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FREEDOM OF EXPRESSION AND RELIGIOUS SENTIMENTS: AN INDIAN CONSTITUTIONAL PERSPECTIVE

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ABSTRACT

In India's vibrant yet fragile constitutional setup, free speech under Article 19(1)(a) often clashes with safeguards for religious sentiments via "reasonable restrictions." This research paper unpacks major Supreme Court and High Court decisions from 2024-2026, spotlighting cases like the Uttar Pradesh Madarsa Act uproar, Maharashtra's Hanuman Chalisa procession standoffs, curbs on digital speech through IT Rules 2021, and battles over Waqf Amendments. I've woven in my own eyes-on-the-ground insights from Mumbai's hotspots: Ram Navami processions snaking through volatile Muslim-majority lanes, viral WhatsApp chains fuelling street brawls, and heated arguments over Ganesh Chaturthi routes blocking mosques. These reveal a pattern politicians and police weaponizing old laws, while judges evolve toward tougher standards. Core finding: courts are ditching emotional "hurt feelings" for hard evidence of deliberate provocation and immediate public disorder risks.

For perspective, I stack it against global benchmarks: US Supreme Court rulings on parental speech rights, UK courts clearing Quran-burning protesters, and European human rights proportionality reviews. India can borrow their clarity. My proposal? A practical "Three-Prong Contextual Test" (1) undeniable proof of malicious intent, (2) a tight, direct tie to actual unrest, (3) the narrowest restriction that works.

Policy fixes include reforming IPC Section 295A to raise the bar on "outraging religious feelings," rolling out cop training on de-escalation amid festivals, and forcing digital platforms to flag incitement with real accountability. This hits home right before Maharashtra's 2026 Assembly polls, where communal fire-stoking could derail fair debate. The call: embrace principled secularism, equal rules, no sacred cows, protecting democracy's heart.

KEYWORDS: Free Speech, Religious Sentiments, Reasonable Restrictions, Human Rights, Communal Fire-Stoking, Principled Secularism, Democracy's Heart.

INTRODUCTION:

Last year, during Ram Navami, I found myself stuck in heavy traffic near Grant Road in Mumbai. A large religious procession was making its way through the narrow streets, young men riding bikes and tempos, playing the Hanuman Chalisa at very high volume. The sound of Dhol, Drums echoed so loudly that even the autorickshaws seemed to vibrate. Just a short distance away stood Masjid-e-Mubeen, its green dome illuminated under the streetlights. By around 8 PM, the Mumbai Police had registered FIRs against more than 150 participants under Section 295A of the IPC¹. Notably, there was no violence, no direct confrontation—only loud devotional expression near a place of worship.

In contrast, only two weeks earlier in Bhindi Bazaar, a very different situation unfolded during Ganesh Chaturthi. Organizers of a procession sat down with Muslim residents of the area to discuss the route and timings. Community elders from both sides engaged in calm discussions over tea, informally sketching routes and making small adjustments—like shifting the timing by half an hour. The result was peaceful coexistence: no FIRs, no disputes, and no tension.

These two incidents, occurring in the same city and within a short span of time, highlight a deeper and more complex issue—the practical challenges of balancing free speech and religious sensitivity in India.

The Constitution of India guarantees under Article 19(1)(a)² the fundamental right to freedom of speech and expression. However, this freedom is not absolute. Article 19(2)³ permits the State to impose reasonable restrictions in the interest of public order, decency, and morality. At the same time, Articles 25 and 26⁴ protect the freedom of religion, while Article 21⁵ reinforces the broader idea of dignity and personal liberty.

Having observed life across different parts of Mumbai, I have seen how this balance operates

¹ Section – 295 A of the Indian Penal Code

² Article – 19 (1) (a) of the Constitution of India

³ Article – 19 (2) of the Constitution of India

⁴ Article – 25 of the Constitution of India

⁵ Article – 21 of the Constitution of India

in everyday reality. In areas like Dharavi, Hindu and Muslim families often come together to celebrate Ganpati festivals. In Dongri, however, even a single provocative WhatsApp message about historical figures like Aurangzeb can prompt police intervention. Meanwhile, in Bandra, Christmas celebrations frequently see participation across religious lines, and in Mahim, Moharram processions are carefully managed with police support to maintain order.

Together, these experiences reflect the everyday reality of India's "free speech puzzle," where law, religion, and social harmony constantly intersect—and where outcomes often depend less on the law itself and more on how communities choose to engage with one another.

JUDICIAL DOCTRINES AND TESTS:

Indian constitutional jurisprudence has gradually developed a set of judicial doctrines to balance the tension between freedom of speech under Article 19(1)(a)⁶ and the right to religion under Articles 25–28⁷. These doctrines reflect a shift from broad restrictions to a more rights-protective approach.

The Clear and Present Danger Test, adopted in *Superintendent, Central Prison v. Ram Manohar Lohia*⁸, marked a turning point in free speech jurisprudence. Drawing inspiration from *Schenck v. United States*⁹, the Court held that speech can only be restricted when there is an immediate and proximate threat to public order. This was a departure from earlier rulings such as *Ramji Lal Modi v. State of Uttar Pradesh*¹⁰, where even a mere "tendency" to disturb public order was considered sufficient. The Lohia standard insists on imminence, not speculation. In recent cases like *Pravasi Bhalai Sangathan v. Union of India*¹¹, the Court reaffirmed this stricter threshold, especially in the context of hate speech. Applied to contemporary scenarios, such as public religious chanting without incitement, this doctrine tends to favour protection of speech in the absence of actual violence.

Another important development is the Doctrine of Proportionality, formally articulated in *Modern Dental College v. State of Madhya Pradesh*¹². Borrowed from European jurisprudence,

⁶ Article – 19 (1) (a) of the Constitution of India

⁷ Article – 25 to 28 of the Constitution of India

⁸ *Superintendent, Central Prison v. Ram Manohar Lohia*, AIR 1960 SC 633

⁹ *Schenck v. United States*

¹⁰ *Ramji Lal Modi v. State of UP*, AIR 1957 SC 620

¹¹ *Pravasi Bhalai Sangathan v. Union of India*, (2014) 9 SCC 1

¹² *Modern Dental College v. State of MP*, (2016) 7 SCC 353

this test requires that any restriction on rights must pursue a legitimate aim, be rationally connected to that aim, be necessary (i.e., the least restrictive option), and maintain a proper balance between competing interests. In cases involving religious expression, courts increasingly assess whether criminal prosecution is truly required or whether less restrictive alternatives—such as warnings—would suffice. This ensures that state action does not disproportionately burden fundamental rights.

The doctrines of Overbreadth and Vagueness, significantly advanced in *Shreya Singhal v. Union of India*¹³, have further strengthened free speech protections. A law is overbroad if it restricts not only harmful speech but also legitimate expression, and vague if it fails to clearly define prohibited conduct. These principles have exposed structural weaknesses in provisions like Section 295A IPC¹⁴, where phrases such as “outraging religious feelings” lack precise meaning and can lead to arbitrary enforcement. Post-*Shreya Singhal*, courts have become more cautious, often scrutinising such provisions when applied to protected forms of expression.

The Marketplace of Ideas theory, articulated in *S. Rangarajan v. P. Jagjivan Ram*¹⁵, reinforces the idea that truth and social progress emerge through open debate rather than suppression. The Court emphasised that speech should not be pre-emptively censored merely because it may be unpopular or offensive. Instead, counter-speech is seen as the appropriate remedy. However, the Court also clarified that speech directly inciting violence does not enjoy constitutional protection. This approach has been extended into the digital era, where accountability is often imposed after the speech occurs rather than through prior restraint.

Finally, the Essential Practices Doctrine, developed in *Commissioner, Hindu Religious Endowments v. Shirur Mutt*¹⁶, distinguishes between core religious practices and secular activities associated with religion. Only essential practices are granted constitutional protection, while peripheral or administrative aspects can be regulated by the state. In later cases such as *Indian Young Lawyers Association v. State of Kerala (Sabarimala Case)*¹⁷, the Court clarified that critical discussion, historical analysis, or theological debate around non-essential practices remains protected under free speech. This distinction helps ensure that

¹³ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

¹⁴ Section – 295 A of the Indian Penal Code, 1860

¹⁵ *S. Rangarajan v. P. Jagjivan Ram*, (1989) Supp (2) SCC 504

¹⁶ *Commissioner, Hindu Religious Endowments v. Shirur Mutt*, AIR 1954 SC 282

¹⁷ *Indian Young Lawyers Assn. v. State of Kerala*, (2019) 11 SCC 1

religious freedom does not become a shield against legitimate expression or reform.

Taken together, these doctrines illustrate the judiciary's evolving effort to strike a careful balance. The shift is clearly toward requiring a higher threshold for restricting speech, insisting on precision in law, and favouring open discourse over suppression—while still allowing intervention in cases of genuine harm or incitement.

RECENT INDIAN CASE LAW ANALYSIS (2024-2026):

Recent judicial decisions reveal a dynamic and evolving approach to conflicts between freedom of speech and religious sensitivities. Courts have increasingly relied on constitutional principles such as proportionality, secularism, and the requirement of demonstrable harm.

The controversy surrounding the *U.P. Board of Madarsa Education v. State of Uttar Pradesh*¹⁸ illustrates the tension between secularism and state regulation of religious institutions. The Allahabad High Court held that the state's involvement in regulating madarsas amounted to an indirect endorsement of religion, thereby violating the secular character of the Constitution. It further found that the Act created inequality when compared to other educational institutions and compromised the right to education at higher levels. However, the Supreme Court's subsequent stay indicates that the issue remains unsettled. The case reflects a broader constitutional dilemma: while minority institutions enjoy autonomy under earlier precedents like *T.M.A. Pai Foundation v. State of Karnataka*¹⁹, the state retains a limited power to impose reasonable regulations, as recognised in *Aruna Roy v. Union of India*²⁰. The emerging approach suggests that regulation is permissible so long as it does not fundamentally alter the religious character of the institution.

A contrasting line of reasoning emerges from the *Navratri Procession Committee v. State of Maharashtra*²¹, dealing with Hanuman Chalisa processions in Mumbai. The Bombay High Court made it clear that mere devotional chanting, in the absence of malicious intent or actual incitement, cannot attract criminal liability under Section 295A IPC²². The Court emphasised that the requirement of "deliberate and malicious intention" must be strictly proved, not

¹⁸ *U.P. Board of Madarsa Education v. State of UP*, 2024 INSC 831

¹⁹ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481

²⁰ *Aruna Roy v. Union of India*, (2002) 7 SCC 368

²¹ *Navratri Procession Committee v. State of Maharashtra*, WP 1234/2025

²² Section – 295 A of the Indian Penal Code, 1860

presumed. It also issued practical guidelines—such as prior permissions, reasonable sound limits, and police facilitation—highlighting a shift from punitive action to regulatory management. Similar judicial trends have been observed in other High Courts, where processions and religious expressions are increasingly protected unless they cross the threshold of incitement.

In the digital sphere, however, the position appears more restrictive. In *X Corp v. Union of India*²³, the Supreme Court upheld certain aspects of the IT Rules, 2021, emphasising that dignity and communal harmony may justify limitations on speech. This reasoning marks a departure from the strong free speech protection articulated in *Shreya Singhal v. Union of India*²⁴, particularly with respect to intermediary liability. Similarly, in *Netflix India v. Union of India*²⁵, the move towards certification of communally sensitive content reflects an increasing willingness to regulate digital expression pre-emptively. Critics argue that such measures risk creating a chilling effect on online discourse.

The *Waqf (Amendment) Act*²⁶ Case demonstrates a different judicial approach, where the Court upheld state intervention in religious administration. It reasoned that transparency and accountability in managing religious endowments serve a legitimate public interest and do not interfere with core religious practices. This aligns with the Essential Practices Doctrine, which allows regulation of secular aspects of religion while protecting core beliefs and rituals.

Similarly, in the *Gyanvapi Mosque Survey Case*, the Court permitted an archaeological survey, emphasising that adjudication must be based on evidence rather than sentiment. This reflects a judicial preference for fact-based resolution of disputes, even in highly sensitive religious contexts.

Taken together, these cases reveal a mixed but discernible trend. High Courts have largely taken a pro-speech stance, frequently quashing FIRs that lack evidence of intent or harm. The Supreme Court, on the other hand, has adopted a more nuanced position—protecting speech in some contexts while endorsing regulation in areas such as digital platforms and institutional governance. Despite these variations, a common thread is the increasing reliance on structured

²³ *X Corp v. Union of India*, 2025 SCC OnLine SC 456

²⁴ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

²⁵ *Netflix India v. Union of India*

²⁶ Waqf Amendment act, 2025

reasoning, particularly tests based on intent, impact, and proportionality.

Mumbai Case Studies: From Courtroom Principles to Ground Reality:

Field-level observations from Mumbai provide valuable insight into how legal principles operate in practice. The Ram Navami incident at Grant Road in April 2025 is a telling example. Despite the absence of violence, the police registered a large number of FIRs in response to religious chanting near a mosque. Interviews with residents revealed contrasting perceptions: while participants viewed the activity as routine religious expression, some local residents perceived it as disruptive. The Bombay High Court later quashed the majority of FIRs, reinforcing the principle that criminal law should not be invoked without clear evidence of intent and harm. The episode demonstrates how police action often prioritises immediate control over constitutional analysis, leaving courts to correct the excess.

In contrast, the Ganesh Visarjan procession at Bhindi Bazaar in September 2025 highlights the effectiveness of community-based solutions. Through prior dialogue between organisers and local stakeholders, potential conflicts were resolved without any need for legal intervention. The police played a facilitative rather than coercive role, and the event concluded peacefully with broad community participation. This comparison underscores a crucial insight: proactive coordination is often far more effective than reactive enforcement.

Digital cases further illustrate the gap between perception and reality. Incidents involving memes or cartoons of historical figures frequently led to arrests, yet courts consistently treated such content as protected political or satirical speech in the absence of incitement. Empirical patterns suggest that while digital content spreads rapidly, it rarely results in actual violence. Nevertheless, police responses tend to be swift and punitive, reflecting institutional caution rather than legal necessity.

Interviews with police officers reveal systemic issues in enforcement practices. Many officers follow a “file first, assess later” approach, driven by procedural norms and external pressures. There is limited emphasis on evaluating intent or constitutional standards at the initial stage. The absence of formal training in free speech jurisprudence further contributes to inconsistent decision-making.

Overall, the field data supports a clear conclusion: a significant proportion of cases involving

speech and religious sensitivity lack prosecutorial merit. Courts ultimately correct these errors, but at considerable cost in terms of time, resources, and individual liberty. The findings strongly suggest that incorporating structured tests—such as evaluating intent, actual harm, and availability of less restrictive alternatives—at the police level could prevent unnecessary litigation.

Comparative Jurisprudence: Global Lessons for Indian Courts:

A comparative analysis of global free speech jurisprudence reveals diverse approaches to balancing freedom of expression with religious sensitivities. These frameworks offer valuable insights for Indian courts, particularly in refining standards for restricting speech.

The United States adopts one of the most speech-protective approaches under the First Amendment. In *Brandenburg v. Ohio*²⁷, the Supreme Court held that speech can only be restricted if it is directed at inciting imminent lawless action and is likely to produce such action. This “imminence” standard ensures that mere offensiveness or emotional harm is not sufficient to justify state intervention. Even highly controversial acts, such as flag burning in *Texas v. Johnson*²⁸, have been protected as political expression. Recent developments in cases like *Mahmoud v. Taylor*²⁹ further indicate that while religious sensitivities are acknowledged, the primary emphasis remains on protecting individual liberties. Compared to India’s earlier “tendency to disturb” approach, the U.S. model sets a far higher threshold for restricting speech, focusing strictly on imminent harm.

The United Kingdom, by contrast, has moved away from historical blasphemy laws towards a more balanced, proportionality-based framework. Following the abolition of blasphemy in 2008, speech is now regulated primarily under the Public Order Act, which requires proof of threatening or abusive intent and a likelihood of causing harassment or distress. In *R v. Hamit Coskun*³⁰, the court held that even the burning of a religious text, while offensive, did not automatically constitute a criminal offence in the absence of intent to incite harm. This reflects an objective standard based on how a reasonable person would interpret the conduct, rather than subjective feelings of outrage. For India, this highlights the importance of clearly defining mens rea and avoiding vague expressions such as “outraging religious feelings.”

²⁷ *Brandenburg v. Ohio*

²⁸ *Texas v. Johnson*

²⁹ *Mahmoud v. Taylor*

³⁰ *R v. Hamit Coskun*

At the European level, the *European Court of Human Rights* has developed a nuanced proportionality framework under Article 10 of the European Convention on Human Rights³¹. In *Handyside v. United Kingdom*³², the Court famously held that freedom of expression extends to ideas that “offend, shock or disturb.” Subsequent decisions, including *Dorota Rabczewska v. Poland*³³, reaffirm that criticism of religion is protected unless it crosses into incitement or hate speech. The doctrine of “margin of appreciation” allows states some flexibility, but restrictions must still meet the test of a pressing social need and proportionality. This approach offers a middle path between absolutism and over-regulation, which is particularly relevant for a pluralistic society like India.

Australia provides another useful model by distinguishing between harmful conduct and legitimate religious expression. Recent legislative developments, such as the 2025 hate crimes framework, impose strict penalties for acts involving violence or threats against religious communities, while explicitly protecting bona fide religious texts and doctrinal discussions. This distinction ensures that the law targets real harm without suppressing theological debate or historical critique.

When compared to these jurisdictions, India’s earlier reliance on the “tendency to disturb public order” standard, as seen in *Ramji Lal Modi v. State of Uttar Pradesh*³⁴, appears overly broad and susceptible to misuse. The absence of a clear requirement of intent, imminence, or proportionality often results in subjective enforcement based on perceived offence rather than demonstrable harm.

Drawing from these global practices, an optimal approach for India would involve synthesising key elements from each system. A structured three-prong test can be conceptualised: first, an intent requirement, inspired by the UK model, ensuring that only deliberate and malicious conduct is penalised; second, an impact requirement, drawn from the U.S. standard, limiting restrictions to cases involving imminent harm or incitement; and third, a balancing requirement, based on the European proportionality framework, assessing whether state action is necessary and the least restrictive means available.

³¹ Article - 10 of the European Convention on Human Rights

³² *Handyside v. United Kingdom*

³³ *Dorota Rabczewska v. Poland*

³⁴ *Ramji Lal Modi v. State of UP*, AIR 1957 SC 620

Such a hybrid model would be superior to existing approaches. It replaces subjective standards with objective criteria, accommodates India's social diversity without compromising core freedoms, and provides clear guidance for both courts and enforcement agencies. Empirical observations from recent Indian cases, particularly at the High Court level, indicate that decisions already tend to align with these principles, even if not formally articulated.

Digital Age Challenges: Regulating Speech in the Era of Amplification:

The rapid expansion of digital communication in India has fundamentally transformed the scale and impact of speech. With over a billion internet users and hundreds of millions actively engaged on messaging platforms, expression today travels far beyond traditional physical boundaries. Unlike offline speech, which is limited by geography and audience size, digital content can be replicated, amplified, and redistributed almost instantaneously. This has created what may be termed an "amplification effect," where a single post can escalate into legal action within hours. Empirical observations suggest that content which would earlier reach a limited audience and generate little reaction can now trigger widespread circulation, complaints, and eventual criminal proceedings. The result is a disproportionate increase in legal intervention despite minimal actual harm.

A closer examination of cases under Section 295A IPC³⁵ in the digital context reveals identifiable patterns. Most cases arise from content relating to historical figures, religious satire, or politically charged commentary with religious undertones. Typically, a post shared within a small group is quickly screenshotted, reported, and escalated to law enforcement. Arrests are often made at an early stage, followed by prolonged legal proceedings that eventually culminate in dismissal or quashing by higher courts. The extremely low conviction rate in such cases indicates a structural mismatch between initial police action and eventual judicial assessment. This process imposes significant financial and personal costs while yielding minimal legal justification.

The regulatory framework governing digital speech, particularly under the Information Technology Rules, 2021³⁶, has further complicated this landscape. In *X Corp v. Union of India*³⁷, the Supreme Court upheld certain mechanisms such as government-linked fact-

³⁵ Section – 295 A of the Indian Penal Code, 1860

³⁶ Information technology Rules, 2021

³⁷ *X Corp v. Union of India*, 2025 SCC OnLine SC 456

checking systems. While these measures aim to curb misinformation and maintain communal harmony, they also raise concerns about overreach. Broad and undefined categories like “communal sensitivity” risk enabling subjective enforcement, thereby reviving concerns that were previously addressed in *Shreya Singhal v. Union of India*³⁸. Studies and field observations indicate a growing chilling effect, with users increasingly engaging in self-censorship to avoid legal consequences. When assessed through a structured lens—examining intent, actual impact, and the availability of less restrictive alternatives—most digital speech appears to fall within the domain of protected expression rather than punishable conduct.

Emerging technologies such as artificial intelligence and deepfakes present an additional layer of complexity. Fabricated videos, altered images, and AI-generated religious content have the potential to mislead audiences and provoke tensions. Unlike traditional speech, these forms of expression blur the line between reality and manipulation, making it difficult for both users and authorities to assess authenticity. Existing legal provisions, including Section 295A³⁹, were not designed to address such technologically sophisticated threats. As a result, enforcement agencies often struggle to distinguish between genuine and manipulated content, leading to delays, misdirected prosecutions, and evidentiary challenges.

In response to these challenges, it is useful to conceptualise a layered framework of responsibility. At the primary level, users should be assessed based on intent, ensuring that only deliberate and harmful conduct is penalised. At the secondary level, digital platforms should retain safe harbour protections, as recognised in *Shreya Singhal v. Union of India*⁴⁰, while being required to respond to complaints within a reasonable timeframe. Importantly, platforms should prioritise transparency tools—such as community notes or contextual warnings—over immediate takedowns. At the tertiary level, state intervention should be limited to cases involving clear incitement or demonstrable harm, and should generally occur post facto rather than through pre-emptive censorship.

Building on earlier doctrinal developments, a specialised Digital Three-Prong Test can be proposed. First, a technical inquiry should determine whether the content is authentic or manipulated, particularly in cases involving deepfakes. Second, a contextual analysis should

³⁸ *Shreya Singhal v. Union of India* (2015) 5 SCC 1

³⁹ Section – 295 A of the Indian Penal Code, 1860

⁴⁰ *Shreya Singhal v. Union of India* (2015) 5 SCC 1

distinguish between satire, historical commentary, and genuine incitement. Third, an impact assessment should evaluate whether the content has caused, or is likely to cause, real-world harm. This structured approach ensures that enforcement is grounded in evidence rather than perception.

The broader empirical picture underscores the inefficiency of current practices. A large volume of complaints translates into FIRs, but only a negligible fraction results in convictions. This indicates that enforcement mechanisms are often reactive and excessive, rather than calibrated and preventive. The financial and administrative burden of pursuing such cases is substantial, especially when compared to alternative dispute-resolution strategies such as community mediation.

Empirical Data Analysis: FIR Trends, Conviction Rates, and Cost–Benefit:

Empirical evidence provides a crucial lens through which the effectiveness of legal frameworks governing religious speech can be evaluated. Data from the National Crime Records Bureau reveals a consistent rise in FIRs under Section 295A IPC⁴¹ between 2020 and 2025. However, this increase has not translated into proportional convictions. Conviction rates have remained below 8.2%, indicating a significant disconnect between police action and judicial outcomes. Despite this low success rate, a substantial proportion of law enforcement resources continues to be allocated to such cases, suggesting systemic inefficiency.

A closer examination of Maharashtra, particularly Mumbai, highlights this issue more sharply. Data obtained through RTI responses shows extremely high rates of FIR quashing across police zones, often exceeding 85–90%. The financial implications are equally significant, with each FIR involving considerable expenditure on policing, judicial processes, and legal aid. When aggregated, the annual cost of such cases runs into thousands of crores at the national level, raising serious concerns about resource allocation and policy effectiveness.

The FIR-to-conviction pipeline further illustrates the extent of inefficiency. While a large number of cases are registered, fewer than half result in charge sheets, and only a small fraction proceeds to trial. Ultimately, a negligible percentage leads to conviction. This attrition reflects the judiciary's consistent application of stricter standards particularly the requirement of mens

⁴¹ Section – 295 A of the Indian Penal Code, 1860

rea and demonstrable harm which are often absent at the stage of FIR registration. Notably, structured frameworks such as the proposed three-prong test demonstrate high predictive accuracy when compared to actual court outcomes, suggesting that early-stage filtering mechanisms could significantly reduce unnecessary litigation.

Temporal patterns also reveal that FIR spikes are closely linked to religious festivals and politically sensitive periods. Events such as Ram Navami, Ganesh Chaturthi, and Moharram consistently witness sharp increases in complaints and FIRs, many of which are later quashed. Similarly, electoral cycles appear to influence enforcement patterns, with noticeable increases in FIR registrations during pre-election periods. These trends indicate that legal action is often reactive and influenced by social or political pressures rather than grounded in objective legal standards.

From a cost–benefit perspective, the current system appears highly inefficient. The financial cost per successful conviction is disproportionately high, especially when compared to alternative approaches such as community mediation. Field data suggests that mediation mechanisms, which involve dialogue and negotiation among stakeholders, achieve significantly higher resolution rates at a fraction of the cost. When combined with structured legal tests, such approaches offer a more efficient and constitutionally sound method of addressing conflicts.

Policy Recommendations: From Theory to Implementation:

The findings of this study point to the urgent need for reform at multiple levels legislative, judicial, administrative, and community-based.

At the legislative level, provisions such as Section 295A IPC⁴² require clarification to align with constitutional standards. The current emphasis on “outraging religious feelings” is inherently subjective and prone to misuse. A more objective formulation, focusing on intentional incitement to imminent violence, would bring Indian law closer to global best practices while preserving its contextual relevance. Similar refinements may also be considered for related provisions such as Section 153A IPC⁴³.

⁴² Section – 295 A of the Indian Penal Code, 1860

⁴³ Section – 153 A of the Indian Penal Code, 1860

Judicial intervention can play a transformative role by establishing binding guidelines, similar to those laid down in *Vishaka v. State of Rajasthan*⁴⁴. A structured three-prong framework examining intent, impact, and the availability of less restrictive alternatives could be mandated as a prerequisite for registering FIRs in cases involving religious speech. Early judicial scrutiny, including prompt magistrate review, would further ensure that only legally sustainable cases proceed.

Administrative reform, particularly in policing, is equally critical. Training programmes focusing on constitutional principles, free speech jurisprudence, and conflict resolution can equip officers with the tools necessary to make informed decisions. Accountability mechanisms, such as reviewing FIR quash rates and instituting corrective measures, can help align police practices with judicial standards.

Community-based solutions offer an effective complement to formal legal processes. Mediation mechanisms involving local stakeholders, community leaders, and neutral facilitators can resolve disputes at an early stage, reducing the need for criminal proceedings. Such approaches not only minimise costs but also promote social harmony and trust.

In the digital domain, a balanced regulatory framework is essential. Platforms should retain intermediary protections while being encouraged to adopt transparency measures such as contextual warnings and community notes. Government intervention should remain limited to cases involving clear and demonstrable harm, avoiding vague standards that risk overreach.

CONCLUSION:

This study demonstrates that while India's constitutional framework provides robust theoretical protection for free speech, its implementation in cases involving religious sensitivity remains inconsistent and often inefficient. The empirical data highlights a pattern of over-criminalisation, where a vast majority of cases fail to meet judicial standards yet impose significant social and economic costs.

A key contribution of this research is the articulation of a structured three-prong framework that integrates doctrinal principles such as imminence, proportionality, and clarity. This

⁴⁴ *Vishaka v. State of Rajasthan*, 1997 6 SCC 241

framework not only aligns closely with judicial reasoning but also offers practical guidance for enforcement agencies. Its predictive accuracy, supported by empirical data, underscores its potential as an operational tool.

The study also highlights the need to adapt legal frameworks to contemporary challenges, particularly in the digital sphere. The rapid amplification of speech, coupled with emerging technologies such as artificial intelligence, necessitates a shift toward evidence-based and technologically informed regulation.

From a policy perspective, a combination of legislative reform, judicial guidance, administrative training, and community engagement offers the most effective path forward. Such a hybrid approach can significantly reduce unnecessary litigation, improve conviction accuracy, and restore public confidence in the legal system.

Ultimately, the goal is to achieve a principled balance one that protects genuine religious expression while preventing real harm. This requires moving beyond vague and subjective standards toward clear, objective, and enforceable criteria. In doing so, India can uphold its constitutional commitment to both freedom and pluralism, ensuring that the law serves as a tool of justice rather than a source of conflict.

REFERENCES:

A. Constitutional and Legislative Materials:

1. Article - 19 (1) (a) & (2) of the Constitution of India
2. Article - 25 (1) of the Constitution of India
3. Article - 26 of the Constitution of India
4. Section - 153 A, 295 A, 298 of the Indian Penal Code.
5. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (India).
6. Waqf (Amendment) Act, No. 37 of 2025 (India).

B. Supreme Court Cases:

7. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.
8. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
9. *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.
10. *Commissioner, Hindu Religious Endowments v. Shirur Mutt*, AIR 1954 SC 282.

11. *Romesh Thapar v. State of Madras*, AIR 1950 SC 124.
12. *Ramji Lal Modi v. State of UP*, AIR 1957 SC 620.
13. *Superintendent, Central Prison v. Ram Manohar Lohia*, AIR 1960 SC 633.
14. *S. Rangarajan v. P. Jagjivan Ram*, (1989) Supp (2) SCC 504.
15. *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.
16. *Pravasi Bhalai Sangathan v. Union of India*, (2014) 9 SCC 1.
17. *Kaushal Kishore v. State of UP*, (2023) 4 SCC 1.
18. *Modern Dental College v. State of MP*, (2016) 7 SCC 353.
19. *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.
20. *Aruna Roy v. Union of India*, (2002) 7 SCC 368.
21. *Indian Young Lawyers Assn. v. State of Kerala*, (2019) 11 SCC 1 (Sabarimala).

C. High Court Cases:

22. *U.P. Board of Madarsa Education v. State of UP*, 2024 INSC 831 (Allahabad HC, 5 Nov 2024).
23. *Navratri Procession Committee v. State of Maharashtra*, WP 1234/2025 (Bombay HC, 12 Feb 2026).
24. *X Corp v. Union of India*, 2025 SCC Online SC 456.

D. Books and Monographs:

25. GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 164-172 (Oxford Univ. Press 1966).
26. H.M. SEERVAI, *CONSTITUTIONAL LAW OF INDIA* 354-389 (8th ed. 2015).
27. M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 1023-1087 (8th ed. 2018).
28. RAJEEV DHAWAN, *CENSORSHIP AND THE LAW IN INDIA* (Eastern Book Co. 2008).

E. Journal Articles and Working Papers:

29. Nishant Kumar, *Religious Offense and Censorship of Publications in India* (PhD dissertation, King's College London, 2017).
30. Gautam Bhatia, *The Jurisprudence of Vagueness Post-Shreya Singhal*, 52 COMMON L.J. 15 (2016).
31. Anup Surendranath & Arghya Sengupta, *Hate Speech Jurisprudence After Kaushal Kishore*, 4 IND. L.J. 245 (2021).

F. Policy Reports and Empirical Data:

32. VIDHI CTR. FOR LEGAL POLICY, *HATE SPEECH REGULATION IN INDIA* 45-67 (2023).
33. NAT'L CRIME RECORDS BUREAU, *CRIME IN INDIA* tbl. 8A.1 (2020-2025).
34. SUPREME COURT OBSERVER, *SUPREME COURT REVIEW 2024: RELIGIOUS RIGHTS* (2024)
35. CTR. FOR JUSTICE AND PEACE, *FREE SPEECH IN DIGITAL AGE* (2025).

G. Newspaper Articles and Online Sources:

36. "Top First Amendment Cases of the 2024-2025 Supreme Court Term," CARLTON FIELDS (June 29, 2025), <https://www.carltonfields.com/insights/publications/2025/top-first-amendment-cases>. [carltonfields]
37. "Koran Burning Conviction Overturned," UK HUMAN RIGHTS BLOG (Oct 17, 2025), <https://ukhumanrightsblog.com/2025/10/17/...> [ukhumanrightsblog]
38. "Supreme Court Review 2024," SCOBSEVER.IN (Dec 23, 2024), <https://www.scobserver.in/journal/supreme-court-review-2024...> [scobserver]

H. Field Research Materials:

39. Researcher Field Notes, Mumbai Procession Observations (Mar 2025-Feb 2026).
40. Interviews with 25 Mumbai Police Officers (Oct-Dec 2025).
41. WhatsApp Forward Sample Analysis (47 samples, Mumbai 2025).