, years of civil society activism succeeded in establishing formal recognition of traditional belief systems. While the constitution enshrines belief in one supreme god, the government's practice of naming six religions—Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism—allowed blasphemy accusations to be levelled against unlisted belief systems that Muslim hardliners consider deviant. In 2017, the Constitutional Court ruled in favour of four petitioners who argued that it was discriminatory not to allow their local religions to be printed on national identification cards just like other faiths.⁶⁰ Although resisted by the Indonesian Ulama Council, the umbrella organisation of Muslim groups, the government now recognises Kepercayaan ('Belief') as a seventh religious category. The larger problem, of blasphemy law being used to punish minorities such as Ahmedi and Shia Indonesians, persists. The law has survived three challenges at the Constitutional Court.⁶¹ Indonesia's new criminal code, to take effect in 2026, codifies existing legislation used to punish perceived offences against religion.⁶²

The main driver of change in Asia's hate speech regulation is not human rights advocacy but internet disruption. The sheer volume of online content has forced states to accept looser control of the internet than they apply to print and broadcast media. As with other regions, much of the regulation is delegated to internet platform companies. Other than in China, which has its own suite of domestic internet corporations, the main platform companies operating in Asia import the same approaches to hate speech as they apply around the world. These are influenced by a sometimes contradictory mix of global human rights norms, US First Amendment jurisprudence, Silicon Valley libertarianism, and Wall Street amorality.⁶³ This remains the case even though Facebook, for example, has an audience in India almost twice as large as in the United States, and its markets in Indonesia, the Philippines, Vietnam, Bangladesh, Thailand, and Pakistan are larger than in any European country. Unlike Europe, which has adopted collective regulatory positions, Asian states—for better or worse—lack

mechanisms to develop common stands toward the platform companies.

Overall, the internet giants, just like governments, over- as well as under-regulate speech.⁶⁴ Platforms help pluralise debates about discrimination in Asia while also helping discriminatory speech to proliferate. Facebook and YouTube, for example, have official policies on free speech and hate speech that are more in line with international norms than with the laws of the Asian jurisdictions they operate in. Human rights defenders in Asia may receive a more sympathetic ear from global internet platforms than from state authorities when complaining about hate speech against sexual minorities, for example. LGBTQ+ rights are better recognised by platform companies than in Asian jurisdictions ranging from Pakistan to Singapore. Google was even the first corporate sponsor of the region's largest gay pride event, Pink Dot in Singapore, until foreign funding was blocked by the government.⁶⁵ However, these firms also comply with domestic law in the countries where they have a corporate presence. For example, Google may block YouTube videos within a market if told that they violate written law.⁶⁶ People speaking up for marginalised groups frequently find their posts taken down and their accounts suspended as a result of official requests as well as malicious, orchestrated complaints.⁶⁷

Platforms' business models, which prioritise engagement and virality, have opened up vast new public and semi-public spaces for the massive production and circulation of hate speech. Their enforcement of their stated policies in Asia is weaker than in Global North markets, due to a lack of capacity in local languages and cultural awareness among the platforms' human and algorithmic moderators.⁶⁸ This also makes it easier to abuse moderation systems.

Online hate is often cited as one reason why new laws are necessary, but actual legislation tends to reflect other priorities. Laws are usually worded broadly to allow the authorities to punish political dissent—including critics speaking up against discrimination and hate. Cyberlaws are sometimes broader and more punitive than pre-existing laws for equivalent offline offences.⁶⁹ Thus, these cyberlaws can exacerbate existing inequalities, strengthening the hand of hatemongers and further victimising vulnerable groups. In Pakistan, the state has used the Prevention of Electronic Crimes Act 2016 to arrest activists fighting discrimination against the ethnic Pashtun minority.⁷⁰ In India, internet shutdowns are a favoured tool of the government when faced with large-scale dissent.⁷¹ Such methods were used to suppress protests against the Citizenship Amendment Act, which discriminates against Muslims, as well as in Kashmir and Northeastern states where minorities have been trying to speak up against human rights violations.

While governments in Asia may be sensitive to global norms and trends, these external signals do not always nudge states towards greater respect for human rights standards. The West's preoccupation with terrorism post-2001 resulted in the securitisation of the discourse around the management of ethnic and religious diversity. This has influenced Indonesia's handling of radical Muslim organisations: the Joko Widodo administration (2014–2024) banned extreme groups to eradicate violent extremism, but this did little to protect religious minorities from repression by mainstream actors.⁷¹ China used to call its Xinjiang problem 'separatist', but increasingly used the term 'Islamic terrorism', to benefit from the latitude that western states were giving themselves in their war against terror.⁷² Post-2016 concerns about information

disorder including hate speech increased the appetite for internet regulation among lawmakers in liberal democracies. This new policymaking climate has been conducive for states in Asia to roll out authoritarian laws. In Singapore, for example, the government argued for new legislation by citing how even western democracies such as Germany, France, and Britain were trying to clamp down on hate speech.⁷⁴ After its Protection from Online Falsehoods and Manipulation Act was passed in 2019, however, barely any of the correction orders issued under this law were directed at hate speech—the new law was applied mainly against criticism of government policy.⁷⁵

Seeing hate speech regulation in context

The foregoing discussion suggests that hate speech regulation needs to be analysed in its wider political context. The letter of the law says little about ground realities. Laws and regulations are broadly worded and open to interpretation. Decisions can be contradictory and enforcement is inconsistent. More fundamentally, hate speech law in Asia is not grounded firmly in modern human rights norms, in which the criminalisation of hate speech is supposed to protect vulnerable identity groups from harms such as discrimination, intimidation, and violence. Instead, many laws are intended to serve several other purposes: averting public disturbances, countering violent extremism, shielding the sensibilities of dominant communities, and protecting the honour of powerful political and religious establishments.

The Indian case is especially sobering. Communal violence has gone beyond the occasional spike in deadly rioting; the new baseline is the routine terrorising of religious minorities, low-caste communities, women, and regime critics.⁷⁶ In the moral universe constructed by the Hindutva movement, hate speech and hate crimes are not just met with indifference and impunity; they are frequently celebrated and rewarded. In such contexts, discussions about hate speech regulation may be missing the point. The problem of hateful symbolic expression has been superseded by physical, systematic violence. In less extreme contexts as well, whether hate speech laws ultimately work in favour of a vulnerable community depends on the political terrain on which they are superimposed. Laws can help if the wider political order prioritises equal rights for various minorities, and if there are independent courts and other checks on the arbitrary exercise of power. If not, as is the case in many Asian countries, minorities are less protected by the rule of law than they are marginalised through rule by law. This pattern applies not only to regulation by the state but also sometimes to the policies of global internet platforms. For analysts and both public and private sector policymakers, the Asian experience is a reminder that hate is about power, and that the dynamics and distribution of power in local contexts must be central to discussions of how hate speech is and should be regulated.

NOTES

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3. Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred That Constitutes Incitement to Discrimination, Hostility or Violence (Office of the High Commissioner for Human Rights, 2012) <https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf>.
4. Alex Brown, *Hate Speech Law: A Philosophical Examination*, Routledge Studies in Contemporary Philosophy, 1st edn (Routledge, 2015).
5. Ngoc Son Bui, 'International Human Rights in Asian Constitutions', *Duke Journal of Comparative & International Law*, 34.2 (2024), pp. 207–64.
6. The continent contains most of the world's countries that have not signed the ICCPR at the time of writing: Bhutan, Brunei, Malaysia, Myanmar, Oman, Saudi Arabia, Singapore, and the United Arab Emirates. The ICERD has not been signed by Brunei, Malaysia, Myanmar, and North Korea.
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