

Policing Cyber Hate: A Comparative Analysis Between Malaysia and India

*Nadia Nabila Mohd Saufi¹, Saslina Kamaruddin²
and Dr. Niteesh Kumar Upadhyay³*

Abstract

Hate speech becomes prevalent phrase in modern times. It is utilised in political debates, and legal jargon. Recently, Southeast Asia has seen an increase in disinformation-driven hate speech. Such crime evolved into a new paradigm with the advances in ICT. Currently, social media platforms allow people to exercise their right to free speech. People publish sensitive content and provocative remarks on social media without any restraints or limitations, which jeopardises or threatens national security and peace. Many cyber-related crimes including hate speech are criminalised in India and Malaysia. However, both jurisdictions' laws have several flaws, and there is no explicit and comprehensive legislation to govern or punish online hate speech. It also analyses flaws in existing legal systems and proposes new techniques to regulate online hate speech in Malaysia and India. This study uses a doctrinal research technique, which analyses primary and secondary sources. The findings show that the use of social media platforms is on the rise, increasing the possibility to infringe on fundamental liberties such as hate speech and expression. Without legal oversight or effective governance, the problem could lead to poor governance and threaten the well-being of the nations.

Keywords: *Hate Speech, social media, Freedom of Speech, Governance, Covid19, India and Malaysia*

¹ Lecturer, Faculty of Business Management & Professional Studies, Management & Science University, 40100 Shah Alam, Selangor Darul Ehsan.

² Senior Lecturer, Faculty of Management & Economics, Sultan Idris Education University, 35950 Perak Darul Ridzuan.

³ Associate Professor, School of Law, Galgotias University, Uttar Pradesh, 203201, India and Research Advsiior South Ural State University , Russia.

I. INTRODUCTION

The Internet has revolutionized communication with those around the globe. When the cyberworld and the real world clash, it degenerates into addiction. While the Internet is the essential human innovation, it still can be the most dangerous weapon in terms of affecting an individual's physical and mental health.⁴ The term "hate speech" enjoys great popularity today. It is used in colloquial speech or political disputes and as an element of lawyers' language and legal language.⁵ Over recent years, Southeast Asia has witnessed a surge of hate speech fueled by disinformation.⁶ However, in the current era and with Information and Communications Technology (ICT) development, hate speech has evolved into a new spectrum.⁷ Social media platforms currently act as a medium for the society to exercise their freedom of speech.⁸ However, when social media is used without any restrictions or limitations, it gave rise to the problem whereby its users post sensitive content and conflicting remarks that inflict or threaten the security and peace of the nation.⁹ In minimizing the dissemination of these threats of unregulated use of social media, the Malaysian government introduced the Communication and Multimedia Act 1998 (CMA 1998), which is still inadequate to govern hate speech.¹⁰

⁴ Saslina Kamaruddin et al., *Imposing Penalty for Internet Addiction in Malaysia: Lesson from South Korea*, INTERNATIONAL JOURNAL OF RECENT TECHNOLOGY AND ENGINEERING (IJRTE). ISSN: 2277-3878, Volume-7, Issue-6S5, April 2019.

⁵ Mahyuddin Daud & Sonny Zulhuda. *Regulating The Spread of False Content Online In Malaysia: Issues, Challenges And The Way Forward*, INTERNATIONAL JOURNAL OF BUSINESS & SOCIETY, 21 (2020).

⁶ Wok et al. "Internet and social media in Malaysia: Development, challenges and potentials." *The evolution of media communication*. IntechOpen, 2017.

⁷ Alsagoff et al. "The growth and development of the Malaysian media landscape in shaping media regulation." *Asian Journal of Applied Communication (AJAC)* (2014).

⁸ Khan et al. "Impact of PECA-2016 Provisions on Freedom of Speech: A Case of Pakistan." *Journal of Management Info* 6.2 (2019): 7-11.

⁹ Islam Md. Zahidul et al, *Internet governance: present situation of Bangladesh and Malaysia*, INTERNATIONAL JOURNAL OF RECENT TECHNOLOGY AND ENGINEERING 7 (2019): 176-180.

¹⁰ Siti Zabedah Mohd Shariff & Rohayu Kosmin. "Regulating Content in Broadcasting, Media and the Internet: A Case Study on Public Understanding of their Role on Self-Regulation in Malaysia."

Based on the statistics released by the Malaysian Communication and Multimedia Commission (MCMC), over the past five years (2016-2020), hate speech reports concerning Race, Religion, and Royal Institution (3R) have significantly increased. In 2017, there were many grievances, but in 2018, the number of complaints fell marginally. In 2019, the number of complaints rose by more than a hundred percent. Surprisingly, 929 grievances were registered in just half a year, from June 2020 to June 2021. The number of allegations is about a hundred thousand greater than the previous year, showing a significant rise in Malaysia's number of online hate speech complaints.¹¹ However, MCMC emphasized that all grievances were dealt with in compliance with existing procedures.

Two assumptions were made due to the substantial rise of online hate speech incidents in Malaysia. Primarily, in August 2019, it was reported that the public might channel all 3R complaints to MCMC's WhatsApp platform, making it more straightforward for people to complain and for MCMC to reply faster. Secondly, most Malaysians were homebound during the Movement Control Order (MCO) timeframe and spending more time on the Internet increases the likelihood of a higher number of complaints. More analysis is required to ascertain the cause of this surge, which may be the emergence of online hate speech or a greater understanding of the issue.¹²

¹¹ Ahmad Tajuddin Mohd Said, Online Hate Speech in Malaysia, September 9 2020, Official Website of Malaysian Institute of Defence and Security (MiDAS), Promoting Peace and Security, Perwira Dialogue 2020, Wisma Perwira A.T.M., Kuala Lumpur. (Feb. 14, 2022, 10.30 AM), <http://midas.mod.gov.my/gallery/publication/midas-commentaries/213-haze-managing-another-disaster-during-covid-19-by-lt-kol-dr-maimunah-omar-2>

¹² *Ibid*

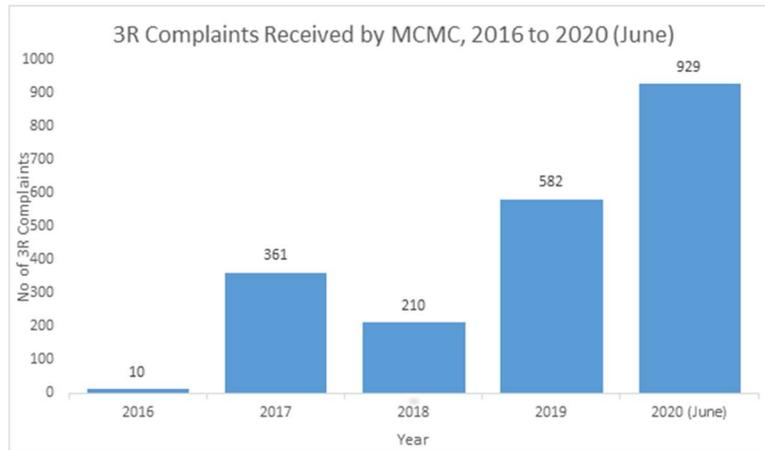


Figure 1: A statistic on the surge increment of reports of online hate speech complaints received by MCMC.

Another evidential incident is whereby during Covid19, the recent wave of 'hate speech and violent threats against the Rohingya appears to be driven by a perception among some members of the Malaysian public and politicians that the Rohingya community is demanding citizenship or other legal rights in Malaysia.¹³ These rights are protected by customary international law, binding on all states, and reflected in the Universal Declaration of Human Rights.¹⁴

The pandemic Covid19 has also resulted in children spending more time on devices, including social media, messaging apps, chat rooms, and video games. This will certainly encourage them to remain in contact with friends and make new acquaintances throughout the pandemic, but it will also make them more prone to online hatred.¹⁵ The abuse and threats are not merely those that we sometimes read of. Regularly, young children are constantly barraged with criticism, whether through Twitter abusers, individuals maligning personalities, or impulsive responses targeted at others. This risk is

¹³ Ehmer, Emily, and Ammina Kothari. "Malaysia and the Rohingya: Media, migration, and politics." *Journal of Immigrant & Refugee Studies* 19.4 (2021): 378-392.

¹⁴ <https://reliefweb.int/>

¹⁵ Ziccardi, Giovanni. *Online political hate speech in Europe: The rise of new extremisms*. Edward Elgar Publishing, 2020.

normalizing hostile online activity and jeopardizing the mental health and well-being of children¹⁶.

In view of the above issues arising, this paper will begin the discussions focusing on the concept and the context of online hate speech. Then, the paper will discuss the international law governing hate speech, the Indian and the Malaysian legal perspective on the said topic. The next part, which is the main crux of the paper, seeks to propose a new Independent Self-Regulatory Model (ISRM) as an alternative to the current policing approach of online hate speech in Malaysia, and the last part concludes the paper.

II. CONCEPTUALIZING ONLINE HATE SPEECH

The definition of "hate speech" consists of posting malicious online comments that insult a person or a group of people. Hate speech laws intend to protect people against any indignant feelings.¹⁷ The European Court of Human Rights has recognized the importance of protecting human feelings in which the limitation on the individuals' rights to "offend, shock, or disturb" others, was closely scrutinized by the Court. As a result, the right to freedom of expression safeguards a significant proportion of offensive speech. On the other hand, the Court has indicated in its case law that "in some democratic societies, it might be deemed appropriate to regulate or even preclude all means of expression that propagate, provoke, encourage, or excuse hatred based on intolerance...".¹⁸

The term may also be extended to hate speech on the Internet. Most social networking platforms, nonetheless, have their perception of hate speech. Facebook, for example, answers the question of what they consider to be hate

¹⁶ *ibid*

¹⁷ Simpson, Robert Mark. "Dignity, harm, and hate speech." *Law and Philosophy* 32.6 (2013): 701-728.

¹⁸ Roels, Jo. "The Battle against Hate Speech and Freedom of Expression Online." *Charles University in Prague Faculty of Law Research Paper No* (2017) (Mar. 26, 2022, 8.30 AM), https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&scioq=%E2%80%9CImposing+Penalty+for+Internet+Addiction+in+Malaysia%3A+Lesson+from+South+Korea%E2%80%9D&q=Roels%2C+Jo.+%22The+Battle+against+Hate+Speech+and+Freedom+of+Expression+Online.%22+Charles+University+in+Prague+Faculty+of+Law+Research+Paper+No+%282017%29.&btnG=.

speech as follows: "Content that attacks people based on their actual or perceived race, ethnicity, national origin, religion, sex, gender, sexual orientation, disability or disease is not allowed." "We may, however, accept simple attempts at comedy or parody that might otherwise be deemed a potential hazard or attack," they say. This contains information that certain people can find offensive".¹⁹

According to the international standards, online hate speech recognized that the same rights that people have offline must also be protected online; and that any limitations on electronic forms of communication or expression disseminated over the Internet must be justified according to the same criteria as non-electronic or offline communications.²⁰ The strength of the Internet is that it can also lead to a new public sphere and challenge or be the alternative to other mass media such as print and broadcast media.²¹ Furthermore, it can be employed to threaten the intellectual life through debate which is offered by especially the print media. Freedom of speech should be absolute, with no restrictions and that it is the only speech that should be protected by the Constitution.²² For this reason, it should not be abridged even on the grounds of national security.

Online hate speech merits heightened protection because it is vital to a democratic society. Special protection of online hate speech caters for the grounds of the government's more significant incentives for self-interested political action.²³ When the government regulates political speech, it is most likely to be biased or to be acting based on illegitimate, venal or partial considerations. Hence, the government is rightly distracted when regulating speech that might harm its interest and when the speech at issue is political, its interest is almost always at

¹⁹ Liina Laanpere, ELSA International Online Hate Speech Competition Participant 03, Estonia, Online Hate Speech: Hate or Crime?, Essay Competition Online Hate Speech: Right or crime? (Jan. 9, 2022, 10.30 AM), https://files.elsa.org/AA/Online_Hate_Speech_Essay_Competition_runner_up.pdf

²⁰ Chetty, Naganna, and Sreejith Alathur. "Hate speech review in the context of online social networks." *Aggression and violent behavior* 40 (2018): (Jan. 9, 2022, 10.20 AM) 108-118.

²¹ *Ibid.*

²² Meiklejohn, Donald. "Public Speech and the First Amendment." *Geo. LJ* 55 (1966): 234.

²³ George, Cherian. *Contentious journalism and the Internet: Towards democratic discourse in Malaysia and Singapore*. NUS Press, 2006.

stake. In a sense, this requires both speaker and receiver to understand that the speech is political. It is enough if 'a few' understand it as such.²⁴

International standards recognized that regulatory approaches in the telecommunications and broadcasting sectors could not simply be transferred to the Internet. Instead, the legal framework regulating the mass media should consider the differences between the print and broadcast media and the Internet while also noting how media converge.²⁵ Therefore, there has to be a line drawn somewhere between where the "right to offend" other people ends and illegal hate speech starts.

In society, one must contemplate that not all voices are heard; the more vital members systemically silence the weaker members of society through hate speech. Victims constantly live in fear of being ridiculed and abused, so much so that they do not even consider speaking or standing up for their rights due to the possible repercussions they may receive from their tormentors. The sensitivities, paranoia, and fear paralyzing people's lives are directly caused by the continuous negative imaging propounded by the privilege.²⁶

III. ONLINE HATE SPEECH AND INTERNATIONAL LAW

Hate speech has become a global issue in recent years. With the emergence of social networking, emotions of animosity that might still occur in communities have been intensified. As a result, social networking firms have taken measures to restrict online hate content on their sites, using technical and human surveillance approaches. Despite this, the dilemma continues.

Hate speech, like all other words, has no widely agreed meaning. However, hate speech is described by the United Nations (UN) as "any kind of contact in speech, writing, or action that opposes or uses pejorative or derogatory language concerning an individual or a community based on whom they are, in other words,

²⁴ *Ibid.*

²⁵ Tsesis, Alexander. "Hate in cyberspace: Regulating hate speech on the Internet." *San Diego L. Rev.* 38 (2001): 817.

²⁶ Nor, Murni Wan Mohd, and Ratnawati Mohd Asraf. "Freedom without Restraint and Responsibility: The Problem of Hate Speech in Malaysia." *Malayan Law Journal* 5 (2015).

based on their faith, ethnicity, nationality, colour, descent, gender, or other characteristics."

Article 19 of the United Declaration on Human Rights (UDHR) states that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".²⁷

Accordingly, Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR) states that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice".

The European Convention does not contain any commitment for the States to prohibit any kind of enunciation. Nevertheless, the European Court of Human Rights believed that any form of dangerous articulation should be strictly regulated to protect the European Convention's overall objectives. In situations where the State has restricted criminal endorsements, the European Court has exerted stringent regulation, ruling in various cases that the burden of a criminal prosecution dismissed the communication standard. Consequently, resorting to criminal legislation cannot be used as the usual solution to instances of disruptive articulation where less severe permits will have the same impact. Regardless, restrictions on the likelihood of enunciation, including those focused on severely hate speaking, were enforced by an essentially unusual social affair of reference-based law and managerial policy.²⁸

IV. INDIAN PERSPECTIVE ON GOVERNANCE OF ONLINE HATE SPEECH

While discussing hate speech, Benoit Frydman, mentioned two approaches adopted by the countries towards Hate Speech.²⁹ He called the first approach a

²⁷ Article 19 of the United Declaration on Human Rights (UDHR)

²⁸ Assimakopoulos, Stavros, Fabienne H. Baider, and Sharon Millar. *Online hate speech in the European Union: a discourse-analytic perspective*. Springer Nature, 2017 (Jan. 9, 2022, 10.20 AM IST).

²⁹ Yadav, A. (2018). *Countering Hate Speech in India: Looking for Answers beyond the Law*, ILI LAW REVIEW, 2, <https://ili.ac.in/pdf/csi.pdf> (Feb 10, 2022, 11.10 AM IST).

"slippery slope", which is primarily seen in the case of the Constitution of the United States of America, under which any restriction on freedom of speech and expression fails to have legal ground. There is no Anti-Hate speech law in the USA, and most of the time, people who committed hate speech when free without any legal interference.³⁰ The second approach is known as "Fatal Slope", which is followed by most countries around the globe.³¹ In the fatal slope approach, hate speech is expressly banned by various legal interference ranging from criminal to civil legislation to punish those guilty. This approach also suggests a very stringent punishment for hate speech as it presumes that hate speech may incite violence, hatred, mass-scale killings and extermination.³²

Hate speech can also lead to various crimes like ethnic cleansing or genocide (United Nations, 2020).³³ UN Secretary-general António Guterres states that hate speech is an early sign in many situations that may lead to genocide, and hence it should be rejected in all its forms at all places.³⁴ He also emphasized that social media platforms and technology companies can also play a vital role in preventing hate speech. He also bestowed his faith on religious leaders and civil societies for the prevention of Hate speech. The Jurisdictions following the fatal slope

³⁰ Zoller, E. (2009). The United States Supreme Court and the Freedom of Expression. INDIANA LAW JOURNAL, 84, 885-916. http://ilj.law.indiana.edu/articles/84/84_3_Zoller2.pdf (Feb 13, 2022, 01.10 AM IST)

³¹ Yadav, A. (2018), *Countering Hate Speech in India: Looking for Answers beyond the Law*, ILI LAW REVIEW, 2, <https://ili.ac.in/pdf/csi.pdf> (Feb 8, 2022, 10.10 AM IST)

³² Myers, S., & Radhakrishna, V. (2017). Hate Crimes, Crimes of Atrocity, and Affirmative Action in India and the United States. https://www.hhh.umn.edu/sites/hhh.umn.edu/files/2021-01/hate_crimes_crimes_of_atrocity_and_aff_action_in_india_u.s_SMyers.pdf (March 8, 2022, 10.50 PM IST)

³³ Niteesh Kumar Upadhyay and Mahak Rathee, *Protection Of Cultural Property Under International Humanitarian Law: Emerging Trends*, BRAZILIAN JOURNAL OF INTERNATIONAL LAW, Vol. 17 No-3, pp390-409 (Apr. 13, 2022, 12.50 PM), <https://www.publicacoes.uniceub.br/rdi/article/view/7076/pdf>

³⁴ Strauss, E. (2018). The UN Secretary-General's Human Rights Up Front Initiative and the Prevention of Genocide: Impact, Potential, Limitations. *Genocide Studies and Prevention: An International Journal*, 11(3), 48-59, (Mar. 8, 2022, 10.50 PM), <https://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1504&context=gsp>

approach through their criminal legislations try to prevent hate crimes, extermination, and genocide³⁵.

India also adopts a fatal approach in regulating hate crime because of its great cultural, religious, caste, race and language-based diversity, making India more vulnerable to hate crimes.³⁶ The Constitution of India states that liberty cannot be absolute and hence makes provisions in clauses (2) to (6) of Article 19 (Freedom of Speech and expression) authorizing the State to restrict the exercise of the freedom guaranteed under Article 19 of Indian Constitution.³⁷ Article 19 clause 2 discusses all the reasonable restrictions on freedom of speech and expression in India, namely for protection of sovereignty and integrity of India, protecting friendly relations with foreign states, maintaining public order, decency or morality.³⁸ This clause also restricts freedom of speech and expression, keeping in mind Contempt of Court, defamation of any individual or organization including company, and incitement to an offence. As we can observe closely, hate speech is not defined under Article 19 clause 1, and clause 2 and neither the crime of Hate Speech was defined in the entire Constitution.³⁹

In India, various legislations penalize situations similar to that of hate speech. Indian Penal Code, 1860 under Section 124 Clause A penalizes Sedition.⁴⁰ The

³⁵ Maneri, M. (2016). Study on hate Speech Online in Belgium, Czech Republic, Germany and Italy. (Mar. 28, 2022, 02.55 PM) https://www.bricks-project.eu/wp/wp-content/uploads/2016/10/relazione_bricks_eng2-1.pdf.

³⁶ Myers, S., & Radhakrishna, V. (2017). Hate Crimes, Crimes of Atrocity, and Affirmative Action in India and the United States. https://www.hhh.umn.edu/sites/hhh.umn.edu/files/2021-01/hate_crimes_crimes_of_atrocity_and_aff_action_in_india_u.s_SMyers.pdf (March 18, 2022, 04.50 PM IST).

³⁷ Kalra, K. & Tanwar, B. (2016), *Freedom of Speech and Expression and the Obligation of State to Protect Rights of Individual*, BHARATI LAW REVIEW, 144-162, (Dec 28, 2021, 10.50 PM), <http://docs.manupatra.in/newslines/articles/Upload/4F72F84B-E235-4893-9770-EDCDA76BA782.pdf>.

³⁸ Law Commission of India Report on Hate Speech (2017). <https://lawcommissionofindia.nic.in/reports/Report267.pdf> (Dec 17, 2021, 07.00 PM).

³⁹ S. S. & Somashekarappa. Freedom of Speech & Expression and the Issues of Intellectual Property and copyright (Dec. 23, 2021, 07.00 PM), <http://manupatra.com/roundup/370/Articles/Freedom%20of%20Speech.pdf>.

⁴⁰ Zoller, E. (2009). *The United States Supreme Court and the Freedom of Expression*, INDIANA LAW JOURNAL, 84, 885-916, (Nov. 03, 2021, 09:00 PM IST), http://ilj.law.indiana.edu/articles/84/84_3_Zoller2.pdf.

Indian Penal Code (hereinafter referred to as IPC) in Section 153 A penalizes doing acts prejudicial to maintaining harmony among various groups on the grounds of religion, race, birth, caste, residence, language, sex etc.⁴¹ In section 153 B of IPC, the acts which are prejudicial to National Integrity are penalized.⁴² Section 295A and Section 298 of IPC penalize 'deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs and anything which is intended to wound the religious feeling of any person or group or association'.⁴³ Many other provisions restrict freedom of speech and expression, like section 505 (1) of IPC, Section 8 of Representation of the People Act 1951, which disqualifies a person from contesting election based on proved hate speech.

Also, it can be contended that despite the various provisions attempted to define hate speech, after close observation, we can say that no single agreed legislation in India clearly defines hate speech. Therefore, a fundamental question that pops up in the ordinary person mind would be; if there is no legislation to regulate such crime effectively, how could the Indian judiciary try to define it as India is a common law country and the judicial decision has the force of law too? The above dilemma could be resolved by providing a clear standard definition for hate speech, which might lead to curtailment of the right of free speech, which prevented the Indian judiciary from defining hate speech.

Additionally, the Information technology Act 2000 under section 69 A provides that direction may be given to any agency or intermediary to block access to any information on any computer, computer system, computer network, computer database or software.⁴⁴ This provision protects against any kind of hate speech

⁴¹ Farheen, S. & Patel, S. (2018). *The Republic of Hate Speech and Religious Sentiments*, CASIHR JOURNAL OF HUMAN RIGHTS PRACTICE, 1(2), 94-106. (Nov. 03, 2021, 08:05 PM IST), <https://rgnul.ac.in/PDF/9b99535b-578e-40cd-adb2-6361dc8a4612.pdf>.

⁴² Yadav, A. (2018). Countering Hate Speech in India: Looking for Answers beyond the Law. ILI LAW REVIEW, 2, (Nov. 03, 2021, 09:00 PM IST), <https://ili.ac.in/pdf/csi.pdf>.

⁴³ Patni, R. & Kaumudi, K. (2009). *Regulation of Hate Speech*, NUJS LAW REVIEW, 2, 749-777. (Nov. 13, 2021, 07:13 AM IST), <http://nujlawreview.org/wp-content/uploads/2016/12/ritika-patni.pdf>

⁴⁴ Bhandari, M. & Bhatt, M. (2012). Hate Speech and Freedom of Expression: Balancing Social Good and Individual Liberty. The Practical Lawyer, (Apr. 22, 2021, 08:23 PM), http://www.supremecourtcases.com/index2.php?option=com_content&itemid=5&do_pdf=1&id=22819.

and hates mongering by putting an obligation on the intermediary to block hate speech. If the intermediary fails, they can be punished with imprisonment terms of up to 7 years and be liable to a fine.

In the social networking and digital applications era, hate speech and hate crimes are becoming more violent. Social media giants like Facebook, Twitter and Instagram tried their best to eliminate hate speech of all forms. Facebook alone removed around 3 million pieces of hate speech in 3 months between July to September in the year 2018.⁴⁵ Facebook divides hate speech into three different tiers and acknowledges that it also failed to detect many hate speech pieces but will try to do its best to reduce and control them in future. In September 2018, Youtube removed around 25,000 online videos that fail under the category of "hateful or abusive" content.⁴⁶

Journalist Kishore Chand posted a statement on Facebook stating that the Chief Minister of Manipur is a 'Puppet', and he was later arrested on Hate speech charges. His problem took a jump after getting bail in the present case when he was detained under National Security Act for the same offence. National Security Act is a very stringent statute and does not allow the right to bail within one year of accusation. The main aim of the National Security act is to prevent anyone from acting in any manner that is dangerous to the State's security or harmful for maintaining public order. This case very clearly reflects how the rights of citizens are in danger and need strict protection because of misuse of powers by different governmental types of machinery.⁴⁷

Within the Indian context, hate speech is not just used to hurt sentiments but also used by political and youth leaders as a shortcut to get famous, which often make

⁴⁵ Facebook. (2021). Community Standards Enforcement Report. (Apr. 12, 2021, 05:23 PM IST), <https://transparency.facebook.com/community-standards-enforcement/#hate-speech>.

⁴⁶ Fowler, G. & Harwell, D. (2018). 2018 was the year of online hate. Meet the people whose lives it changed, (Apr. 09, 2021, 09:23 PM IST), https://www.washingtonpost.com/business/technology/2018-was-the-year-of-online-hate-meet-the-people-whose-lives-it-changed/2018/12/28/95ac0558-f7dd-11e8-8c9a-860ce2a8148f_story.html?noredirect=on.

⁴⁷ Anonymous. (2018). Misusing NSA: the detention of a Manipur journalist. THE HINDU, (April 21, 2021, 10:23 PM IST), <https://www.thehindu.com/opinion/editorial/misusing-nsa-the-detention-of-a-manipur-journalist/article25791811.ece>

the concept of hate speech more complex and dangerous to threaten the freedom of speech and expression. Freedom of speech and expression is a fundamental right under India's Constitution and various other international human rights instruments like UDHR, ICCPR, and ICESR.⁴⁸

Recently, it can be seen that a new trend in India about the filling of multiple first information reports in different police stations against the accused of a single instance of hate speech. Many researchers and jurists believe that this is done to overburden the accused with multiple cases and create a trap for the accused person.⁴⁹ In various instances, the Supreme Court of India has quashed multiple FIRs filed for the same crime in different states and jurisdictions. For example, in a recent *Amish Devgan v Union of India and others (2021) 1 SCC*. Several FIRs were registered against the anchor Amish Devgan across the country to call Khwaja Moinuddin Chisthi, better known as Khwaja Ghreeb Nawaz, an 'attacker 'lootera' during his news debate 'Aar Par'. In this case, the Supreme Court of India refused to quash the multiple FIRs registered in different jurisdictions and further observed that statements by the persons holding power or power to influence people should be considered while deciding in cases of hate speech.

Contrary to the above case court granted relief in the case of Republic TV Editor-in-chief Arnab Goswami when he made a statement about the opposition party leader concerning the mob lynching of two sadhus and their driver in the State of Maharashtra. Supreme Court, in this case, quashed all FIRs except one and stated that filing of multiple FIRs for the same incident amounts to abuse of judicial process.⁵⁰

⁴⁸ Bhandari, M. & Bhatt, M. (2012). Hate Speech and Freedom of Expression: Balancing Social Good and Individual Liberty. *The Practical Lawyer*, (Mar. 11, 2021, 07:09 PM IST), http://www.supremecourtcases.com/index2.php?option=com_content&itemid=5&do_pdf=1&id=22819.

⁴⁹ Verma, A. (2020). Review: The Supreme Court makes important observations on Hate Speech, (Mar. 11, 2021, 07:09 PM IST), <https://factly.in/review-the-supreme-court-makes-important-observations-on-hate-speech/>.

⁵⁰ Vishwanath, A. (2020). 10 free speech cases this year: In most, no relief from Supreme Court- except when Centre did not object. *THE INDIAN EXPRESS*, (Feb 11, 2021, 02:09 PM IST), <https://indianexpress.com/article/india/10-free-speech-cases-this-year-in-supreme-court-6564796/>.

V. MALAYSIAN PERSPECTIVE ON GOVERNANCE OF ONLINE HATE SPEECH

In Malaysia, Part II of the Federal Constitution formally assured freedom of speech under Article 10(1) entitled "Freedom of Speech, Assembly and Association". Article 10 and other laws such as the Sedition Act and Penal Code, however, have provisions that seek to limit and punish those who are found to be exceeding their right of expression by expressing controversial views on issues such as the special rights of the Malays and other indigenous people (*Bumiputera*), Islam as the national religion, the rights of immigrant ethnic (especially Chinese and Indians) to citizenship, the position of the King, and the status of the Malay language as the national language and a host of other issues that could potentially be sensitive in the context of the fragile ethnic relations in the country. It is argued that Malaysia, as a multi-ethnic society, liable to ethnic conflict, requires such laws to prohibit the propagation of ethnic prejudice and religious bigotry.⁵¹ Thus far, online hate speech does not have explicit enactment, although directly some law has been utilized to regulate online hate speech. However, it is undeniable that Malaysian laws cannot decipher how to function appropriately but extended to only act as an instrument for the government to take advantage and collect votes.⁵²

The Communications and Multimedia Act 1998 regulates online freedom of expression in Malaysia. However, there have been confirmed instances of malicious charges against human rights activists and political critics following the previous Malaysian General Election in 2018 (GE14). Section 233 of the Communications and Multimedia Act of 1998 enabled these arrests (CMA 1998). Although several prosecutions have been dismissed, the Royal Malaysian Police continue to apprehend citizens guilty of creating "violent internet posts." For example, Mohd. Hannan Ibrahim was arrested and convicted for allegedly making

⁵¹ Speech, Not Legitimate Political, And Mohd. Azizuddin Mohd. Sani, *Chapter One Constitutional and Legislation Practices In Protecting Ethnic Relations In Malaysia: Restrict Hate Speech*, DYNAMIC OF ETHNIC RELATIONS IN SOUTHEAST ASIA (2010): 9.

⁵² Ambiga Sreenevasan & Ding Jo-Ann, Does malaysia need hate speech laws? *Malaysiakini* (2019), (Mar. 26, 2022, 8.30 AM), <https://www.malaysiakini.com/news/460524>.

an insensitive joke about the deaths of two police officers in a car crash. At his hearing, the perpetrator was not served by an attorney.

Additionally, a freelance graphic artist was condemned to imprisonment and fined RM30,000 by the Sessions Court for transferring a comedian sketch of the former Prime Minister Datuk Seri Najib Tun Razak on his Facebook account for two years ago.⁵³ According to Bernama's reports, Judge Norashima Khalid passed a sentence on Mohd. Fahmi Reza Mohd. Zarin, 40, after finding that the defence had neglected to raise sensible uncertainty against the indictment's case. Despite that, the Court permitted a stay of the sentence pending an appeal in the High Court and Fahmi was permitted bail of RM10, 000 with one surety.⁵⁴ This was in response to Fahmi's application to the High Court to strike out his charges under the Communications and Multimedia Act 1998 because the charges were unconstitutional.⁵⁵ The prosecution obtained the order when they submitted a motion that only the Federal Court was empowered to address questions of constitutionality.⁵⁶

Chief Judge Abdoolcader elucidated that the term 'public order' is not specified anywhere. However, there must be inevitably a threat to humankind and welfare in addition to the disturbances of public tranquilly.⁵⁷ Therefore, the government and any part of the body making laws need to look forward to no specific

⁵³ Niteesh Kumar Upadhyay, & Mahak Rathee. (2022). Cyber Security in the Age of Covid-19: A Timeline and Analysis of Cyber-Crime and Cyber-Attacks during the Pandemic. *Medicine, Law & Society*, 15(1), 89-106. (Mar. 11, 2021, 07:09 PM IST), https://doi.org/10.18690/mls.15.1.89-106.2022_

⁵⁴ Fahmi Reza gets jail, fined RM30,000 over clown caricature - NST online, (Jul. 6, 2022, 11.30 AM), <https://www.nst.com.my/news/crime-courts/2018/02/337249/fahmi-reza-gets-jail-fined-rm30000-over-clown-caricature>.

⁵⁵ Amnesty International "Fahmi Reza Charged; Laws Must Not Be Used to Stifle Peaceful Dissent And Critique" (May. 16, 2022, 12.30 PM), <https://www.amnesty.my/2022/02/10/media-quote-fahmi-reza-charged-laws-must-not-be-used-to-stifle-peaceful-dissent-and-critique/>

⁵⁶ *Ibid.*

⁵⁷ Nadia Nabila Mohd Saufi & Siti Saidah Nafisah Omar "The Exercise Of Police Powers In Enforcing Public Order Legislations In Malaysia. In A. Abdul Rahim, A. A. Rahman, H. Abdul Wahab, N. Yaacob, A. Munirah Mohamad, & A. Husna Mohd. Arshad (Eds.), *Public Law Remedies In Government Procurement: Perspective From Malaysia*, vol 52. *European Proceedings of Social and Behavioural Sciences* (pp. 723-731). FUTURE ACADEMY. (Apr. 5, 2022, 10.30 AM), <https://doi.org/10.15405/epsbs.2018.12.03.73>

legislation to regulate online hate speech in Malaysia.⁵⁸ Similarly, the issues and implications of online hate speech communication on Malaysian citizens are safeguarded and analyzed. Presently, the problems regulating hate speech and its transformation to cyberspace are still being discovered under Malaysian law. Also, it is undeniably resisted that the laws have lacunae, and it was scattered. Due to the absence of specific laws to cover online hate speech, it could cause a lot of disturbance towards society today, where people will find the difficulties to whom they should meet to solve their problems relating to hate speech. Several other laws are used to the topic of hate speech.⁵⁹

As previously stated, existing laws that may cover online hate speech include computer-specific legislation such as Section 233 of the Communications and Multimedia Act 1998 (CMA 1998) and traditional legislation such as the Penal Code and the Sedition Act 1948. However, Malaysia's current legal framework is distorted, as there is no specific law governing online hate speech, but the elements of the crime can be found in the Sedition Act 1948, the Penal Code, and the CMA 1998.

The problem with the current legal framework is that, compared to the Sedition Act and Section 233 of CMA, the Penal Code provisions are hardly ever invoked. Furthermore, the stipulations of the Penal Code are still open to abuse, and some argue that they need to be refined. The Sedition Act and the CMA 1998 have the following drawbacks on some correlation to violence; for instance, the Sedition Act requires someone to "excite disaffection" against the Ruler or the government or to provoke feelings of "ill will or hostility" between different racial groups for a crime to be committed. Meanwhile, Section 233 of the CMA makes offensive postings intended to annoy others illegally, posing as the country's broadest restriction on freedom of speech. There is no requirement to prove the intent to provoke violence or the commission of any crime under either of these Acts.⁶⁰

⁵⁸ *Ibid.*

⁵⁹ Omar Ali, "Hate Speech defined", (Jun. 8, 2022, 3.30 PM), <https://thecandor.wordpress.com/2018/09/12/why-online-hate-speech-is-more-problematic-than-offline-hate-speech>.

⁶⁰ Ambiga Sreenevasan & Ding Jo-Ann, Does Malaysia need hate speech laws? (Aug. 8, 2022, 6.30 PM), <https://www.malaysiakini.com/news/460524>.

On the other hand, several commentators argue that while freedom of speech is not absolute and can be regulated, such regulations cannot be so broad that the right becomes illusory. Restrictions must be necessary and proportionate, and they must serve a legitimate purpose. It is to protect other people's human rights, not the vested interests of those in power.⁶¹

VI. NEW INDEPENDENT SELF-REGULATORY MODEL (ISRM) TO GOVERN ONLINE HATE SPEECH

The United Nations states that various forms of social media regulation structures operate around the globe, respectively influencing the cultural, social, and political traditions of different countries (Universal Declaration of Human Rights, 2018). There are three major styles in general: initially, the Legislative Control Model (L.C.M.), which refers to all regulations, enacted by parliaments to govern the media and is distinguished by greater state involvement. Subsequent, the Co-Regulation Model, also known as "Controlled Self-Regulation," (CSR), usually involves aspects of a self-regulatory system backed up by legislation. Finally, the Self-Regulation system focuses solely on mutual compliance to implement such rules and regulations.⁶²

The position of regulations in upholding the applicable requirements is non-existent. Its mission is to keep its members accountable to the public, foster awareness among its members, and establish and maintain ethical principles.⁶³. Companies and parties who commit to this form of legislation do so for beneficial motives, such as the intention to advance the growth and reputation of their discipline and industry, rather than fear of legal consequences. An alternative study of the traits for non-adopters to internet convention and their variations was performed by taking advantage of the skills of sociology, psychology, and social sciences. Five variables that influence the position of non-adopters have been

⁶¹ Hajjafari, Aria, Wan Asna Wan Mohd Nor, and Faridah Jaafar. "The Progress of the Freedom of Speech in Malaysia's Political Trajectories: A Review."

⁶² Gorwa, Robert. "The platform governance triangle: Conceptualising the informal regulation of online content." *INTERNET POLICY REVIEW* 8.2 (2019): 1-22.

⁶³ Kormos, Ana, et al. "Ethical Considerations for Gene Drive: Challenges of Balancing Inclusion, Power and Perspectives." *Frontiers in Bioengineering and Biotechnology* 10 (2022).

analyzed; namely, power locus, autonomy, affective secondary education, perceived danger and self-assessment are all the ones.⁶⁴

Self-regulation models focus on participants sharing a mutual sense of the principles and ethics that govern their professional behaviour. To establish a complex and pluralistic broadcasting system, regulatory or co-regulation models have historically been considered appropriate for the news media, where the distribution of a limited natural resource spectrum necessitates the involvement of public authorities. For ten-print media, self-regulation is the chosen approach; press councils are a typical example of those structures.⁶⁵ Self-regulation is generally acknowledged as the least intrusive mechanism for efficiently controlling the press and the most efficient framework for promoting high expectations in the media.

Essentially, a robust self-regulatory system will help ease the strain on the courts and the judiciary. Legal trials are often required in the most extreme situations, and a vast majority of cases can be settled quickly and satisfactorily at a low expense. When an issue is efficiently handled by self-regulation, the need for government intervention is usually minimized. It safeguards employees of the industry (such as journalists) while also making them accountable to their profession and ensuring that news organizations are kept accountable to the public.⁶⁶ Furthermore, self-regulation will only flourish in the sense of a legislative system that respects the constitutional rights to freedom of speech and knowledge. Several criteria for successful media self-regulation have been established, and an effective self-regulatory agency should, first and foremost, be independent of the State, financial interests, and special interests.

Consequently, it should be formed by a completely consultative and inclusive mechanism, with the primary constituent elements of their practice being formulated in an open, accessible, and participatory manner that allows for broad

⁶⁴ Tarofder, Arun Kumar, S. M. Azam, and Azrin Ali. *Characteristics of social media non-adopters: Lessons learned*, THE MARKETING REVIEW 18.2 (2018): 131-148.

⁶⁵ Gorwa, Robert, *The platform governance triangle: Conceptualising the informal regulation of online content*, INTERNET POLICY REVIEW 8.2 (2019): 1-22.

⁶⁶ Speech, Not Legitimate Political, And Mohd Azizuddin Mohd Sani, *Chapter One Constitutional and Legislation Practices In Protecting Ethnic Relations In Malaysia: Restrict Hate Speech*, DYNAMIC OF ETHNIC RELATIONS IN SOUTHEAST ASIA (2010): 9.

public participation. Fourth, in terms of delegate appointment and decision-making, it should be democratic and open. It is crucial to maintain the integrity of self-regulatory agencies, with a composition that involves members from civil society to ensure broad representation. It should also follow a code of ethics for the occupation or industry it aims to control as a fourth prerequisite. The company must therefore include comprehensive appeals process with consistent procedural guidelines to assess if ethical principles were broken in certain situations, as well as the authority to enforce just moral penalties.⁶⁷

Finally, it must serve public interests while both being transparent and accountable to the public. Moreover, self-regulatory bodies may play a significant role in promoting ethical rules awareness and comprehension within a business or occupation. They will accomplish that by adopting and transmitting suggestions and guidelines and vivid descriptions to their participants.⁶⁸ Thus, a minimal level of government aid may enhance the implementation of effective self-regulatory processes, as long as the intervention is limited to developing a legal framework for self-regulation and does not endanger the self-regulatory bodies' independence. Situations under which government bodies force private corporations to define and regulate speech under the guise of self-regulation or co-regulation, on the other hand, are in clear contrast with international standards on freedom of expression.⁶⁹

The development of an autonomous self-regulatory authority for social networking (Social Media Council) will be the most ambitious challenge in this regard; it could be achieved at the national or foreign level or a mixture of both. It will contend with problems of content moderation which will be sufficiently supported by social network platforms and other involved parties.⁷⁰ The Council

⁶⁷ Lai, Mirko, et al. *HaMor at the Profiling Hate Speech Spreaders on Twitter*. WORKING NOTES OF CLEF 2021-CONFERENCE AND LABS OF THE EVALUATION FORUM. Vol. 2936. CEUR Workshop Proceedings, 2021.

⁶⁸ R. BALDWIN, M. CAVE & LODGE, M. UNDERSTANDING REGULATION: THEORY, STRATEGY, AND PRACTICE, (Oxford University Press, 2011).

⁶⁹ Nor, Murni Wan Mohd, and Ratnawati Mohd Asraf, *Freedom without Restraint and Responsibility: The Problem of Hate Speech in Malaysia*, MALAYAN LAW JOURNAL 5 (2015).

⁷⁰ Quintel, Teresa, and Carsten Ullrich. "Self-regulation of fundamental rights? The EU Code of Conduct on Hate Speech, related initiatives and beyond." *Fundamental Rights Protection Online*. Edward Elgar Publishing, 2020. 197-229.

could create ethical principles related to online content delivery, including terms and conditions, user rules, and social media providers' content regulation practices.⁷¹ This system will establish a democratic platform for critical public debates on the control of online content sharing by having the work open to the public in general and by effective consultative processes.⁷² This body will track and encourage the implementation of acceptable ethical practices by social media platforms by utilizing light penalties and focusing solely on accountability, peer pressure, and public pressure. Transparency coupled with independence can provide the legitimacy that this mechanism needs to achieve public confidence.

VII. CONCLUSION

In conclusion, there has been an upsurge of hate speech and cyberhate crime during the pandemic Covid19. The tremendous rise of hate speech cases should be taken as a wake-up call for regulators to consider the concerns and obstacles associated with regulating online hate speech in Malaysia and India. As a result of the severity of the effect of hate speech, many people of all races and nationalities continue to exist beneath the surface and have a significant impact on the victims and society. It is critical to remember that if the source of hatred is an incident occurring outside the country, the more significant problem is addressing the core cause. Within the Indian context, it has been observed that the country has failed to address critical concerns about hate speech and related restrictions. This raises the subject of introspection and study of laws and their implementation, or more particularly, the proliferation of laws that has resulted in the horrible scenario of overcriminalization of hate speech. Overcriminalization places the burden of proof on the State, which frequently fails to do so beyond a reasonable doubt. Numerous documented cases said that expressing one community's or group's feelings without making any reference to another community's or group's feelings is not considered hate speech. The Indian legal

⁷¹ Flew, Terry, Fiona Martin, and Nicolas Suzor, *Internet regulation as media policy: Rethinking the question of digital communication platform governance*, JOURNAL OF DIGITAL MEDIA & POLICY, 10.1 (2019): 33-50.

⁷² Klonick, Kate, *The Facebook Oversight Board: Creating an independent institution to adjudicate online free expression*, YALE LJ 129 (2019): 2418, (Apr. 29, 2022, 8:19 AM), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ylr129&div=48&id=&page=>.

system needs improvement, and specific laws needed to be able to aid. For example, in Australia, hate speech complaints are settled through mediation.⁷³ Numerous countries also employ fines and compensating payments to the damaged party in cases of hate speech, which is an effective method of policing hate speech in some. However, the imposition of a fine might not be, in all circumstances, effective measures as the affluent individual may be worried about paying a charge, whereas a poor or middle-class individual will be impacted by it and added burden to them.

Additional efforts should be taken to foster critical thinking among Malaysians, particularly among our youth, to strengthen mental firewalls and general digital literacy abilities within the Malaysian legal context. Additionally, this may result in social disruptions due to a lack of legislation to regulate or manage internet hate speech. Citizens will have difficulty determining whom to consult with their internet hate speech concerns. Since Malaysia's persistent problem with online hate speech is poorly defined, generic, and lack of comprehensive legal framework that allows for the "improper use" of any expression. This is demonstrated by the fact that the Malaysian Communication and Multimedia Act and the Penal Code regulate hate speech crimes, with the law being so broad and imprecise. Thus, to mitigate the rise in hate speech criminality on social media, a new self-regulation paradigm is required.

⁷³ Rosenfeld, Michel, *Hate Speech in Constitutional Jurisprudence: A Comparative Analysis*, CARDOZO L. REV. 24 (2002): 1523, (Apr. 5, 2022, 8:30 AM), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/cdozo24&div=53&id=&page=>.