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A Fine Balance

Censoring for Respect and Social Harmony

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‘I am afraid you will have to rephrase some sections of your analysis. Certain sentences could seem offensive, and we do not want to risk that.’ This was the message I received from my reader at the New Delhi division of Oxford University Press just before my book *Blended Boundaries* went to press.¹ One of the themes was caste discrimination, and I had not always found generic referents such as ‘dalit’ adequate for discussing how such attitudes were expressed in everyday life. For reasons of precision, I had distinguished between the specific communities that make up the dalit category, in spite of the fact that certain of these designations are perceived as stigmatizing. I had also exemplified the way in which upper-caste Hindus referred to dalits in a condescending way and associated them with a host of negative characteristics. Was it going to be impossible for me to document how upper-caste prejudices were expressed? Would the publishers censor my research? The background to the publishers’ request was India’s strict legal restrictions on offensive remarks made in the public domain. As it turned out, the publishers had just been involved in a stormy controversy over another book, which ended with the state authorities in Maharashtra not just banning it, but also taking legal action against both the publisher and author.² Understandably, the publishers were anxious to avoid a repetition of such an experience. Fortunately, we soon came up with a compromise – I rewrote the phrases that could be misunderstood, but retained concrete caste designations and quotations where I considered them essential for the analysis, and the publication has so far provoked neither legal nor political reactions.³

² More on this later.
³ For this reason I follow the same practice in the present chapter.
This experience is my own little window onto a question that is of immense significance for the way in which the world’s largest democracy manages its public sphere. How does India balance its commitment to freedom of expression with its aspiration to promote amiable relations and mutual respect between its many religious and social communities, and what does the balance point say about India’s democratic status? On the one hand, the connection between democratic governance and a public sphere that allows free and critical dispute can hardly be exaggerated. One of the most renowned social science dictionaries, for instance, maintains that for units of the size of modern states, freedom of expression is as fundamental a requirement for representative government as elected representatives, free and frequent elections, access to alternative information, autonomous organizations and equal civil rights. But on the other hand, the ability to enjoy one’s democratic rights requires a certain dignity and worth of the human person, and if these traits are to hold meaning beyond ‘bare life’ in the sense used by Giorgio Agamben, certain restrictions to freedom of expression may be necessary. Thus, one could also ask whether India becomes more or less democratic by restricting its public sphere for the sake of respect and social harmony. Since this question would necessitate a lengthy engagement with the many competing definitions and theories of ‘democracy’ that have appeared over the years, this chapter will rather stay closer to the empirical ground.

Indian freedom of expression is limited in several ways. Explicit sex scenes are still unacceptable in feature films and TV series, there is strict protection from libel, and considerations of national security weigh heavily in a state with several unresolved border conflicts and past instances of terrorism. In this chapter, however, I emphasize the restrictions on freedom of expression that are justified by concepts such as ‘social harmony’, ‘respect’ and ‘religious sentiments’. More specifically, I want to compare how the Indian balancing act has been performed in relation to caste discrimination and religious relations in the recent decades. I also examine the extent to which India’s balancing act is explicitly challenged or defended in public, thus, generating a political debate on the desirability and also of the dangers of a more extensive freedom of speech in a country such as India.

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My argument is that in issues of caste we see a growing trend towards judicial censorship on the grounds of respect; that the judicial restrictions on expression in the religious field are stable, but under growing influence from religious and political pressure groups; that the chief public critique of regulation within these fields arises from instances that affect art, academic writing, and what I term the proliferation of \textit{laissez faire} zones; and that, though censorship for the sake of respect and harmony certainly has had some rather disconcerting outcomes, it does not restrict the public sphere sufficiently to threaten India’s reputation as the world’s largest democracy. Perhaps the case is rather to the contrary.

THE PUBLIC SPHERE AND THE SEARCH FOR AN UNBIASED STARTING POINT

The concept of the ‘public sphere’ that recurs in such discussions derives from the German sociologist Jürgen Habermas’ classic treatise on how the growth of discursive spaces in Europe – from British coffee houses and Parisian \textit{salons} to newspapers and journals – enabled the transition from a feudal representative government to a form of governance in which the authority of the state could be subjected to critical discussion.\footnote{Jürgen Habermas, \textit{The Structural Transformation of the Public Sphere}, Cambridge: Polity Press, 1989.} Though the Indian public sphere grew forth in a different way, it is this conceptualization I invoke in the present discussion, and since I limit my case material to the recent past, I will primarily be concerned with newspapers, books and political meetings, with occasional side-glances to television and the Internet.

India’s public sphere is exceptionally lively. Not only does it encompass newspapers, periodicals, TV channels, radio stations and more, in at least twenty-two languages, it also involves an impressive range of participants, including countless non-profit and religious organizations, political parties, social activists, and public intellectuals who by no means refrain from speaking out. The liveliness of India’s public sphere is protected by the Constitution of India, which gives all citizens the right to freedom of speech and expression. India has also ratified the International Covenant on Civil and Political Rights, which 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 in print, in the form of art, or through any other media of his choice’.\footnote{This being said, the Constitution of India also specifies that its}
commitment to freedom of expression does not prevent the state from enforcing ‘reasonable restrictions’ in the interest of sovereignty, security, international relations, public order, decency or morality. How do we approach these exceptions and the controversies that surround them without relying too heavily on normative concepts, which give virtually any discussion along these lines a considerable bias against such restrictions?

My solution is to take inspiration from the title of Rohinton Mistry’s novel *A Fine Balance* from 1995. Here we meet a young middle class widow, her friend’s student son and two low-caste rural tailors who end up in the same apartment during the Emergency in the 1970s, and who try to find a balance between hope and despair, corruption and courage, dignity and heroism. On the front cover of the Vintage paperback edition, the balance metaphor is underscored by a photograph of a tiny girl who balances on the top of a long pole, which in turn balances on the thumb of an adult hand. True, the balance metaphor has been subject to considerable simplistic use given its easy applicability to all kinds of situations in which values come into conflict with one another. In this case, I nevertheless find it productive given its neutrality compared to concepts such as ‘censorship’ and ‘freedom of expression’. The problem is not the inherent value-ladenness of these concepts but what their value-ladenness makes us emphasize and overlook.

Grounding our studies in the concept of censorship can all too easily steer us toward an analysis that gives virtually all its attention to state regulation of the public sphere while ignoring the motivation for this regulation, as Raminder Kaur and William Mazzarella correctly point out. Grounding our studies in the concept of freedom of expression can make it difficult to maintain sufficient analytical distance from the increasingly vocal Western discourse on freedom that emphasizes individual autonomy while ignoring power relations, as Thomas Hylland Eriksen and Arne Johan Vetlesen argue. Although it is impossible to avoid

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8. OHCHR, op. cit.
10. The photo was taken by Dario Mitidieri and depicts a two-and-a half year old girl named Savita performing for Arab tourists near the Taj Mahal Hotel. The photograph is part of a series titled ‘Children of Bombay’, dated 1992.
these concepts, ‘balance’ and ‘regulation’ constitute more neutral starting points. But what is it that is actually being balanced here?

Neither India nor other states restrict their freedom of expression because they ‘hate our freedoms’, as George W. Bush used to claim during his presidency in the United States. The reason is, rather, that they regard other values as even more fundamental. The value with which freedom of expression is balanced in India is neither hatred of freedom nor censorship, I suggest, but an equivalent of what political philosophers, social anthropologists and other scholars refer to with terms such as cosmopolitanism and recognition. Cosmopolitanism covers the concern for other social communities than one’s own, as well as the mutual habituation that arises though everyday communication across social fault lines. According to the political philosopher Axel Honneth, recognition also includes legislative fairness and the acknowledgement that a child receives from its family, where especially the former is of relevance here. In Indian political parlance such values are normally discussed in terms of ‘respect’ and ‘social harmony’, which are seen as necessary to limit violent group conflicts, caste discrimination and religious tension, thereby also protecting ‘public order’, which is another common term in Indian political discussions about the regulation of the public sphere. The necessity to promote a cosmopolitan attitude arises from India’s remarkable religious, linguistic, ethnic and social diversity. Beneath the mind-boggling heterogeneity documented by the Census of India each decade, there is a mosaic of villages, towns and cities in which people of different social affinities share social space. Most people relate to this plurality in an impeccable manner, treating each other with a tact whereby differences are acknowledged but downplayed, controversial topics circumvented and cultural restrictions respected. Indeed, Indians seem to be more skilled at this than many others, but in order to prevent hotheads and provocateurs from overstepping this unspoken social contract, endangering the social fabric and worsening inequalities, cosmopolitan behaviour and recognition of difference are also reinforced by India’s legislation.

Most of the Indian studies that have looked into the regulation of the public sphere make their point of departure in the ‘censorship’ term and emphasize its

negative implications. Examining the proscription of books since the nineteenth century, for instance, Girja Kumar argues that the book is under a ‘state of siege’, held hostage by religious fundamentalists. Examining the regulation of films, which also pertains to questions of decency, Someswar Bhowmik argues that the Indian State has ‘kept the cinematic medium in chains’ and generated a ‘long list of serious abuses’. Examining the court cases that have emanated from the effort to keep offensive expressions away from the public sphere over the years, Rajeev Dhavan argues that the authorities overstate their concerns for ‘public order’, that the censorship legislation is too inclusive and that ruling is inconsistent even at the apex level. Additional critique will be exemplified later. In contrast, Western scholars’ writing for a Western readership also accentuate the cosmopolitan side of the equation. At present, this is especially appealing in my home region Scandinavia, which is where the infamous cartoon crisis began, where the threshold for what one can write in public about Islam and European Muslims currently is lower than most other places in the world, where the blasphemy legislation is either abolished (Sweden, Norway) or dormant (Denmark), and where successful prosecution under the hate speech legislation is rare. Against this background, the Norwegian social anthropologist Thomas Hylland Eriksen pre-

21. I am thinking here of the cartoons that were first published in the Danish newspaper Jyllands-Posten in 2005 and which triggered an international clash of values, where Muslim organizations in a number of countries protested against what they perceived as unnecessary offence, while an increasing number of European newspapers reprinted the cartoons either in solidarity with Jyllands-Posten or due to their lasting news value.
22. There are some crucial differences between these countries. The Norwegian hate speech legislation is considerably narrower than the Swedish one, with the Danish legislation occupying a middle position. The infamous cartoons were not published in Sweden (Eide 2011). Swedish newspapers, nevertheless, published a Swedish artist’s offensive drawing of Prophet Muhammad as a dog.
sents the Indian ban on Salman Rushdie’s *The Satanic Verses* (discussed later) as ‘a clear victory for a cosmopolitan attitude that transcends mere liberalism and acknowledges that difference necessitates respect’. Likewise, the Canadian philosopher Ashwani Kumar Peetush, warning against the social marginalization and radicalization that an unfettered freedom of expression may engender in plural societies, mentions India as an example of a state that recognizes the harm of hate speech and other kinds of hurtful expressions. The question I address in the following pages is neither which of these positions are most accurate, nor whether they can represent different perspectives on reality like in the story of the blind men and the elephant (as I suggest in Frøystad, 2013), but rather what the regulation of the public sphere ‘does’, for better or for worse. This, in turn, raises the question of what kind of empirical material one should look for.

While the Indian critique of censorship methodologically privileges the most controversial instances of censorship over those that have been met with consensus, Eriksen’s and Peetush’s praise of India’s regulative measures privileges the authorities’ intentions over actual outcomes. To balance these methodological extremes, I find it useful to juxtapose the ban on expressions that offend religious sentiments, which has given rise to most of the critique, with the ban on caste abuse, which helps bring out some of the cosmopolitan aspects of regulation. In both cases, I follow Michel-Rolph Trouillot’s call for approaching the state (and by extension, democratic governance) not through its institutions but rather through its wider ‘state effects’, beginning with the legislative sections that limit freedom of expression and continuing with their chains of implications, whatever these may be. When doing so, I find it useful to look for what Victor Turner termed ‘social dramas’, which reveal the existence of some very real conflicts, not merely about the subject matter of the expressions, but also about whether these expressions should be allowed to circulate freely or not. The advantages of this approach are that it prevents romanticism of the kind found in comparative discussions that


depict India as the ‘cosmopolitan other’ of an increasingly Islamophobic Europe, and the methodological accessibility of ‘censorship dramas’ given their broad coverage in Indian news media, books and studies. But this accessibility can easily boomerang. Since news journalists are known to pay far more attention to conflicts and irruptions than to the uneventful flow of everyday life, there exist far more media records of controversial proscriptions than of regulative measures to which the population at large agrees. Relying too heavily on media accounts and commentaries would then inevitably result in a study that exaggerates the extent to which the regulation of the public sphere generates problems on its own. To steer clear of this methodological pitfall, I will also draw on my former research on social inequality, interreligious relations and violence dynamics, besides including some largely uncontroversial instances of censorship. Indeed, the regulation of the public sphere entails a fine balance also for scholars who study it. Let me now step carefully onto the balance rope, beginning with the legal measures that India has taken to reduce the amount of derogatory public remarks against dalits.

CASTE ABUSE AND RESPECT

Sadly, the formal abolishment of untouchability in the Constitution of India in 1950 did not put an end to the many forms of caste discrimination that still occurs across the country. Over the years, the Indian state has adopted several successive legal acts that precisely detail the kinds of caste discrimination deemed unlawful. The kinds of discrimination targeted by these legislations typically concern behaviour that is far graver than making derogatory remarks. The Untouchability (Offences) Act of 1955, later revised as the Protection of Civil Rights Act in 1976, made it punishable to deny someone access to temples, village wells, schools, eating establishments and other gathering places on the basis of untouchability. The

29. My former research includes an article on the caste dimension of master-servant relationships (Frøystad 2003), a book chapter on how people position each other according to class in public places (Frøystad 2006), an ethnographic account of the ways in which everyday enactment of caste and class articulated with the anti-Muslim tenets of the Hindu nationalist movement before, during and after the 1992 riots (Frøystad 2005), as well as an article discussing the temporality of riot dynamics (Frøystad 2009).
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, which came into being to promote social inclusion of dalits further, also makes it punishable to force any member of a Scheduled Caste or Scheduled Tribe (SC/ST) to eat ‘inedible or obnoxious substances’, chase them from their property, compel them into forced labour, or report them to the police on false charges, to name a few of the atrocities specified in the text. Against this background, derogatory caste remarks may appear to be quite insignificant, but they nevertheless represent a form of discrimination that is now prohibited throughout the country. The SC/ST Act, as it is known, states that any person not belonging to the SC/ST category who ‘intentionally insults or intimidates with intent to humiliate a member of a scheduled caste or a scheduled tribe in any place within public view’ will be punished with imprisonment or a fine. This clause clearly includes verbal utterances, though it neither specifies what kind of utterances, nor how publicly an insult has to be made to qualify for punishment. Energetic legal activism among India’s politically engaged dalits has ensured that a growing number of derogatory remarks have been tried in court in the recent years, which is one of the most immediate state effects of the SC/ST Act.

To exemplify such processes, I open with the immediate reactions of Mayawati, chairperson of the Bahujan Samaj Party (BSP) and four-time chief minister of Uttar Pradesh, when Mahendra Singh Tikait, leader of the Bharatiya Kisan Union (BKU) used a caste slur against her during a public meeting in Mayawati’s home town Bijnor in 2008. Mayawati belongs to the jatav community (also known by the more condescending caste term of chamar) which is traditionally associated with leather work and treated as untouchables throughout the Hindi-belt. The jatav community is administratively recognized as a scheduled caste, which gives its members legal protection under the SC/ST Act. Tikait, on the other hand, hails from the jat community of medium-status farmers and landowners who are not included in the Schedule, and was thus liable to be taken to court for a caste slur. That Tikait’s remark was public was beyond any doubt. So was evidently the condescending tone of his remark, although Indian news media refrained from repeating exactly what he said for reasons I will come back to later. At first Tikait attempted to excuse himself by claiming that he had merely been using ordinary village expressions. But when a 4,000 strong police force surrounded his home village of Sisauli, where he was surrounded by fellow villagers and BKU activists, he softened sufficiently to ask for forgiveness and offered to withdraw his remarks, now referring to Mayawati as his beti (daughter). Although he was arrested anyway, in order to set an example, he was soon released on bail. The Bijnor court eventually concluded that his remarks were ‘not derogatory’, a con-
clusion Mayawati refrained from challenging given her dependence on jat support to remain in power in Uttar Pradesh.\textsuperscript{31} Even so, the SC/ST Act had enabled Mayawati to demonstrate successfully to her fellow dalits that no one should have to tolerate caste-related insults any longer, even if they were ‘only’ verbal.

Another instance concerns an article written by the media personality, playwright and former investment banker Anish Trivedi for the Mumbai based newspaper \textit{Mid-Day} in 2006. Trivedi is of brahmin background, and in an article titled ‘Children of a lesser God’ he argued that government offices and government-owned companies suffered due to India’s reservation policy, which sets aside a state-specific quota of the posts in all state institutions and enterprises for people of SC, ST and Other Backward Class (OBC) origin. In an attempt to establish the link between reservation and inefficiency, Trivedi made some rather distasteful remarks about reserved-category employees.\textsuperscript{32} Such remarks are not unusual. When I lived in Kanpur in the 1990s, for instance, I often heard upper-caste Hindus blame bureaucratic inefficiency on reservation, not only by criticizing the practice of hiring people on grounds other than merit (which was inconsistent given their own tendency of seeking employment and college admissions through personal contacts and bribes) but also by maintaining that reserved-category people had less favourable capabilities as a direct result of their caste background.\textsuperscript{33} Trivedi’s mistake was to put forth such remarks in public. Seeing them as a clear violation of the SC/ST Act, dalit activists registered a case under the special Prevention of Atrocities Act court in Mumbai. Seeing this coming, Trivedi made a public apology in \textit{Mid-Day}, but the activists decided to let the matter take its course, and in January 2011 he was sentenced to six months’ imprisonment and a fine of Rs. 25,000. This conviction was a clear victory for dalit activists across the country, though Trivedi was released on bail when he appealed the decision.


\textsuperscript{32} The contentious part of Trivedi’s argument was not quoted in the mainstream news media that reported on the case, but it is freely available on the Internet, including in various blogs and the electronic edition of Dalit Voice. See V. T. Rajshekar,’Editorial’, \textit{Dalit Voice}, vol. 25, no. 15, 2006.

\textsuperscript{33} Despite being grounded in an entirely different cultural logic, this mode of reasoning has much in common with classic racist arguments in the West, which occasionally resurface in academic studies that ‘prove’ people of African descent to be less intelligent than whites. The controversial book The Bell Curve is a case in point. Richard J. Herrnstein and Charles A. Murray, \textit{The Bell Curve: Intelligence and Class Structure in American Life}, New York: Free Press, 1994.
My third example concerns the question of whether stigmatizing caste names are illegal in themselves. According to Susan Bayly, the use of caste terms was already banned in certain state-specific legislations.34 Among them was Gujarat, which prohibited the use of caste terms such as *dhed* in the 1950s.35 But whether the SC/ST Act made such caste terms illegal throughout the country remained an open question until 2008. True, my upper-caste acquaintances in Kanpur generally believed such caste terms to be illegal. In fact, their resentment at the silent dalit revolution36 under Mayawati’s reign in the state was frequently expressed in terms of muffled remarks such as ‘*Abhi* it has even become illegal to call out *he bhangi, idhar ao!* (Hey bhangi, come here!) to the *safai karamcharis* (municipal sanitation workers) who sweep the streets outside here!’ The term *bhangi* is a stigmatizing designation used to address the community of scavengers and sweepers who now prefer to call themselves *balmiki*, which has positive connotations, since it is named after the person credited for having authored the Ramayana. All the same, dalits who attempted to report the use of derogatory caste terms to the police were usually turned away.

In the mid 2000s, the Supreme Court was faced with an interesting question. A case was filed in 2005 by a man named Vinod Nagar, who hailed from the khatik community, who used to make their living as pig herders. They are classified as SC and are protected by the SC/ST Act. Nagar worked as a driver in one of the upper middle class neighbourhoods in south Delhi, and his work included keeping the car clean and being available whenever his employer needed to go anywhere. As a result, Nagar spent most of his time just outside his employer’s house, waiting to be called. This was not to the liking of the Sikh family who lived on the second floor of the building. On repeated occasions, the wife and daughter of that family are supposed to have called out to him that he ought to keep away when they went by as he was a *chuda-chamar*. Etymologically, *chuda* (also transcribed *chura*) is yet another term for the stigmatized balmiki/bhangi community, while *chamar* refers to the aforementioned leather workers and tanners. When these designations occur together and are directed at a person who is neither *chuda* nor *chamar* but a third low caste, the semantic effect is that of a profound derogation. That the offenders in this case were Sikhs, whose religion does not officially

acknowledge caste, shows how entrenched caste thinking is in day-to-day life, despite all the legal measures that have been taken to reduce it.

Vinod Nagar’s appeals to the women to speak to him more politely were unsuccessful. So were his employer’s attempts to get the woman’s husband to persuade them to behave more politely. Vinod Nagar, therefore, decided to report the women, who responded by submitting a counter charge against Nagar for misusing the legal system. The Delhi High Court was in doubt as to what to do about the case and requested a clarification from the Supreme Court. The issues the Supreme Court was asked to decide upon was whether expressions of the kind the women were alleged to have used were covered by the SC/ST Act or not and whether they were made sufficiently publicly to be illegal. The two-judge bench who assessed this issue produced a detailed statement – cited in all the major newspapers across the country – which argued that the use of such terms was indeed punishable by law. Their argument was that although the designations *chuda* and *chamar* may originally have been neutral, such terms are nowadays mainly used by upper- and middle-caste Hindus as insults for people of (assumed) low-caste background, which makes them illegal. In this way, the Supreme Court based its argument on the social context and assumed intention of the expression rather than on its etymological origin. Its statement also contained a broader justification for why the SC/ST Act should be interpreted rather strictly in order to do away with caste discrimination. In its verdict, the Court elaborated that,

This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody’s feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word *Chamar* when addressing a member of the scheduled caste, even if that person in fact belongs to the *Chamar* caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity – so many religions, castes, ethnic and lingual groups, etc., all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.37

Despite the unequivocal conclusion about the illegality of derogatory caste terms, the Supreme Court judges had serious doubts about the publicness of the women’s

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remarks. In principle, they argued that caste-related insults by no means need to be exposed to large audiences to be punishable, as the SC/ST Act prohibits insults made ‘within public view’, which according to the judges also includes private places where others than family members and immediate friends are present. But whether this condition was met in Vinod Nagar’s case was doubtful, they stated. On this note, they returned the matter to the Delhi High Court, which is yet to take a decision when this chapter goes to press. Regardless of what the final judgement will say, it is certain that the Indian judiciary has now made an unambiguous statement in favour of interpreting derogatory caste terms as a punishable insult, and that the Supreme Court justified its statement with cosmopolitan arguments that are strongly reminiscent of those made by Nussbaum and Appiah, two of the most prominent scholars of cosmopolitanism.

My fourth and final example concerns the circulation of caste insults on the Internet, which comprises the ‘opposite’ pole of the public sphere, so to speak. This will enable me to return to Mayawati, who for long has been a prime target for caste insults given her influential political position. During the general elections of 2009, when certain newspapers speculated whether Mayawati could attract enough votes and alliance partners to become India’s first dalit prime minister, an anti-Mayawati group was set up on Facebook sporting images and text that clearly were against the law, whichever way it was interpreted. Its profile picture had a portrait photograph of Mayawati with the word *chamar* written underneath in uneven, almost dripping handwritten letters. Not only did this involve a derogatory caste term, the shape of the letters also alluded to the false rumours that Mayawati is illiterate, and gave – at least to me – uncanny associations of horror films with long takes showing writings on a wall written in blood, following a murder scene.\(^{38}\) While this particular group eventually was removed after repeated complaints to Facebook, anti-Mayawati groups continued to be established years later, many of which contain remarks that not only violate the SC/ST Act, but also argue that Mayawati deserves to be killed. In all fairness, the anger that was poured out in these pages was primarily directed at Mayawati’s extravagant use of public money rather than at her effort to alter deeply entrenched caste relations. Nevertheless, the caste dimension was salient in the way in which the resentment was expressed. In an attempt to reduce the amount of objectionable expressions on the Internet, the Indian Department of Technology tightened its

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\(^{38}\) Personally I was also reminded of the way in which Nazi sympathizers painted the word ‘Jude’ across the windows of Jewish-owned shops in Germany and several other European countries in the beginning of the Second World War, though I doubt that the group administrators were sufficiently familiar with European history to have been inspired by this kind of acts.
regulation of the Internet in April 2011.\(^{39}\) From then on, all officials and private citizens were entitled to demand that Internet sites, service providers and foreign ‘intermediaries’ remove illegal or objectionable content within 36 hours.\(^{40}\) Several sites had already been blocked before these regulations were issued, including a Facebook group named ‘I hate Ambedkar’, which had motivated clashes in the outskirts of Mumbai.\(^{41}\) Even so, the ‘I hate Mayawati’ pages were still in place when this book went to press and it remains to be seen how effectively Indian authorities will be able to clamp down on caste abuse and other unlawful expressions forwarded in cyberspace while more and more people gain access to the Internet.\(^{42}\)

To summarize the way in which freedom of expression has been balanced against caste abuse in the recent decades, I note the following trends. First, the enforcement of the SC/ST Act in 1989 made it illegal to forward caste insults in public. Second, in 2008 the Supreme Court confirmed that derogatory caste terms count as insults. Third, the effort that dalit activists and politicians have made to transform the SC/ST Act from a paper tiger to an actively implemented legislation has raised the number of court cases pertaining to verbal and written caste abuse. Fourth, to prevent the Internet from becoming a burgeoning laissez-faire zone of the public sphere, the Government of India has since 2011 regulated the Internet more strictly. Fifth, all these changes have clearly given dalits better protection and self-esteem. Sixth, these developments have also contributed to generate a growing public critique of censorship, which I return to later. As far as caste issues are concerned, the balance point has clearly shifted towards a stricter regulation of the public sphere, especially since 1989. Compared to the United States or my home country Norway, India’s balance point is located at an entirely different spot. In these two countries, stigmatizing terms such as *nigger* and *svartskalle* (black skull) are fully legal despite being politically incorrect in the extreme. Unless

\(^{39}\) The term ‘objectionable’ includes information that ‘is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, pedophilic, libelous, invasive of another’s privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner’. See *Information Technology (Electronic Service Delivery) Rules, Department of Information Technology*, Government of India, 2011, p. 12.


\(^{41}\) Mateen Hafeez, ‘“I Hate Ambedkar” Page Deleted from the Internet’, *The Times of India*, 21 March 2011.

\(^{42}\) I have personally reported these and other groups to Facebook on several occasions, but Facebook is either slow or reluctant to block pages with content that violates other legislations than that of the USA, which may be why the Government of India now attempts to regulate such pages by itself.
these terms are used in ways that violate the respective hate speech legislations by explicitly inciting violence, their use is left to people’s own sense of appropriateness. India, on the other hand, appears to apply its legislation in order to promote self-justice of this kind.

ETHNO-RELIGIOUS BOUNDARIES AND SOCIAL HARMONY

While the SC/ST Act only protects people from the most stigmatized castes and tribal communities, Indian law also gives a more general protection against expressions that may provoke violence along its various fault lines, especially those that are ethno-religious in nature. Of particular relevance are four of the sections in the Indian Penal Code (IPC). Section 153A of Chapter 8 states that anyone who by words, signs or visible representations promotes disharmony or enmity between different religious, racial, language groups or castes, shall be punished with up to three years’ imprisonment and/or a fine. Section 153B further details that anyone who insinuates that people of particular religious, racial, linguistic or regional backgrounds cannot be loyal to the Constitution or be legitimate citizens, shall be similarly punished. In Chapter 15 of the IPC, section 295A states that anyone who, through words, signs or visible representations, insults with malicious intent another group’s religion or religious beliefs, shall be punished with up to three years’ imprisonment and/or a fine. Section 298 details that this also applies at the individual level by declaring that anyone who through speech or sound deliberately attempts to wound the religious feelings of any person, shall be punished with up to one year’s imprisonment and/or a fine. In other words, India has exceptionally strong protection against infringements and prov-

43. I prefer to speak of ethno-religious rather than religious boundaries when thematizing the pronounced ‘us’ and ‘them’-ness that gives room for politicization. Following this line of thinking, the boundaries between Hindus, Muslims, Sikhs and Christians – all large-scale imagined religious communities, some of which did not crystallize until the late nineteenth century – are primarily ethno-religious whereas the boundary between, say, Arya Samajis and devotees of Krishna merely constitutes a religious boundary.

44. Despite the general phrasing of this section, readers familiar with the scholarship on Hindu nationalism are likely to be reminded of the 1930s ideologist M.S. Golwalkar’s much quoted statement that ‘foreign races’ deserve ‘no privileges, far less any preferential treatment – not even citizen’s rights’ unless they respect and stay subordinated to the Hindu nation. M.S. Golwalkar, We, or Our Nationhood Defined, Nagpur: Bharat Prakashan, 1947, pp. 55–6; Ramachandra Guha, India After Gandhi: The History of the World’s Largest Democracy, New York: Harper Perennial, 2008, p. 33.

45. For details, see Government of India, Indian Penal Code, 2010.
ocations linked to community memberships with pronounced ascriptive characteristics.

The background to this legislation lies, as mentioned, in India’s remarkable diversity. Despite the ease with which this heterogeneity is usually dealt with in everyday life, India has experienced some horrendous instances of collective violence, particularly along religious boundaries. Since 1980 there have been several major instances of ethno-religious violence. In 1984 Sikhs were attacked following the assassination of Indira Gandhi, who had been killed by her Sikh bodyguards. They had acted in revenge for Operation Blue Star, which was a rough-handed attempt by Indira Gandhi to defeat Sikh separatists in Punjab. She ordered the Indian Army to storm the Golden Temple in Amritsar, where at least 400 armed separatists had barricaded themselves. As counter-revenge to Indira Gandhi’s murder, Sikh families were attacked in several Indian cities, especially in Delhi. In the course of three days at least 3,000 people – almost all Sikhs – were killed or had their homes destroyed. Later, in 1992, there were widespread riots between Hindus and Muslims following the destruction of the Babri Masjid, which Hindu nationalists claimed was built upon the ruins of an ancient Ram temple. Muslim protests were met with violent attacks. In town after town in north India, local troublemakers went on the rampage against Muslim residents, often acting on orders from leaders of Hindu nationalist organizations. Before the central government’s paramilitary forces regained control, at least 1,200 people had lost their lives and almost a thousand more if we include the riot in Mumbai, one month later. In 2002, there were anti-Muslim riots in Gujarat, where the state authorities are said to have been so complicit that several scholars treat the riots as pogroms or even genocide. The violence was triggered by a passenger train full of Hindu pilgrims on their way home from Ayodhya allegedly being stopped and set on fire by a local Muslim mob. In revenge, Muslims were attacked in large areas of Gujarat in a series of riots that cost between 1,000 and 2,000 lives. This is the kind of ethno-religious violence that the Indian lawmakers attempt to limit by banning expressions that wound a person’s religious sensibilities or promote disharmony in other ways. Granted, all the riots above occurred in spite of these legal restrictions, which begs the question of whether they really have the intended ‘state effect’. Before commenting on this question, I want to exemplify certain instances where freedom of expression has been targeted, starting with Salman Rushdie’s novel *The Satanic Verses*.

47. Nussbaum, op. cit., 2007, p. 17.
Rushdie’s fourth novel was anticipated with great excitement. The remarkable success of his two previous novels *Midnight’s Children* (1981) and *Shame* (1983) had made Rushdie an international celebrity and introduced a number of Western readers to South Asia’s complex history for the very first time. The *Satanic Verses* was initially released in Great Britain in September 1988. Weaving together the migration histories of two radically different Indian-born men with a rather unflattering fable on the origin of Islam, the novel alienated several Muslim readers, who complained that it was historically inaccurate, denigrated Prophet Mohammed, and contained passages that resembled hate speech. Penguin Books India, who had planned to publish the book in India, asked the renowned writer and intellectual Khushwant Singh for advice. Singh concluded that the book was so hurtful and tasteless that it could motivate massive riots, and advised the publisher to drop its plans. Penguin initially decided to ignore his warning, but changed its stance when the matter came to the attention of the Jamaat-e-Islami. This organization already bore a grudge against Rushdie following his malicious portrait of it in *Shame*, which made it launch a campaign against *The Satanic Verses*. The turning point came when the MP Syed Shahabuddin forwarded Jamaat-e-Islami’s objections to the novel in *The Times of India*, and demanded that Prime Minister Rajiv Gandhi ban it. Rajiv Gandhi complied with this demand on 5 October 1988, mainly because he acknowledged the offensive nature of the book, but also because he did not want to lose Muslim votes barely a month before the elections. Thus, *The Satanic Verses* was never published in India, but the controversy had nevertheless taken root. Following Ayatollah Khomeini’s fatwa against Rushdie in February 1989, Muslim youth organizations arranged a strike and demonstration in Mumbai. Since India’s ban was already in place, most leading Muslim politicians and organizations declined to take part. I happened to be in the city myself at that time, and I still recall the deserted streets with their closed metal shutters that Friday. The next morning the newspaper front pages sported pixillated photographs of white-clad

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50. According to Malik in *From Fatwa to Jihad*, Penguin reckoned on low readership figures in India, an assessment I believe to have been class-based. In India, the small proportion of the population that read serious English-language literature was dominated by Hindus. Though there were Muslims among them, there were hardly any from the Muslim working class who would take to the streets in protest.
51. The book was formally banned under the Customs Act, which regulates what goods can be imported into the country. The important thing in this case was to stop the import of British editions.
men with banners in Urdu and English denouncing Rushdie and supporting the fatwa. The caption said that ten people had been killed when the police attempted to disperse the crowd, a figure that was later adjusted upwards to twelve, and which included several onlookers. This incident and the discourse that surrounded it, reveal a tripartite disagreement between the critics of the ban, its supporters, and those who wanted Rushdie to be punished according to Islamic law for insulting the Prophet. In the years that followed, the public opinion in India mainly crystallized around two positions: the first supporting the ban on the same grounds as Khushwant Singh; the other interpreting it as a token of ‘Muslim appeasement’, which became a catch phrase in the Hindu nationalist discourse that began to grow forth. Even if it could be established that the proscription of Rushdie’s novel succeeded in averting large-scale riots, which I am inclined to believe, the proscription nevertheless caused considerable ripples on its own.

A more recent instance in which the IPC came into play occurred during the general elections of 2009, following Varun Gandhi’s unofficial election speech in the Pilibhit district of Uttar Pradesh. In contrast to the other members of the Nehru-Gandhi dynasty, Varun and his mother Maneka represent the Bharatiya Janata Party (BJP), and Varun was already rumoured to have made some rather harsh statements against the Muslim minority, including that the Muslim population ought to be sterilized. During the election meeting in Pilibhit, he also proclaimed that Muslims should have their hands cut off if they raised their hands against Hindus, that Pilibhit must be saved from becoming a new Pakistan, that his Muslim opponent was an Osama bin Laden and that his own lotus-shaped hand would cut the throat of ‘the circumcised’ after the election. What Varun Gandhi did not know was that he was being filmed, and in the following days the recordings were broadcast on news channels across the country. This made the matter so highly publicized that the authorities stepped in. The Election Commission of

55. Maseeh Rahman, ‘Gandhi Relative’s Hate Video Shocks India’, *The Guardian*, 19 March 2009; Santwana Bhattacharya, ‘Varun Gandhi: A Pox on Both His Houses’, *Asia Times Online*, 27 March 2009; *India Latest News*, ‘Varun Gandhi Speech Video’, 17 March 2009. The lotus flower is the political symbol of the BJP, and the slang expression he used for those who have been circumcised is itself derogatory. His statements were reproduced in greater detail in foreign news media than in India.
India accused him of having breached the ethical principles to which political parties and candidates are subject, and recommended that the BJP find another candidate from Pilibhit—a request the party opted to ignore. As Varun Gandhi was a politician in the middle of an election campaign, his provocative speeches could not be stopped by reporting him for breach of the IPC. The Mayawati-led state government in Uttar Pradesh, therefore, reported him in accordance with the National Security Act (NSA), which allows preventive arrests of people who threaten state security or public order. Despite Varun Gandhi’s protestations that the video was a fake, he was arrested. Even so, he was released eighteen days later, once he had signed a declaration that he would make no more speeches that could precipitate violence. At the same time, the Supreme Court rejected the state authorities’ use of the NSA, which it argued should be reserved for more serious cases. Now Varun Gandhi was free to return to the election campaign, and at the time of writing he represents the BJP as a Member of Parliament. Nonetheless, his encounter with the long arm of the law demonstrates some of the sanctions that can be set in motion if the IPC is violated. I also highlight the complex legal terrain one may move into when trying to regulate the public sphere, whether in regard to exceptions (here politicians in election campaigns), alternative legislations (here the NSA and in Rushdie’s case The Customs Act) or the disagreement between the state authorities and the higher courts, which I will discuss later.

While both the Varun Gandhi and the Rushdie case illustrate how freedom of expression is restricted on behalf of the Muslim minority, the blasphemy legislation gives equal protection to Hindus and Christians. In 1998, the Indian authorities banned the Christian pamphlet ‘Satya Darshini’, which describes Hindu deities in such negative terms that it soured the relationship between Hindus and Christians in southern India. Christian missionizing is widespread in certain parts of the country, and the inclination of people from low-status communities to convert has caused considerable alarm in Hindu nationalist circles, whose ideology prescribes a numerically powerful Hindu majority with all its caste communities

56. The Election Commission referred here to the so-called Model Mode of Conduct (MMC), which specifies in its opening paragraph that no party or candidate may act in such a way that they reinforce the tension between various castes or religious/linguistic communities. However, the MMC has no official status or powers of sanction. Election Commission of India, Model Code of Conduct for the Guidance of Political Parties and Candidates, 2007.

57. While most Indian citizens can be arrested while awaiting judgement, politicians are exempt from this rule. As the election campaign was about to begin, Varun Gandhi could not be arrested until after a potential judgement.

58. The National Security Act has been criticized for being so wide-ranging that it is often used unnecessarily, something that was also claimed following the arrest of Varun Gandhi.
interacting in harmonious complementarity. In 2008, the book appeared again in Karnataka, this time allegedly distributed by an American charismatic church. It triggered angry attacks on a convent and fourteen Christian places of worship. As the pamphlet had already been banned, the author and distributors were reported to the police, but the government commission who looked into the matter advised a withdrawal of all the cases in the name of forgiveness. While I was writing the first draft of this chapter, a ‘converse’ situation occurred in the northeastern state of Meghalaya, where Christian parents and church members, supported by the National Council of Churches in India, protested vehemently against a textbook in which Jesus was depicted with a cigarette in one hand and what was interpreted as a beer can in the other, under ‘I for idol’ next to ‘J for jeep’. The textbooks were promptly confiscated and legal action against the publisher contemplated, but since then there has been no news about the matter. As Torkel Brekke suggests, this controversy shows how Christian organizations are not just protesting against a particular offensive depiction, but implicitly also against what they see as long time harassment by Hindu nationalist forces. As I was revising this chapter for the present volume, newspapers reported about a controversy over bathing suits that depicted the Hindu goddess Lakshmi on the lower front. The bathing suits had been designed in Australia and shown at a fashion show there, and though there was little the defenders of Lakshmi could do to influence freedom of expression outside India, they arranged loud protests against the Indian newspapers that published photographs of the event. The protesters were supported by the Allahabad High Court, which issued notices to the newspapers, and the designer promptly issued a public apology in which she added that the production of these bathing suits has been stopped. Cases such as this do not only con-

59. The Hindu nationalist conceptualization of harmony, which from the perspective of its critics glosses over glaring social inequality and structural violence, must not be confused with the cosmopolitan conceptualization of social harmony on which the Indian authorities base their restrictions on freedom of expression. The only feature these conceptualizations have in common, apart from the term itself, is the absence of open conflict.


firm that the regulation of the public sphere for the sake of harmony benefits the Hindu majority as much as religious minorities, but also that what counts as offensive is heavily influenced by the social and political context.

Let me now return to the difficult question of whether the prohibition of public expressions that are offensive on religious grounds really does promote public order, social harmony and respect, as intended by Indian lawmakers. This is a notoriously tricky question given the impossibility of describing the course of events that would have unfolded if, say, The Satanic Verses really had been published in India after all, or Lakshmi bathing suits had been displayed in shopping malls across the country. We simply do not know. Nonetheless, we have two strong indications that these legal sections do indeed protect public order. The first indication arises from the contrast between the riots that followed the demolition of Babri Masjid and the train fire in Godhra on the one hand, and the absence of riots following the largely successful effort to keep the Danish Muhammed cartoons away from the Indian public sphere. These cartoons acquired an explosive symbolic potential that may well match the demolition of a discarded mosque or the charring of a train carriage full of passengers. After all, the ‘victim’ was the Prophet himself. In 2006, a minister in the state government of Uttar Pradesh, Haji Yaqoob Qureishi, offered Rs. 51 crore to anyone who would behead the cartoonists. In addition, he demanded an apology from Jyllands-Posten and the Danish authorities. In Europe, planned and actual attacks on the cartoonist who had made the provocative drawing contributed to keep the cartoon controversy a hot news topic for several years. But in India the matter blew over fairly quickly. The main reason, I suggest, is that very few publications actually printed the cartoons, and that those who did so – Dinamalar, Senior India and the Patna edition of The Times of India are those I know of – had their remaining copies immediately confiscated and their editors arrested. Protests were staged and additional bounties declared, but there was hardly any political violence to speak of, which suggests that Muslims felt that, this time around, the Indian government had stood up for them. An additional element is that the Indian authorities successfully advised the then Danish Prime Minister, Anders Fogh-Rasmussen, from carrying out his

66. Aman Sharma, ‘Cartoons: Spontaneous Rage? Look at Drama, Well Scripted’, Indian Express, 21 February 2006; Malik, op. cit., p. 145. Qureishi’s reward was highly controversial. He was reported to the police (though the charge was rejected by the courts), criticized for being both un-Islamic and inhumane. Several Muslim intellectuals in Delhi demanded his resignation.

planned state visit to India in 2006. But as Haji Qureishi’s reward indicates, there was hardly a lack of activists willing to organize mass action if these cartoons had been allowed to circulate freely, action that could well have triggered ethno-religious violence once again.

The second indication arises from the vast scholarship on how ethno-religious riots are initiated, developed and spread from place to place. Most riots are rooted in local quarrels – for example, regarding a cow grazing on a neighbour’s property or young boys being denied cold drinks from a corner shop on the grounds that they plan to mix it with rum – that escalate when bystanders take a stand aligning with their religious denomination. If local goondas or politicians also get involved, such riots can become relatively fierce, although they almost always remain local. The most grave riots, in contrast, tend to begin with a symbolic shock event, such as the destruction of a sacred building, the assassination of a politician, or a fatal accident which comes across as pre-planned, and this is the kind of riots that can spread from place to place. If the shock event is interpreted according to a general discourse that is then reproduced as various local variants across the country, it may legitimate violence in those places too. This form of riots is often so carefully organized that they resemble pogroms. In such cases, the motivation varies from political gain and settling old scores to liberating land from settlers. Biased press coverage and political rhetoric that is hostile to minorities tend to give considerable local legitimacy to such actions, which is why the law attempts to restrict such forms of expression.

69. Interestingly, bomb blasts and terrorist attacks have not had the same precipitating effect so far. Somehow these kinds of events are neither sufficiently symbolic nor as easily interpreted according to a wider ethno-religious discourse. See Philippa Williams, ‘Hindu-Muslim Brotherhood: Exploring the Dynamics of Communal Relations in Varanasi, North-India’, Journal of South Asian Development, vol. 2, no. 2, 2007, pp. 153–76.
Let me exemplify this process with one of the riots that took place in Kanpur a few years before I arrived to do my first fieldwork in the city. In 1990, there had been an attempt to destroy the Babri Masjid which was stopped by Mayawati’s predecessor, Mulayam Singh Yadav. Between twelve and twenty people were killed when the police took action against the mosque vandals, but although many people in Kanpur were furious about the rough defence of the mosque, Kanpur remained calm. Rioting only spread to Kanpur when, several months later, a local newspaper reported a murder incident on a train, in which several passengers and a railway employee from Kanpur were killed by Hindu troublemakers who boarded the train in Aligarh. On one level, this happened through a banal chain of events: a Muslim street vendor in an inner-city Muslim-dominated muhalla was attacked and his stock burnt; sympathizers set fire to a few Hindu-owned shops; Hindus retaliated by burning down a few Muslim-owned shoe shops and destroying a mosque; paramilitary forces attempted to enforce peace by cutting power and water supplies to the muhalla, whereupon Muslim residents attacked the paramilitaries and between twenty and fifty people died. On another level, this chain of events was fed by newspaper reports that inflated the death toll in Ayodhya, topped with the train murders on the way between Aligarh and Kanpur. Certain Hindi newspapers were also said to have published unconfirmed rumours that poisoned cows had been found in the courtyard of a temple, rumours that spread like wildfire and sharpened communal hostility even without the help of the press. Just as such reports can fuel ethno-religious violence, it is likely that the suppression of such reports and expressions that offend religious sentiments contribute to limit the level of ethno-religious violence. But it certainly does not prevent violence entirely, and has undoubtedly struck down a number of expressions that are unlikely to have caused harm or hurt. In some cases, censorship may even have generated political ripples that exceed the turbulence it was put in place

to prevent, at least in the long run.\textsuperscript{76} Thus, the regulation of offensive remarks for the sake of public order is something of a double-edged sword. Yet, in terms of respect and recognition it nevertheless has the same merits as the prohibition of caste abuse. After all, it ensures that each and every child from the minority religions grows up without being surrounded by TV broadcasts, magazines and books that mock the religious practices of their parents or denounce their families as second-class citizens, which over the years would have generated a profound feeling of alienation.

An additional ‘state effect’ I want to consider, concerns the way in which proscription generates circumvention. To be on the safe side from violating the IPC, the mainstream news media stay well within its boundary. Some even impose on themselves a restraint so high that their articles come close to losing their news value, as quoting an offence may be interpreted as an offence in itself. This is why mainstream newspapers refrained from quoting the offensive statements of Tikait and Varun Gandhi. In newspaper reports on ethno-religious conflicts restraint is usually shown by concealing which communities the conflicting parties belong to, as well as the ethno-religious identity of the main culprits. Consider this excerpt from \textit{The Times of India},

\begin{quote}
\begin{footnotesize}
Lucknow: The murder of a youth in Pratapgarh sparked off large scale violence when his supporters torched 100 houses spreading over three villages, belonging to the community to which the murder-accused belonged to. . . . Complaints by a particular community about biased police action against them also added fuel to the fire.\textsuperscript{77}
\end{footnotesize}
\end{quote}

Interestingly, such media restraint has created an interpretive dynamics of its own, and most newspaper readers know that ‘members of a particular community’ or ‘a minority community’ typically mean Muslims, and that ‘the majority community’ means Hindus. To some extent this enables newspapers to write between the lines,

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though doing so entails a fine balance indeed. More explicit content usually circulates in alternative media, which brings me to the point of secondary adjustments.

In his sociological classic *Asylums*, Erving Goffman analysed how patients in total institutions such as mental hospitals in the United States eventually managed to circumvent the rigid rules they were subject to by developing routine methods for achieving unauthorized goals.\(^{78}\) In Goffman’s terminology, these routine methods were analysed as secondary adjustments. In the case of censorship, the secondary adjustments to the IPC’s restrictions on freedom of expression implies that people or organizations who want to transmit overly explicit or illegal messages do so in a way that is difficult for the authorities to trace. Pamphlets and leaflets disseminated through religiously homogeneous networks of friends, for example, were a common channel for Hindu nationalist anti-Muslim propaganda in the 1990s. Cassettes were also used, and especially popular were recordings of the fiery speeches of Sadhvi Rithambara and Uma Bharati.\(^{79}\) Video cassettes of banned documentaries also circulated, and I recall quite well a video recording from the attempt to destroy the Babri Masjid in 1990 – close-ups dwelling on the swollen corpses from police bullets, with flies buzzing around.\(^{80}\) Publishing outside India is also a possible strategy. For instance, when I wanted to familiarize myself with the ideological founders of Hindu nationalism, M.S. Golwalkar and V.D. Savarkar in the 1990s, I had to order their books from the Hindu Swayamsevak Sangh in Great Britain.\(^{81}\) Smuggling is another strategy – around 3,000 copies of *The Satanic Verses* are believed to be smuggled into India every year.\(^{82}\) Publishing on the Internet offers yet another avenue for secondary adjustment, which is demonstrated with the Facebook group on Mayawati. Even though all these outlets are, in principle, subject to regulation in the sense that the controversial expressions they circulate are occasionally discovered, confiscated/removed and punished, Indian authorities would have had to impose censorship of a far more authoritarian nature to monitor them completely. Fortunately, this has never been an option.

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79. For a translation of one of these speeches see Peter L. Manuel, *Cassette Culture: Popular Music and Technology in India*, Chicago: University of Chicago Press, 1993.
81. I have been told that these books are now available from Indian distributors again.
Let me summarize the ways in which freedom of expression has been balanced against the protection of public order since the ban on the *The Satanic Verses* in 1988 by noting the following trends. First, the IPC sections on censorship and the way they are interpreted remain unchanged, in stark contrast to the legislation on caste abuse. Thus, the balancing act primarily concerns their implementation, that is, questions as to which expressions should or should not be stopped, and what sanctions should be imposed in the event of infringement. Second, the number of charges according to these IPC sections appears to have risen. It is perhaps inevitable that some religious organizations exaggerate their feelings of hurt to express pent-up collective resentment or mobilize support for a broader political cause. The latter seems particularly true for Hindu nationalist organizations, some of which appear to have ‘invented’ feelings of insult to make up for what they interpret as Muslim appeasement. Third and consequently, many charges, state government proscriptions, and lower-court verdicts rooted in these IPC sections are overturned later on. This reflects India’s judicial hierarchy, and more examples follow in the final section. But even if the end result is acquittal, years of court cases and hearings involve considerable mental and economic strain, which Rajeev Dhavan rightly encapsulates with the words that ‘the process becomes the punishment’.  

Seen from the United States or Norway, where neither blasphemy nor negative generalizations about religious minorities are likely to be punished, unless they involve threats of physical violence, India’s balance point tilts heavily towards public order, respect and recognition. The strictness of India’s legislation does not only lie in the preventive ban on expressions that may legitimate ethno-religious violence, but also in the protection from expressions that cause religious offence, regardless of the perpetrator’s intention.

**DEBATING THE BALANCE**

What kind of public debates have emanated from the restrictions on freedom of expression of the kind I have examined in the preceding pages? The answer depends on whether one looks at the restrictions on caste abuse or religious insults, and I begin with the former. Interestingly, virtually all the comments I have come across so far open with a general appreciation of the SC/ST Act, and its overall aim of promoting respect for dalits. Still, there is some disagreement about whether the SC/ST Act ought to criminalize verbal and written caste insults along-

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side graver atrocities. The loudest outcries against regulation typically concern the particular instances in which the SC/ST Act has come into use. The following statement by the managing director of Mid-Day Multimedia in defence of Anish Trivedi’s rant against reservation exemplifies such arguments exceptionally well,

While I am deeply aware that the lower castes have suffered great indignity and discrimination at the hands of the majority and I have no intention whatsoever to cast aspersion on the judiciary or the judgement of the learned court, let me make two simple points: (1) Anish Trivedi has been my friend for forty-five years now. Very rarely have I agreed with him, on anything, least of all politics. . . . The learned Court has thrown the rule book at Anish for stating an opinion. I certainly do not agree with that opinion, but that’s all it is. . . . Are we going to start stifling opinion and free speech on the basis that it is ‘offensive’ to some people? . . . (2) Anish Trivedi may hold unpopular opinions. And he may not even be a very pleasant person. But the last time I looked, this was still a free country. I don’t agree with his views but we lose the right to hold independent opinions at our peril, and to the great detriment of a free India.84

Ansari’s advocacy for a public sphere with fewer restrictions echoes the views of not only the French enlightenment thinker Voltaire, but also the classic liberalism of the American democracy, and Ansari may well have been influenced by US-style liberalism when he studied in USA in the early 1980s.85 Interestingly, a growing (though still modest) proportion of India’s urban middle class now has personal experience from USA or other Western countries. Yet most of them have a rather limited contact with people hailing from the communities that risk caste abuse – at least beyond servitude and other asymmetrical relations of employment and exchange.86 This may explain why there appears to be considerable yet unspoken resonance for Ansari’s view among the elite.

85. Voltaire’s view was famously paraphrased as ‘I disapprove of what you say, but I will defend to death your right to say it’ by his biographer Evelyn Beatrice Hall in 1906, writing under the pseudonym Stephen G. Tallentyre. See Evelyn Beatrice Hall, The Friends of Voltaire, London: Smith, Elder, & Co., 1906. Given Ansari’s Muslim background, it would have been interesting to know how strongly he would have defended insults against religious minorities of the kind I discussed in the previous section.
But the proscription of caste abuse also has vocal defenders. Alongside dalit activists, the political establishment, and the judges manning the courts, we find several respected scholars. Commenting on Tikait’s casteist remarks about Mayawati shortly after they became a media event, the historian Ramachandra Guha stated that ‘If a male leader from a landed community in Uttar Pradesh calls a female dalit leader an offensive name, and if action is taken against him, it should be seen only as a case of adherence to the Constitution, which abolishes untouchability, including verbal abuse’. His fellow historian Mushirul Hasan, former Vice-Chancellor of the Jamia Millia Islamia, further reflects that ‘Mayawati could act and enforce the law because of the resources at her command. But think of the vast majority of dalits who have little recourse to justice. This is the huge challenge that India faces’. The abyss between Ansari’s viewpoint and those of Guha and Hasan suggests the emergence of an increasingly explicit disagreement about the regulation of the public sphere, where media representatives and the traditionally privileged social segments are pitted against the government, the courts, the marginalized and the academic elite. This disagreement constitutes a second-order state effect of India’s caste-related legislation, though it must be carefully balanced against the intentional but more slowly evolving recognition (in the sense of Honneth) for India’s around 300 million dalits.

As for the prohibition of expressions that unsettle ethno-religious relations, my impression is that there is high acceptance for the effort to keep intentional religious insults away from the public sphere. Many people have experienced riots and interreligious tussles in the vicinity of their homes at some point during their lives, and know painfully well how fragile local ethno-religious ties may be in times of serious political turbulence. There is certainly not much general defence for the right to threaten Muslims, missionize by making critical remarks about Hindu deities, or circulate offensive images of Jesus or Muhammed. But this does not preclude censorship from being questioned, which typically occurs in three contexts. The first is when the disputed expression belongs to the artistic realm, as in Rushdie’s case. Here, the primary question is not whether a particular ban represents ‘Muslim appeasement’, but what implications such a ban may have for artistic freedom. One of the first to make such an argument was the renowned historian Romila Thapar,

88. Ibid.
If the state has taken on the role of the main patron of culture and if it should then withdraw from innovations in creativity on the grounds that it will hurt the sentiments of a ‘religious community’, culture will tend to be reduced to the lowest common denominator. . . . [T]he Shiv Sena can once again object to the government of Maharashtra reprinting a chapter of Dr Ambedkar’s book because it questions the authenticity of the brahmanical version of the Ramayana among other things, and the government bends. It may not even be a question of objecting to the suppression of the views of Ambedkar per se, but of allowing various readings of a cultural tradition. Or a Shahabuddin can demand the banning of Salman Rushdie’s book The Satanic Verses, and again the government accedes to this demand. Predictably the next step is that the government anticipates a demand from some Christian groups to ban The Last Temptation of Christ, and yet once more the government bans the film. Are we going to be left then with laundered strips of culture because the patron, the state, cannot distinguish between religious sensibilities and cultural articulation?  

Seven years later similar arguments were made in defence of M.F. Husain, whose paintings of Hindu goddesses in the nude earned him death threats and a series of charges that eventually made him leave the country for good. Seen from the world of art, India’s censorship for the sake of public order and religious respect does indeed look overzealous.

The second context in which censorship is explicitly challenged is when it affects academics. One such case is James Laine’s book Shivaji: Hindu King in Islamic India, which triggered the request I received from the Oxford University Press to rewrite the most controversial quotations in my book. By examining the shifting narratives that had been told about Shivaji during the three and a half centuries that


90. For the details, see Dhavan, op. cit.

had passed since he established the Maratha Empire, Laine’s book triggered sharp reactions from Maratha patriots and Hindu nationalists. Especially unpalatable was Laine’s reference to a humorous story that questioned Shivaji’s paternal descent. What followed were withdrawal requests to the publisher, attacks on one of Laine’s collaborators and the research institute that had hosted him and, not the least, a series of legal charges. Laine’s book was banned in Maharashtra in 2004, and became a legal and political shuttlecock for six full years until it eventually was irreversibly cleared by the Supreme Court in 2010. Laine is not the only academic to have had such experiences. Dwijendra Narayan Jha, professor of history at Delhi University, was reported and threatened for his book *Holy Cow: Beef in Indian Dietary Conditions* (2001), which was banned in Hyderabad and Uttar Pradesh for some years, and the political psychologist Ashis Nandy was reported to the Gujarat Police for having written in *The Times of India* that the urban middle classes in the state bore much of the responsibility for the 2002 riots by virtue of controlling the ‘hate factories’ of the media and education system. In 2014, the academic community witnessed yet a new turn of events when Penguin India decided to pulp all the remaining copies of Wendy Doniger’s book *The Hindus: An Alternative History*, following a lawsuit against its alleged hurtful expressions and factual inaccuracies. The publisher’s decision to opt out of a long-drawn court battle that could have cleared the book was a bitter realization of the extent to which academic freedom in India has become affected by ‘lawsuit fatigue’. With the exception of those who sympathize with the pressure groups that attempt to block academic writing that is at loggerheads with their political ideology, the public response to such censorship dramas is uniformly critical, which the following statement demonstrates,

The attack on a Ramanujan text, an Ashis Nandy article, a Husain painting, a James Laine book . . . has something in common with the Gujarat genocide and the Nandigram operation. It is for us to realize this. It is for the larger academic community . . . to ask if they are going to remain prisoners of their self-styled guardians or assert and secure for themselves the rights . . . enshrined in the Constitution, to think for themselves, decide for themselves.94

The fact that virtually all those who agitate for censorship of academic texts have been Hindu nationalist organizations, whose claims of offended religious sensibilities have been hard to understand even for fellow Hindus, has clearly amplified the critique.

The third context in which the prohibition of offensive expressions is questioned is when new regulations come into being. My Kanpur acquaintances’ misgivings over the SC/ST Act’s clause on insulting remarks are but one example, though I do not recall having encountered similar complaints in the public sphere at the time. While the IPC sections on religious insults have remained unchanged since the 1970s, several regulations have appeared that aim to limit the proliferation of secondary adjustments and *laissez faire* zones. True, the regulations that were imposed on Cable TV broadcasters in 1994 were met with few protests at the time, presumably because they were issued so shortly after the *Doordarshan* monopoly was lifted that hardly anyone knew what the alternative to a tightly controlled TV channel could be, apart from simpler language, advertisements and more TV series. But following the enforcement of the Information Technology (Intermediaries Guidelines) Rules in 2011, there was literally a public outcry. As one blogger expressed it, ‘What is the government trying to do? Why is it bossing around the Internet world like the Chinese regime? . . . Are rules and regulations like these the right thing in a democracy like ours?’ This reaction was echoed by the Delhi-based advocacy group People’s Union for Civil Liberties, which also considered challenging the regulations legally. The strength of these reactions

95. The Cable Television Network Rules, 1994 [later passed as The Cable Television Networks (Regulation) Act in a lightly rephrased version], states that no programme should be carried in the cable service which ‘contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes’, ‘criticizes, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country’ or ‘contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups’ amongst other things (Government of India 1994).

<http://www.google.com/url?sa=t&source=web&cd=1&ved=0CBoQFjAA&url=http%3A%2F%2Ftdsat.nic.in%2Fbooks%2FTHE%2520CABLE%2520TELEVISION%2520NETWORKS%2520RULES.doc&rct=j&q=cable%20television%20networks%20rules%201994&ei=gCfyTfTnN5Dhw66MCHBw&usg=AFQjCNHqICrTjemsB_odjFWu76pUWaqCr9g>, accessed on 11 June 2011. These regulations were, however, challenged later, especially by those who risk persecution for their TV-serials. See for example Vinta Nanda, ‘Censorship in India Is an Eyewash’, *Indiantelevision.com*, 4 November 2003.


must be measured against the context in which the regulations were issued. By 2011, Indian Internet users had benefited from extensive cyber freedom for a number of years. By coincidence, the regulations were also enforced almost at the same time as the United Nations declared access to the Internet a fundamental right, having witnessed its vital role during the democratic revolution attempts in the Arab world. Besides, the definition of ‘objectionable content’ came across as overly inclusive and vague, though this could also be said about the censorship legislation these regulations reflect. Seen from the blogosphere, these regulations felt like a sudden attempt at straitjacketing.

Such discussions will continue to ebb and flow for every new proscription controversy and regulation enforcement. But during times of ethno-religious tension of the kind that marred Uttar Pradesh and Maharashtra in 1992–3 and Gujarat in 2002, one also encounters critiques of the Indian media for being ‘irresponsible’ and ‘insensitive’, which perhaps reflect an expectation that they ought to maintain a cosmopolitan self-restraint after all.

CONCLUSION

As I drafted the first version of this chapter, an American acquaintance asked me an insistent question: ‘Yes, but what do you think? Shouldn’t India have complete freedom of expression like us?’ All my attempts to make her understand why, in certain situations, freedom of expression can be legitimately balanced against other considerations were, however, interrupted by loud, high-principled statements about how essential freedom of expression is for any democracy worthy of its name. What I tried in vain to say but write here instead, was as follows: Freedom of expression is not completely unrestricted in the United States or other Western countries either, as the draconian reactions against Bradley Manning’s and Edward Snowden’s information leakages suggest. It yields to considerations of national security, privacy and the safety of minorities, among other things. In the same way as Americans and Europeans attribute these exceptions to inalienable values that are given precedence over freedom of expression, any analysis of the way in which the Indian democracy handles freedom of expression must take

into account that India too may have values that are regarded as so essential that they are given precedence. The Indian values that hold such a status may be summed up in four key concepts: national security, moral decency, public order and respect for vulnerable groups. In this chapter, I have concentrated on the latter two, which I have analysed as being rooted in a cosmopolitan orientation in which respect for social communities other than one’s own is not merely desirable, but also necessary for curtailing ethno-religious tension, fighting discrimination and promoting equal citizenship.

The question of freedom of expression in India cannot be answered with a simple ‘for or against’ conclusion. If I were pushed into stating an opinion, I would probably express agreement with Indian lawmakers in that India’s unique heterogeneity, political inflammability and history of oppression require more restrictions on the freedom of expression than in the United States or Europe. At the same time, I share many of the concerns outlined in the previous pages, and welcome all informed discussion about the desirability of legal procedures which make it so easy for pressure groups to implicate artists, academics and others in decade-long judicial imbroglios. Yet, my main concern has been to contrast and compare the regulation of caste abuse with the regulation of religious insults, and to trace their respective state effects without falling into either of the contrasting traps of exaggerated criticism or cosmopolitan romanticism.

This focus has left several questions unanswered. For instance, does the commercialization of the media encourage sensationalism that borders on offences, or does it rather promote self-regulation? Do the legal sections I have examined encourage proscription demands and transgressions that worsen rather than safeguard ethno-religious relationships in the long run, as Christopher Pinney suggests? Will a higher level of education and material security help people respond to insults by ‘talking back’ rather than resorting to judicial activism or violence, and thus, reduce the need for such an inclusive regulation? Is it possible to protect public order and promote respect for one and all without affecting art and scholarship? These are some of the questions that will require attention in future studies of democracy and the public sphere in India, all deserving scrutiny informed by broader material than the most questionable instances of proscription.

Whether India’s regulation of the public sphere makes the country more or less democratic depends on which understanding of democracy one subscribes to. It also depends on which democratic right one would give precedence to if they come into conflict with one another. Thus, a die-hard liberalist would probably

argue that regulation of the kind discussed in this chapter makes India less democratic, while political philosophers such as Martha Nussbaum probably would argue that it makes India more democratic. Put starkly, democratic rights are of little value for people who are too harassed to dare exercise them, whereas cosmopolitan restrictions on public expressions would entail an indisputable threat to democratic rights if the authorities use them as a pretext to silence political critique. Proponents of a freer public sphere frequently invoke the ‘slippery slope’ metaphor to suggest that any censorship of the kind discussed in the foregoing pages entails a risk of political repression. Judging from the livelihood and fervour with which political issues are debated in the Indian public sphere despite more than a century of state-enforced religious respect, such arguments are dubious. That even censorship can be discussed with such fervour is certainly a democratic feat.

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