

# Striking the balance: Global frameworks for regulating internet content and combating hate speech in a borderless digital era

Aneesh V. Pillai<sup>1\*</sup>

<sup>1</sup> School of Legal Studies, Cochin University of Science and Technology, Kochi 682022, India

\*Corresponding author's email: [advavpillai@gmail.com](mailto:advavpillai@gmail.com)

## Abstract

The rapid proliferation of internet content and the growing prevalence of hate speech in digital spaces present unprecedented global governance challenges, complicating efforts to regulate harmful content while upholding the fundamental right to free expression. This research critically examines emerging frameworks, including international legal instruments, regional strategies, and voluntary corporate standards, to identify gaps, inconsistencies, and areas for improved enforcement and cooperation across jurisdictions. Key findings reveal a fragmented and inconsistent regulatory landscape, exacerbated by varying definitions of hate speech, leading to discrepancies in enforcement and outcomes, and highlighting the tension between international norms and domestic policies. Despite these challenges, promising advancements like the European Union's Digital Services Act offer valuable lessons for harmonizing global regulatory efforts. The study, employing a doctrinal legal research methodology to analyze existing frameworks and judicial decisions, advocates for clearer hate speech definitions, robust safeguards against overreach, and enhanced cross-border collaboration among states, international organizations, technology companies, and civil society, to achieve a more equitable, consistent, and effective global approach to internet governance that balances free speech with necessary regulation.

## Keywords

Freedom of speech, Hate speech, Digital era

## Introduction

Regulating content on the internet, particularly hate speech, thus marks a vital juncture between free speech and societal cohesiveness. The internet has indeed emerged as the most significant transformational medium of communication in the digital age. The democratization of content creation on the internet has made it possible for diverse voices to participate in public discourse, challenging the traditional dynamics of power and making it more inclusive. However, the same technologies that promote freedom of expression have also been exploited to spread hate speech, incite violence, and

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perpetuate discrimination [1]. These harmful practices pose significant risks to individuals and communities, necessitating a balanced approach to regulation. International and regional human rights frameworks provide foundational principles for addressing hate speech while safeguarding the right to freedom of expression. Instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) enshrine the right to free speech, emphasizing its applicability to all media, including the internet. These frameworks also recognize the need for lawful restrictions to prevent harm, protect public order, and uphold the rights of others. Regional agreements, including the European Convention on Human Rights (ECHR), the African Charter on Human and Peoples' Rights (ACHPR), and the American Convention on Human Rights (ACHR), complement these international principles by addressing challenges in specific contexts [2].

These strong frameworks notwithstanding, the internet continues to pose challenges in hate speech regulation. The internet's global and borderless nature creates jurisdictional enforcement complications, and the definition of and approaches to hate speech often seem inconsistent. The role of private corporations as content moderators brings additional complexity, as the lack of transparency is always a concern, not to mention algorithmic biases that may result in a disproportionate suppression of lawful expression. Furthermore, the spreading of harmful content in digital networks indicates that traditional mechanisms for dealing with real-time threats are inadequate [3].

This research is novel in its comprehensive exploration of the interplay between international legal frameworks, regional strategies, and corporate standards, with a focus on identifying gaps and inconsistencies in addressing hate speech within the borderless digital landscape. By examining the challenges arising from cultural and legal variations, jurisdictional conflicts, and algorithmic biases, the study provides innovative insights into developing cohesive global mechanisms that effectively regulate internet content while safeguarding the fundamental right to free speech. Combating hate speech and protecting free expression need to be well balanced with appropriate regulatory means. Legality, necessity, and proportionality are foundational concepts for designing measures for risks in society without being harmful to democratic values. International cooperation to foster corporate accountability, public awareness, and stakeholder participation can ensure a fair and effective model of governance, balancing individual freedom with collective good [4].

### **Internet content: A manifestation of freedom of expression**

The right to produce content on the internet is part of the generally accepted umbrella created under the right to freedom of speech and expression, which are considered general building blocks of a democratic society. Creating the ability for content to be placed on the internet to reach mass audiences changes the modality in the exercise of

this right. This revolutionary platform has democratized access to information and given space for diverse voices, thereby enabling people to participate in public discourse and hold power to account. Its scope, though expansive, still keeps off certain areas for the sake of maintaining the balance of other competing rights and societal interests [5].

This right is protected and established at the international level by the Universal Declaration of Human Rights (UDHR), Article 19, which guarantees freedom of opinion and expression, including freedom to ‘seek, receive, and impart information and ideas through any media and regardless of frontiers.’ This provision gives a good basis for considering internet content creation as an exercise in free expression. Through Article 19 of the ICCPR, a very similar right is stated, emphasizing that in this respect, freedom of expression must apply ‘through any medium of choice,’ which means the rights shall automatically extend to the digital territory. These instruments clarify and point out that, even as a global platform in the internet, this device is not only used in communicating but also as one in creating and sharing products of human mind which advocate freely expressing ideas and culture multiplicity [6].

Regionally, instruments of human rights further this recognition. The European Convention on Human Rights (ECHR) guarantees freedom of expression in Article 10, where it states that the rights to ‘receive and impart information and ideas without interference by public authority’ fall within the scope of the clause. This has been further interpreted by the European Court of Human Rights (ECtHR) to include the digital space because the internet may make expression more powerful, but it needs protection from overly broad limitations. For example, such balance was struck on online platforms’ rights and the need to regulate hate speech and offending content in *Delfi AS v. Estonia* (2015). This ruling highlights that the existence of a fundamental right to create content, on its own, cannot be allowed as it should not violate other people’s rights.

Article 9 in the African Charter on Human and Peoples’ Rights provides for an assurance of freedom of expression that the African Commission on Human and Peoples’ Rights has interpreted as including digital expressions. According to the Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019, one should make internet use-friendly space in the states and ensure through it that access of individuals in sharing contents through it be without arbitrary restraints or censorship and therefore address other problems, including even disinformation and hate speech [7]. The Americas have similar rights under the American Convention on Human Rights, Article 13 of which ensures freedom of thought and expression. The Inter-American Commission on Human Rights states that the states have a responsibility to ensure an inclusive environment in the digital space where such creators can flourish. At the same time, it strongly stresses regulation on harmful activities online, such as fake news and incitement to violence among others, and that this shall be without neglect of observance of principles of legality, necessity and proportionality [8]. This means the right to produce content online, based on international and regional human rights

instruments, is an important constituent of the freedom of speech and expression. It enables unprecedented sharing of ideas, which facilitates dialogue and public discourse. However, the exercise of this right must be balanced against legitimate concerns to avoid harm and protect other rights. A balanced approach sensitive to the principles of human rights yet taking into account the complexities of the digital age will help preserve the internet as a space for free and responsible content creation.

## Restrictions on internet content

While the right to produce content on the internet is a fundamental element of freedom of speech and expression, it is not absolute. International and regional human rights instruments recognize that this right can be limited in certain circumstances to protect other rights and societal interests. Such limitations must respect the principles of legality, necessity, and proportionality to avoid abuse and ensure they do not disproportionately restrict the exercise of free speech. Article 19 (3) of the International Covenant on Civil and Political Rights (ICCPR) forms the basis to restrict freedom of speech or the creation of content, online or otherwise. Freedom of expression can be made subject to limitations if such a measure is ‘provided by law,’ ‘necessary in a democratic society’ for securing a legitimate aim, and ‘proportionate to the aim aimed at.’ Justified reasons include protecting national security, public order, public health, public morals, or the rights or reputations of others. Nevertheless, such limitations must be narrowly drawn to prevent or not amount to arbitrary abridgment of freedom of speech.

Similarly, Article 19 of the Universal Declaration of Human Rights [9] recognizes the right to freedom of speech but Article 29 (2) accepts that the exercise of that right may be subject to such limitations as are necessary: a) for respect of the rights or reputations of others; b) for the protection of national security, public order, or public health or morals. At the regional level, the European Convention on Human Rights (ECHR), under Article 10 (2), allows restrictions on freedom of expression if they are prescribed by law, serve legitimate aims such as national security or protecting morals, and are necessary in a democratic society. In the digital realm, the European Court of Human Rights has further developed those principles in cases such as *Delfi AS v. Estonia* (2015), where it upheld limitations on user-generated content qualified as hate speech. While platforms that allow for user-generated content have a role to play in facilitating freedom of expression, they cannot allow their platforms to be used for the dissemination of harmful or illegal content. This case highlights that creating internet content can be restricted as part of efforts to protect the public from harm and balance competing rights.

Under African jurisprudence, Article 9 of the African Charter on Human and Peoples’ Rights (ACHPR) protects freedom of expression but allows for the same to be limited subject to the law. The Declaration of Principles on Freedom of Expression and Access

to Information in Africa, adopted in 2019, provides that any restrictions on digital expression should conform to international standards and not be arbitrary. The declaration recognizes the need to fight harmful content, such as hate speech and disinformation, but insists that such measures should not be used to justify undue censorship or limit dissenting voices [10].

Article 13 of the American Convention on Human Rights provides robust protections for freedom of expression but also recognizes exceptions for ensuring public order, national security, and respect for the rights of others. The Inter-American Court of Human Rights has ruled in cases like *Herrera Ulloa v. Costa Rica* [11] that any restriction must be clearly defined by law and must not disproportionately affect the exercise of free expression. These principles have now expanded to include the digital space with content creation on the internet, and efforts made toward preventing misuse without weakening measures that may compromise democratic participation.

The UN Human Rights Council and the UN Special Rapporteur on Freedom of Opinion and Expression have repeatedly called attention to dangers of overly broad or vague restrictions on online content. While states may regulate harmful content, such as hate speech, terrorism-related propaganda, and child exploitation, measures like internet shutdowns, blanket bans on platforms, or criminalization of dissent can violate international human rights standards. The UN's 2018 report on online content regulation emphasized the importance of transparency and accountability in content moderation practices, urging states and private entities to adopt clear and narrowly defined rules [12].

Private corporations are also in the hot seat regarding their policies because they play a central role in moderating internet content. Algorithms used for filtering or removing content must be designed transparently and not be disproportionate to lawful restrictions. The Guiding Principles on Business and Human Rights advance corporate accountability in the exercise of respect for human rights while addressing harmful or illegal content.

Therefore, the right to content creation on the internet-the building block of freedom of expression-is subject to limitations aimed at protecting from harm, ensuring public order, and protecting other rights and freedoms. Such limitations must be set within clearly defined legal frameworks; must have legitimate objectives; and must be proportionate in order not to unreasonably impair freedom of expression. Balancing this right with other societal interests remains a complex but necessary task in preserving both individual freedoms and collective well-being in the digital age.

### **Hate speech: Beyond the restrictions?**

Hate speech is generally defined as speech that incites violence, hatred, or discrimination against individuals or groups based on characteristics such as race, religion, ethnicity, gender, or other protected attributes. Its regulation seeks to balance



the fundamental right to freedom of expression with the imperative to protect individuals and communities from harm. Both international and regional human rights instruments have principles to guide the curbing of hate speech while at the same time not infringing on freedom of expression excessively [13].

International law gives the framework for the regulation of hate speech. It primarily relies on the International Covenant on Civil and Political Rights (ICCPR). Article 20 (2) of the ICCPR obliges states to ‘prohibit by law any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.’ This obligation therefore complements the broader right to freedom of expression granted under Article 19 of the ICCPR, that is, the right to seek, receive, and impart information. The UN Human Rights Committee, in General Comment No. 34, emphasizes that although restrictions on hate speech are necessary, they must be in line with the principles of legality, necessity, and proportionality to avoid abuse. This means that limitations are only for a legitimate aim, such as protecting public order or the rights of others, and do not unduly restrict free speech [14].

Other international instruments also address hate speech. The Convention on the Elimination of All Forms of Racial Discrimination, under Article 4, requires states to criminalize the dissemination of ideas based on racial superiority or hatred. The Genocide Convention, 1948, further requires states to prevent and punish hate speech that incites genocide. In light of these obligations, the UN Office of the High Commissioner for Human Rights (OHCHR) has developed the Rabat Plan of Action 2012, which presents a six-part test for judging incitement to hatred [15]. This framework analyzes aspects such as the intent of the speaker, the context of the speech, the content of the speech, the audience, and the likelihood of harm in responses to hate speech to be appropriately calibrated.

Regional human rights frameworks complement international standards by taking into account the specific contexts of different regions. In Europe, for example, the European Convention on Human Rights (ECHR), under Article 10, protects freedom of expression but permits restrictions to prevent hate speech under Article 10 (2). The European Court of Human Rights has continuously upheld measures against hate speech in its jurisprudence, as in *Erbakan v. Turkey* (2006), where it highlighted the importance of protecting societal harmony and democratic values. These decisions reflect an understanding that hate speech can weaken democracy through intolerance and violence [16].

In the Americas, the American Convention on Human Rights allows for speech that incites violence or hatred to be restricted under Article 13 (5). The Inter-American Court of Human Rights has, however emphasized that such restrictions must be narrowly defined and proportionate so that they do not become tools for suppressing dissent or critical expression. In Africa, the African Charter on Human and Peoples’ Rights, therefore, recognizes freedom of expression but emphasizes the importance of

preventing hate speech. For example, the Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019) calls for laws regulating hate speech to be made as international standards require; also that such measures ought to be neither arbitrary nor unreasonable. Therefore, international and regional frameworks aim to regulate hate speech in a manner that balances the protection of individuals and communities with the safeguarding of freedom of expression. Emphasizing legality, necessity, and proportionality, these frameworks set a course for states to address hate speech effectively while avoiding excessive or arbitrary restrictions that may undermine democratic values and the free exchange of ideas.

### **Tests of legality, necessity, and proportionality: A balancing wheel**

This balancing effort, therefore, represents an uphill task between allowing unrestricted creativity on the internet, but at the same time restricting hate speech. International and regional human rights law comprises a set of integral principles applied in testing measures meant for regulation of hate speech not to disproportionately curtail a fundamental right to freedom of expression. Any form of restriction on freedom of expression, including online content creation, must be defined with clear law. Law has to be specific, accessible, and non-arbitrary; thus, allowing persons to know what is considered to be prohibited speech. It prevents the abuse of vague or overly broad laws which might silence dissent or legitimate expression [17]. For instance, International Covenant on Civil and Political Rights Article 20 (2) obligates countries to enact laws proscribing hate speech so that, among other things, clarity exists about what incitement to discrimination, hostility, or violence constitutes. Regional instruments, such as the ECHR under Article 10 (2), also insist on ‘prescribed by law’.

A need for restrictions calls for an urgent social demand to protect public order, national security, or rights of others. For example, in the Rabat Plan of Action (2012), evaluation of the context, intent, and likelihood of causing harm is highlighted with regards to potentially harmful content. That is necessary to regulate content that incites imminent violence or discrimination because it poses a clear and present danger to persons or groups. Content that offends or criticizes is not necessary to restrict, since it does not pose such a threat. Proportionality guarantees that the measures adopted are reasonable and the least intrusive necessary to accomplish the legitimate goal. A disproportionate measure, such as blanket internet shutdowns or platform-wide bans, often chokes lawful content and undermines democratic participation. Courts such as the European Court of Human Rights (ECtHR) have decided cases like *Erbakan v. Turkey* (2006) where restrictions must balance societal interests with individual freedoms, ensuring minimal interference with free expression. Thus, the tests of legality, necessity, and proportionality help to achieve a delicate balance between free expression on the internet and the curbing of hate speech. These principles ensure that restrictions are

narrowly tailored, justified, and proportionate to foster an online environment that protects both freedom of creation and societal harmony.

## Global regulation of hate speech and its challenges

Regulating hate speech within the content of the Internet represents a significant challenge that faces international law because defining and changing the digital terrain remains complex. One problem area is the definition of hate speech across jurisdictions to apply uniformly. International instruments like the International Covenant on Civil and Political Rights provide the states with an obligation to prohibit hate speech but provide wide latitude in ‘advocacy of hatred’ or ‘incitement to violence.’. Cultural, political, and social differences across countries make it difficult to establish a universally accepted definition, leading to inconsistent application and enforcement [18].

Another challenge is the global nature of the internet, which allows content to transcend borders instantly. While international law provides a framework for addressing hate speech, the lack of a unified regulatory mechanism complicates enforcement. Content deemed illegal in one jurisdiction may be permissible in another, creating jurisdictional conflicts. For example, hate speech targeting racial or religious groups could be tightly regulated in Europe, whereas similar content could enjoy free speech protections in the United States under the auspices of the European Convention on Human Rights (ECHR) [19].

It also introduces complexity through the role of private corporations: social media and technology companies are often content gatekeepers, implementing policies for the moderation of internet content, sometimes more than and other times less stringent than international standards. In such companies as Facebook and Twitter, hate speech can be controlled through algorithms and community guidelines, but its policies might not be very transparent and consistent. This means a lack of accountability for errors, overreach, where good content is censored and bad speech left uncensored because of error or bias in moderation [20].

Moreover, the rapid spread and dissemination of hate speech online, given algorithms and network effect, creates a challenge for international law. Traditional mechanisms are inadequate to respond to gradual investigation and adjudication while fast-paced harmful content and the real-world consequences resulting from it are spread, made worse by anonymity in the internet, which removes individuals’ fear of liability while propagating hate speech.

Finally, the balance between hate speech regulation and protection of freedom of expression remains a persistent challenge. Overbroad or vague laws targeting hate speech can become tools for censorship and oppression, particularly in authoritarian regimes. International law must navigate the tension between safeguarding free expression and preventing harm, ensuring that measures to combat hate speech are



lawful, necessary, and proportionate [21]. Therefore, the issues of hate speech definition, jurisdictional conflicts management, corporate accountability, technological dynamics, and balance of rights show the obstacles that international law faces while trying to effectively regulate hate speech in internet content.

### **Hate speech in internet content: Indian perspective**

In India, creation of content for the internet is held to be within the freedom of speech and expression guaranteed under Article 19 (1)(a) of the Constitution. This right is, however, subject to reasonable restrictions under Article 19 (2), permitting restrictions in the interests of public order, decency, morality, or the sovereignty and integrity of India. Such restrictions have to be just, fair, and reasonable. India tackles hate speech online through constitutional provisions, statutory laws, and regulations under the Information Technology Act, 2000 (IT Act), seeking to balance freedom of speech with the need to prevent harm and maintain public order.

The Constitution of India acts as the base framework for hate speech regulation in internet content. While Article 19 (1)(a) enshrines free speech, Article 19 (2) permits restrictions to prevent public disorder, protect decency, or uphold national security [22]. This constitutional base is further complemented by statutory provisions such as the Bharatiya Nyaya Sanhita, 2023, which criminalize various forms of hate speech. Section 196 penalizes actions, including electronic communication, that promote enmity or hatred among religious, racial, or linguistic groups and disturb public tranquility. Section 197 criminalizes assertions that undermine the allegiance of a community to the Constitution or promote disharmony. Similarly, Section 298 punishes acts intended to insult the religious sentiments of a group, while Section 302 penalizes deliberate actions that wound religious feelings. Provisions such as Section 356 (3) and (4) deal with defamation content, holding liable those persons who print, engrave, or sell the material.

The Information Technology Act, 2000, is important in regulating hate speech online. Section 69A gives the government authority to block access to online content in the interest of sovereignty, security, or public order. The IT Rules, 2021 require social media platforms to remove unlawful or hateful content upon direction from courts or authorities and ensure grievance mechanisms for harmful content. Other laws pertain to specific contexts in which hate speech occurs [23]. The Representation of the People Act, 1951, forbids hate speech during elections through Sections 123 (3A) and 125 [24]. The Cable Television Networks (Regulation) Act, 1995 forbids hate speech in broadcasts, and the Indecent Representation of Women (Prohibition) Act, 1986 tackles gender-based hate speech [25]. In India, any form of restriction on freedom of expression, including the generation of digital content, must satisfy the principles of legality, necessity, and proportionality. Those restraints must also meet the ‘golden triangle’ of being just, fair, and reasonable as held down by constitutional jurisprudence. Moreover,

those constraints hold good only if they relate within the grounds mentioned in article 19 (2) of the Constitution such as sovereignty and integrity of India, security of the State, public order, decency or morality, or contemptuous toward another country or incitement to an offence. India's legal framework seeks to suppress hate speech effectively, yet safeguard free expression. Enforcement remains more of an issue, and transparent guidelines on carrying out this balance are needed so that the harm of individuals' rights is not surpassed by democratic freedoms.

## Conclusion

Although international and regional frameworks provide a robust foundation to regulate hate speech on the internet, the effective implementation of such regulations is plagued by a myriad of challenges. Internet globality, jurisdictional conflicts, private corporate roles, and rapid dissemination of information make it challenging to enforce rules. Balancing freedom of speech with the need to stop harm remains a contentious issue that continues to arise. These challenges can be mitigated through some measures. International organizations must strive towards developing harmonized definitions of hate speech that are respectful of cultural contexts but uphold universal standards. Such definitions should be precise so that there is little room for abuse. International cooperation should also be increased because increased collaboration between nations can solve the jurisdictional problem and improve mechanisms for enforcement. Multilateral agreements may lead to harmonizing the regulatory practices across borders. Social media platforms and tech companies should take transparency in content moderation as an internationally agreed standard. Regular audits coupled with independent oversight mechanisms will bring accountability and fairness in such processes.

Empowering local communities to identify and combat hate speech makes enforcement more context-sensitive and effective, by not imposing blanket or arbitrary restrictions. Public awareness and education are also important because enabling digital literacy and educating the user toward the implications of hate speech can ensure responsible content creation and consumption. Algorithms for content moderation, too, should be audited with regard to bias and fairness. Policymakers should ensure that AI tools are transparent and do not disproportionately suppress lawful content. Finally, establishing expedited international mechanisms for handling cross-border hate speech cases could enhance responsiveness and reduce delays in addressing harmful content. These measures would help strike a balance in internet governance by protecting freedom of expression while effectively combating hate speech and safeguarding democratic values.

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