



PENAL REGULATIONS FOR ONLINE SPEECH: TENSIONS BETWEEN EXPRESSION AND NATIONAL SECURITY

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ABSTRACT

For a country like India, the right to access information and expression is seen as the backbone of democracy and as a propagator of its national interest, as this helps citizens, promote accountability and encourage diverse views of its people. That's the reason is constitution provides freedom of speech and expression in part 3 of the constitution under art. 19(1) but rights are not absolute rather subject to reasonable restrictions which are explicitly given under article 19(2). Today we live in connected world facilitated by information and communication technology. With growing technology and the virtual world, the traditional boundaries of free expression have been narrowed down. However, now online platform being used to spread harm, misinformation and upsurge of terrorism and hate speech as post of media can reach millions of people on just on click. In this article we will see how different penal regulations are used by the government against such speech and expression and how such regulations are being used as a weapon by the government to curb free speech in India and growing trend of over criminalising online speech.

I. Introduction

The Internet is history's largest anarchist experiment. It is a source of immense good and potentially awful evil, and we are only now beginning to see its effects on the global stage. India is known to be a successful and robust democracy for over decades. Individual freedom is integral part of any democracy. Among those freedoms, freedom to speech is one of the most important rights. The ability to freely communicate and get information from others is central to free speech. It is considered the mother of all liberties and is recognized as the most fundamental civic freedoms, which are freedoms that defend against repression. Right to

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speech and expression is guaranteed under art. 19(1)(a)¹ of the constitution. It is wide enough to embrace not only verbal speech but representation of one's ideas, feelings, opinion and thoughts through any communication means or visual display such as sign, gesture, symbols etc. Right to freedom of speech and expression is not only a constitutional right but also a human right under article 19 of the Universal declaration of human right (Hereinafter referred to as UDHR)². In article 19 of international covenant on civil and political right (Hereinafter referred to as ICCPR)³ also recognise the right to hold opinion and right to freedom of expression, seek and impart information.

However, the right to speech and expression unlike America, in India it is not absolute rather subject to the reasonable restriction as outlined in art. 19(2)⁴ of the constitution.⁵

II. Digital Speech and Challenges to National Security

Nowadays, social media has become an integral part of people's life. By different internet and social medias like Facebook, WhatsApp, Twitter etc. as have allowed People across the world to connect instantaneously and have revolutionised the way earlier information being shared with one another. Internet has had a positive impact on society like it has enabled people to improve their creativity and enhanced easy communication and sharing of knowledge.

In digital era digital communication is seen as part of free speech and expression. In *Shreya Singhal v. Union* case,⁶ Section 66A of the Information Technology Act of 2000 specifically addressed the freedom to speech and expression in the digitalized world. (Hereinafter referred to as IT act) was found to be unlawful and invalid. It was also stated that the internet is the food for the burgeoning digital or cyber web.

Further in the *Anuradha Bhasin v. Union of India*,⁷ the court decided that the right to information is a essential component of the right to free speech and expression, and that online expression is the quickest and most broad means of information distribution. The court further

¹ The Constitution of India, art. 19(1)(a).

² Universal Declaration of Human Right, 1948, art. 19.

³ International Covenant on Civil and Political Right, 1966, art. 19.

⁴ The Constitution of India, art. 19(2).

⁵ Criminalisation of online speech, *Media Legal Defence Initiative* (2022), available at: <https://www.mediadefence.org/ereader/wp-content/uploads/sites/2/2022/12/Module-3-Criminalisation-of-online-speech-Dec-2022.pdf> (Last visited on November 19, 2023).

⁶ AIR 2015 SC 1523.

⁷ AIR 2020 SC 1308.

added that the freedom given by article 19(1)(a) extends to the internet, therefore a total internet shutdown would have a negative impact on the circulation of free speech and expression.

India is the most populous country with second largest number of internet user globally. In 2022, there are around 470.1 million active social media users. In 2023 there are around 448.8 million Facebook users, around 252.41 million Instagram users.⁸ YouTube, Google's video-sharing service, receives 60 million views every month in India. Twitter has 22.2 million users in India, giving it the world's third-largest user base. These numbers are rapidly increasing and have significant implications for security, law, and order.

The advancement of information and communication technologies gives enormous promise for successful participatory government efforts in India. But technology is a two-edged sword. It allows for new problems in the field of law and order. A serious challenge is the threat to national security. As internet is a conducive environment for evil forces to function because of its vast breadth, immense size and potential for user anonymity. The content posted is capable of generating ill feelings and violence among people against the government. Hate speech in the times of internet spreads like fire and it hurts collectively. Internet has brought an explosion of offensive, extreme expression, exacerbated by the online norm of anonymity. The issue of hate speech, violent and anti-national speech because these are creating a great challenge to the national security. Hate speech can sometimes be the fundamental cause of terrorism.

In today's world, terrorism poses the greatest threat to humanity's survival. Terrorists are using information technology to spread their tentacles in remote locations. In 2022, I&B ministry, for spreading fake news and disinformation blocked 78 YouTube channels and various twitter and Facebook accounts on the sensitive grounds of national security, foreign relations and public order.⁹

Online Speech versus Offline Speech

⁸ Social Media in India - 2023 Stats & Platform Trends (Last Updated: October 30, 2023), available at: <https://oosga.com/socialmedia/ind/#:~:text=Social%20Media's%20User%20Demographics%20in,of%20users%20has%20grown%204.2%20%25>. (Last visited on November 19, 2020).

⁹ Devesh K. Pandey, "Social Media Exploited to Promote Anti- India activities", *The Hindu*, April 16, 2022 available at: <https://www.thehindu.com/news/national/capacity-building-vital-for-counteracting-online-threats-say-experts/article65324361.ece> (Last visited on November 19, 2023).

With the growing digital era, online speech is becoming a major challenge to the national security. The reasons why online speech is more challenging than the offline hate speech is:

Anonymity

People who use the internet as a medium of communication are not obligated to reveal portions of their offline identities unless and until they choose to do so. As a result, people can express themselves freely without worrying about how others will react.

Instantaneous

With the emergence of internet, it provides the people opportunity to publish their thoughts and words instantly. With just one click person can publish anything.

Coverage

Now a days, almost every person is active online and number of users is also increasing. That is the reason that moment one post is uploaded on any social media platform, it in minutes reached to vast population.

Community

One measure issue is that in online speech the member of community who otherwise would have engaged into offline hate speech. Chances are there that even they will also respond to it.¹⁰

Due all such reasons the threat of online speech against the national security becomes more challenging. Leading to increase in incidence of violence, public disorder and anti – national activities.

Recently on 12th September 2023, violence broke out in Pusesevali village in Khatav taluka of Maharashtra's Satara district. The violence was erupted in response to an objectionable social media post which said "Pakistan Zinabad" and also slandered Indian freedom fighter. This post ignited tensions between two communities and lead to one person dead and several injured.¹¹

¹⁰ Alexander Brown, What is so special about online (as compared to offline) hate speech?, *available at: https://ueaeprints.uea.ac.uk/id/eprint/64133/1/Accepted_manuscript.pdf* (Last visited on November 30, 2023).

¹¹ Sayantani Biswas, "Satara Communal Violence Claimed One Life, Injured Ten Others Over A Social Media Post.", *LiveMint*, September 12, 2023, *available at: <https://www.livemint.com/news/india/satara->*

In May 2023, communal clash broke out in Akola district of Maharashtra between two groups. The violence broke out following Instagram post, allegedly making remarks about the founder of Islam after the film “The Kerala story”. Although the post was deleted but due to reach of social media that too in short span of time. This led to death of one and many got injured.¹²

In past also we can see similar incidence where because of social media offensive clips and hate message disturbed the national security and caused unrest.

In 2012 government blocked various webpages, including Facebooks, goggle and twitter to avoid panic among northeast migrant living across the country. As on these websites inflammatory and harmful content, particularly morphed images and video which were used to incite Muslims to target people from northeast. In text messages it was claimed that people from the north east will be targeted after Ramzan. This caused a feeling of insecurity among the northeast persons and led to mass departure of northeast migrants from various states.¹³

In 2013 western Uttar Pradesh witnessed large scale political violence between two communities. Social media added fire to Muzaffarnagar clashes. A controversial video clip purportedly depicts a Muslim mob lynching two Hindu youths. Due to which later on police suspected to be from neighbouring countries Pakistan or as was filmed in an unrelated event in Sialkot in 2010. Video stirred unease, deepening hatred between Muslims and Hindus.¹⁴

In mid-December of 2014, Mehdi Masroor Biswas, a 24-year-old from Bangalore, India, who ran the Twitter account, @Shami Witness, was arrested. The account sent out around 1,30,000 tweets, the most of which were in support of the IS. Mehdi was charged of distributing messages, recruiting, and propaganda. A review of his account activity revealed that it was founded in 2009 and has around 18,000 followers. The account was most popular

communal-violence-claimed-one-life-injured-ten-others-over-a-social-media-post-all-you-need-to-know-11694870126380.html (Last visited on November 19, 2023).

¹² Maharashtra: Communal clash over Instagram post allegedly ‘insulting prophet’ in Akola, one dead & several injured, *organizer voice of the nation*, May 15, 2023, available at: <https://organiser.org/2023/05/15/174100/bharat/maharashtra-communal-clash-over-instagram-post-allegedly-insulting-prophet-in-akola-one-dead-several-injured/> (Last visited on November 19, 2023).

¹³ “Assam Violence: Cyber War Continues, Government Block 89 More Web Pages to Avoid Panic”, *The Economic Times*, August 12, 2012, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/assam-violence-cyber-war-continues-government-blocks-89-more-web-pages-to-avoid-panic/articleshow/15580063.cms> (Last visited on November 19, 2023).

¹⁴ Zia Haq, “A dangerous trend: Social media adds fire to Muzaffarnagar clashes”, *Hindustan Times*, 3 December, 2013 available at: <https://www.hindustantimes.com/india/a-dangerous-trend-social-media-adds-fire-to-muzaffarnagar-clashes/story-qWmUteMPVIZkPZkoAlRyDK.html> (Last visited on November 19, 2023).

in the Middle East and Britain, according to mapping and analysis of its followers. Such messages cause threat to national security and leads to radicalisation.¹⁵

In September 2015, an Indian woman accused of recruiting individuals for ISIS was deported by the UAE and later apprehended in Hyderabad. Afsha Jabeen, also known as Nicky Joseph, 37, has been using social media to recruit young people for ISIS while posing as a British national.

All such incidence reflects that boundaryless social media which has eased our life beyond the level, is also responsible for causing unrest and threat to national security. By just one post on the social media can turn hamper the national security and can bring thousands of people do violent act.

Modern terrorism is primarily reliant on the internet. Operation via the internet does not require significant investment and is not easily traceable. The internet is being used to support false proxy conflicts, recruit fighters, and promote information and ideas. So, it is need to the time to curb all such messages or videos on social media and to regulate them.

III. Legal Regime for Regulating Such Online Speech

At international level, article 20 of the ICCPR requires governments to ban by legislation the advocacy of national, racial, or religious hatred that involves incitement to violence, discrimination, or hostility. Art. 19(3) further empowers states to make legislation prohibiting speech for respect of others' rights or reputations, national security, public order, public health, or morality.

In India, government regulate such speech by various laws. In 2008, Section 66A was added to The Information Technology Act 2000 (IT act) to penalize online hate speech. The clause was made applicable to any information sent by any computer or communication equipment that is excessively offensive in nature or that can produce menace, or any false information with the intention of causing irritation, inconvenience, danger, insult, harm, enmity, hatred, or ill will. However supreme court in *Shreya Singhal v. Union of India*¹⁶ held this provision unconstitutional and order to struck down it. Section 66F of IT act, empowers to impose life imprisonment, If a person refuses authorised personnel access to a computer resource or seeks to penetrate or access a computer resource without authorization with the

¹⁵ *Mehidi Masroor Biswas v. The State of Karnataka*, CrI. Petition No. 8749 of 2016.

¹⁶ *Supra* Note 7.

intent to endanger India's unity, integrity, security, or sovereignty, or to instill fear in the people or any portion of the people. The section is imposed by the government whenever there is online tweet or post which goes against the national security. However, the issue in this section is that it has specifically mention the categories of act which need to be done to be to be charged under this section. But in those categories of acts it does not mention the online tweet or post. Although in *Mehidi Masroor Biswas v. The State of Karnataka*¹⁷, he was charged under the IT act section 66F besides other acts. Section 69A¹⁸ of The IT Act, empowers the government to block or filter or restrict access to any website or sources on the internet.

Section 144¹⁹ of The Code of Criminal Procedure (Sec163 BNSS 2023) (Hereinafter referred to as CrPC) authorizes the district magistrate to impose an internet shutdown in their territory. In *Madhua Limaye v. Ved Murti*²⁰, The constitutionality of Section 144 was challenged before the Supreme Court, but the court refused to accept this argument, ruling that even the possibility of a provision being exploited is insufficient grounds for striking it down. However, The Supreme Court stated that the objective of the clause is to handle an urgent

¹⁷ *Supra* note 18.

¹⁸ *Supra* note 19, S. 69A Power to issue directions for blocking for public access of any information through any computer resource. -(1) Where the Central Government or any of its officer specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2) for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.

¹⁹ The Code of Criminal Procedure, 1973. S. 144 (1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquillity, or a riot, or an affray.(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.(4) No order under this section shall remain in force for more than two months from the making thereof: Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

²⁰ 1971 SCR (1) 145.

problem in order to avoid damages. The threat expected must be actual rather than hypothetical or based on likelihood.²¹

Section 124A of The Indian penal code 1860 Or (Sec152 of BNS) (Hereinafter referred to as IPC) which deals with sedition specify that whosoever by speech, whether spoken, written, by sign, or by visual representation incites the people to violence against the constituted authority via hatred, contempt, or stimulation of disaffection toward the government established by law. Section 153A²² of IPC, criminalises words either spoken or writing or sign or visual representations that promote enmity between different groups on grounds of race, caste, religion, community etc. and doing any act prejudicial to maintenance of harmony. Section 153B of the IPC supplements the above section as it extends liability to publishers as well as those who reiterate the content. Section 504²³ of IPC Or Sec352 BNS, which provides that anyone who threatens, insults, or seeks to provoke another person with the goal of effecting peace through email or any other electronic form will be held accountable under this provision.

Apart from above penal provisions, government can also... anti-terrorism laws against online slogan and speech which are against national security these are The National Security Act, 1980 (Hereinafter referred to as NSA), under which section 3, grants the state huge authority to arrest a person if there is concern of danger to national interest or public order. Apart from these other legislations used are The Unlawful Activities Prevention Act

²¹ Mehvish Ashraf, "Online Hate Speech in India: Issues and Regulatory Challenges", 3 *International Journal of Law Management & Humanities* 919 (2020).

²² The Indian Penal code, 1860. S. 153A Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.- (1) Whoever--(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities, or (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity,

²³ *Ibid.* S. 504 Intentional insult with intent to provoke breach of the peace. - Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(hereinafter referred to as UAPA). Section 13²⁴, 16²⁵, 18²⁶, 18B²⁷, 38²⁸ and 39²⁹ of UAPA enabled special procedure to handle terrorism related activities pertaining to individuals and organisation. The act extends exceptional power and jurisdiction to detain and arrest people.

Presently the issue with the current provisions of UAPA, the act was formulated with the aim to deal with the activities undermining the integrity and sovereignty of India. However, presently government using the provisions of such a stringent act to curb the online speech. The issue with the provisions is that nowhere online speech is mentioned in the provision and there is not clarity what type of online speech will be covered under it. All this leading to excessive use of the act and curbing the online speech which are not even against the national

²⁴ The Unlawful Activities (Prevention) Act, s. 13 Provides that, (1) Whoever— (a) takes part in or commits, or (b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine. (2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

²⁵ *Id.*, S. 16 provides, Punishment for terrorist act. (1) Whoever commits a terrorist act shall,— (a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine; (b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

²⁶ *Id.*, s. 18 provides, Punishment for conspiracy, etc.—Whoever conspires or attempts to commit, or advocates, abets, advises or 3 [incites, directly or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

²⁷ *Id.*, s. 18B provides, Punishment for recruiting of any person or persons for terrorist act - Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

²⁸ *Id.*, s. 38 provides, Offence relating to membership of a terrorist organisation.—(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation: Provided that this sub-section shall not apply where the person charged is able to prove— (a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and (b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation. (2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

²⁹ Offence relating to support given to a terrorist organisation.—(1) A person commits the offence relating to support given to a terrorist organisation,— (a) who, with intention to further the activity of a terrorist organisation,— (i) invites support for the terrorist organization; and (ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or (b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is— (i) to support the terrorist organization; or (ii) to further the activity of the terrorist organization; or (iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or (c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity. (2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1) shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

security or anti-terrorism. leading to its misuse. As a result, it prohibits dissent and criminalizes mere political ideas that produce dissatisfaction with the state. Certain words in the provisions used in the act like word advocate, abets or incite are very broad and there is no clarity when in online speech it will amount to abet or advocate or incite.

Recently on 20th November 2023 the Jammu and Kashmir and Ladakh High Court, while giving bail to writer Fahad Shah, the founder editor of the erstwhile news portal ‘The Kashmir Walla’, who has been in detention for nearly two years following accusations of terrorism relating to the publication of an article titled ‘The shackles of slavery will break’ published in his magazine in 2011. Court observed that an arrest under the UAPA 1967 without ‘legal justification’ would violate the Constitution’s guarantee of equality and liberty. The court also emphasized that, while the investigating agency has discretion in making arrests under the anti-terror law, a compelling rationale must be provided after the arrests, rooted in the concept of a ‘clear and present danger’ posed by the accused to society, especially if released on bail.³⁰

This all is also because of the lack of clearance in the act when to charge a person under the act for online speech.

Section 8³¹ of the Jammu and Kashmir Public Safety Act, 1978 has been used by government several times to control the post or speech which misguides the common masses by circulating fake news against the government and its policies. The provision allows for a person’s detention without trial for up to two years. On the basis of preventing the suspect from behaving in any manner harmful to the security of the state or the maintenance of public order.

So, there are penal regulations to dealt with such online speech and slogan which cause threat to national security and public order. But all are general legislation dealing with general

³⁰ Human Rights Watch, India: Kashmiri Journalist Held Under Abusive Laws, February 8, 2022, available at <https://www.hrw.org/news/2022/02/08/india-kashmiri-journalist-held-under-abusive-laws>. (Last visited on December 01, 2023).

³¹ The Jammu and Kashmir Public Safety Act, 1978. S. 8 Detention of certain persons. —(1) The Government may— (a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to— (i) the security of the State or the maintenance of the public order “acting in any manner prejudicial to the maintenance of public order” means— (i) promoting, propagating or attempting to create, feelings of enmity or hatred or disharmony on ground of religion, race, caste, community, or region ; (ii) making preparations for using, or attempting to use, or using, or instigating, inciting, provoking or otherwise abetting the use of force where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order ; (iii) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of, mischief within the meaning of section 425 of the Ranbir Penal Code where the commission of such mischief disturbs, or is likely to disturb public order ; (iv) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment of a term extending to seven years or more, where the commission of such offences disturbs, or is likely to disturb public order.

hateful speech and in this legislation, there is no such provision which explains in details when such slogan or online post will be seen as threat to national security and public security.

Because of all such ambiguity's that when to treat online speech and slogan as threat to national security and public order it gives the government a tool to criminalise all type of dissent and speech. Which is leading to overcriminalisation of speech.

IV. Overcriminalisation of Speech

Now a days government is directly resorting to national security law like UAPA, NSA or PSA to charge the people, journalist for any form of speech or slogan. Not even properly analysing whether in actual it is against the national security or not. Government now fencing themselves as a whole nation and any statement in their criticism as seen as a threat to public order. So, laws for security of nations are now being used by government in cases if the slogan or speech hurt their personal sentiments also.³² All this is leading to overcriminalisation of speech and hampering the democratic attribute of the nation.

In *L. Raghmani v. District Magistrate West District Manipur*³³, a Manipuri activist was arrest by police for uploading a Facebook post contending that “the cure for corona is not cow dung or cow urine. The cure is science and common sense. Professor ji RIP”. District magistrate smacked the National Security Act against the activist. It was argued that Facebook post was to incite political, social and religious agitation among people. The top court released the activist and ruled that a person cannot be detained in detention for such an offense. If the detention continues, it would violate the right to life and personal liberty. So, here such a draconian law was used by the government not because it was harming the national security or public order. Rather it used against a citizen because it was challenging and criticizing the government on corruption.

Similarly, in *Jasbir Singh v. State of Punjab*³⁴ also, government charged the person for positive criticism. where the defendant was arrested because he went live on Facebook and criticised the governments for the way they handling the COVID situation. Government alleged that all this utterance is against the integrity of the nation and can cause communal disaffection. Supreme court in this case held that although defendant criticised the government functioning

³² Shreya Rawat, National Security Laws in India Against Freedom of Speech and Expression Uttaranchal University, Dehradun, *Supremo Amicus* (2022). available at: <https://supremoamicus.org/wp-content/uploads/2022/07/Shreya-Rawat-1.pdf> (Last visited on November 19, 2023).

³³ WP(CrI) 266/2021.

³⁴ CrI. Misc. No. M-19376 of 2020

and that too in intemperate and abusive language, but same does not amount to exciting disaffection towards the government and will not amount to disruption of communal harmony. So, he was released after spending 6 months and 14 days.

In *Sanskar Marathe v. The State of Maharashtra*³⁵, where Assem Trivedi, who is a political cartoonist and social activities. Through his cartoon which he uploaded on his Facebook page and his website, mocked the parliament and corruption in administrative machinery. In the cartoon, he showed the parliament as a national toilet, the national insignia as wolves instead of lions with the subtitle wolf with the sign of danger, and *Bhrashtameva Jayate* instead of *Satyameva Jayate*. The allegation against him were for defaming parliament, constitution and Ashok emblem and also for spreading hatred and disrespect against the government. He was charged under section 124A IPC. Court observed that a citizen has a right to say or write whatever by way of criticism or comment, so long it does not incite people to violence against the government or with intention of creating public disorder. As a result, there is a need to define a line of demarcation between the scope of citizens' fundamental rights under article 19(1)(a) of the constitution and restrictions based on state security and public order.

Growing restriction on media freedom and increasingly arrest of journalist on charge of terrorism and sedition. By using penal legislations government routinely targeted critics and independent news organisation.

Siddique Kappan was detained due to his religious identification and reporting on religious freedom issues, when he was on his way to cover a rape case of a Dalit girl. He was being investigated for sedition under section 124A, fostering hatred between various groups on the basis of religion, race, place of birth, domicile, etc, section 153 IPC, knowingly possessing property earned or received from the commission of a terrorist act, section 14 of UAPA, raising funds for terrorist act section 17 UAPA. While held that Kappan had no work at Hathras when he was arrested.

In 2020, Umar Khalid and Sharjeel Imam were chargesheet on ground of pre-planned violence against the state in the case related to larger conspiracy in Delhi through social media for large scale indoctrination a mobilisation of youth for chakka Jaam as protest against the citizenship amendment bill.

³⁵ 2015 SCC OnLine Bom 587.

From all such cases it is clear that using the veil of national security and public order. Government misuses such draconian laws in which all procedure from starting to end is under the control of the government to curb the dissent against it. Using such laws not only infringement right of speech and expression and right of doing positive criticism which makes any country real democracy. It also infringes liberty of a person but putting them behind bars or by labelling them as terrorism.

Looking on all such case, one important question arises is whether all online speech, slogans are anti-national speech or not.

A nation's citizens are more than just animals. They have at least some basic human rights to have a meaningful existence. India, as a democratic country, protects basic human rights by protecting freedom of speech and expression under Article 19(1) of the Indian constitution. In name of national security and peace government arbitrary declare the even reasonable speech and slogan of criticism as anti-national.

Although it is not easy to define and categorise that which online post or slogan can cause threat to national security or not. Defining hate speech is one of the most perplexing issues of the present, especially because its definition is dependent on the impact that the speech produces. Given the inherent intersection with freedom of expression, there is scant agreement on what constitutes hate speech. The challenges of identifying hate speech become even stronger with the increasing use of the internet as a means of communication, because it may be utilized by anybody anywhere in the world and targeted at anyone anywhere in the world.

YouTube, which permits free sharing of video content on its service, erased 25,000 films in one month alone. All such hate crime has led to horrendous hate crimes like communal riots, series of violent clashed between religious communities. Incidents of gruesome killings took place due to hate against another community or mob lynching. As in above cases like recent incidents in Maharashtra were slogan such as 'Pakistan zindabad' or commenting against the Islam foundation can cause violence on such a large level. That it took precious live of a person. So, such slogan or speech can be seen as anti-national and threat to national security.

However, in cases like *Mohammad Niyaz v. State of U.P.*³⁶ where the petitioner wrote on his Facebook page "I Love You Pakistan, I miss you Pakistan" and in case *Nazir Hussain*

³⁶ Crl. Misc. Bail Appl. No. 56050 of 2021.

@ Bittu v. State of UP³⁷ where the accused was arrested and spent five months in prisoner for posting a flag of Pakistan on his Facebook page. FIR were lodged against them on ground of anti-national post, but court granted him bail as never tried to create any social disturbance or done any anti national activity. So, such post is not seen as serious as did not led to any kind of violence or disturbed the public order.

Although it is not easy to classify speech or slogan as hate speech or one which will threaten the national security. However, judiciary in different cases tried to classify whether particular slogan is anti-national or not. It also directed government to distinguish between anti-government slogan and anti-national slogans. It tried to make is clear that mere shouting slogan or posting a slogan cannot be seen as threat to national security. intention behind it or was it the reaction of public at large towards such slogan or post is also need to be considered. Moreover, to apply proportionality test whenever government uses reasonable restrictions provision to curb the right to free speech and expression. To ensure that it does not infringe the right ensured to citizens.

In *Brandenburg v. Ohio*³⁸, in which a leader made a speech at a rally that advocated violence. He was charged under Ohio criminal syndicalism act which prohibited individuals from advocating for crime, sabotage, violence or unlawful method of terrorism as means of political reform. The United States Supreme Court ruled that Ohio's legislation violated *Brandenburg's* right to free expression. Speech may be restricted if it is intended to encourage or generate immediate lawless action and is likely to do so. Mere abstract debate is not the same as actually preparing or persuading individuals to engage in unlawful acts.³⁹

In *Balwant Singh v. state of Punjab*⁴⁰, in which two appellants in public were charged under section 124A of IPC for raising slogan such as "Khalistan Zindabad" and "Raj Karega Khalsa" when rioting erupted across the country following the assassination of Indian Gandhi. They also sang, "Hindustan Murdabad.". The supreme court decided that casual raising of slogans once or twice by two individuals alone cannot be considered to be aimed at stirring or attempting to inspire hatred or disaffection against the government, and hence the offence of section 124A would not be triggered.

³⁷ CrI. Misc. Bail Appl. No. 26129 of 2020.

³⁸ 395 U.S. 444 (1969)

³⁹ "Brandenburg v. Ohio", Global Freedom of Expression Columbia University, *available at: <https://globalfreedomofexpression.columbia.edu/cases/brandenburg-v-ohio/>* (Last visited on November 19, 2023)

⁴⁰ AIR 1995 SC 1985.

The Supreme Court justice Deepak Mishra, addressing at an event "democracy and dissent" organized by the Supreme Court Bar Association, remarked that insulting the government is not the same as disrespecting the nation, in same way all anti-government slogans are not anti-nation.

Hence, Indian citizens have right to critics the government. If we suffocate such criticism and dissent against government, then it's better to be police state instead of being a democracy. His words are significant because they come against the backdrop of a prevailing trend in which everyone who does not agree with the administration or is against any law and expresses his or her discontent against the government through posts and slogans is labeled as being anti-national.

In *State of Maharashtra v. Sangharaj Damodar Rupawate*⁴¹ it was held that the impact of the words used in the offending material must be measured by the standards of sensible, strong-minded, resolute, and courageous men, rather than those of weak and vacillating minds, or those who see danger in every opposing point of view. The type of readers for whom the book is primarily intended would also be relevant in determining the likely repercussions of the writing. Although, art. 19(2) provide state absolute immunity if it restricts the right to speech and expression on the ground of national security. But these restrictions are qualified by word reasonable.

In *Chintaman Rao v. state of Madhya Pradesh*⁴², The court ruled that fair restriction implies that the limitation should not be arbitrary or excessive, but should be reasonable and applied with intelligent care and decision. Therefore, it is very important that doctrine of proportionality must be seen, which was expounded by supreme court in *Modern dental college & Research centre v. State of MP.*⁴³

In *Anuradha Bhasin v. Union of India*⁴⁴ The case dealt with internet and movement restrictions enforced in the Jammu and Kashmir region in the interest of public order. The Supreme Court has recognized that permanent suspension of internet service is unlawful and violates the freedoms of speech, expression, and the practice of a profession. The court ruled that internet shutdowns should comply to necessity and proportionality.

⁴¹ (2010) 7 SCC 398.

⁴² AIR 1951 SC 118.

⁴³ (2016) 7 SCC 353.

⁴⁴ *Supra* Note 8.

V. Way Forward and Conclusion

There is a saying that “haters are going to hate,” but that does not mean society should passively listen and allow threats to the nation and its security to grow unchecked. It is necessary to take concrete steps to prevent the spread of hatred. Although India currently lacks a stringent, specialized law on the issue, the formulation of such legislation must be seen as a long-term measure. At present, it is not easy to define precisely what constitutes hate speech and to lay down its essential ingredients.

In the short term, alternative measures are required, such as educating citizens, strengthening social and political cohesion, and fostering an “aware citizenry.” Public awareness itself can act as a powerful deterrent against dangerous online speech that threatens national security and societal harmony. Equally important is the involvement of non-state actors, particularly private social media platforms. These entities must ensure that speech inciting disharmony is curbed at the earliest and that no material capable of destabilizing society is allowed to circulate.

At present, legal provisions used by the government to address online speech remain unclear and often inadequate. For instance, s. 66F of the IT Act has been invoked against tweets and online statements, even though the provision does not explicitly mention online speech. Similarly, provisions of the UAPA are sometimes used against journalists, despite the Act lacking a clear definition of what kind of online expression qualifies as anti-national or as an act of terrorism. Such ambiguities invite misuse. Therefore, the government should introduce amendments and clarifications to prevent these laws from being arbitrarily applied against legitimate dissent.

At the same time, it must be remembered that the Internet is a vital medium for exercising the constitutional right to freedom of speech and expression. Excessive restrictions on this right are unjustified and amount to a violation of civil liberties. A balance must therefore be struck between protecting national security and upholding free speech. Stringent laws should not be misused to suppress anti-government views under the guise of protecting national security. In a true democracy, it is the government’s duty to perform its functions responsibly, and if it fails, it must remain open to criticism from the people. That is how democracy sustains itself.