

# **Does India need a ‘RIGHT TO OFFEND’?**

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# ABSTRACT

*This research paper aims to address one of the most Polarising concepts in India today "Right to Offend".*

*On one hand the recent arrests of activists like Disha Ravi, comedians like Munawar Faruqui, columnists, artists, or the clamp down on OTT content like 'Tandav' owing to "offensive" materials questions the hollow frame of freedom of speech in India, which does not seem to include the right to offend.*

*On the other hand, incidents like the 'Boy's locker room' or songs like "Beyonce Sharma Jayegi", which led to a nationwide crackdown on the content, again due to its 'offensive' nature exhorts the question that should a person have the right to offend anyone as an extension to their own freedom of speech? It is a stern belief of communities, legislatures, courts, and governments that such a right is akin to the right to violence.*

*This is the primary question that needs to be answered in world's largest democracy, which seems to have become thin-skinned to any form of criticism and reducing us to a society of 'touch-me-nots'. Or are we just protecting the democracy which believes in tolerance and peaceful coexistence?*

## **LIST OF ABBREVIATIONS**

NFL- National Football League.

WPFI- World Press Freedom Index

CG- Character Generated

MoE-Ministry of Education

CCS-Central Civil Services

NCRB- National Crime Records Bureau

IPC- Indian Penal Code

# 1. INTRODUCTION

## **Does India need a “RIGHT TO OFFEND?”**

*“No idea is above scrutiny; no people are below dignity”- Majid Nawaz.*

In the 2015 popularly known as the *Shreya Singhal case*, Justice Rohinton Fali S. Nariman’s judgement on striking down Section 66A of the IT Act as unconstitutional owing to the lack of clarification of what is “offensive”? is the daunting question that seeks relevance with each passing day in the largest democracy of the world.

So, what exactly can be termed offensive? Racism, misogyny, homophobia? Or can anything one thinks or perceives can be taken as offensive, or can any question asked, or any belief be seen in a kaleidoscopic view of offense? While Nicholas Copernicus did offend the established status quo when he proposed a stationary sun as the centre of the universe, it was Percy Bysshe Shelly’s book *“The necessity of Atheism”*<sup>2</sup> that got him expelled from Oxford University in 1811 as he refused to deny authorship to his belief because many felt offended by the essay. Similarly, the most beloved novel series of all times *“Harry Potter”* has also managed to offend a considerable lot of people due to various satanic and demonic reference. So, does this mean that offending is the central wheel of bringing the necessary changes in the society?

India from a civilisational perspective has always encouraged the culture *‘Tarkshastra’* a treatise dealing with the dialectic process, logic, and debates that took pride in open communications and dialogue. But the recent deluge of arrests under the sedition laws owing to offensiveness highlights a saying that if you have a hammer, everything looks like a nail. This research paper analysis the Indian society as increasingly becoming a group of touch-me nots that find the ever-growing need to defend our own country, religion, or community from even the slightest criticisms thrown at it as we become increasingly insecure of our own culture that we feel the need to defend it. Primarily, the right to offend has three separate dimensions and some pre-established legal framework that encourages the right to be offended. *Firstly*, the right to offend the state under which we have section 124A of IPC as a sedition law to safeguard executive. The number of cases under 124A has increased by 160% from 2016-2019 and bulk of these cases are filed for criticising political leaders and governments. It is the same section 124-A which lost its relevance after India adopted a constitution that was used during the colonial rule by British to arrest any dissidents to their atrocious rule. For the judiciary’s right to get offended we have the contempt of court and for legislature we have the privilege motions. *Secondly*, the right of a community to get offended that involves 153-A which deals with promoting enmity between communities that is something needed that it refers to clear promotion of enmity or any form of incitement. But 295-A creates questions as it involves insulting a religion in any form to be considered as a violent act and can lead to arrest which is cognizable and non-bailable. *Thirdly*, it is defamation under section 499 and 500 IPC involving civil and criminal defamation. Now if

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<sup>2</sup> Andrew Copson, April 2 2011 ( 08.00 BST), “Atheism’s aesthetic of enchantment”, <https://www.theguardian.com/commentisfree/belief/2011/apr/02/shelley-the-necessity-of-atheism#:~:text=As%20an%20Oxford%20undergraduate,The%20argument%20itself%20is%20simple.>

we read Shivpurana and take a close look at what it says about Brahma, whoever wrote Shivpurana should have been jailed then and a very similar fate had to be shared by the dhobi who questioned Raja Ram (The question raised might not be pertinent) but it was heard and deliberated upon.

Finally, the month of June 2021 brings a fresh scope of interpretation on the sedition laws via the *Vinod Dua* case. The Supreme court bench tempted to examine the constitutionality of the sedition provisions and a probable strive to define the limits, which gets juxtaposed by frequent and often absurd sedition cases. The Supreme Court's quashing verdict on the case upholding journalistic freedom from sedition cases simply by either criticising the government on their provisions or policy is seen as a huge victory roaring the pledges of press freedom and democracy in the country. The fact that the law's maximum punishment is life imprisonment for something even probably not related to distort the interest of the state as a whole is very concerning. Taking an instance from the 1992 *Kedarnath Singh* judgement by the Supreme court revolving around IPC section 124A that previously defined sedition as words or actions that bring "hatred, contempt or dissatisfaction" towards the government. The Supreme Court being fully aware of the implications regarding the bare reading of this provision was keenly aware of the possible ways that could be attempted to silence free speech or quell dissent. Keeping this in mind the application of sedition by the section was consciously narrowed down to instances having "intention" or "tendencies" to cause any public disorder or endanger the security of the state. But did this anyhow change the prevalent interpretation of sedition cases? What is concerning in this matter and is already discussed is how easy according to law it is to accuse any journalist, artists, academicians or even citizens under sedition with the wording of working against the state's 'interests'

India, slipping further 2 places to 142<sup>nd</sup> in the WPI 2020 has seen an upsurge of sedition cases in the recent years from 35 in 2016 to 93 in 2019. Sedition charges were brought against the leaders of the Patidar agitation in 2015, protesters against Gurmeet Ram Rahim Singh's conviction in 2017, the Jat unrest in 2017, the Adivasis in Jharkhand's Pathalgadi movement in 2018 and those opposing the Citizenship (Amendment) Act, 2019. State governments from time to time has invoked the sedition law on suspicious grounds-charging a 53-year-old man who made a video alleging that the Chhattisgarh government was in league with inverter makers, the headmistress of a Karnataka school which staged an anti-CAA-NRC play or a girl in Bengaluru who shouted a pro-Pakistan slogan at a political rally. The most recent instance of what seems to be misuse of this law was the February 14 arrest of 21-year-old Bengaluru-based climate activist Disha Ravi in the "toolkit" case. A very similar fate was shared by many journalists, artists and comedians or protestors. The Delhi police accused Disha Ravi and two other individuals in that very case of collaborating with a pro-Khalistan group-Poetic Justice Foundation-and linked them with the January 26 violence during a farmers' rally in Delhi. While granting bail, the Additional Sessions Judge, Dharmender Rana, said that the offence of sedition cannot be invoked to minister to the wounded vanity of governments.

On the other hand, the idea of a society with an inherent 'Right to offend' goes against the very grain of Indian culture that believes in the World as one family of '*Vasudhaiva Kutumbakam*' and preaches peaceful coexistence. A right to offend in this setting would mean the right to hurt others by the assertion of our own very rights. This would ideally not only lead to disarray in the administration but is also equivalent to "Right to violence". It is also notable that with the rights also comes the individual responsibilities and accountabilities towards the rights of others. India since its freedom struggles has always talked about rights and duties, for instance Mahatma Gandhi's dissociation from the Chauri Choura movement or any kind of violence came with the essence of harmonious coexistence. Come what may. The right to offend in India would bring silent undertones of emotional and psychological violence as no individual should have the outright authority to hurt the feelings of others as that would mean an unmindful society deaf of all kinds of sensitivities. These two arguments form the crux of the topic at hand that whether a section of people have a right to be offended by somebody else's freedom of expression?

### **1.1 Research Objective**

The objectives of this research paper are-

- a.** To carefully analyse the free speech laws in India and a multi-faceted interpretation of "offensiveness" as per the Indian culture and society in comparison to others.
- b.** The paper aims to gauge the wide public opinion and thoughts regarding the topic to understand their responses to the prevalent responses on sedition cases.
- c.** This paper carefully analyses two contrasting perspectives of either the possible repercussions of an absolute free speech and a right that gives legal backing to any offensive content, or the wilful submission of free speech and criticising or being vocal about anything in the society that might have the possibility of "offense"

<b>Sedition (Section 124A IPC)</b>	<b>National Security Act, 1980</b>	<b>Unlawful Activities (Prevention) Act 1967</b>
<p>Defines sedition as any words, spoken or written, or signs, visible representations or other communication that can cause ‘contempt or hatred’ or ‘excites or attempts to excite disaffection’ towards the government. (Disaffection is defined as feelings of disloyalty or any form of enmity).</p> <p>However, any comment that shows disapproval of actions by the government, made with intention to alter the actions of the government are not considered sedition unless they excite or attempt to excite hatred, contempt, or disaffection towards government.</p> <p><b>Tough proviso-</b> It is cognisable, non-bailable and non-compoundable. Those charged under this have to surrender their passports, barred from holding government jobs. Punishment of 3 years to life sentence, a fine or both.</p>	<p>This act provides for ‘preventive detention in certain cases and matters connected therewith’. It empowers central and state governments to detain people to prevent them from acting in any manner ‘prejudicial’ to the security of India, the relations of India, The relations of India with foreign countries or maintenance of public order, maintenance of supplies and essential services to country.</p> <p><b>Tough proviso-</b> People can be detained even without being charged for up to 12 months. People can be detained for 10 days without informing the reasons for the same. Individuals can appeal to High court advisory board but not allowed lawyer during trial.</p>	<p>This law is aimed at enabling central and state governments to prevent terrorist activities against the integrity and sovereignty of India.</p> <p><b>Tough Proviso-</b> UAPA permits detention without charge for up to 180 days. 2019 amendments gave Union power to notify an individual as a ‘terrorist’ without any trial. Custody can be extended to 30 days. On Feb 1, 2021, the apex court gave the ruling that bail could be granted to an accused if the right to speedy trial was violated.</p>

Existing Legislature

## 2. RESEARCH METHODOLOGY

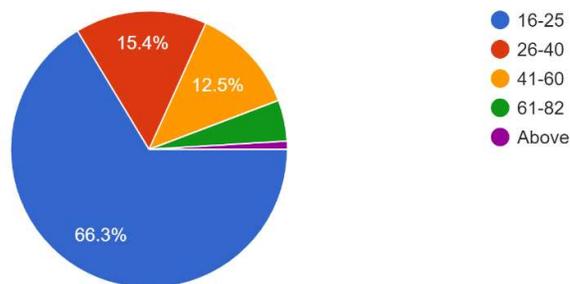
### A. PRIMARY RESEARCH

Sample Size- A demographic division of

- 16-25
- 26-40
- 41-60
- 61-82
- Above

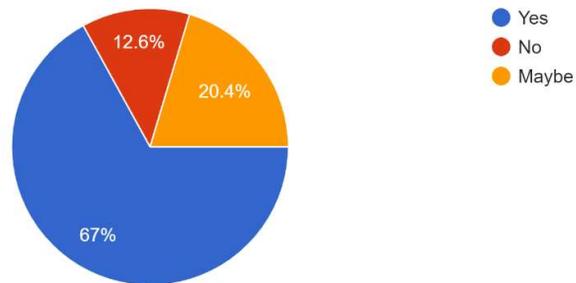
Responses- 104

Age  
104 responses



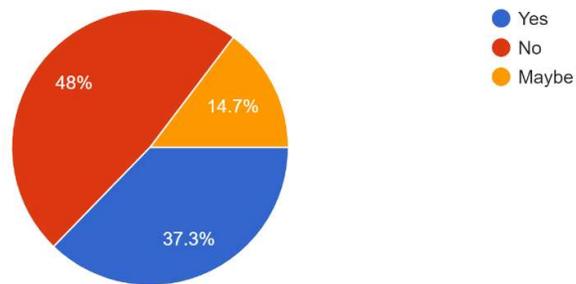
Do you think the Indian Democracy is becoming intolerant to any form of criticism?

103 responses



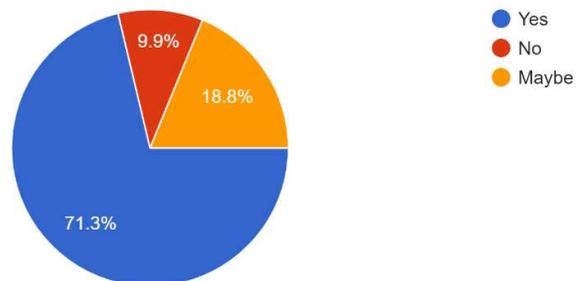
Do you think that freedom of speech should automatically involve the right to offend?

102 responses



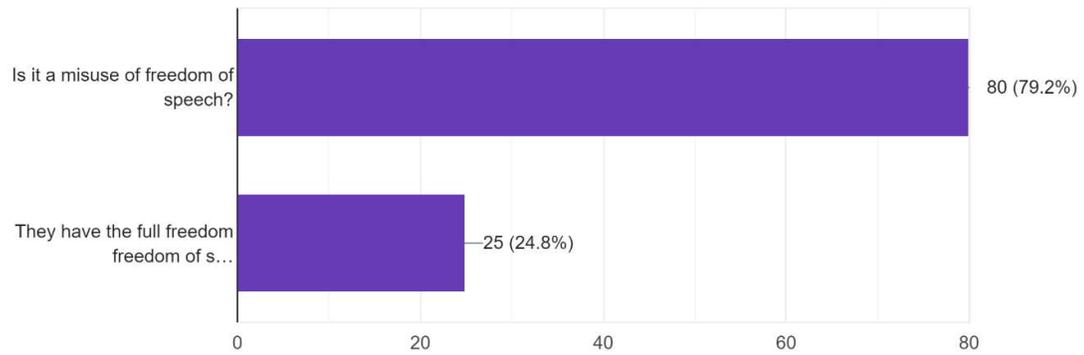
Do you think India needs an amendment of the sedition law to suit the democratic framework and not dwell in the colonial framework?

101 responses



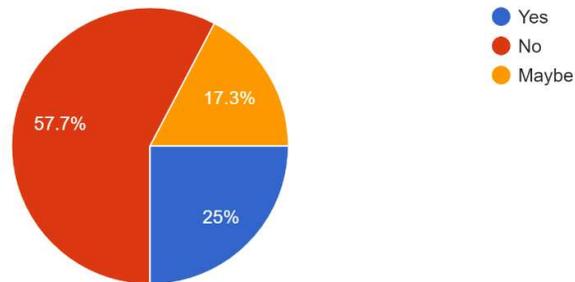
If someone says something racist, misogynistic or tries to denigrate a particular religion or community

101 responses



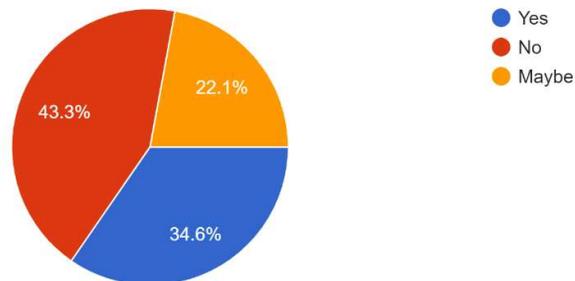
Do you think freedom of speech should be absolute?

104 responses



Does India need a 'Right to offend'?

104 responses



# RESPONSES OF QUESTIONNAIRE

Q. Was it justified for Twitter to ban Donald Trump? And what message do you think that sends to a country with the 1<sup>st</sup> amendment covering everything that might come under the purview of offensive?

- ***“..... No definitely not. It was justified for Twitter as they are not really bound to stand by the country's constitution to ban someone from their private utility. Trump overall left enough leeway in his tweets to not trigger them to ban a seating President. Also, offensive has no limit, what's offensive to Twitter might not be to Reddit or 4chan.....”***

Q. The Recent step down of Piers Morgan for the comment “I'm sorry, I don't believe a word she said, Meghan Markle. I wouldn't believe it if she read me a weather report.” Has been seen offensive by a global audience. But does that not tamper with journalistic freedom or freedom of speech?

- ***“..... He always had the journalistic freedom of saying a lot worse than what he did now. Again, for a TV journalist being part of the 'accepted' by the advertisers and the big money donors are the most important thing, he got away by saying everything till he got pressure by again a private company who are bound to do anything. MSM journalists got away with Iraq war propaganda which killed tens of thousands of civilians, because it was 'accepted' and what was 'right'. Again, the journalist should be able to do whatever they can but then again there's Assange who did it and messed his life forever.....”***

Q. India under the UPA government was one of the first countries to ban Satanic Verses by Salman Rushdie due to alleged blasphemy even without any inspection of the content. This stand has been severely criticised by politician and former international diplomat Shashi Tharoor as criticism of a religion is also a part of free speech. Who are you siding with Mr Tharoor or the government?

- ***“Mr Tharoor.”***

Q. Do you think, Free speech is an absolute myth in any country in the world? It is the correct speech as per the government which is projected as free speech?

- ***“..... You can only achieve what is 'absolute' when there is no other possibility or option left, therefore making it impossible for anything to be absolute until everything is, which is not possible on the most progressive and pro-human constitution around the world. Yes, Correct speech of the current government is the free speech.....”***

## B. SECONDARY RESEARCH

1. But, before we deeply delve into the topic, let us look at some of the “offensive” cases from two exemplary countries around the world.

### a. United States-

President Ronald Reagan once joked, *“Politics is the second oldest profession”*. And then added, *“I didn’t realize how much it is like the first”* referring to his career as a Hollywood actor. Years earlier during the re-election campaign of President Nixon, a bathroom graffiti noted, *“If you voted for Richard Nixon, you can’t s\*it here because you’re a\*\*hole is in the White House”*. The joke was widely circulated but did not sit well with the president, all though he was aware of free expression and its importance in the country. The First amendment to the United States constitution offers the most robust protection to unfavourable speech, except for direct threats or any form of incitement. In another instance, Mark Twain’s quip on equating a congressperson to an idiot was hailed by one and all as a delight of free expression on the United States. It encouraged many on American television later to hold that instance as a yardstick for political satire. Every year, the White House and its residing president with the family are seen hosting a televised dinner for the media in which a well-known comedian takes liberal swipes at the seated president nearby, which in itself is a profound example of deliberately offending the president to hail over free speech. During former President Donald Trump’s presidency, Indian American Hasan Minhaj ridiculed the fortunately absent president with, “the only way to keep America functioning is to ensure that Trump spends more time on the golf course”. Despite, of tales of press freedom and the absence of any kind of hate speech laws due to the believe of the Supreme court in a nation open to debate, The United States of America has also been witnessing dichotomy in public opinion on free speech. The emergence of movements like **BLACK LIVES MATTER** and **#MeToo** have raised awareness and promoted dialogue on racism, sexual harassment and more. With increased awareness also is stemming the increasing need for laws punishing speech. The debates on **“Take a knee protests”**<sup>3</sup> by NFL players on Black Lives Matter and the bold move of Twitter to block the account of a sitting President, where a federal judge ruled that blocking private accounts on basis of mere viewpoints is a violation of a first amendment, is sure to open a new interpretation of the first amendment if upheld. Similarly, the January *suspension of former President Donald Trump’s account by both Twitter and Facebook*, for the alleged incitement has raised several questions on the freedom of speech in America over the unchecked power of the tech giants. Many

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<sup>3</sup> FACING HISTORY AND OURSELVES: August 28, 2020, “UNDERSTANDING #TAKEAKNEE AND ATHLETE ACTIVISM. How are the Athletes protesting Racial Injustice”. <https://www.facinghistory.org/educator-resources/current-events/understanding-takeaknee-athlete-activism#:~:text=Over%20the%20summer%20of%202020,left%20the%2049ers%20in%202017.>

legal and constitutional experts feel that the first amendment in U.S does not support the move as the amendment aims at protecting the people from being silenced by the government authority.

-  **b. France-** In France, Freedom of speech is considered an “essential freedom”. It is protected by the 1789 Declaration of Human and Civil Rights, as incorporated into the present-day French Constitution. It is additionally protected by the European Convention on Human Rights, to which France is a party. Yet, even if the French law considers free speech to be an essential element of a democratic society, it is not deemed to be absolute. French courts, legislators often seek to balance freedom of speech with other freedoms and rights, and public order. It is, therefore, illegal in France to incite others to commit a crime, even when no crime is actually committed from incitement. French law prohibits hate speech, and any speech justifying or denying the Holocaust and other crimes against humanity. Additionally, French law also prohibits defamation against government institutions and office-bearers, as well as disrespecting the national anthem and flag in the context of public events as organized or regulated by public authorities. The recent assassination of a Christian teacher for showing his class controversial cartoons of the Prophet Mohammed as was earlier published by the satirical magazine *Charlie Hebdo*<sup>4</sup> which led to mass shootings in 2015 in Paris. This incident was heavily condemned by the French President Emmanuel Macron in declaring that free speech is inclusive to the right to offend and those offended are welcome to protest peacefully, but not to gag or kill the offenders. On the contrary Malaysian Prime Minister Mahathir Mohamad claimed that Muslims had the absolute right to be angry and kill millions of French people for the massacres caused in the past. Similarly, the Turkish President Erdogan was outraged not by the French president Macron’s defence of free speech and not by the murders, prompting him to call for a boycott of French goods. Although later, Malaysia and Turkey formally decried the murders. Yet the rhetoric of their presidents shows the dichotomy of offensiveness and providing air to religious violence.

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<sup>4</sup> Roger J. Kreuz, University of Memphis: September 15,2020 “Charlie Hebdo shootings served as an extreme example of the history of attacks on satirists”<https://theconversation.com/au/topics/charlie-hebdo-attack-14299>

## 2.CREATIVE FREEDOM

As individuals, does believing in something and not in the opposite give us the right to decide which ideas are worthy of expression and which are not? Creativity via books, films, comedy, songs, dance, graffiti, or any other forms from time to time has been constantly attacked by diverse beliefs of the people from backgrounds. A shocking example would be a classic like Harry Potter. While these books have claimed a world full of potter heads, it still offends a certain section of the world community that find demonic references in the text. A similar lashing wave from Oxford was also faced by Percy Shelly when he expressed himself as an atheist and his strong belief on atheism which was seen as offensive by the rest.

A similar fate is faced by almost all creative content available in India today. And probably the worst is faced by our jesters. It is not only Munawar Faruqui who got jailed for a joke he could have cracked but also several others who have either chosen to tone down on their jokes or go all in with their creativity no matter what offends whom.

In July comic Agrima Joshua<sup>5</sup> was sent various rape and death threats after a joke about Chhatrapati Shivaji Maharaj's upcoming statue which is under construction. She issued an official apology yet, her Instagram read about how comedians are going out of control and one of them needs to be killed for the comedians to understand their "aukaat". Similarly, co-founder of feminist comedy collective Mahila Manch Shefali Pandey talks about an incident during a show when she initially started talking about her personal life and then transitioning towards a political joke about how her parents support the current government without realising, that her audience had many politicians. This transition led not only towards some of the audience walking out followed by a bouncer who blatantly told her to leave. Preeti Das, another co-founder of *Mahila Manch* says that comedians now focus on things like Covid and their personal lives. As a curator of these comedy shows for the first time now, she has to previously discuss all the topics of the performance by the comedians before they go on stage just to stay at arm's length from offending their audience.

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<sup>5</sup> Updated Jul 13, 2020 11.08 pm: " Gujarat man arrested for threatening to rape stand-up comedian for her remarks about Shivaji statue". <https://scroll.in/latest/967318/gujarat-man-arrested-for-issuing-rape-threats-to-stand-up-comedian-for-her-remarks-on-shivaji>

### From Comedy train to Controversial train

1. Kunal Kamra got threats, eviction notice and a contempt case against him.
2. Lawyers filed case against Vir Das for maligning the community<sup>6</sup>
3. EIC members posted apology videos after old comedy sketches resurfaced again on the internet with the hashtag #Hinduphobicomedyindustry.

The world of *films* has seen various degrees of censorship from a decade now. While it is mostly done to remove any kind of objectionable content that does not gel well with Indian society it also prevents the influx of new ideas into this very society. In this changing paradigm independent films or unregulated content on the OTT platforms came a ray of hope which are soon to be taken away by the new OTT laws that propose to monitor the content on three rigorous level and been always kept under scrutiny. The question here is that can any faith or any belief of a person be shook by a mere negative representation of the truth or a criticism that the audience finds it difficult to integrate with the freedom of speech of these artists or creative minds?

In the rather recent 2021 case study of the adaptation of Vikram Seth's *A Suitable Boy* when the main protagonist Lata is seen kissing a Muslim boy with a temple in the background, led to the ruling parties Yuva Morcha to indignantly file a complaint against Netflix for deliberately attempting to outrage religious feelings. Similarly, a major part of the *Padmavaat* controversy involved an alleged intimate dream sequence between the Muslim king and a Hindu queen along with objectionable attire and behaviour of the queen. The Rajput community felt ridiculed about Queen Padmavati dancing in public with a bare midriff. This was later hidden by CG cloth to pass U/A certification.

India, for a long time has been recognised as a hub of liberal society with freedom of expression better than atleast middle eastern countries or authoritarian governments. But, even on Pakistani television Banana news network spoofs and mimics corrupt politicians. Similarly, Iranian films issue powerful rebuttals to prevailing political conditions and criticising authoritarianism. Chinese dissident Ai Weiwei<sup>7</sup> continues to fearlessly rile the government via films and images based on conditions in Hong Kong. These realities show an increasing mediocrity in creative work in India which simply abides by the rules of society out of sheer fear of reprisal.

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<sup>6</sup> Press Trust of India, New Delhi, HT correspondent, April 27, 2020 11:08 IST: "Vir Das Has Mukh in trouble, plea in Delhi H.C to take series off Netflix for allegedly maligning lawyers" <https://www.hindustantimes.com/tv/vir-das-has-mukh-in-trouble-plea-in-delhi-hc-to-take-series-off-netflix-for-allegedly-maligning-lawyers/story-rl21h1D4yF0fFfEh9PQ2TK.html>

<sup>7</sup> Vanessa Thorpe, October 4 2020 : "Ai Weiwei on China, free speech and message for London" <https://www.theguardian.com/artanddesign/2020/oct/04/ai-weiwei-on-china-free-speech-and-a-message-for-london>

### 3.ACADEMIC FREEDOM

To discuss academic freedom in India we will be analysing three highly publicized events in India. First, the resignation of Professor Pratap Bhanu Mehta<sup>8</sup> from Ashoka University. Second, Refusal by the director of IIM Ahmedabad, Errol D'souza<sup>9</sup> to allow MoE to review a PhD thesis approved by the institution. And third, heckling of Vivek Agnihotri's screening of Buddha in a Traffic jam in Jadavpur University.

All these three events might seem dissimilar but collectively illustrate the dances of academic freedom and the consequences of 'offence' towards the state or community.

Professor Mehta was a public intellectual at the Ashoka university, who was voicing a fearless critique of the government on national media and finally impelled to step down to save the private institution. Similarly, with D'souza, director of a public institution who took a stand for academic principles first and claiming autonomy from the state supported by the IIM's Act had to face government harassment and interference.

These incidents involve, two kinds of academic freedom- engagement in public sphere by academicians and researching on controversial matters within the university. Universities and their constituting teachers, students, and staffs for long has been at the receiving and attacking phase of government reactions directly or indirectly. Faculty and students continue to be targeted for unpopular intellectual opinions, attack on campuses, homes raided, and books and papers seized.

Activists like Shoma Sen of Nagpur University, Anand Teltumbde of the Goa Institute of Management and JNU students like Natasha Narwal, Debangana kaltika, Umar Khalid and Sharjeel Imam are detained under UAPA as 'urban Naxals'<sup>10</sup> conspiring to overthrow the government by inter-community violence. Sharjeel Imam himself stands accused of being radicalized' by merely the books he read for his MPhil thesis on violence during partition. The further government outreach in these institutions can be highlighted by an increase in contractual teaching staff. New service rules cancelling the right to free speech.

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<sup>8</sup>TIMESOFINDIA.COM / Updated: Mar 20, 2021, 12:25 IST: "Pratap Bhanu Mehta resignation: Yale, MIT, Harvard professor writes open letter to Ashoka University"  
[http://timesofindia.indiatimes.com/articleshow/81600504.cms?utm\\_source=contentofinterest&utm\\_medium=txt&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/81600504.cms?utm_source=contentofinterest&utm_medium=txt&utm_campaign=cppst)

<sup>9</sup>DHNS, MAR 11 2021, 01:34 ISTUPDATED: MAR 11 2021, 02:03 IST: "Leave institutions, PhD theses alone"  
<https://www.deccanherald.com/opinion/first-edit/leave-institutions-phd-theses-alone-960567.html>

<sup>10</sup> Abhiram Ghadyalpatil, Shaswati Das, 29 August 2018: "Maharashtra cops crack down on 'urban naxals' in five states."  
<https://www.livemint.com/Politics/83dgRkXPQhrsgfHuFKkgyJ/Maharashtra-cops-crack-down-on-urban-Naxals-in-five-states.html>

For example- the government's proposal to bring DU under Essential services maintenance act (enabling arrests without warrant for violations), and to impose CCS conduct Rules on JNU were shelved in 2018. The very next year 48 teachers of JNU were charge-sheeted for participating in a peaceful campus protest. At another central university, Visva Bharati the CCS gag orders prevent faculty from publicising administrative persecution, with more than 100 staff members show-caused, suspended or charge-sheeted.

On the contrary, the education phase has also seen simultaneous polarisation that not only simply denies but also violently attacks the ideology of dislike and it is inclusive of teachers and students in these very institutions. This is also a form of curb on academic freedom. The increasing culture of Labelling a person for opposing ideologies is also a stamp for views



unwelcomed. Two primary examples for these are- 1. How the evolutionary biologist Richard Dawkins was cancelled after being invited to University of California for his alleged Islamophobia. A charge he denied and justified by saying that he criticised all religions at the same time.

Hitting back closer to Home in Jadavpur University, Kolkata the screening of Vivek Agnihotri's Buddha stuck in a Traffic was cancelled at the last minute. He was heckled and attacked outside gate no8 for alleged murder of Rohith Vemula which he denied and claimed to be a suicide. Universities, today need a self-checked and only autonomously checked free and open space of debates, enquiry, and knowledge acquisition that the current structure that keeps on loosing with each passing day.

## 4. RELIGIOUS FREEDOM

Adding meaning to how scary and destructive ‘offence’ can be, all we need to do is add religion. Like when an innocent schoolteacher in France gets beheaded for offending religious extremists by showing a satirical cartoon previously used by Charlie Hebdo to a group of schoolchildren in a cultural democracy like France. In a way, we tend to live in the age of offence. And taking offence is not an explicit right to any particular political or non-secular or cultural cluster. From the most self-acclaimed liberals to Hindu fundamentalist social media to various Muslim fanatics, nowadays all of them operate on getting offended by something or the other with varying degrees of reaction and its course.

Our nation is not a stranger to individuals getting outraged. From artists like MF Hussain getting nagged out of the nation for 'offending' Hindu fundamentalists with his artistic specialty, Author Salman Rushdie cancelling his book signing in Jaipur due to intelligence report of a possible mob attack on him from the Indian citizens hurting their religious sentiments, to different brands like Tanishq<sup>11</sup> and Surf Excel<sup>12</sup> pulling out their meaningful and impactful advertisements due to claims of causing religious disharmony is a piece of everyday Indian life. Also, as mentioned above many comics and satirists received death and rape threats due to their humour regarding various Hindu sentiments. What is funny is how the people issuing these threats were widely celebrated across digital media.

We can comprehend the significance of the right to offend better by thinking about certain models. Looking from the very beginning, a cluster of Dalits reprimanded the Bhagavad Gita and Hinduism for the development and endorsement of the caste system. They portrayed the Bhagavad Gita and Hinduism as disgusting and offensive. Again, thinking about another group of rationalists who mocked the unexplainable wonders that Jesus is depicted to have performed. They portray the Bible as a book of falsehoods and Christianity as a philosophy for the guileless. Likewise, another group of feminists objects to polygamy in Islam. They censure Prophet Muhammad and the Quran as detestable and misanthropic. Every one of the three models would, apparently, be covered by both blasphemy provisions of the IPC and the proposed Punjab law. Every one of the three articulations as mentioned above would not pass in the events offensive if it was not about religion. If the Dalit group had scrutinized Mahatma Gandhi for his perspectives on rank, this would be passable, or if the feminists

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<sup>11</sup> Times Now Digital, October 14, 2020 : “ After internet backlash, Tanishq pulls plug on latest ad- the controversy around ‘Ekatvam’, explained <https://www.timesnownews.com/india/article/after-internet-backlash-tanishq-pulls-plug-on-latest-ad-the-controversy-around-ekatvam-explained/666883>

<sup>12</sup> Financial Express, March 12, 2019 “Surf Excel’s Holi ad promoting Hindu- Muslim Harmony faces backlash on Twitter” <https://www.financialexpress.com/india-news/surf-excel-s-holi-ad-promoting-hindu-muslim-harmony-faces-backlash-on-twitter/1511886/#:~:text=Soon%20after%20the%20ad%20was,girl%20and%20a%20Muslim%20boy.>

criticized Indian culture or the rationalists questioning anthropology. If the women's activists had scrutinized Indian culture, all would be passed as reasonable if religion would not have been involved in any of them.

There is nothing that makes religious sentiments exclusive so as to make its perceived insult a criminal offence. There is no primary principle that explains why the criticisms or insult to religion should not fall within the ambit of freedom of speech and expression. Secularism is an inherent constitutional principle prohibiting any religious interference in State affairs. The blasphemy laws do not aid the State to become secular in any way. If anything, it may betray secularism by being partial towards religions for appeasement or vote banks at the expense of non-believers. Several clauses within the Indian Penal Code (IPC) make it punishable upon the person expressing himself or herself not to “hurt sentiments”, something that is open to broad interpretation and is subjective. Section 295(A) and 298 criminalizes acts and speech intended to outrage religious feelings, including words, visible representations, or any signs. Who is motivated by deliberate and intended malice is left for the court to decide?

In *Ramji Lal Modi vs State of UP (1957)*, the apex court upheld the constitutionality of India’s blasphemy law. It held that the legislation was a reasonable restriction on free speech in the interest of harmonious public order. It held that blasphemy includes a tendency of bringing about the public disorder. This argument again is flawed in two ways. Firstly, it allows for what has been popularly termed as the Heckler’s Veto. The fact that people will react to someone’s speech violently should not silence the voice of others who want to speak out. Yet, this seems to be the case proposed law in Punjab. The government is reacting vigorously to intense protests against the sacrilege of the Guru Granth Sahib. But the intensity of protests should at no cost be a reason to silence unpopular expression and opinion.

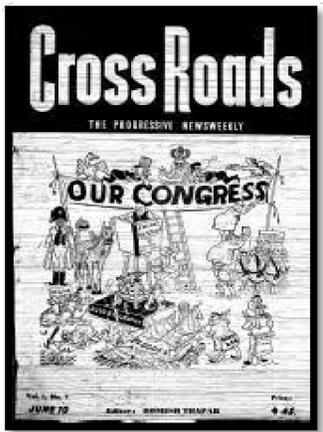
The second flaw is that the trend for public disorder is too vague. The criterion also fails to recognise that speakers cannot be blatantly held responsible for what other people decide to do or not to do. Blasphemy neither constitutes incitement to violence nor does it constitute lawlessness actions as per Supreme Court standards.

For these reasons, the blasphemy law in India is incompatible with the constitutional right to freedom of speech and expression. Any ‘deeper’ importance of religion integrated into our regular lives does not give us a good reason for making an exception to our freedom of expression.

## 5. IMPORTANT JUDGEMENTS

- **Romesh Thappar vs State of Madras**

Over the years protests by the Indian citizens have collectively exercised the freedom of expression. These protests have also propelled the states to incarcerate certain popular public figures, activists on grounds of maintaining public order. This raises an important question that, do all perceived breaches to public order merit for restrictions on free speech? Irrespective of the degree and the potency?



The 1950 judgement of the Indian Supreme Court provides ample food for that on this issue.

Romesh Thappar, a journalist believing in Marxist ideologue, edited and published an English weekly journal called CrossRoads<sup>13</sup> in Madras. The journal carried writings criticizing the then Congress government's policies and actions. On March 1, 1950, the Madras government (as it was earlier) banned the circulation as well as entry of CrossRoads under Section 9(1A) of the Madras Maintenance of Public Order Act, 1949, owing to securing public order in the state. Romesh Thappar challenged this ban on the weekly journal as well as Section 9(1A), claiming violation of his fundamental right to freedom of speech and expression as enshrined in the constitution. The government counter argued that the 1949 Act was a law relating to the security of the state, and actions under this provision constituted a reasonable restriction on freedom of expression.

Finally, the Supreme Court ruled in favour of journalist Thappar and set aside the government's ban on the journal. The Court categorically stated that freedom of speech and expression includes freedom of propagation of ideas, as well as freedom of circulation of the same ideas.

Simultaneously, the apex court also held that unless Section 9(1A) of the 1949 Act is concerned with any matter undermining the security of the state or tends to overthrow the state, it would be unconstitutional to violate freedom of expression, even if it may have been done on grounds of public interests and public safety. The Court stated that the Constitution talks about varying criteria for permissible curbs on the freedom of speech and expression

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<sup>13</sup> Global freedom of Expression Columbia University:  
<https://globalfreedomofexpression.columbia.edu/cases/thappar-v-madras/>

and draws a line between serious and aggravated forms of public disorder which are directly owed to endanger the security of the State and any minor breaches of the peace of local significance. Only a higher degree of any threat pertaining to the endangering the foundations of the state could be used to justify curtailment of the rights to freedom of speech and expression.

- **Brandenburg v Ohio, 395 US 444(1969)<sup>14</sup>**

During the end of the 20th century, the United States was experiencing one of the most fabricated phases of its history. As the Civil Rights Movement was getting stronger day by day, many white Americans seeking to resist change in dynamic were joining the Ku Klux Klan (KKK), an infamous white supremacist group. It was in this condition that the US Supreme Court, through a judgment passed in 1969, demonstrated the importance of the right to free speech and not correct speech. A KKK rally was held in 1964 in Hamilton County, Ohio. Clarence Brandenburg, a leader of the Ku Klux Klan, attended the rally and in his speech, he made various derogatory remarks against the Jewish and black communities in U.S. During the very speech, he also indicated the possibility of some sort of vengeance if the then US president, SC, and Congress continue suppressing the Caucasian race. After this speech, Brandenburg was convicted under the Ohio Criminal Syndicalism Statute, 1919, on charges of propagating violence to stir political reform and assembling with others of same ideology to advocate criminal syndicalism. In an appeal against this decision before the US Supreme Court on the speech, Brandenburg's conviction was reversed on the grounds that the Ohio statute that condemns his actions impinged upon freedom of speech and press, guaranteed under the US constitution's first amendment.

The court said that the constitution guarantees free speech and free press which do not permit a State use of force or of law violation except where such actions or circulation is primarily directed towards inciting or producing imminent lawless condition. The SC noted categorically that if the statute fails to distinguish mere advocacy of thought from incitement to lawless action it destroys the idea of free speech in our Constitution that has immunity from governmental control.

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<sup>14</sup> Global Freedom of Expression Columbia University:  
<https://globalfreedomofexpression.columbia.edu/cases/brandenburg-v-ohio/>

One of the judges, Justice Douglas, even criticized the restrictions on the freedom of speech which



were based solely on the perception that such speech presents red flags towards unlawful activities. He said that although the government could regulate the manner of advocacy of speech, such as place and hours of protest, it could not regulate what beliefs an individual hold.

- **2018 Duncanmec case (South Africa)<sup>15</sup>**

The lyrics of the Zulu song goes something like “Climb on top of the roof and tell them that my mother is rejoicing when we hit the boer”<sup>15</sup>: These were the very lyrics that led to the dismissal of nine black employees in Duncanmec (Pty) Limited in South Africa. Decoding the meaning of the lyrics, Boers were Afrikaans-speaking, white-skinned settlers whose representatives in the National Party of South Africa conceptualized the policy of ‘apartheid’ that marked South African life in the 20th century and continues to extend its long shadow till this day. According to Duncanmec company, in post-apartheid South Africa, singing a song that celebrated or rejoiced in the attack on a boer, is racially offensive conduct and amounts to hate speech. But the Supreme Court of South Africa disagreed with the company. However inappropriate the song might seem the word, ‘boer’ was not a racially offensive word when it is seen in the context in which it used.

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<sup>15</sup>Case CCT 284/17

[2018] ZACC 29

Hearing Date: 31 May 2018 Judgement Date: 13 September 2018, Constitutional Court of South

Africa’ <https://www.concourt.org.za/index.php/judgement/259-duncanmec-pty-limited-v-gaylard-no-and-others>

In explaining the context, the Court noted that the song was a historical representation of the age-old struggle of the country, and it was sung to mobilize workers during apartheid. In the present case, this singing was done by the employees to show defiance towards the authority. Instead of washing away racism in post-apartheid South Africa, the Court recognized that it was still very much prevalent despite the drafting of the Constitution that promised equality and freedom. This noteworthy decision was taken in the backdrop of another judgment of the Court passed which was passed four months earlier, which held that referring to a fellow employee in a workplace as a 'swart (black) man' would qualify as racially offensive conduct leading to possible dismissal. Despite the similarity in both the cases, the Court chose not to punish the nine employees in the Duncanmcc case. This difference was justified by the court in defining how equality does not imply a homogenization of behaviour or labelling one form as supreme, and another as inferior, but it is an acknowledgment and acceptance of the existing difference.

Although the decision itself has far-reaching consequences in the post-apartheid society in South Africa, but the approach taken by the court in dealing with the issue of racism and speech is noteworthy. The Constitutional Court emphasized upon the need to draw a distinction between speech that dehumanizes the historically oppressed community and those that embrace the prevalent historically accepted conduct as a method of expressing dissent. It serves as an important reference point for courts all over the world, including India.

### **3. RESEARCH OBSERVATION AND DISCUSSION**

- A. Analysing the primary Data Collected via google forms and questionnaire.
- 67% of the population consisting the respondents believe that the Indian Democracy is getting intolerant in the recent times. Although, on telephonic interview with few of the respondents it was found out that most of them believe that the cases have gone up in the six years of the BJP government in power, there has been no comparable data to ascertain this assumption that the record of the previous governments were better. It is only from 2014 that the National Crime Records Bureau (NCRB) started publishing data on offences against the state as registered under UAPA 2014. However, the increasing surge in sedition cases can be owed to the availability of the data at large as well as the widespread awareness of the Indian citizens.
  - 47.6% of the respondents believe that freedom of speech should not involve the right to offend. While 37% percentage believes freedom of speech should automatically involve right to offend. On very similar grounds 81% of the respondents believe that of someone says something racist, homophobic, or misogynistic or insinuating any religion or community it is a misuse of freedom of speech and that should be stopped.

Similarly, the survey also shows that 57.7% or the majority from a highly diversified sample pool thinks that freedom of speech should not be absolute. Integrating these responses with the response by our anonymous respondent in central administrative services, we see there is a clear contrast. Here, the focus is more on the freedom of speech and propagation of thought. The fact that Piers Morgan always had the journalistic freedom of saying what he wanted to and by, but he said to step down because of how the global audience did not see this as “right speech”. Here the respondent believes that the dominant powers in any society may it be civil societies, influential leaders or widely accepted government free speech simply means nothing more than “right speech at the right time”. Similarly for the government what is beneficial for them is free speech.

- 71.6% of the respondents strongly believe that there is an increasing need for amendment to the sedition law of India to suit the democratic framework instead of having colonial underpinnings. This data collected goes hand in hand with a paper published by Law commission on india in 2018 that it is time to re-think or maybe even repeal section 124A. The United Kingdom where the sedition law originated banned it in 2009. But nor everyone in India believes it to be that way like 18.6% of the respondents do not feel the need to amend or repeal the laws. Repealing the law can have daisy repercussions in India because that would mean not check on any threat from terrorism or any separatist tendencies.
- The responses get intertwined in the very last question of the interview where 43.3% of the population believes that we do not need a “Right to offend”, definitely not as a sperate fundamental right but it should be inclusive to freedom of speech. While 34.6% believes we need the “Right to offend” in India. Here, the tipping scale is the remaining 22.1% which is not sure about the right but is a very decisive pool with a slight tilt that can simply, change the majoritarian voice of the people.
- However, what formed the most important part of the Qualitative research is the bulk hesitancy noticed in the respondents to fill up the survey. Almost, 30-40% of the respondents personally enquired about the anonymity of their names and if there is any possibility of the paper coming under the government radar. They were afraid that this might lead to unnecessary harassment to them and their family or their future prospects in case the paper gets public. This clearly highlights, the fear of dissent or simply put fear of even criticizing the government.

#### B. Analysing the collection of secondary data

- Creative scrutiny is something that India has never been a stranger to. Many people are aware about Salman Rushdie’s Satanic verses and how one of his meet and greet in India had to be cancelled because of an intelligence warning that there will be a mass attack on him as he reaches the venue. All this happened because of his interpretation of Islam in his book which was not widely accepted to some parts of the community. What we are not aware is how former Prime Minister Indira Gandhi also found Midnight’s Children offensive due to claims of excessive use of oppressive powers during emergency and alleged involvement in election fraud as well as Sanjay Gandhi’s “cleansing” of the Jama Masjid slum. But what is notable is that the book was never banned for offending the Prime Minister unlike satanic verses. Even if these tales seem a lifetime ago, they still have immense impact in Indian content made on religious and political affairs. From

cartoonists like Aseem Trivedi getting arrested on charges of sedition to defamation charges on Hasmukh series by Vir Das, recent arrest of comedian Munawar Faruqui and FIRs on Tandav series, Bombay Begums and anything that does not belong to mainstream Bollywood entertainment has faced clamp down not only the government or the political parties but also from communities at large. While it is important for civil societies, communities, or governments to regulate content that has the potential to disturbing social security or safeguard public and cultural interests, continuous clamp down on creative content with a different angel of representation will put the full stop to creative liberty and thought. It is also the duty of the general public to demand entertainers and creative artists to create something new and meaningful instead to forcing them to stick to what is safe and conventional. The OTT players have widely opened an array of entertainment that we needed the most. This streaming service industry in India is on a high growth trajectory estimated at revenue around Rs 4,300 crore in FY2019. OTT is estimated to reach Rs 17,400 Cr by 2024 making it the golden goose that India should not even think about culling with restrictions. At a time like the global pandemic this sector has created employment opportunities for lakhs of works in the industry. With Delhi Crime winning ‘Best Drama Series’ in the Emmy’s and international fame and recognition of unconventional and exceptional talents like Radhika Apte, Shefali Shah, Shobita Dhulipala. Pankaj Tripathi and many others for the atypical content they are a part of demands support from Indian audience. If these platforms are subjected to obtaining 1.3 billion,no objection certificates for offending any group of citizens it will simply slow down the process of creativity.

- The arrest of students like Disha Ravi, Safoora Zargar, Umar khalid for voicing their strong ideological standpoints which seems to offend the popular and acceptable free speech by the government is the perhaps the main reason behind this paper. The worst kind of effect to free speech is the curbs on academic freedom. In 2017 when students of BHU protested against gender discrimination, they faced police batons and were accused by the university chancellor. This is a recurring colour almost every central government universities in JNU and Jamia Milia as well as private universities like Ashoka. What is alarming is in NCRB 2019, most sedition cases were slapped on 18–30-year-olds. But for how long can we continue to see the brightest minds of Indian future behind the bars? Simply sharing online documents or participating in protests or campaigning for environment is seen as offensive and subversive actions. In a highly globalized world, Freedom of speech and expression should be inclusive t the right to seek a global audience. As Indians we express various thoughts and opinions on policies by the United States, about the presidential election, our favourite international albums, actions by artists just not in India but elsewhere, they also equally have the right to keep opinions about Indian laws, culture, protests etc until that infringes the sovereignty of the state. It is by sharing and resharing of different cultures and opinions that we learn from each other and get more connected. If everything is taken as an offense, then that part of the communications gets shut and we are left with no exchange of ideas. Participating in a global campaign is similarly under the rights and liberty of individuals. We cannot simply lash out on the pillars of Indian future and representation because they have a separate opinion. There has be a dialogue with these young dissenters to understand their concerns

and not demonise them or else India will inevitably face the claws of enhanced brain drain.

- While talking about religious freedom the primary question is does criticism of a religion or the disbelief or unlikability towards a religion be a reason for criminal offence?

After research done on various case studies in India and international affairs the plausible answer is that if we are talking about right to offend, we also must acknowledge the right to get offended because of their own liberty and freedom of expression. And those who get offended are welcome to protest peacefully but definitely, not kill or gag offenders like the classic Charlie Hebdo case in France.

*"It's high time religious people realised one basic truth: every religious text and tradition is offensive, blasphemous and heretical to the followers of other sects and religions."*

- Feroze Mithiborwala

- In India, it is often considered that free speech does not extend to offensive speech. But the irony is every religion has strong beliefs in its own superiority, and this necessarily offends other religions in the process. Freedom to practice any religion inherently implies freedom to offend others, and tolerance by those offended by it. All freedoms are subjected to reasonable curbs. If someone deliberately incites violence that must certainly be stopped. This comes on the very grounds of the propagation of Love jihad laws which demean interfaith marriages and see them as taboo. Christianity views people who reject Christ as "heathen" who cannot go to heaven just because they do not believe in Christ and are doomed for hell. This is bound to offend non-Christians. But is that a justifiable ground for burning the Bible or killing Christians? it does not. The Quran and Hadith historically led Muslim conquerors to convert by the sword and kill millions of people but that does not justify banning the Quran and Hadith. Hindu scriptures hold that bad people inclusive of people from other religions will be reborn as animals like dogs and pigs. This can offend non-Hindus but does not explain the killing of Hindus or banning the scriptures. People of different religions can co-exist only via tolerance, not punishment or revenge. Having said this, Muslim promotion of secular values has similarities with the anti-CAA protests at Shaheen Bagh. The Shaheen, Bagh protesters invoked not the Sharia but freedoms of the Constitution with slogans like "I love India" and singing the national anthem. This shows that as Indian Hindutva needs to develop inclusivity towards Islam, Islam should also not support criminal offences in name of religion may it be in India or France. Developing a faith so strong that feels threatened by criticism or disbelief of others is a sign of one's one disbelief or insecurity in the faith. People of different religions in a secular country like India can only co-exist only via tolerance of ideas and free propagation. Not, by punishment or revenge.

### 3.1 Limitations of Research-

The limitations faced during the research paper were

**a.** Hesitancy amongst the respondents to answer the survey forms owing to possible threats from the establishment which led most of them to respond under anonymous names and frequent need to clarify whether the paper could come under the government radar. This also formed a very important part of qualitative research.

**b.** Lack of availability of data in abundance as the NCRB started publishing data from 2014 itself.

**c.** Due to the ongoing pandemic, it became impossible to conduct focus group discussions or wide distribution of questionnaires in person which hindered. Qualitative analysis.

## **4. CONCLUSION**

What will happen if India finally incorporates the “right to offend”? Everyone would have the right to offend others may it be offending the state, individual or community and all we have to do is listen to it and not act upon it in any way. Surely, the right to offend would make criticising the state legal, criticising any faith legal, would give absolute artistic freedom and carter to absolute propagation of any ideals. On the other hand, it would support the right of influential public figures like Ram Dev Baba to openly claim to cure homosexuality by Ayurveda, or panchayats banning girls for wearing jeans as they find it offensive or outrageous comments celebrating racism, homophobia, communal disharmony etc. Having said that, absolute freedom of speech and expression means safeguarding the speech of every person irrespective of the popularly accepted opinion.

Taking an example of Piers Morgan stepping down due to the global backlash he received for his comments about not believing anything Meghan Markel said on the Oprah Winfrey show, the global audience was quite happy with the step down without an inch of doubt about how that was curbing his journalistic freedom. If, instead of Meghan Markel and prince Harry, it would have been Prince Charles and Camilla, Duchess of Cornwall, the same global community would have nodded in agreement with Piers Morgan’s reaction to the interview. Similarly, as after 9/11 it was the accepted speech that enemy combatants primarily from Afghanistan and Iraq in Guantanamo Bay should be tortured to death and it was widely supported. With the change of time and recognition of basic human rights for these detainees

such extremism by state faces strong criticism. These examples show that there is no presence of Free speech in any country. As per the government the narrative it has is the free speech and as per the citizens the popular opinion is the free speech and anything opposing that becomes offensive. The concept of free speech is utopian in anywhere in the world, it is the “right” speech that we as a society accept.

Looking from the most complicated perspective of religion, Author Brian Winston<sup>16</sup> in his book “A right to offend” analyses some very important contemporary cases of “offense” which can help in putting things into perspective. He effortlessly brings up the battle for or against free speech in an evergreen and ceaseless manner regarding the religious dimension with examples like the prohibition of film Noah in various Islamic countries, Iran’s former supreme leader Ayatollah Ruhollah Khomeini’s fatwa on Salman Rushdie for Satanic verses, John Milton’s *Areopagitica* and many more. In this book he introduces the concept of *Harm principle* being seized by those who felt wronged, to come up with a plan to control and direct the public opinion and beliefs to fulfil their needs and purpose. It is in this harm principle that a right to offend in India would also mean a guarantee of right to get offended and how those getting offended are rightfully reacting to the offense.

We must accept that we do not live in the ideal world or the ideal democracy. There must be some restrictions to freedom of expression and the right to offend being a definite part of freedom of speech but again not absolute, so as to not spread hatred among communities and to incite violence of any sort. These principles have to be constantly negotiated and renegotiated as the society evolves while ensuring that some perpetrators of hate speech do not use the freedom to serve their venom. The right to offend being a part of the freedom of speech and expression is important for the foundational liberty in a democracy which needs self-assessment and reconsiderations before conducting themselves. While Disha Ravi was released on the grounds that criticising the government is not sedition, in Begusurai case 1953 the S.C upheld the conviction due to acts that clearly indicated the effect of subverting the government by violent means. The blame of the junk sedition cases cannot only be put on central and state governments. Sometimes, it is the aggressive media framing and polarisation or reluctance for implementation of laws like Sec 66A which was struck down but still cases are filed under it. Other times it is the widespread misuse of power by police forces booking people for criticising any political party, promulgation of ordinances like 118D into police act criminalizing online posts for offensive content. It can also be owed to India’s slow-moving democracy. The judiciary must jealously guard the personal liberty of the people. By not hearing habeas corpus petitions for months and denying bail in genuine cases can further decrease India’s partially free status to not at all a free status country.

There is however complete unanimity of amending the laws on how they are implemented on the ground. Either the sedition law has to be taken off the statute book or use very sparingly and with possible decrease of criminalisation. In cases like sedition the process in itself becomes the punishment because of media trails, societal influence, and long waiting line in

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<sup>16</sup>By Brian Winston. London, UK: Bloomsbury, 2012. 414 pp. ISBN 9781849660150.

the courts. Use of this law excessively in the name of security will be a negatively defining factor for freedom of expression. In the long-term perspective what could possible help is regular workshops to train police personnel mainly investigators about the scope of various laws in the country. While the population may seem deep rooted in only the administration, it is actually well delved inside the Indian diaspora. The collective approaches of social, legal, and administrative approaches will be needed to have an inclusive right to offend and also right to get offended and react on it unless it incites crime or violence.

Given that governments in Indian democracy survive on public mandate, it should be mature enough to handle criticism of various policies and adapt more to correct the course rather than penalise its own people. While national security and integrity of the country are non-negotiable, democratic principles enshrined in the constitutional also must never be compromised.

#### **4.1 Future Extension of Current work**

#### **4.1 Future Extension of Current work**

The ongoing pandemic saw an exponential growth in the usage of every form of digital media which also gave the opportunity to express opinions and perceptions pertaining to oneself on these platforms which in itself has faced many restrictions and clampdown. The result of the current research work and the analysis of the provisions and scope of sedition should be widely known to the citizens, students and artists for being able to safeguard their own rights as well as to act responsibly and fulfil their fundamental duties to respect the fundamental rights of others. The local and national administration must interpret the current provisions as per the current situations to differentiate between dissent and security threat for the overall democratic rights of the citizens as well as to safeguard them from any threat. Some areas of future research are-

- a. The changing digital landscape of multi-nationals companies like Twitter and Facebook working as an opinion maker rather than a communicator.
- b. Digital Battles ( twitter Vs Indian Government) where should we draw the line?
- c. How to include participatory democracy at every level to break the conformities of religious intolerance and religious superiority ?

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## REFERENCES

1. A Right to Offend: Free Expression in the Twenty-First Century. By Brian Winston. London, UK: Bloomsbury, 2012. 414 pp. ISBN 9781849660150.  
[https://www.google.co.in/books/edition/\\_/CzF824TavGQC?hl=en&gbpv=1](https://www.google.co.in/books/edition/_/CzF824TavGQC?hl=en&gbpv=1)
2. A Right to Offend: Free Expression in the Twenty-First Century. By Brian Winston. London, UK: Bloomsbury, 2012. 414 pp. ISBN 9781849660150.  
[https://www.google.co.in/books/edition/\\_/CzF824TavGQC?hl=en&gbpv=1](https://www.google.co.in/books/edition/_/CzF824TavGQC?hl=en&gbpv=1)
3. FACING HISTORY AND OURSELVES: August 28, 2020, "UNDERSTANDING #TAKEAKNEE AND ATHLETE ACTIVISM. How are the Athletes protesting Racial Injustice"?<https://www.facinghistory.org/educator-resources/current-events/understanding-takeaknee-athlete-activism#:~:text=Over%20the%20summer%20of%202020,left%20the%2049ers%20in%202017.>
- 4.4. Roger J. Kreuz, University of Memphis: September 15, 2020 "Charlie Hebdo shootings served as an extreme example of the history of attacks on satirists"<https://theconversation.com/au/topics/charlie-hebdo-attack-14299>
5. Updated Jul 13, 2020 11.08 pm: "Gujarat man arrested for threatening to rape stand-up comedian for her remarks about Shivaji statue".<https://scroll.in/latest/967318/gujarat-man-arrested-for-issuing-rape-threats-to-stand-up-comedian-for-her-remarks-on-shivaji>
6. Press Trust of India, New Delhi, HT correspondent, April 27, 2020 11:08 IST: "Vir Das Has Mukh in trouble, plea in Delhi H.C to take series off Netflix for allegedly maligning lawyers"<https://www.hindustantimes.com/tv/vir-das-hasmukh-in-trouble-plea-in-delhi-hc-to-take-series-off-netflix-for-allegedly-maligning-lawyers/story-rl21h1D4yF0ffEh9PQ2TK.html>
7. Vanessa Thorpe, October 4 2020 : "Ai Weiwei on China, free speech and message for London"<https://www.theguardian.com/artanddesign/2020/oct/04/ai-weiwei-on-china-free-speech-and-a-message-for-london>
8. TIMESOFINDIA.COM / Updated: Mar 20, 2021, 12:25 IST: "Pratap Bhanu Mehta resignation: Yale, MIT, Harvard professor writes open letter to Ashoka University"  
[http://timesofindia.indiatimes.com/articleshow/81600504.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/81600504.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)
- 9.<sup>1</sup>DHNS, MAR 11 2021, 01:34 ISTUPDATED: MAR 11 2021, 02:03 IST: "Leave institutions, PhD theses alone"<https://www.deccanherald.com/opinion/first-edit/leave-institutions-phd-theses-alone-960567.html>
10. Abhiram Ghadyalpatil, Shaswati Das, 29 August 2018: "Maharashtra cops crack down on 'urban naxals' in five states."<https://www.livemint.com/Politics/83dgRkXPQhrsgfHuFKkgyJ/Maharashtra-cops-crack-down-on-urban-Naxals-in-five-states.html>
11. Times Now Digital, October 14, 2020 : " After internet backlash, Tanishq pulls plug on latest ad- the controversy around 'Ekatvam', explained"<https://www.timesnownews.com/india/article/after-internet-backlash-tanishq-pulls-plug-on-latest-ad-the-controversy-around-ekatvam-explained/666883>

12 Financial Express, March 12, 2019 “Surf Excel’s Holi ad promoting Hindu- Muslim Harmony faces backlash on Twitter” <https://www.financialexpress.com/india-news/surf-excels-holi-ad-promoting-hindu-muslim-harmony-faces-backlash-on-twitter/1511886/#:~:text=Soon%20after%20the%20ad%20was,girl%20and%20a%20Muslim%20boy.>

13 Global Freedom of Expression Columbia University:  
<https://globalfreedomofexpression.columbia.edu/cases/brandenburg-v-ohio/>

14 <sup>1</sup> Global Freedom of Expression Columbia University:  
<https://globalfreedomofexpression.columbia.edu/cases/brandenburg-v-ohio/>

15 Case CCT 284/17  
[2018] ZACC 29  
Hearing Date: 31 May 2018 Judgement Date: 13 September 2018, Constitutional Court of South Africa’ <https://www.concourt.org.za/index.php/judgement/259-duncanmec-pty-limited-v-gaylard-no-and-others>