
LEGAL IMPEDIMENTS IN FREE SPEECH AND EXPRESSION IN INDIA

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ABSTRACT

Being human, one of the best gifts is expressing his thoughts through speech and expression. Hence, freedom of speech and expression is considered as an inherent right of the human being. In India, Article 19 guarantees free speech and expression as a fundamental right under Constitution of India, 1950. This right of speech and expression means every citizen has the right to express one's own opinion freely by words; written or oral, printing pictures, or through any other mode. In India, the fundamental right of free speech and expression comes with certain restrictions termed as "reasonable restrictions". The article focuses on the restrictions on the way in the free speech and expression under various Indian laws.

Keywords: Speech, fundamental right, restrictions, Indian Constitution

INTRODUCTION

One of the best of God's gifts to human mankind is speech. Humans can convey his sentiments, thoughts, and feeling to others through speech. It is always considered that the first background of liberty is freedom of speech and expression. It is always considered as the mother of all the liberties and occupies an important position in the hierarchy of liberty. Hence, freedom of speech and expression is considered as an inherent right of the human being. Hence, the right to freedom of speech is the spirit of a free society and it is widely accepted that it must be safeguarded.¹ Freedom of speech and expression is the foundation of any democratic society. Freedom of speech and expression is a basic human right that is enjoyed by all the people irrespective of religion, culture, race, caste, political opinion, etc.²

Article 19 of the Universal Declaration of Human Rights gives freedom of opinion and expression which includes freedom to hold opinions and to impart, receive or seek ideas through any media irrespective of frontiers.³ The Constitution of India also guarantees the Freedom of Speech and Expression as a Fundamental Right under Article 19 (1) (a). This right can be entitled by every citizen of the country except the conditions imposed by the state. It is said that freedom of speech gives more benefits to the hearer than the speaker. Freedom of speech and expression is essential for the success of parliamentary democracy and also for the development of one's individuality. It is not only the right of an individual rather it is the right of the community to hear and be informed. It is the obligation on the state that such rights should not be infringed. So an attempt must always be made so that this means will not be get disturbed. The beauty of freedom always lies in its limits in the interest of society.⁴

However, in the present scenario, this freedom is widely abused by media, press, and even by political parties also. This is the main focus of the paper to touch the dark side of the freedom of speech and expression that how laws are made in such a way to curb free speech in India.

¹ Dheerendra Patanjali, *Freedom of Speech and Expression, India v America - A Study*, (Apr. 21, 2020, 7:05 PM), https://www.indialawjournal.org/archives/volume3/issue_4/article_by_dheerajendra.html

² V. Govindu, *Contradictions in Freedom of Speech and Expression*, LXXII IJPS, 641, 641 (2011).

³ *Universal Declaration of Human Rights*, UNITED NATIONS (Apr. 23, 2020, 11:21 AM), <https://www.un.org/en/universal-declaration-human-rights/>

⁴ *Concept, Meaning and Scope of Freedom of Speech*, SHODHGANGA (Apr. 23, 2020, 11:34 AM), https://shodhganga.inflibnet.ac.in/bitstream/10603/102441/9/09_chapter-2.pdf

MEANING OF FREEDOM OF SPEECH AND EXPRESSION

Article 19 deals with the various types of freedom given to us as a Fundamental Rights out of which Article 19 (1) (a) specifically deals with the freedom of speech and expression. According to Article 19 (1) (a), all citizens of India shall have the right to freedom of speech and expression but subject to certain limitations which are imposed under Article 19 (2). It means that this right is not absolute and state named such limitations as reasonable restrictions and those are:

- a) Security of the state
- b) Friendly relations with the foreign States
- c) Public order
- d) Decency and morality
- e) Contempt of court
- f) Defamation
- g) Incitement to offense
- h) Sovereignty and integrity of India

This right of speech and expression means every citizen has the right to express one's own opinion freely by words; written or oral, printing pictures, or through any other mode. The necessary objective of freedom is to free propagation of ideas. However, it is not only included free propagation of ideas but also freedom of publication. That is why freedom of the press is also included in freedom of speech and expression.⁵

In *Romesh Thapper vs State of Madras*⁶, Justice Patanjali Sastri observed, "Freedom of Speech and the Press lay at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the processes of

⁵ J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA 172 (Central Law Agency , 2007)

⁶ AIR 1950 SC 124

popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected with Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, that it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits.”

Lord Steyn explained that “Freedom of speech and expression is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve. People are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake in the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country...”⁷

CONSTITUTIONAL SCOPE OF FREEDOM OF SPEECH AND EXPRESSION

The preamble of the Indian Constitution envisages one of the important objectives of the Constitution which is to secure LIBERTY OF THOUGHT AND EXPRESSION. To give effect to this objective, a Fundamental Right was guaranteed to every citizen of Freedom of Speech and Expression.⁸ According to the Supreme Court in case *Indian Express Newspaper (Bombay) (P) Ltd. Vs Union of India*⁹, this freedom serves the following broad purposes:

- a) It helps an individual to attain self – fulfillment
- b) It helps in the discovery of the truth
- c) It strengthens the capacity of an individual in participating decision making
- d) It provides a mechanism to establish a reasonable balance between stability and social change.
- e) It helps in forming beliefs and to communicate such beliefs freely by all the members of society.

Every citizen of India has the right to form their credence and freely communicate them to

⁷ Regina v. Secretary of State for the Home Department, (2000) 2 LR 115 (AC).

⁸ PANDEY, *supra* note 5.

⁹ AIR 1986 SC 515

others. A person always has a right to say or write whatever pleases him so long as he is not infringing on the rights of others. Liberty of thought also flows from the freedom of speech and expression and is an important component of democratic government. Information is very important for the life of an individual and society. Hence, the Right to Information becomes an intangible part of speech and expression as information is the source of thought and expression.¹⁰

Supreme Court also enlarges the scope of this freedom by saying that “freedom of speech and expressions” must be broadly construed. It must include propagating one’s view through any print media or any communication channel. Thus, every person has the right to circulate his or her views through print or electronic media subject to reasonable restrictions imposed by Article 19 (2). It is the lifeline of every democratic institution and any attempt to discard this right means the death of democracy and will result in the dictatorship. In modern communication, the public interest is created by informing the public about the events and development that have taken place. This right also extends to use the media by the citizen but subject to restrictions imposed by the Constitution.¹¹ Hence, it means that the right of Freedom of Speech and Expression is not absolute. One cannot express their views if such thoughts or ideas are against the very sovereignty of the State or if it falls under any of the restrictions mentioned in Article 19 (2).

LIMITATIONS OF FREEDOM OF SPEECH AND EXPRESSION

In India, the fundamental right of free speech and expression comes with certain restrictions termed as “reasonable restrictions”. Apart from these reasonable restrictions, there are certain limitations on free speech and expression which are punishable under the Indian Penal Code. Section 153 A makes any act that promotes enmity between different groups based on religion, race, place of birth, residence, language, etc., punishable. It also criminalizes any act which is prejudicial to maintenance of harmony. Section 292 contravenes the sale or distributes any obscene material. Section 292A makes printing and distributing any matter which is indecent or scurrilous, punishable. Section 294 criminalizes obscene acts and songs. Section 295 A

¹⁰ *Concept, Meaning and Scope of Freedom of Speech*, SHODHGANGA (Apr. 23, 2020, 12:35 AM), https://shodhganga.inflibnet.ac.in/bitstream/10603/102441/9/09_chapter-2.pdf

¹¹ *Freedom of Speech and Expression*, LAW TEACHER (Apr. 23, 2020, 1:07 PM), <https://www.lawteacher.net/free-law-essays/constitutional-law/freedom-of-speech-and-expression-constitutional-law-essay.php#citethis>

makes punishable any act which is deliberate and malicious with intent to outrage religious feelings of any class of citizens. Section 298 also criminalizes the utterance of any word or any sound making to wound the religious feelings of any person. Another important section is Section 124 of the Indian Penal Code which makes any speech with hatred with intent to incite disaffection towards the government is also punishable.¹²

CONTEMPORARY SCENARIO OF INDIA

According to the “World Press Freedom Index” released in 2018, India was at 138th position and in the latest release of 2019, the rank of India slipped to 140th out of 180.¹³ This is the scenario of the world’s largest democracy. Looking into today’s scenario, this freedom seems to have lost its objective somewhere in between the actual needs and politics. There are instances where higher authorities put restrictions on the publication or distribution of certain books, arts, movies, etc because they get offended by the content of the books, and restriction was placed by giving justification in the name of protection to maintain public order or it will incite hatred feelings.¹⁴ Indian Government uses the laws of the Indian Penal Code to ban books such as the novel *The Satanic Verses* by *Salman Rushdie* and movies such as *India’s Daughter*, documented by *Leslee Udwin* for BBC in 2015 which was a documentary film based on the gang rape of Delhi College student. Penguin India was also forced to withdraw a book on *The Hindus: An Alternative History* of *Wendy Doniger* who is a scholar in the University of Chicago by bringing charges under Section 295 A.¹⁵

Following are the few impediments in the road of free speech and expression in India:

1. SEDITION LAW

In the present scenario, there is an abuse of this freedom. There is a multiplication of charges of sedition in India and opted as a way to curb free speech in India. Section 124 A of Indian Penal Code popularly known as ‘Sedition Law’ is a colonial-era law that was then used against the Indian leaders to stop them from making any speeches that incite hatred against Britishers.

¹² The Indian Penal Code, 1860, No. 45.

¹³ Samarth Mishra & Aditya Kumar Shukla, *Balancing Freedom of Expression and Hate Speech: Case of India* 9, PRAMANA RESEARCH JOURNAL 1409, 1411 (2019)

¹⁴ Anindito Mukherjee, *Stifling Dissent: The Criminalization of Peaceful Expression in India*, HUMAN RIGHTS WATCH (Apr. 24, 2020, 12:16 PM), <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india>

¹⁵ Mira Kamdar, *Do Indians Have Freedom of Speech?*, PACIFIC COUNCIL (Apr. 24, 2020, 12:42 PM), <https://www.pacificcouncil.org/newsroom/do-indians-have-freedom-speech>

This particular law violates India's obligation towards International Law and Treaties. In spite of the fact, this law is still used against people who are criticizing the government or is dissent with any action or policy of the government. In 2014, 47 cases were registered across the country as per the National Crime Records Bureau (NCRB) and 58 people were arrested and only 1 was convicted. The official data of 2015 is not available but according to certain media people, there were significant increases in arrest in the first quarter of 2016 in which 11 cases were filed against 19 people.¹⁶

According to the data collected by NCRB, in 2018, 70 cases of sedition were registered. The major number of cases relating to sedition is from the state of Assam, Jharkhand, Bihar, and Haryana which comprises 65% of the total cases. Emerging hotspot areas for sedition is Assam and Jharkhand. The shocking scenario is that the January of this year, where more than 3,000 people were protesting against the CAA (Citizenship Amendment Act), they were charged with sedition. In 2019, more than 3,300 farmers protesting about land disputes were also charged with sedition. According to lawyer *Chitranshul Sinha* in her book *The Great Repression – The Story of Sedition* mentions that sedition must be used as an emergency weapon and it is only a preventive measure as it is a century-old provision which does not find any place in the legislation of the worlds' largest democracy.¹⁷

There are many examples where we will find the blatant misuse of the sedition charges to curb the freedom of speech. As discussed earlier also that Britishers enacted this law to curb the freedom struggle in our country and made it a non-bailable offense. The most famous victims of this offense were Lokmanya Tilak who wrote about national freedom struggle in his newspaper and Mahatama Gandhi who initiated Young India newspaper. In past years there were other people also who were slapped with the charges of sedition and those were Simranjeet Singh Mann (2005), social activist Binayak Sen (2007), author of book Arundhati Roy (2010), cartoonist Aseem Trivedi (2012), Tamil Nadu's folk singer s. Kovan (2015) and the list go on. Thousands of protesters of the Nuclear Power Project were charged with sedition by Tamil Nadu Police in 2012-13.¹⁸

¹⁶ MISHRA, *supra* note 13

¹⁷ Pooja Dantewadia, *Sedition Cases in India: What Data Says*, LIVE MINT (Apr. 25, 2020, 3:44 PM), <https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html>

¹⁸ Shastri Ramachandaran, *Section 124A: The Case Against the Much-misused Sedition Law*, OUTLOOK (Apr. 25, 2020, 3:58 PM), <https://www.outlookindia.com/website/story/opinion-section-124a-the-case-against-the-much-misused-sedition-law/347936>

The very famous case of Kanhaiya Kumar who was a student union leader at JNU was arrested on the charges of sedition by accusing him of giving anti-national speeches on the campus. In this case, the Delhi Police has also admitted in the trial that they had not seen him giving any anti-national slogan in the available video footage. This particular case attracts worldwide media attention and everyone speaks up in support of JNU students. Later on, he was released on bail.¹⁹

The recent case of slapping of charges sedition came into light when a Bangaluru Journalism student, Amulya Leona Noronha, 19 years of age, came on stage, where a rally was going on and started shouting the slogan of “Pakistan Zindabad”. According to retired Supreme Court Judge B. Sudarshan Reddy, India was neither in the state of war with Pakistan nor have we declared Pakistan as our enemy country. Therefore, chanting “Pakistan Zindabad” does not attract any criminal provision, leave apart sedition.²⁰

Also according to NCRB, only a handful of cases of sedition resulted in a conviction. Out of the 70 cases in the year 2018, only 2 were convicted and since 2016, only in 4 cases conviction was given. The reason could be that there is no solid legal ground in an offense of sedition. Many legal scholars have also argued that sedition is preventing us from enforcing our very important fundamental right.²¹ Judiciary, no doubt has taken its stance on sedition from time to time. In case *Balwant Singh vs State of Punjab*²², the Supreme Court laid down that mere shouting a slogan “Khalistan Zindabad” does not amount to sedition. In another case, *Kedar Nath Singh vs State of Bihar*²³, Supreme Court laid down certain guidelines that any comment, however strongly expressed through words, shows any dissent towards the action of the government but if it does not cause any public disorder by acts of violence will not be punishable. However, it seems that these guidelines are always ignored.

The people who are peacefully taking out the protest, how they can be charged under sedition? How a young student taking out slogans about any other country with who we are not in a state

¹⁹ Sara H., 5 Landmark Cases That Changed the Way We Look at India's Sedition Law, HOMEGROWN (Apr. 25, 2020, 4:51 PM), <https://homegrown.co.in/article/47919/5-landmark-cases-that-changed-the-way-we-look-at-indias-sedition-law>

²⁰ Amarnath K Menon, *How the sedition law has become a weapon to muzzle dissent*, INDIA TODAY (Apr. 25, 2020, 4:15 PM), <https://www.indiatoday.in/india-today-insight/story/how-the-sedition-law-has-become-a-weapon-to-muzzle-dissent-1650030-2020-02-26>

²¹ Pooja Dantewadia, *Sedition Cases in India: What Data Says*, LIVE MINT (Apr. 26, 2020, 3:15 PM), <https://www.livemint.com/news/india/sedition-cases-in-india-what-data-says-11582557299440.html>

²² 1995 (1) SCR 411

²³ 1962 AIR 955

of war is charged under sedition? Does the Freedom of speech and expression have no practical meaning? How long all the successive governments will use this draconian provision to stop the authentic criticism against them? These are a few questions left unanswered. It is the high time that the judiciary takes a more active initiative to curb this weapon against free speech and expression. Otherwise, this particular freedom will lose its significance as any political party will use these provisions against any person who genuinely wants to criticize the government, freedom given by our democracy setup. Before placing charges it must be seen that legitimate speech must be protected and care must be taken while deciding the limitation on such speech. According to the Consultation Paper asking to revoke sedition of 21st Law Commission, every irresponsible exercise of free speech does not amount to sedition. Merely expressing a thought which is not in concord with the policy of the government does not amount to sedition. Dissent and criticism are tools of a democratic setup. Therefore every restriction must be deeply scanned.²⁴ But before this Law Commission delivered its recommendation, its term was ended.

2. DEFAMATION LAWS

Another barrier to free speech and expression is the law of defamation. Defamation means any publication of harmful and false statements which amounts to degradation in the reputation of a person. It can be libel (in writing) or slander (in speech). Defamation is a criminal as well as the civil offense in India. Tort law explained civil defamation whereas Section 499 and 500 of IPC deals with the criminal aspect of defamation. Punishment in the case of defamation is up to two years but it can have the same negative effect on free speech as the sedition has. However, in India criminal defamation is not used widely as civil defamation used. But Indian corporations and higher authorities use this tool to sue authors, journalists, or activists and claim damages of such higher amounts which was not afforded by these people to harass them. Apart from punitive damage, it surely involves a huge amount of fees for filing the case which itself is mental harassment to a person against whom defamation case has been filed.²⁵

According to UN special rapporteur, penalties in civil defamation should not be so heavy that it will block the freedom of speech and expression and should be outlined in such a way that it

²⁴ Consultation Paper on Sedition by 21st Law Commission (2018).

²⁵ Mira Kamdar, Do Indians Have Freedom of Speech? , PACIFIC COUNCIL (Apr. 26, 2020, 03:52 PM), <https://www.pacificcouncil.org/newsroom/do-indians-have-freedom-speech>

will help in restoring the lost reputation, and to not penalize defendant nor as to compensate the plaintiff. The penalty in such cases should be directly proportional to the actual harm caused to the reputation. The defamation laws are very easy to misuse and in recent years, corporations and big business houses are using this as a tool to harass the journalists and to restrain critical speeches.²⁶

According to Index on Censorship, 2014 year sees seven defamation notices which were served in India. Five legal notices were sent to media companies, one legal notice to marketing federation and last one to journalists Jyotirmoy Chaudhari, Subir Ghosh, and Paranjoy Guha Thakurta for writing a book on Reliance Industries Ltd., by claiming one billion rupees for damages. In the same year, Sahara Media Group also charges defamation against journalist Tamal Bandhophadhyay for his book *Sahara: The untold story* and claims 2 billion rupees as damages.²⁷

Political parties are also using this tool to stop legitimate criticism against them. Few instances are where the government of Tamil Nadu whose CM was J. Jayalalithaa, filed 34 defamation law cases against the popular Tamil Magazine published by the Vikatan group namely, *Ananda Vikatan* and the political magazine *Junior Vikatan* between the year 2012 to 2016. It is not the only case. The Tamil Nadu state government, since 2011 when it came into power has filed nearly 200 criminal defamation cases against media houses, journalists, and politicians of opposite parties. The state government has even appointed a special public prosecutor to deal with defamation cases. However, in 2014, Subramanian Swamy of BJP filed a petition to challenge the constitutional validity of criminal defamation. The petition of Delhi CM Arvind Kejriwal and Congress Vice-President Rahul Gandhi was also added in the same petition. However, the SC upheld the validity of defamation by expressing that freedom of speech and expression should not be used in a way that it will defame others. The court also sets out the outline under which this law should be used.²⁸

The intensity with which the defamation cases are increasing, it creates an alarming situation.

²⁶ Anindito Mukherjee, *Stifling Dissent: The Criminalization of Peaceful Expression in India*, HUMAN RIGHTS WATCH (Apr. 26, 2020, 04:05 PM), <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india>

²⁷ Mira Kamdar, *Do Indians Have Freedom of Speech?*, PACIFIC COUNCIL (Apr. 26, 2020, 04:34 PM), <https://www.pacificcouncil.org/newsroom/do-indians-have-freedom-speech>

²⁸ Anindito Mukherjee, *Stifling Dissent: The Criminalization of Peaceful Expression in India*, HUMAN RIGHTS WATCH (Apr. 27, 2020, 06:32 PM), <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india>

Nowadays, defamation becomes a weapon to harass the other side of the party be it civil defamation or criminal one. No doubt defamation falls under one of the reasonable restrictions but in practice these restrictions (defamation) do not seem to be reasonable. Criminal defamation would not be allowed as a device to take unfair advantage by the state or by the person having a dominant position. Defamation falls under reasonable restrictions but it should not be arbitrarily used. Frivolous defamation cases not only harass the accused but it also caused mental agony. The balance between the right to speak and the right to reputation must be maintained. Judiciary, time to time harmoniously deals with the situation but unnecessary complaints should be rejected at once. Unless the case genuinely falls under the prima facie case, it should not be entertained. Urgent steps need to be taken to curb the blatant use of this provision. It is high time that the legislature starts considering the criminality of defamation.

3. INFORMATION TECHNOLOGY ACT, 2000

Section 66 A of the Information Technology Act, 2000 makes it an offense to send offensive messages through communication services. Any message created, transmitted, or received in the form of text, images, audio, or video on a computer system or any device giving false information to cause inconvenience or with intent to deceive regarding the origin of the message is considered offensive.²⁹

This particular section was used as a tool to criminalize free speech to protect powerful political figures and to hound those who criticize the authorities. In 2012, a professor at Jadavpur University of West Bengal, Ambikesh Mahapatra was arrested for forwarding a spoof through email about the state's Chief Minister, Mamta Bannerjee under Section 66A. Fourteen students in Bangalore were detained for sharing a message regarding newly elected PM Narendra Modi in 2014.³⁰

However, 2015 witnesses a landmark judgment in the case of *Shreya Singla vs Union of India*³¹, the Supreme Court struck down Section 66A of IT Act, 2000 as unconstitutional on the grounds of violation of Art. 19(1)(a) and Art. 21. The bench of Justices J. Chelameswar and Rohinton

²⁹ All you need to know about Section 66A of the IT Act, THE HINDU (Apr. 27, 2020, 6:46 PM), <https://www.thehindu.com/news/national/all-you-need-to-know-about-section-66a-of-the-it-act/article10773220.ece>

³⁰ Anindito Mukherjee, *Stifling Dissent: The Criminalization of Peaceful Expression in India*, HUMAN RIGHTS WATCH (Apr. 27, 2020, 07:16 PM), <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india>

³¹ AIR 2015 SC 1523

F. Nariman observed that Section 66A of the IT Act was arbitrary and it invades right to free speech and expression. The court admitted that there is no direct connection between the public disturbances or incite to an offense with Section 66A. Written words sent over the internet need not be the information that incites anybody. The offenses mentioned in this section are remotely explained in the IT Act, 2000.

The result of striking down this section is that all cases filed under Section 66A will now be withdrawn and those who have been booked under this section can approach the court to seek withdrawal of this section. Withdrawal of the section will be for only those who have booked only under this particular section and those who have been booked under other sections with Section 66A, then those cases will be continued in the court and the only charge under Section 66A will be dropped.³²

However, the scenario is different. Across the country, police departments are still arresting people under this draconian law. The latest case was in Guntur in Andhra Pradesh where a man was charged under Section 420 of IPC and Section 66A of IT Act, 2000 for impersonating a woman on a dating app and asks for money. To clarify this, IGP and Commissioner of Police, Jalandhar, Praveen Kumar Sinha, have said that the law does not change just because the Supreme Court has said something. The government has to send the notification. There are enough provisions in the Indian Penal Code to deal with the harassments and abuse on the internet. As reported by Hindustan Times, in 2016 more than 3,000 people were arrested under this section. This clearly shows the gap between the judiciary and executives. Our guardian of law must know about every detail of law.³³

The internet is a way where we can exchange our ideas through a large number of platforms with an indefinite number of people. It is a channel that allows the free flow of communication. No doubt such communication must not fall under any of the reasonable restrictions mentioned under Article 19 (2). But it also does not mean that higher authorities or people with dominant position cannot hold any person liable under those restrictions. Dissemination of information under the right content can never fall into reasonable restrictions. Whenever, any case arises

³² Vicky, *Life after Section 66A of the Information Technology Act*, ONE INDIA (Apr. 27, 2020, 7:43 PM), <https://www.oneindia.com/feature/life-after-section-66a-of-the-information-technology-act-1694926.html>

³³ Gopal Sathe, *The Supreme Court Struck Down Section 66A of the IT Act in 2015, Why Are Cops Still Using It to Make Arrests?*, HUFFPOST (Apr. 27, 2020, 7:55PM), https://www.huffingtonpost.in/2018/10/15/the-supreme-court-struck-down-section-66a-of-the-it-act-in-2015-why-are-cops-still-using-it-to-make-arrests_a_23561703/

under this, the doctrine of fairness must apply in all those cases. Even Section 66A of the IT Act was struck down by the highest court of the land, but there are several instances which show that these provisions are still being used to hound the accused. Is it unintentionally or they just pretend to ignore it? Whatever is the scenario, but it shows how laws in India are being misused by a few “intellectual groups” to solve their purpose. The legislature must take initiatives to make laws which act as a middle ground for free speech and reasonable restriction on such free speech.

4. HATE SPEECH OR OVER-CRIMINALISATION OF SPEECH

Hate speech means any words, written or oral, sign, visual representations which brings the feeling of enmity based on religion, race, caste, language, etc. Most of the countries in the world ban Hate Speech because of its capacity to not only cause harm but it also disturbs public order. The 267th Law Commission Report in 2017 recommends that new penal provisions need to be introduced that punish incitement to hatred that may result in disturbance and violence. It also recommends the need to convince and educate people on the responsible use of freedom of speech and expression. However, it is still a debatable issue as to what type of speech should be criminalized. Is it a certain type of hate speech that is banned or all types of hate speeches are banned. In India, hate speech is not expressly mentioned in any law, but Sections 153A, 153B, 295A, 298, 505(1) and 505(2) penalizes any word; spoken or written, signs or visual representation that promotes enmity, hatred or feeling of ill-will irrespective of religion, culture, language, ethnicity, caste, community, etc.³⁴

Any critical speech related to any religion or caste or community nowadays is termed as Hate speech. A distinction must be made as to what type of speech will be considered as a hate speech. Hate speech emerges as an exception to free speech. But speech which is merely offensive and not popular can never be amounted to hate speech. No doubt today the internet is full of hate speech and politicians are using it for their vote banks but this does not mean that any type of speech that is debatable amounts to hate speech. It is high time that critical analysis needs to be done to ensure that how the judiciary is interpreting the amount of enmity and hatred in a speech.

³⁴ Anandita Yadav, *Countering Hate Speech in India: Looking for Answers Beyond the Law*, II ILI LAW REVIEW (2018)

As it is said that any reasonable restriction on freedom of speech and expression will help in curbing the menace caused by ill words but the restriction imposed must be reasonable. All such laws which curb the freedom of speech and expression mentioned under the Indian Penal Code are very vague and uncertain. The legislative intent behind these laws is unclear. Ironically, these provisions are used to target the legitimate exercise of free speech. Laws must be construed in such a way that it should criminalize only that speech which leads to violence or which provokes violence. This undesirable outcome of violence from the speech must be directly related to the speech given.³⁵

CONCLUSION

Freedom of speech and expression is also termed as a birthright. We are always taught from childhood what to speak and what not to speak. Our supreme land of law gives us free speech and expression as a fundamental right. However, it looks as if free speech and expression are nothing more than a myth. One must ask the question that whether the freedom to speech and expression is decided by the one who listens or by one who speaks. Because it is happening around us that whenever any individual wants to speak then he was slapped with so many penal laws and on top of that it is always considered to be a reasonable restriction on the speech. It is always a scuffle between freedom to speech and expression and its reasonable restrictions. In this paper, I had tried to discuss all those laws which turn as impediments in free speech and expression. It is need of the hour that the legislature must give a thought about as to what speech is free and which type of speech comes under restrictions. Free speech means critical think upon an issue. But if such critical thinking was started penalized in a democratic set up than we must think as to in which direction our country is moving.

³⁵ Ajay Patri, *India would benefit from curbing hate speech more than creating a new lynching law*, THE PRINT (Apr. 28, 2020, 7:41PM), <https://theprint.in/opinion/india-would-benefit-from-curbing-hate-speech-more-than-creating-a-new-lynching-law/87809/>