

# **SUPPRESSING DISSENT – THE CRIMINALISATION OF SPEECH AND EXPRESSION IN INDIA**

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## **Abstract**

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Democratic dissent is not disloyalty; it is instead a positive civic duty. Dissent and democracy are synonyms in a liberal-democratic social order. Yet, we see that the governments at state and national level do not always share these values and instead use draconian laws and criminalise the protected right of the citizens of speech and expressions. There was no right to freedom of speech and expression until the departure of the British and the birth of our Constitution, wherein Article 19(1)(a) provides that; “All citizens shall have the right to freedom of speech and expression”. This freedom of speech and expression comes under the preview of law and forms the pillar of any democracy. Without citizens having the power in their hands to criticise the government or their decisions and policies, the main objective of democracy gets violated.

In this paper, the researcher’s main focus is to draw an analysis on how the prevailing draconian laws in India are used to criminalise free speech. It will document examples of vague and overboard laws that are used to stifle political dissent, restrict activities of peaceful expression, harass journalists, arbitrarily taking down internet services in territories and to target marginalised communities and religious minorities. It will further give recommendations to the government to avoid overboard use of such law and protect peaceful expression.

## **Keywords**

Democracy, Government, Section, Charge, Criminalise, Dissent, Expression, Speech, Amend, Silence, Article.

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*“Once a Government is committed to the principle of silencing the voice of opposition, it has only one way to go, and that is down the path of increasing repressive measures, until it becomes a source of terror to all its citizens and creates a country where everyone lives in fear”*

– Harry S. Truman (1945 - 1953)

## **I. INTRODUCTION**

*“Our democracy will not sustain if we can’t guarantee freedom of speech and expression”*, these were the words of our Prime Minister, Narendra Modi in June 2014, a month after he took his office. Freedom of speech and expression is protected under the Indian Constitution and other international treaties to which India is a party. When it comes to democracy, the liberty of thought and expression becomes of cardinal value of paramount importance under our Constitutional scheme.<sup>1</sup> Democracy is Supreme and dissent forms the most quintessential right granted by our Constitution. Majoritarianism is the antithesis of any democracy, and a country cannot grow in a holistic manner unless criticism against the government is reflected by its citizens.

However, it has been observed over the years that governments at both national and state level do not always share such value and often pass laws and take harsh actions to criminalize peaceful expression. The use of draconian laws by the government such as sedition provisions, criminal defamation to silence dissent are due to vaguely worded laws that are overboard and prone to misuse and as such are repeatedly used for political purposes against critics. Further, while a few prosecutions end up being dismissed and

abandoned, most people who were engaged in nothing more than peaceful expression of speech get arrested by being held in partial detention and are subjected to expensive criminal trials. Fear of such actions leads to self-censorship, which is the foremost defeat to right of expression. Very seemingly, the successive Indian governments have made little or no effort to prevent local officials or private actors from abusing the law to harass the individuals expressing minority views or to even protect them from violent attacks from extremist groups. Most often the authorities justify such restrictions on expression to justify public order, risk of potential incitement of violent protests and communal violence.

Indian Courts have generally protected an individual’s right to freedom of expression; however, this record gets blurred and uneven. Lower courts often give poorly reasoned decisions. Supreme Court on the other hand while being a forceful defender for the protection of freedom of expression, has at instances, been inconsistent leaving the lower courts with no appropriate precedent to rely upon. This lack of inconsistency has left the door open for the continued misuse of law by the officials and interest groups to harass and criminalise unpopular and dissenting opinion.

It should be understood that the problem with India is not that our Constitution does not

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<sup>1</sup> Shreya Singhal v. Union of India, (2013) 12 S.C.C. 73.

guarantee us the right to free speech but that it is easy to silence free speech due to over-board laws, inefficient criminal justice system and jurisprudential inconsistency. Our legal system is in fact infamous for being clogged, leading to lengthy and expensive delays thereby discouraging the families of the innocent to fight for their right to free speech.

## **II. LEGAL REGIME UNDER OUR CONSTITUTION**

The Constitution of India expressly protects the right to free speech and expression under Article 19(1)(a), which provides “*all citizens shall have the right to freedom of speech and expression.*”<sup>2</sup> However, the provision to limit the right to freedom of expression is given in Article 19(2)<sup>3</sup> which permits reasonable restrictions in the interest of security of state, sovereignty and integrity, public order, decency and morality with respect to contempt of court, relations with foreign states, defamation and incitement to violence. The Supreme Court has made it clear that only those cases wherein restriction is imposed in the interest of one of the specified aspects shall pass the Constitutional scheme.<sup>4</sup>

The Supreme Court in several instances has been protective of the individuals right to free speech and expression. The effect of words shall be judged from the standards of a reasonable mind of the firm and courageous and not of weak and vacillating or of those who scent danger in every hostile point of view.<sup>5</sup> The advocacy of unpopular opinion unless it gives rise to incitement shall be

protected by the Constitution, as is criticism of government action.<sup>6</sup> The scope and the extent of protection shall be detriment of the terms “reasonable restrictions”, “in the interests of” and on the grounds listed in Article 19(2). However, in order to impose a restriction on a person’s right to speech and expression, there must be an authority of law to do so, and without this authority of law, no restriction shall be imposed on the right, and if any such restriction is imposed, the law shall be deemed unconstitutional.<sup>7</sup>

Hence, it is pertinent to note that the Supreme Court is not always in favour of upholding freedom of speech and expression and acts as a safeguard against the state whenever a right is violated. The state uses charges of sedition against individuals out of sync in the voice of the society due to its thin line of difference from right of speech. Other laws too, are used arbitrarily thereby violate the right to freedom of speech and expression granted by our Constitution.

## **III. INTERNATIONAL STANDARDS AND REGIONAL CHARTERS**

The General Assembly at United Nations on 19<sup>th</sup> December, 1966 adopted *International Covenant on Civil and Political Rights*<sup>8</sup> that gives legal force to Universal Declaration of Human Rights. The ICCPR under its Article 19 provides that; - (1) “*Everyone shall have the right to hold opinions without interference.* (2) *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in*

<sup>2</sup> INDIA CONST. art. 19, cl. 1.

<sup>3</sup> INDIA CONST. art. 19, cl. 2.

<sup>4</sup> Singhal, *supra* note 1, at 17.

<sup>5</sup> Ramesh v. Union of India, A.I.R. 1988 S.C. 775 (India).

<sup>6</sup> Kedar Nath v. State of Bihar, A.I.R. 1962 S.C. 955 (India).

<sup>7</sup> State of M.P. v. Bharat Singh, A.I.R 1967 S.C. 1170 (India).

<sup>8</sup> International Covenant on Civil and Political Rights, Dec. 12, 1966, 999 U.N.T.S. 171.

*the form of art, or through any other media of his choice.*"<sup>9</sup> Further, *clause 3* provides for the grounds under which the state can put restrictions on the exercise of this right "*a) For respect of the rights or reputations of others; b) For the protection of national security or of public order (order public), or of public health or morals.*" Further, India is not merely a signatory to ICCPR but had also ratified the covenant on 10<sup>th</sup> April 1979, which implies that ICCPR is enforceable in India. Principle 12 of the *Camden Principles on Freedom of Expression and Equality*<sup>10</sup> ("Camden Principles"), prepared in 2009 defined the terms 'hatred', 'hostility', 'advocacy' and 'incitement'.

In addition, there are International Regional Charters which provide for basic human rights among which include the freedom of speech and expression; however, such charters have little or no influence to India or create any type of legal obligation. *The African Charter on Human and People's Rights*<sup>11</sup> adopted by the organisation on African's Unity in 1981 under its Article 9 provides for individuals' freedom of speech and expression. Article 13 of the *American Convention on Human Rights*<sup>12</sup> that became effective in 1978 provided for this right including the freedom to seek, receive and impart information's of all kind in the form of art or any other medium. The League of Arab States adopted the *Arab Charter on Human Rights*<sup>13</sup> on 22<sup>nd</sup> May, 2004 wherein it contained the principles of

Universal Declaration of Human right as well as of International Covenant on Civil and Political rights. Finally, *The European Convention on Human Rights*<sup>14</sup>, which became active in 1953, provided for laws pertaining to freedom to expression under Article 19.

Upon analysis, pursuant to these standards, laws that are currently in effect in India tend to impose restrictions on expression that more often go beyond the restriction that are permitted by International Law and in few instances conflict our Constitution itself. Continued application of laws in lieu of its inconsistency with International Standards makes it clear that there is a need to amend and repeal the laws. The Special Rapporteur on the freedom of Expression stated that, "*arbitrary use of criminal law to sanction legitimate expression constitutes one of the gravest forms of restriction to the right, as it not only creates a 'chilling effect', but also leads to other human rights violations.*"<sup>15</sup>

#### **IV. LAWS CRIMINALISING PEACEFUL EXPRESSION**

The Indian authorities at the State and the National level use a wide range of vaguely worded laws to investigate, prosecute and arrest individuals for expressing views. The Indian laws upon assessment with international standards have identifiable shortcomings. Such laws are often misused to criminalise peaceful expression. While some cases get dismissed, the existence of such vaguely termed overboard laws continues to have a rather far-reaching chilling effect on those who

<sup>9</sup> International Covenant on Civil and Political Rights, art. 19, Dec. 12, 1966, 999, U.N.T.S. 171.

<sup>10</sup> The Camden Principles on Freedom of Expression and Equality, art. 12, Apr., 2009.

<sup>11</sup> African Commission on Human and People's Rights, Jun 27, 1981, 1520 U.N.T.S. 217.

<sup>12</sup> American Convention on Human Rights, "Pact of San Jose", Costa Rica, Nov. 22, 1969, 1144 U.N.T.S.123.

<sup>13</sup> Arab Charter on Human Rights, Sept. 15, 1994, Res. 5437 L.J. 151.

<sup>14</sup> European Convention on Human Rights and Fundamental Freedom, Nov 4, 1950, ETS 5.

<sup>15</sup> UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, May., 2011, A/HRC/17/27/2011.

hold minority views on expressing criticism or dissent against the government.

## 1. Sedition Law

Sedition Law in the Indian Penal Code under Section 124A<sup>16</sup> was introduced by the British in 1870. It was used by the British as a form of colonial control. India's First Prime Minister, Jawaharlal Nehru during a parliamentary debate in 1951 on free speech stated, "*Now so far as I am concerned that particular Section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better.*"<sup>17</sup> In 2011, a private member bill was introduced in the Rajya Sabha to remove S124A IPC and later in 2015, The Indian Penal Code Amendment Bill (2015)<sup>18</sup> was introduced that proposed to criminalise only those acts that directly lead to incitement of violence.

In the case of *Kedar Nath v. Union of India*<sup>19</sup>, the court opined that criticism of the government however strongly worded shall be considered consistent within its reasonable limits unless they have the tendency or intention to create disorder, incitement to violence or disturbance of law.<sup>20</sup> Although this decision narrows the understanding of law, however, restriction on the basis of

'tendency' to create disorder gives the local authorities room for abusive application.

Although convictions are less, there has been a significant increase on the number of people being charged with sedition. According to the National Crime Record Bureau which started collecting information in 2014, reported 47 cases<sup>21</sup> across the country which increased to 70 in 2018. In January 2020, more than 3000 protestors against the Citizenship Amendment Act were charged with Sedition and 3300 farmers being charged for protesting against land disputes.<sup>22</sup>

In February 2016, Delhi police arrested student union leader, JNU, Kanhaiya Kumar, accusing him of hate speech during a meeting organised in campus<sup>23</sup>. Upon trial the police admitted in the court that Kanhaiya had "not been seen" in the video footage available raising any anti-national slogans. Five more students were booked under the case. Despite police's admission that there was no evidence of anti-national sloganeering and no evidence on incitement of violence, the government is yet to admit that the arrest was wrong. In 2012, Tamil Nadu Police filed case against thousands of individuals peacefully protesting against the construction of nuclear power plant in Kudankulam<sup>24</sup>. Later, the court found out that the state had denied both the

<sup>16</sup> Indian Penal Code, No. 45, Acts of Parliament 1860.

<sup>17</sup> Manoj Mitta, *Jawaharlal Nehru wanted sedition law out as early as 1951*, TIMES OF INDIA, (Sept. 11, 2012, 04:16PM), <http://timesofindia.indiatimes.com/city/mumbai/Jawaharlal-Nehru-wanted-sedition-law-out-as-early-as-1951/articleshow/16343758.cms>.

<sup>18</sup> Private Member's Bill, Bill no. 234 of 2015, (December 18, 2015), <http://www.shashitharoor.in/in-parliamentdetails.php?id=379>.

<sup>19</sup> 1962 AIR 955.

<sup>20</sup> Nath, *supra* note 7, at 809.

<sup>21</sup> National Crime Records Bureau, Ministry of Home Affairs, Government of India.

<http://ncrb.gov.in/StatPublications/CII/CII2014/Compendium%202014.pdf>.

<sup>22</sup> *Id.*

<sup>23</sup> Kanhaiya Kumar, *We are of this country and love the soil of India: Full text of Kanhaiya Kumar's speech*, INDIAN EXPRESS, (Feb. 18, 2016, 02:15PM).

<http://indianexpress.com/article/opinion/columns/kanhaiya-kumar-speech-jnu-row-is-this-sedition/>.

<sup>24</sup> *India: End Intimidation of Peaceful Protesters at Nuclear Site*, HUMAN RIGHTS WATCH NEWS RELEASE, (May 11, 2012, 05:13PM)

<http://www.hrw.org/news/2012/05/11/india-end-intimidation-peaceful-protesters-nuclear-site>.

freedom of speech and the freedom to protest among protestors<sup>25</sup>. In September, 2012, Aseem Trivedi was arrested after a complaint was filed against him for mocking the Indian Constitution and the National Emblem<sup>26</sup>. In March, 2016, Uttar Pradesh government charged 60 people with sedition for cheering for Pakistan against India in a cricket match. In 2014, seven students were charged with sedition for refusing to stand up during national anthem.

The aforementioned cases thereby reveal how divided our country still prevails over the impression of intolerance and imperative legal protection of peaceful expression. However unpopular or unreasonable people's dissenting views might seem, such expressions should not be branded as criminal simply because they oppose the government.<sup>27</sup> New Zealand and the U.K. are countries who have abolished their sedition laws<sup>28</sup> over the recent years. India must also follow their lead.

## 2. Criminal Defamation

Section 499 of the Code<sup>29</sup> sets forth the definition of criminal defamation. This provision is not used as often as civil defamation, nor does it frequently result in convictions, however, the threat of

merely a criminal action can have a chilling effect on free speech. *The UN Special Rapporteur on Freedom of Expression* has made recommendation in its report to abolish this provision.<sup>30</sup> Defamation is frequently used to mask the political and economic powers as a means to retaliate against criticisms of mismanagement of corruption and to exert undue pressure on media.<sup>31</sup> The distinction that serves the government officials with regard to reputation as against ordinary citizens makes it harder for persons in power to deter or penalize those who expose wrongdoing.<sup>32</sup>

In the recent years, observations have been made with respect to increasing cases used by corporations, business houses and politicians against journalists and student groups to suppress critical speech. Such suits are normally made in an abuse form of Strategic Litigation Against Public Participation (SLAPP Suits) that are used for the sole purpose of intimidating defendants to silence.<sup>33</sup> In 2009, Indian Institute of Planning and Management (IIPM) filed several defamation cases against publication of content that could be critical for their institute; when the court quashed

<sup>25</sup> Chennai Solidarity Group for Koodankulum Struggle, *Fact Finding Report on the Suppression of Democratic Dissent in Anti-Nuclear Protests by Government of Tamil Nadu*, KRACTIVIST, (Apr. 2012, 09.15AM) [http://www.dianuke.org/wpcontent/uploads/2012/04/Fact\\_Finding\\_Report\\_Sam\\_Rajappa\\_English.pdf](http://www.dianuke.org/wpcontent/uploads/2012/04/Fact_Finding_Report_Sam_Rajappa_English.pdf).

<sup>26</sup> *India: Drop Sedition Charges Against Cartoonist*, HUMAN RIGHTS WATCH NEWS RELEASE, (Oct. 12, 2012, 05:30AM), <http://www.hrw.org/news/2012/10/12/india-drop-sedition-charges-against-cartoonist>.

<sup>27</sup> Law Commission Reforming the Law of Sedition: Consultation Draft (Oct. 2006). [http://www.lawcom.govt.nz/sites/default/files/pressreleases/2006/10/Publication\\_128\\_343\\_SEDITION%20CONSULTATION%20DRAFT.pdf](http://www.lawcom.govt.nz/sites/default/files/pressreleases/2006/10/Publication_128_343_SEDITION%20CONSULTATION%20DRAFT.pdf), at 18.

<sup>28</sup> The Crimes (Repeal of Seditious Offense) Amendment Act, 2007, No. 26, Acts of Parliament, 2007 (India).

<sup>29</sup> Indian Penal Code, No. 45, Acts of Parliament 1860.

<sup>30</sup> UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, (Jun. 2012), A/HRC/20/17.

<sup>31</sup> *Id.* at 83.

<sup>32</sup> UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, (Apr. 2010), A/HRC/14/23, para. 82: The protection of reputation of others "must not be used to protect the State and its officials from public opinion or criticism ... (n)o criminal or civil action for defamation should be admissible in respect of a civil servant or the performance of his or her duties".

<sup>33</sup> *The use of India's Laws to Suppress Free Speech*, INTERNATIONAL HUMAN RIGHTS PROGRAMME, (May 20, 2015) <http://www.pen-international.org/theindia-report-imposing-silence/>.

a few of these suits by 2016, the institute withdrew all.<sup>34</sup>

Between 2011 and 2016, Jayalalitha lead government in Tamil Nadu reportedly filed more than 200 cases against journalists, media outlets and rival politicians.<sup>35</sup> The court, stayed the case and opined that a defamation suit was not meant for a state to file against individuals. In 2018, the MeToo Movement lead caused several defamation cases against men for allegedly sexual harassment cases. In 2015, Arun Jaitley filed defamation suit claiming 10 crores against Arvind Kejriwal for making scandalous remarks based on financial irregularities in Delhi and DDC against the claimant<sup>36</sup>. Hence, it can be observed how Criminal defamation suits are used to threaten or bully rather than to seek Justice.

In 2016, the Supreme Court upheld the constitutionality of India's criminal defamation law, stating that "A person's right to freedom of speech has to be balanced with the other person's right to reputation".<sup>37</sup> However, the court did not conclude with regards to how the law does not violate international human right norms, how it does not permit imprisonment for criminal defamation neither does the court offer a rationale with respect to why civil remedies are insufficient for defamation in democracy.

<sup>34</sup> 7 years late, Delhi HC finally cancels IIPM injunction SLAPed on Caravan, LEGALLY INDIA (Feb 22, 2018, 17:26PM), <https://www.legallyindia.com/the-bar-and-bench/7-years-late-delhi-hc-finally-cancels-iipm-injunction-slaped-on-caravan-20180222-9124>.

<sup>35</sup> As apex court weighs idea of criminal defamation, Jaya files yet another case against media, SCROLL.IN, (Jul. 15, 2015), <http://scroll.in/article/741016/as-apex-court-weighs-idea-of-criminal-defamation-jaya-files-yet-another-case-against-media>.

<sup>36</sup> Arun Jaitley vs Arvind Kejriwal & Ors, A.I.R. 2015, S.C. 3457 (India).

<sup>37</sup> Swami Ramdev vs. Juggernaut Books, A.I.R 2018 S.C 79105 (India).

### 3. Laws Regulating the Internet

Laws that regulate the internet under the IT Act could be one of the essential factors to criminalise free speech over the Internet. Section 66A of the IT Act<sup>38</sup> was often repeatedly used to curb such form of expression until March 2015 when Supreme Court declared S66A unconstitutional to being violative of Article 19(1)(a) of the Constitution.<sup>39</sup> Though being dissenting voices, it continues to be a dominant strand in the free speech jurisprudence that, instead of the government, it is the person expressing free speech who has to maintain caution by others. Further, the S.C in *U.P v Lalai Singh Yadav*<sup>40</sup> upheld 'orderly security' as a Constitutional value, wherein, when free speech and public order seemingly clash, the latter shall prevail as precedence.

As an aftermath to the abrogation of Article 370<sup>41</sup>, the internet services were snapped by the Central Government by imposing Section 144 CrPC<sup>42</sup> in the territory of Jammu and Kashmir. In 2019, India faced a total of 106 Internet shutdowns and the period of shutdown exceeded 8 months in Kashmir. All this was done by the government in the pretext of national security. The Supreme Court in the case of *Anuradha Bhasin v Union of India and Ors*<sup>43</sup> declared that freedom of speech and expression over the internet enjoys Constitutional protection under Article 19(1)(a). It further held that suspending internet services is impermissible under the Temporary Suspension of

<sup>38</sup> Information and Technology Act, No. 21, Acts of Parliament, 2000.

<sup>39</sup> Singhal, *supra* note 1.

<sup>40</sup> U.P v Lalai Singh Yadav, A.I.R. 1977 S.C. 202 (India).

<sup>41</sup> INDIA CONST. art. 370.

<sup>42</sup> Indian Penal Code, No. 45, Acts of Parliament 1860.

<sup>43</sup> Anuradha Bhasin v. Union of India, 2020 SCC Online 25.

Telecom Services (Public Emergency or Public Service) Rules, 2017<sup>44</sup> and that, the suspension can be utilised for a temporary duration only. Although the judicial pronouncement amounts a semblance of hope, however the lack of actual relief stings in the criticism of delay and it fell short in terms merely ordering the government to review its orders without giving specific directions.

#### 4. Counterterrorism Laws

Counterterrorism laws such as the Unlawful Activities Prevention Act<sup>45</sup> have been used disproportionately against marginalised communities and religious minority groups for expressing dissent in the country. Often, those charged with counterterrorism laws are considered to be as 'anti-nationals'. It can be said that simply being charged can lead to having a devastating impact on the individual and his family even if the judicial trail ends up declaring him innocent.

*Rationale on Anti-CAA arrests during Lockdown;* Earlier in April, 2020, Delhi police's decision on arresting Jamia Students in a case related to communal violence in North East Delhi was criticised by Amnesty International as an extension to crackdown the dissenting voices<sup>46</sup>. Government has often used this law to repress dissent in the country. In 2018, conviction rate under the offence of UAPA was

27% while 93% cases remained pending in the court.<sup>47</sup> The slow investigating process and stringent bail provisions ensure that the accused remains locked up for years. The Office of the United Nations High Commissioner for Human Rights (OHCHR), on April 3<sup>rd</sup>, urged the countries around the globe to release people charged without sufficient legal basis including those detained for critical dissenting views on account of Covid pandemic.<sup>48</sup> Despite this, 27 years old, Safoora Zargar, a research student from Jamia Millia University was charged under UAPA as a key conspirator in Delhi riots. Her trimester pregnancy was a mitigating factor for her continued detention against pandemic. Besides Safoora, Meeran Haider, Member, Jamia Coordination Committee (JCC) and Shifa-Ur-Rehman, President, Jamia Millia Islamia Alumni Association were also arrested under UAPA and were kept in detention without any charge for up to 180 days, which was far more than international standards.<sup>49</sup> In 2017, NCRB introduced a new category of crime that outlined incidents of 'anti-national' elements, these groups include north-east insurgents, 'Jihadi' terrorists and Naxalites and other terrorists. The government has clearly used the lockdown period to track on dissent, during the period of pandemic when it should focus on protecting its citizens without discrimination, it has continued to harass

<sup>44</sup> Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, No. 679 of 2017.

<sup>45</sup> The Unlawful Activities Prevention Act, No. 37, Acts of Parliament, 1967.

<sup>46</sup> *Delhi violence: UAPA against Jamia students an example of crackdown on dissent, says Amnesty India*, SCROLL.IN (Apr 22, 2020, 09:23AM), <https://scroll.in/latest/959963/delhi-violence-uapa-against-jamia-students-an-example-of-crackdown-on-dissent-says-amnesty-india>.

<sup>47</sup> *Covid-19 Pandemic: Crackdown On Dissent Putting Lives At Immediate Risk In India*, AMNESTY INTERNATIONAL INDIA (May 1, 2020, 11:24AM)

<https://amnesty.org.in/news-update/covid-19-pandemic-crackdown-on-dissent-putting-lives-at-immediate-risk-in-india/>.

<sup>48</sup> Michelle Bachelet, *Press briefing note in Covid-19*, (Apr 3, 2020)

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25770&LangID=E>.

<sup>49</sup> *Id.*



and jail people who were involved in peacefully exercising their rights.

### 5. Other Regulating Laws

There are several laws in our country that prohibit 'hate speech', for instance, speech that causes differences between groups or insults religion. India's hate speech laws are so broadly scoped that they infringe right to peaceful expression and fail to meet international standards. Such laws were intended to protect the minorities and the powerless, however, they are often used at the behest of persons in power, or groups who claim to have been offending in order to silence speech that they do not like. Further, the state too often pursues such complaints, leaving minority groups, journalists, writers and scholars facing legal action and threats of violence.

The Official Secrets Act<sup>50</sup>, although not used as commonly as other laws, has serious chilling effects wherein the accused can end up in prison for months and even years without being granted bail. Other laws concerning expressing dissent normally come under the provisions of Section 298 and 295A; Hurting religious sentiments, Section 503; Criminal intimidation, Section 153A, 505(2), 505(1)(c) IPC<sup>51</sup>; concerning hate speech, Section 69A; Information and Technology Act and "Blocking Rules". As a result of all this, those individuals that have been charged with even unfounded criminal charges, end up withdrawing their 'offending' words rather than facing prolonged legal, financial and personal impact of those charges.

<sup>50</sup> The Official Secrets Act, No. 19, Acts of Parliament, 1923.

<sup>51</sup> Indian Penal Code, No. 45, Acts of Parliament 1860.

## V. RECOMMENDATIONS TO THE GOVERNMENT

Analysis of various reports and scholarly articles makes us understand that Indian laws and practices that silence free speech and expression by criminalisation are against international standards and legal obligations. Such laws result in undermining rather than strengthening the efforts of combating communal violence and since the right to freedom of expression is an enabler of other rights, it threatens to erode other human rights protections. Firstly, the government must develop a clear plan of action for repealing and amending the laws that criminalise peaceful expression in compliance with international obligations and in cases wherein a legislation is required to be amended, thorough consultation should be made with civil society groups in a transparent manner. There is an emergent need to repeal Section 124A, 298, 295A, 153 and 501(1) I.P.C, and ensure that the new laws allow regulations for hate speech causing imminent harm only. The overly broad definition of 'Unlawful Activities' should pertain to only those acts which cause a genuine threat to the national security. Secondly, initiatives should be taken by the state government to drop all cases and close investigations in those cases in which the underlying behaviour of the individual involved peaceful expression of his/her opinion or thought in any manner whatsoever. Thirdly, the governments at both state and national level should make efforts to train the police at the executive level to ensure that inappropriate cases are not filed in courts and arrests are made only after evidentiary assessment of the individual

violating the law. Training should also be provided particularly in the lower courts on standards pertaining to peaceful expression so that they may dismiss cases that infringe protected speech at its initial stage. Finally, the Supreme Court should establish precedence of rule of law and such decisions should be independent of any political influence, media or extraneous conditions. The judgement should set forth directions for the police to exercise and should articulate the scope of the provision in a detailed manner for the lower courts to apply. Judges and magistrates should ensure that any threat to public order should pass 'clear and imminent danger' test with regard to criticism made to the government.

## **VI. CONCLUSION**

"There can be no democracy without dissent". If this right is taken from the citizens, then our country would breed an unquestioning morbid society and there will be no development thereafter. If the country has to grow in a holistic manner wherein not only civil rights but also economic rights of the citizens are protected then the citizen's right to dissent and disagreement should be protected. Defendants in the criminal justice system face lengthy and drawn out proceedings. In some case, even judges are found to be poorly trained and fall heed to the guidance of the Supreme court in matters related to free speech. While Supreme Court often dismisses cases, however, such dismissals are brought in action after much delay. Some laws are even non-bailable and the accused may be taken to pre-trial custody which extract a heavy price from the accused emotionally and financially. In the recent years, there has been an

increase in total number of cases pertaining to legal action against free speech and expression. The right to dissent is the most important right granted by our Constitution. New thinkers are born when they tend to disagree with the existing norms of the society. The country will not witness any growth and democracy will not sustain if all move in the same trodden path.