

Law Affecting Freedom of Speech

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“Our rights are interconnected and inseparable. When freedom of expression is threatened, the rights to freedom of association and assembly, of thought, conscience and religion, are also compromised”.

Nazanin Boniadi¹

Abstract: In India, the right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution. However, this right is not absolute and is subject to reasonable restrictions as outlined in Article 19(2). This paper explores the complex interplay between laws that limit freedom of speech in India and the broader implications for individual rights and democracy. It analyzes key legal provisions such as sedition, defamation, hate speech, and national security laws, which have been invoked to curb free expression. The study delves into landmark judgments by the Indian judiciary that have shaped the scope and boundaries of this right. Additionally, the paper addresses concerns related to media censorship, online speech, and the increasing use of laws to stifle dissent. By critically examining the tension between national security concerns and the protection of free speech, the paper aims to provide a comprehensive understanding of how laws in India both safeguard and restrict the right to free expression.

Keywords: Freedom of Speech, India, Constitutional Law, Sedition, Defamation, Hate Speech, Media Censorship, National Security, Judicial Precedents, Human Rights

I. INTRODUCTION

God gave us the ability to speak. Humans communicate their thoughts, feelings, and sentiments to others through speech. Therefore, the ability to express oneself freely is a natural right that all people possess from birth. Thus, it is a fundamental right. Everybody has the right to freedom of expression and opinion, which includes the freedom to hold beliefs without hindrance and to search for, receive, and share knowledge and concepts via any media and across all boundaries. The right to freedom of speech and expression includes the ability to express oneself verbally, in writing, print, art, or any other medium of one's choosing.²

Freedom of speech and expression signifies the privilege to share personal sentiments and views freely. This is done through spoken words writings, printed materials pictures or any other method. It ranks among the most favored constitutional rights. Especially in liberal democracies, this right is valued highly.

It is deeply rooted in both current constitutions and human right agreements. The emergence of the freedom of speech happened with a certain purpose in mind. A democratic nation wished to allow its people to speak without reserve. They also wanted to gather information through public discussions and printed media. This was with zero fear of government restrictions or suppression.

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² Art. 19, The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations General Assembly on December 16, 1966, and came into effect on March 23, 1976.

In today's world the phrase "freedom of speech" is exceptionally striking. It describes an essential element in the constitution. This is for an independent democratic nation. At the constitution's heart the expression freedom of speech is a very impressive phrase. Its role is to outline the basic component of a democratic country, independent and free.

The right to freedom of speech is fundamental. It appears in numerous international human rights agreements.³ This right is in India's Constitution too. Yet it comes with certain restrictions. Over the years, there has been a focus on the balance. It is between the freedom of individuals and the interests of society. Legal scrutiny has been intense. They are about the freedom of speech in India. These laws include the Constitution's provisions. They also include statutory laws and judicial interpretations. There are challenges, they arise when these laws intersect with national security. Public order and morality also play an important role. This conflict is between state's regulatory powers and individual rights and how to adopt a balanced approach.

The laws' intersections are not trivial. They come with national security, public order and morality. The intersection of freedom of speech and law in India presents a complex legal landscape. Over the decades, judicial pronouncements and legislative interventions have shaped the contours of this right. While there is considerable legal protection for free expression, there is also an evolving body of law that imposes restrictions on speech deemed harmful to the public interest.

II. LITERATURE REVIEW: AN ANALYSIS OF BOOKS AND PEER-REVIEWED ARTICLES

The literature on freedom of speech and expression in India is extensive, addressing the theoretical, legal, and practical dimensions of the issue. Various scholars have examined the constitutional provisions, judicial rulings, and sociopolitical challenges surrounding free expression in India. Below are key areas covered in the literature:

The right to freedom of speech in India was significantly influenced by the colonial-era laws that curbed dissent, such as sedition laws (Section 124A of the Indian Penal Code). Scholars such as Arvind Verma (2004) argue that the restrictions imposed during British rule laid the groundwork for post-independence legal struggles over free speech. The framers of the Indian Constitution were keen on protecting fundamental rights, but they were also cautious of the dangers posed by unbridled speech, leading to the inclusion of reasonable restrictions under Article 19(2).⁴

The interpretation of freedom of speech has evolved through judicial rulings over time. Dr. Durga Das Basu (2011)⁵ emphasizes that the Supreme Court of India has consistently upheld the significance of free speech but has also recognized the necessity of restrictions in certain situations. Key cases such as *Romesh Thapar v. State of Madras*⁶ and *Bennett Coleman & Co. v. Union of India*⁷ have shaped the judicial stance on the issue. In these cases, the Court upheld the importance of press freedom while also considering issues of national security and public order.

Several articles in the *Journal of Indian Law and Society* highlight how judicial activism has expanded the scope of free expression in India. The Court ruled that the provision violated the right to free speech, particularly in the digital age. Scholars like Rajeev Dhavan (2015) argue that judicial interpretations have been instrumental in preserving free speech against legislative attempts at censorship.⁸

The tension between free speech and the state's duty to protect national security, public order, and societal harmony is a recurring theme in the literature. In Indian Penal Code (IPC) Section 124A (Sedition), Subhash C. Kashyap (2018) examines how sedition laws have been used to stifle dissent, especially in politically sensitive contexts. Critics argue

³ Article 19, Universal Declaration of Human Rights, 1948 (General Assembly resolution 217 A).

⁴ Verma, A. (2004). "The Politics of Free Speech in Post-Colonial India." In *Indian Political Science Review*, 2004, Volume 34, Issue 2, Pages 137-160.

⁵ Basu, D. D. (2011). *Introduction to the Constitution of India*. 21st Edition, LexisNexis.

⁶ AIR 1950 SC 124.

⁷ 1973 SCR (2) 757.

⁸ Dhavan, R. (2015). "Freedom of Speech and Expression in India: A Judicial Perspective." In *The Indian Constitution and the World*. Oxford University Press.

that the misuse of sedition laws disproportionately affects journalists, activists, and individuals criticizing government policies.⁹

The Right to Free Speech and Social Media Regulation in India" by R. Venkatesh (2021), Venkatesh discusses the challenges and opportunities that digital media present in regulating free speech in India, with a focus on controversial issues like hate speech and misinformation.¹⁰

International human rights standards, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR)¹¹, advocate for the protection of free speech globally. Scholars often compare India's legal framework to these international norms to assess whether Indian restrictions on speech are consistent with global standards. Cheryl D. Y. (2014) argues that India's legal system struggles with balancing its domestic needs and international commitments, particularly when it comes to speech that could harm public order or national security.¹²

"The Indian Constitution and Free Speech: Judicial Perspectives" by Rajeev Dhavan (2015). Rajeev Dhavan's article focuses on how the Indian judiciary has interpreted freedom of speech and expression under Article 19(1)(a) and its restrictions under Article 19(2). Dhavan argues that while the Supreme Court has been instrumental in expanding the scope of free speech, it has also placed important limitations, especially in cases involving national security and public order. The article explores key judgments, including *Romesh Thapar v. State of Madras*¹³ and *Bennett Coleman & Co. v. Union of India*¹⁴, emphasizing how the Court's interpretations have evolved over time to reflect a balance between individual rights and state interests.

The article critiques the Court's tendency to allow government overreach in the name of national security and public order, especially in cases of dissent or criticism of government policies. Dhavan discusses the tension between protecting fundamental rights and addressing the needs of national security, stressing that while restrictions are necessary, they should be applied in a manner that does not stifle public discourse or the right to critique the state.

"The Problem of Hate Speech in India" by Seema Shekhawat (2019). In this article, Seema Shekhawat delves into the issue of hate speech and its regulation within the Indian legal framework. Shekhawat examines how the Indian government has attempted to balance the protection of public order with the need to protect freedom of expression. Hate speech, as defined in Indian law, is speech that can incite violence, discrimination, or hostility against individuals or groups based on religion, race, or ethnicity.¹⁵

Shekhawat's analysis focuses on how the Indian judiciary has dealt with hate speech cases, such as *Shreya Singhal v. Union of India*¹⁶, which dealt with the constitutionality of Section 66A of the Information Technology Act (IT Act). The Supreme Court struck down this provision for being overly broad and vague, which could lead to the suppression of legitimate speech. Shekhawat concludes that while India must regulate hate speech to maintain public order, it must do so in a manner that preserves the core principles of free expression, rather than resorting to censorship.

"The Role of the Judiciary in Protecting Free Speech in India" by M.P. Jain (2017) M.P. Jain's article takes a deep dive into the role of the judiciary in interpreting and safeguarding freedom of speech in India.¹⁷ According to Jain, the

⁹ Kashyap, S. C. (2018). "Sedition and the Indian Law." Publication: National Book Trust.

¹⁰ R. Venkatesh, The Right to Free Speech and Social Media Regulation in India, Journal of Cyber Law and Policy, (2021).

¹¹ Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

¹² Cheryl, D. Y. "India's Legal System and International Commitments: Balancing Domestic Needs and Global Obligations." Publisher: Cambridge University Press, (2014).

¹³ AIR 1950 SC 124.

¹⁴ AIR 1973 SC 106.

¹⁵ Shekhawat, S. (2019). "Hate Speech and the Law in India: A Critical Examination." Publication: Oxford University Press.

¹⁶ AIR 2015 SC 1523.

¹⁷ M.P. Jain, The Role of the Judiciary in Protecting Free Speech in India, (2017).

Supreme Court has consistently upheld the importance of freedom of speech, while also acknowledging the state's need to impose reasonable restrictions. Jain's work traces the development of key judicial decisions, including *K.A. Abbas v. Union of India*¹⁸ and *Shreya Singhal v. Union of India*¹⁹, to show how the Court has balanced the freedom of the press and individual expression with the state's interest in maintaining order.

The article highlights the dynamic relationship between law, judiciary, and society, noting that while judicial activism has expanded the scope of free speech in some instances, the Court has also been careful not to allow speech to jeopardize public order or national security. Jain's analysis underscores that the protection of free speech is not a straightforward issue, as it involves navigating complex societal and political realities.

"Digital Media and Free Speech: The Challenges of Social Media Regulation" by Sushant Mehta (2020). Sushant Mehta's article addresses the modern challenges posed by digital media and the regulation of speech on social media platforms. With the rapid rise of platforms such as Facebook, Twitter, and WhatsApp, Mehta explores how these platforms have disrupted traditional legal frameworks for regulating speech. The article discusses the implications of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021²⁰, which seek to hold social media platforms accountable for harmful content.²¹ Mehta critically analyzes the Intermediary Guidelines, which require platforms to remove content deemed offensive or harmful, and argues that these regulations pose a risk of overreach. While the guidelines are intended to curb hate speech and misinformation, Mehta warns that they could lead to censorship and the suppression of free speech, particularly when the rules are applied without sufficient transparency or judicial oversight.

Mehta's article emphasizes that in the digital age, where speech moves faster and farther than ever before, the need for a nuanced and well-defined legal framework to protect free speech while regulating harmful content is paramount. The challenge lies in balancing these competing interests without infringing on the fundamental rights guaranteed by the Constitution.

The peer-reviewed literature on the law of freedom of speech and expression in India provides valuable insights into the historical, judicial, and contemporary dimensions of this right which is discussed hereinafter.

The challenge of defining hate speech within the framework of Article 19(2) is critical. The Supreme Court has held that speech which incites violence or threatens national security can be curtailed, but distinguishing between offensive opinions and speech that incites harm is often subjective. The *Kedar Nath Singh v. State of Bihar*²² case reaffirmed that sedition laws under Section 124A of the IPC must only apply when speech incites violence or creates public disorder.

III. CONSTITUTIONAL FOUNDATIONS

3.1 Right to Freedom of Speech and Expression in India

Article 19(1)(a) guarantees to all citizens the right to freedom of speech and expression, a right considered essential for the functioning of a democratic society. However, this right is subject to limitations under **Article 19(2)**, which allows for reasonable restrictions on free speech in certain circumstances.

3.2 Reasonable Restrictions on the Right to Freedom of Speech and Expression in India

While Article 19(1)(a) guarantees the right to freedom of speech and expression, this right is not absolute. Article 19(2) empowers the state to impose reasonable restrictions on this right in the interest of certain public goals. In order to preserve friendly relations, security, decency, morality, public order, and to prevent defamation or any form of

¹⁸ (1970) 2 SCC 781.

¹⁹ AIR 2015 SC 1523.

²⁰ Vide G.S.R. 139(E), dated 25.2.2021, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 25.2.2021.

²¹ Mehta S., Digital Media and Free Speech: The Challenges of Social Media Regulation, (2020)

²² AIR 1962 SC 955.

incitement to crime, the Indian Constitution's Article 19 lays out a number of rights for its citizens, all of which are subject to certain reasonable restrictions.²³ These restrictions are outlined in the following categories:

- **Security of the State:** Speech that threatens national security can be restricted. For example, speeches inciting violence or promoting terrorism can be curtailed.
- **Friendly Relations with Foreign States:** Speech that may damage the relationship between India and other countries can be restricted.
- **Public Order:** Speech that disrupts public peace and order can be restricted.
- **Decency or Morality:** Speech that offends decency or morality, such as obscenity, can be limited.
- **Contempt of Court:** Speech that undermines the authority of the judiciary can be restricted.
- **Defamation:** False statements that harm the reputation of individuals can be restricted under defamation laws.
- **Incitement to Offenses:** Speech that incites criminal offenses can be restricted.²⁴

The phrase "reasonable restrictions" has been subject to judicial interpretation, and the courts have often had to decide where the line between free expression and restriction lies.²⁵

3.3 Other Legal Provisions Restricting Freedom of Speech

Article 19(1)(a) guarantees freedom of speech but there are various statutes and provisions in Indian law that impose limits on this freedom. These laws are enacted to protect national interests, public order, and individual rights, but they have been criticized for being overly broad or vague, thus potentially curbing free expression.

3.3.1 Provisions in Bharatiya Nyaya Sanhita, 2023 (BNS)

The BNS contains several sections that restrict freedom of speech, particularly in relation to defamation, and incitement.

3.3.1.1 Acts endangering sovereignty unity and integrity of India

One of the most controversial provisions in Section 152 BNS, which criminalizes acts endangering sovereignty unity and integrity of India. It states that anyone who attempts to bring hatred or contempt against the government of India through speech or writing can be punished with imprisonment.²⁶ This law has been widely criticized for being used to stifle dissent and suppress free speech. Landmark cases, such as *Kedar Nath Singh v. State of Bihar*²⁷, have upheld the constitutionality of this provision but narrowed its scope to include only speech that incites violence or poses a real threat to public order.

3.3.1.2 Defamation

Defamation laws in India criminalize speech that harms the reputation of others. Section 356 of the BNS defines defamation and prescribes penalties for those found guilty. Defamation in India, it is a civil as well as criminal wrong. Critics argue that defamation laws are often misused to silence critics, journalists, and activists, especially when they challenge powerful figures or institutions.²⁸

²³ Nidhi Bajaj, Article 19 of the Indian Constitution, iPleaders, <https://blog.ipleaders.in/article-19-indian-constitution/>, 2024.

²⁴ <https://www.mcrhrdi.gov.in/91fc/coursematerial/pcci/Part3.pdf>

²⁵ Article 19 (2) of the Constitution of India

²⁶ Section 152, Bharatiya Nyaya Sanhita, 2023.

²⁷ AIR 1962 SC 955.

²⁸ Section 356, Bharatiya Nyaya Sanhita, 2023

3.3.1.3 Incitement to Offenses

Section 196 of the BNS criminalizes speech that promotes enmity between different groups based on religion, race, or other factors. Section 353 criminalizes speech that causes public mischief or incites people to commit offenses. These provisions are often used to curb speech that could potentially lead to violence or unrest.²⁹

One of the most contentious issues in the law on freedom of speech in India is the regulation of hate speech. While freedom of speech is a fundamental right, there are instances where speech can incite violence, hatred, or social discord. The Indian legal system recognizes this conflict through Section 196 of the BNS, which criminalizes speech that promotes enmity between different groups on grounds of religion, race, etc.

However, the question remains where does the line between offensive speech and hate speech lie? The challenge is to draw a clear distinction between speech that is offensive and speech that incites violence or threatens public order. The Kedar Nath Singh v. State of Bihar (1962) case, which upheld the sedition law, further complicates this issue. Critics argue that sedition laws are often used to suppress dissent, particularly when it involves criticism of the government or political elites.

3.3.2 The Information Technology Act, 2000

The Information Technology Act (IT Act)³⁰ governs digital communication and online expression in India. It includes provisions that restrict freedom of speech in specific contexts, such as cyberbullying, online defamation, and spreading hate speech online.

3.3.3 Section 66A of the IT Act (Struck Down)

Section 66A of the IT Act, which criminalized sending offensive messages through electronic communication, was widely criticized for being overly broad and unconstitutional. In Shreya Singhal's case, the Supreme Court struck down Section 66A, ruling that it violated the right to freedom of speech as it imposed disproportionate restrictions on free expression.

3.3.4 Section 69A of the IT Act

Section 69A allows the government to block access to online content deemed harmful to national security or public order. While intended to safeguard the country's interests, this provision has been criticized for its lack of transparency and its potential to curb free speech on the internet.

3.3.5 The Contempt of Courts Act, 1971

The Contempt of Courts Act, 1971³¹, restricts speech that may interfere with the administration of justice. This includes any act that scandalizes or disrespects the judiciary, potentially undermining public confidence in the judicial system. The law has been used to silence criticism of judges or court rulings, raising concerns about its misuse to curb free speech in the legal domain

IV. JUDICIAL INTERPRETATIONS AND LANDMARK CASES ON FREEDOM OF SPEECH AND EXPRESSION

Indian courts have played a significant role in defining the scope of free speech and its limitations. Several landmark cases have shaped the interpretation of this right, setting precedents that continue to influence legal discourse.

Romesh Thapar v State of Madras³²: This case was one of the first significant judgments on the freedom of speech and expression in India. The Supreme Court held that the right to free speech is a basic feature of the Constitution and

²⁹Section 196 and 353 Bharatiya Nyaya Sanhita, 2023.

³⁰Act No. 21 of 2000

³¹Act No. 70 of 1971

³²AIR 1950 SC 124

cannot be curtailed without just cause. The Court emphasized that the restrictions under Article 19(2) must be read narrowly to prevent the state from unduly limiting free speech.

Bennett Coleman & Co. v. Union of India³³: In this case, the Supreme Court addressed the issue of press freedom. The Court ruled that any restrictions on the press should be based on specific laws and not arbitrary executive orders. This judgment reinforced the constitutional protection of free speech and expression in the context of the media.

K.A. Abbas v. Union of India³⁴: This case explored the tension between freedom of speech and public morality, particularly in the context of film censorship. The Supreme Court upheld the government's ability to regulate content based on societal standards of decency but reiterated that such regulations should not stifle free expression.

In the case of Arun Jaitley v. State of Uttar Pradesh³⁵, the issue was whether a political leader's speech criticizing the government could be prosecuted under sedition laws. The Court observed that mere criticism or speech that does not lead to incitement to violence cannot be labeled as sedition. This case reaffirmed the need for sedition laws to be used cautiously and within a defined scope.

Indian Express Newspapers v. Union of India³⁶: In this case, the Supreme Court held that the freedom of speech and expression encompasses the freedom of the press. The case solidified the principle that the government cannot impose censorship on the media, reinforcing the importance of press freedom in a democratic society.

S. Rangarajan v. P. Jagjivan Ram³⁷: In this case, the Supreme Court emphasized that while freedom of speech is a fundamental right, it must be exercised responsibly. The Court held that the right to free speech must be balanced against the need to maintain public order and protect societal values.

Subramanian Swamy v. Union of India³⁸: The Supreme Court in this case upheld the constitutionality of Section 124A (sedition law) but laid down certain guidelines for its application. The Court reiterated that sedition laws should not be used to stifle free speech and must only be invoked in cases where there is a real threat to the sovereignty, integrity, or public order of the country.

Shreya Singhal v. Union of India³⁹: In a significant ruling, the Supreme Court struck down **Section 66A** of the **Information Technology Act, 2000**, which criminalized offensive or menacing online content. The Court found the provision overly broad and unconstitutional, ruling that it violated the right to freedom of speech guaranteed by **Article 19(1)(a)**. This judgment marked a significant victory for online free speech in India.

V. DIGITAL FREE SPEECH AND THE CHALLENGE OF SOCIAL MEDIA REGULATION

The digital age has introduced new challenges in the realm of free speech. With the rise of social media platforms such as Facebook, Twitter, and WhatsApp, the ability to disseminate information has become democratized. However, these platforms have also given rise to new challenges such as fake news, online hate speech, and the spread of harmful or illegal content.

India has seen an increasing effort to regulate⁴⁰ online speech, which seek to hold digital platforms accountable for the content they host. Critics argue that these rules could lead to overregulation, resulting in censorship and stifling free speech online. Furthermore, the legal framework for regulating online speech remains underdeveloped, raising concerns about the lack of consistency and transparency in enforcement.

³³ AIR 1973 SC 106

³⁴ [1971] 2 S.C.R. 446

³⁵ 2016 (1) ADJ 76

³⁶ 1985 SCC (1) 641

³⁷ 1989 SCC (2) 574

³⁸ (2016) 7 SCC 221

³⁹ AIR 2015 SC 1523

⁴⁰ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules

VI. CHALLENGES OF LAWS AFFECTING FREEDOM OF SPEECH

While the legal framework in India allows for freedom of speech, it has been criticized for being overly broad and restrictive. The following issues have emerged over the years.

6.1 Overbroad and Vague Provisions

Many provisions in Indian law that restrict freedom of speech are criticized for being vague and overbroad. Laws such as sedition, defamation, and contempt of court can be easily misused to silence dissent. The absence of clear definitions and specific criteria for what constitutes an offense leads to arbitrary and excessive restrictions on free expression.

6.2 Growing Censorship in the Digital Age

With the rise of digital platforms, the Indian government has increasingly used laws like the IT Act to regulate speech online. The blocking of websites, social media accounts, and online content has led to concerns over censorship, particularly when the government invokes vague provisions to block content it deems offensive.⁴¹

6.3 The Chilling Effect

The fear of legal action, such as sedition charges or defamation suits, has a chilling effect on free speech in India. Journalists, activists, and ordinary citizens may refrain from expressing their opinions or criticizing the government out of fear of prosecution or harassment. This stifles debate and undermines the democratic principle of free expression.

VII. THE BHARATIYA NYAYA SANHITA, 2023: KEY REFORMS ON SEDITION AND FREE SPEECH

In 2023, the Indian government introduced the Bharatiya Nyaya Sanhita (BNS)⁴², a comprehensive revision of India's criminal laws. The BNS seeks to update and consolidate various provisions under the IPC⁴³ and other laws, with an emphasis on balancing national security concerns with individual rights.

One of the most significant provisions of the BNS pertains to the revision of sedition laws. The key changes introduced by the BNS Bill are as follows:

7.1 Narrowing the Scope of Sedition: Under the revised BNS, sedition charges are to be more narrowly defined. The new law clarifies that criticism of government policies or leaders, if done without inciting violence, will not be considered sedition. The amendment seeks to protect the right to dissent and free speech, ensuring that individuals cannot be charged with sedition simply for disagreeing with the government or for engaging in peaceful protest.

7.2 Stricter Criteria for Sedition Charges: The BNS Bill emphasizes that sedition charges can only be applied if the speech or act directly incites violence or poses a clear and present danger to national security or public order. The reform aims to prevent the abuse of sedition laws to target political opponents, journalists, or activists whose speech does not threaten public safety.

7.3 Judicial Oversight and Safeguards: The BNS provides for enhanced judicial oversight in cases involving sedition. Sedition charges can only be filed after a thorough review by a court, which must determine whether there is sufficient evidence to substantiate the claims. This judicial check is designed to ensure that individuals are not wrongly arrested or prosecuted based on politically motivated sedition charges.

⁴¹ Madhav Goswami and Ashutosh Kumar Jha "Censorship in the digital age: Exploring the current regulatory legal framework and the future of online content in India" Volume 6 , *International Journal of Law, Policy and Social Review* , 62-68(2024)

⁴² Act No. 45 of 2023

⁴³ Act No. 45 of 1860

7.4 Increased Focus on National Security Threats: The BNS revisions emphasize that sedition laws should be used sparingly and only in cases where there is a direct threat to national security. The law has been restructured to prioritize cases where speech or acts incite violence or promote terrorism. This is a departure from the previous approach, where sedition charges were sometimes used in cases involving non-violent protests or political speech.

7.5 Aiming for International Human Rights Standards: The BNS Bill also brings India's sedition laws closer in line with international human rights standards, especially those outlined in the International Covenant on Civil and Political Rights (ICCPR)⁴⁴, to which India is a signatory. The revisions ensure that any restrictions on free speech must be proportionate and necessary, with clear limits on government power to silence critics.

VIII. RECENT SUPREME COURT RULINGS ON SEDITION AND FREE SPEECH

Kedarnath Singh v. State of Bihar⁴⁵: In a landmark case, the Supreme Court of India upheld the constitutionality of sedition laws, but with important qualifications. The Court ruled that sedition could only be charged if speech incited "violence" or posed a "clear and present danger" to public order or national security. The judgment emphasized that "mere criticism of the government" should not amount to sedition. This ruling became the cornerstone for interpreting sedition laws in India, but it was often challenged in practice by the misuse of these laws to target peaceful dissent.

Balwant Singh v. State of Punjab⁴⁶: In this case, the Supreme Court further clarified that sedition charges should be based on a clear and imminent threat to public order. The Court held that merely making inflammatory speeches or statements, without an actual attempt to incite violence, cannot be considered sedition. This judgment underscored the need for the government to demonstrate a direct link between speech and violence before sedition charges could be levied.

Manipur High Court Ruling: A 2020 judgment by the Manipur High Court highlighted the overreach of sedition laws. The Court quashed sedition charges against a journalist who had criticized the government's handling of a security situation. The Court emphasized that the journalist's expressions were protected under the right to freedom of speech and did not constitute sedition. This judgment reinforced the idea that the sedition law should be narrowly applied, particularly in cases where no incitement to violence is involved.⁴⁷

IX. DRAWBACKS OF THE CURRENT LEGAL FRAMEWORK

Despite the proposed reforms in the Bharatiya Nyaya Sanhita, 2023, there are several drawbacks and challenges that need to be addressed:

9.1 Vagueness of Sedition Provisions: While the BNS narrows the scope of sedition, the language of the law remains broad and open to interpretation. The distinction between criticism and incitement to violence can sometimes be unclear, leading to potential misuse by authorities.

9.2 Political Influence in Judicial Oversight: Although the BNS introduces judicial scrutiny for sedition charges, there remains a risk that political influence could still impact the independence of the judiciary. Ensuring transparent and unbiased judicial review is crucial.

9.3 Alarming Effect of Defamation Laws: Criminal defamation laws continue to have a chilling effect on free speech, particularly in the political sphere. Many critics argue that these laws disproportionately target journalists, activists, and opposition leaders, stifling criticism of the government.

⁴⁴ Adopted on 16 December 1966 by General Assembly resolution 2200A (XXI)

⁴⁵ AIR 1962 SC 955

⁴⁶ AIR 1995 SC 1785

⁴⁷ Kishorechandra Wangkhemcha v. The Union of India (2022) 7 SCC 433

9.4 Lack of Clear Guidelines on Public Order: The law still provides vague criteria for restrictions on free speech in the interests of public order. These criteria could be misused to silence peaceful protests and legitimate dissent.

X. SUGGESTIONS FOR BALANCING FREEDOM OF SPEECH AND RESTRICTIONS

10.1 Clarity in Seditious Provisions: The sedition law should provide clear, specific definitions of "incitement to violence" and "public order" to avoid arbitrary enforcement. Courts should ensure that dissent and criticism do not automatically equate to sedition.

10.2 Independent Judicial Oversight: To prevent misuse of sedition and defamation laws, independent bodies or judicial panels should be empowered to review charges, especially in politically sensitive cases. This will ensure that freedom of speech is not unduly suppressed by political considerations.

10.3 Strict Standards for Public Order: Laws that restrict free speech in the interest of public order must be applied only in cases where there is an imminent threat of violence or a clear public safety concern. The vague "public order" exception should be restricted to more specific cases of incitement to violence.

10.4 Clearer Guidelines on Hate Speech: India should adopt more specific and clearly defined laws on hate speech to avoid overreach. Laws should clearly distinguish between offensive speech and speech that incites violence. The definition of hate speech should be based on whether the speech directly incites harm or poses a serious risk to public order.

10.5 Promoting Public Education on Responsible Speech: There should be greater emphasis on educating citizens about the consequences of spreading hate speech and defamation, as well as promoting responsible speech. Public awareness campaigns can help reduce the harmful effects of hate speech while respecting the right to free expression.

10.6 Balancing Government Defamation Claims: Public officials and government institutions must be held accountable to the public, and criticism of them should be encouraged. However, the law should also protect individuals from baseless defamatory statements that cause personal harm or disrupt public order. A balance must be struck between protecting the dignity of individuals and allowing robust public debate.

10.7 Digital Speech Regulation: The digital space has created new challenges in regulating free speech. The government should establish clear rules for managing online content that may incite violence or spread misinformation while safeguarding freedom of expression online. The recent ruling in Shreya Singhal underscores the need for careful regulation of speech in the digital realm.

XI. CONCLUSION

The right to freedom of speech is a cornerstone of India's democracy, but it is subject to certain reasonable restrictions in the interest of national security, public order, and morality. The Indian legal framework governing free speech, while robust, often presents challenges regarding its interpretation and implementation. The judiciary has played a key role in safeguarding this right, but the law continues to evolve to address contemporary concerns, particularly in the digital age.

The tension between protecting individual freedoms and maintaining public order will continue to shape the debate over free speech in India. There is a pressing need for legal reforms to clarify the scope of restrictions on speech and ensure that laws do not unduly stifle dissent or criticism. A balanced approach is essential to uphold both individual rights and the larger social and national interests.