CHILLING EFFECTS: A NEW CHALLENGE TO FREEDOM OF SPEECH & EXPRESSION IN INDIA

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Abstract

There is no doubt that freedom of speech and expression is one of the most precious rights a human being can relish. Its reflection can be found in almost every human rights instrument including the Universal Declaration of Human Rights, International Covenant on Civil & Political Right and the European Convention on Human Rights, to name a few. However, like any other fundamental human right, the freedom of speech and expression is not an absolute right. There are always certain restrictions attached to it. These restrictions should be reasonable and must have a proximate nexus with the object sought. Where this freedom gets violated due to government action, not due to its direct application but because of its consequence then the freedom of speech and expression is said to have been chilled. Chilling Effects emphasises on the practical consequences of Government action. It is a concept of deterring the exercise of constitutionally protected rights. Hence, the gist of chilling effects is deterrence or fear. Chilling Effects was originated in the US and was dealt with in various First Amendment cases. However, it also gained importance in many countries like England and India. Most of the cases in which the chilling effects have been dealt or referred are the cases that are concerned with free speech and expression. It is due to this that chilling effects are regarded as a great antithesis of freedom speech and expression. In, recent years it has also emerged as a new challenge to freedom of speech and expression in India. This research paper is an attempt to study the evolution of the Chilling Effects, its relationship with freedom of speech and expression, the reason why chilling effects have emerged as a new challenge to the freedom of speech and expression in India and present to its reader these concepts in a brief manner.

Keywords: freedom of speech and expression, fundamental human right, chilling effects, constitutionally protected rights, proximate nexus, deterrence, first amendment, antithesis, challenge.

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I. INTRODUCTION

The US Supreme Court first referred to the „chilling effects‟ in a constitutional matter of ***Wieman v. Updegraff*.**[1] Since then the phrase has been widely employed in adjudications concerning freedom of speech and expression. Chilling Effects is an indirect effect of state action which deters an individual to exercise his legally protected rights. It occurs when deterrence does not stem from the restriction directly but as an indirect consequence of such restriction.[2] It means that if a statute instils in the mind of an individual that a sanction would otherwise be a consequence if a constit-utionally guaranteed right is exercised, and then such statute can be said to have chilling effects. Usually, such deterrence is caused by vague or overbroad statutes.[3] Hence, the very essence of chilling effects is an act of deterrence.[4]

Frederick Schauer has put forth a bipartite classification of deterrence. First, according to him is a *benign*, a class of deterrence which is permissible as it is an intentional regulation of activities that are unprotected by the First Amendment.[5] For instance, the punishment for rape is expected to deter people from committing rape, thus "chilling" such activity is legally permissible. Similarly, in the law of torts, the imposition of liability to pay damages for a negligent act will deter people from being careless and negligent, thereby chilling such negligent and careless acts. An obscenity law censoring the production of hard-core porn-ography might “chill” its distribution as well. However, in ***Miller v. California*** hard-core pornography was not deemed to be constitutionally protected; any “chilling eff-ects” of such kind was held to permissible.[6] Hence, “chilling effects” may not be applicable where there exists no constitutional barrier preventing such regulation. The second form of deterrence described by Schauer is an *invidious* deterrence, it occurs when a certain activity, safeguarded by the Constitution is unduly discouraged.[7] Permitting the prosecution to comment on the defendant's prerogative to remain silent in a trial is an apt example of an *invidious* deterrence. The „right to remain silent‟ is a constitutionally guaranteed right which directly stems out from the „freedom of speech and expression‟, due to the comments of the prosecution the defendant might be deterred from exercising his „right to remain silent‟.

Another classification of deterrence has been put forth by Barendt, which provides for both direct and indirect or „structural‟ deterrence.[8] A direct deterrence connotes conscious inhi-

[1] 344 U.S. 184, 195 (1952).
[2] *See* Daniel J Solove, *The First Amendment as Criminal Procedure*, 82 N.Y.U.L. REV. 112, 142 (1997).
[3] *See* Walker v. City of Birmingham, 388 U.S. 307, 344 (1967), Renu v. American Civil Liberties Union, 521 U.S. 844, 894 (1997), Smith v. California 361, U.S. 147, 151 (1959).
[4] Freedman v. Maryland, 380 U.S. 51, 59 (1965).
[5] Frederick Schauer, *Fear, Risk and the First Amendment: Unraveling the “Chilling Effect”*, 58 B.U.L. REV. 685, 690 (1978).
[6] 415 U.S. 15, 36 (1973).
[7] Schauer, *supra* note 6.
[8] *See* BARENDT ET AL., LIBEL AND THE MEDIA: THE CHILLING EFFECT 191 (Oxford University Press 1997).

bition or self-censorship due to the presence of a law regulating free speech and expression. For instance, the presence of libel laws might compel editors and publishers of newspapers/magazines to exercise self-censorship on their freedom to publish. The second category of deterrence, i.e. indirect deterrence implies more subtle and deeper methods of inhibiting free speech and expression.[9] Here, deterrence is not due to the presence of a law censoring free speech but due to frequent and extensive application of such law. This category of deterrence prevents the very creation of media content as certain subjects are treated off-limits. One of the apt examples of this genus of deterrence is the fear created amongst the media due to frequent slapping of libel charges. As a result of this fear, content creation has suffered a severe blow. Now nothing is edited to reduce or lessen the risk of libel because nothing is written in the first place.

Hence, we arrive at a basic definition of „chilling effects": A chilling effect occurs when individuals seeking to engage in activity protected by the first amendment are deterred from so doing by governmental regulation not specifically directed at that protected activity.[10] Thus, where a law provided for trebling the contribution limits of an opponent, if a political candidate spends more than the threshold, the US Supreme Court held the law to be in contravention with First Amendment Rights.[11] The Court reasoned that facilitating a benefit to the opponent at the spending threshold created a substantial chilling effect on such spending.[12] Thus, chilling effects comprises of deterring an individual from engaging in a lawful activity due to the fear of a legal sanction.

II. EVOLUTION OF CHILLING EFFECTS

The Chilling effects made its first debut in ***Weiman v. Updegraff,***[13] where the US Supreme Court employed the metaphor „*chill*". In this case, the constitutionality of the Oklahoma loyalty oaths legislation was in question, which required the teachers of Oklahoma to affirm that they were not the members "a communist front or subversive organisation" and had not been over the preceding five years. The court held the legislation to be unconstitutional and observed that it had "an unmistakable tendency to *chill* that free play of the spirit which all teachers ought especially to cultivate and practise; it makes caution and timidity in their associations by potential teachers."[14] The concept of chilling effects made its presence again in ***Gibson v. Florida*** Legislative Investigation Committee,[15] where the issue before the Court, was whether an order issued by the legislative investigation committee compelling the organizations to divulge their membership is constitutional. The Court ruled that such disclosure of membership before the legislative investigation committee will create a deterrent and

[9] *Id.* at 192.
[10] Schauer, *supra* note 6, at 693.
[11] Davis v. FEC, 554 U.S. 724, 726 (2008).
[12] *Id.* at 738.
[13] *Supra* note 2.
[14] *Supra* note 2, at 195.
[15] 372 U.S. 539, 542 (1963)

chilling effect on the free exercise of speech, expression and asso-ciation.[16]

Chilling effects reached its zenith and got evolved as a Constitutional Law doctrine in ***Baggett v. Bullitt***,[17] where the Washington loyalty oaths legislation was struck down for its inconsistency with the First Amendment Rights of Employees. The court also opined that the fear of punishment may deter as potently as the actual application of such punishment.

The doctrine of Chilling effects was exte-nsively referred to in ***Dombrowski v. Pfister***.[18] In this case, the SCEF, a civil rights protection group was declared by the state officials of Louisiana to be a "subversive or Communist-front organization". Further, the offices of Dombrowski, the director of SCEF and two of his lawyers were raided and seized by the state officials. Subsequently, they were arrested under the Louisiana Subversive Activities and Communist Control Law. The appellants brought a suit in the Federal District Court, seeking declaratory relief and injunction to res-train the State from prosecuting or threatening to prosecute them under the said law. It was also argued that the law was excessively broad and was being used in bad faith, not to secure a lawful conviction, but to deter appellants‟ right of free expression under the First and Fou-rteenth Amendment. However, the District Court dismissed the suit on the ground that it should abstain from adjudicating on unsettled issues of state law. The appellants then pref-erred an appeal before the Supreme Court of the US, which observed that "*a chilling effect upon First Amendment Rights might result from such prosecution regardless of its pro-spects of success or failure... Even the prospect of the ultimate failure of such prosecutions by no means dispels their chilling effects on protected expression."*[19] The court further noted that the Federal District Court erred in dismissing the action as ordinarily federal courts should abstain from adjudging a state law, it may do so where a law chills free expression through an overbroad application on the very face of it.

Another case in which the „chilling effects‟ was pressed into service was ***Lamont v. Postmaster General***[20] the law at issue, in this case, required the postmaster to review mail sent from abroad and decide on his discretion whether it constituted "communist political propaganda". If he determined that the mail is indeed communist propaganda then the add-ressees would only receive a postcard instead of the mail. The addressees could return the po-stcard to the postmaster and signup indicating his desire to receive the mail, upon which the post office would deliver the letter to them. The Court invalidated the law for being *ultra vires* the First Amendment Rights. It premised its ruling on the proposition that the law was almost certain to have a deterrent effect, esp-ecially as respect to those who have sensitive positions and thus amounted to an

[16] *Id.* at 557.
[17] 377 U.S. 360, 373-374 (1964).
[18] 380 U.S. 479, 487 (1964).
[19] *Id*. at 480, 494.
[20] 381 U.S. 301, 305-307 (1965).

unconsti-tutional abridgement of addressee‟s First Ame-ndment Rights.

The chilling effects doctrine suffered a devastating setback in ***Laird v. Tatum***,[21] where the US Supreme Court dismissed a challenge to an army surveillance program. In this case, the army had launched a surveillance program which consisted of gatherings of news clips and observation of civilians by army personnel. Although the program did not directly harm the individuals, they initiated an action against the Secretary of Defence. The court drew heavily on ***Davis v. Ichord*** [22] wherein it had noted that a claim of chilling effects on First Amendment Rights cannot arise from a mere collection of files and a mere possibility of misuse of those files.[23] It noted that the respondents failed to point out any actual harm or threat of future specific harm which they alleged to have suffered due to the army surveillance program. Further, the mere existence of a data-gathering program would not constitute a chilling effect on First Amendment Rights. However, Douglas, J. in his dissenting opinion had intoned that "the Bill of Rights was added to keep the precincts of belief and expression, of the press, of political and social activities free from surveillance" and described the army surveillance program as "a cancer in our body politic."[24]

Although the concept of chilling effects originated and developed in the US, it made its way across the Atlantic and gained impetus within the common law as well. In ***Reynolds v. Times Newspaper Ltd***.,[25] the Prime Minister of Ireland had initiated defamation proceedings against the respondent for publishing an article which claimed that appellant had misled his and cabinet and suppressed information. The House of Lords held that the defence of „*qualified privilege*‟ could be extended to media. It further noted that "it is true that the restrictions on freedom of speech that have been thought necessary to give reasonable pro-tection to personal reputation tend to chill the publication, not only of untruths but also of that which may be true but cannot be proved to be true."[26]

In India, the chilling effects have been utilized as a fairly recent concept. However, the foundation of chilling effects was already laid down in ***R. Rajgopal & Ors. v. State of Tamil Nadu***[27] In this case, a death convict while in jail wrote his autobiography and expressed his wish to get it published in petitioners‟ mag-azine. Just before the publication the resp-ondents i.e. prison officials forced him to revoke his consent to prevent the petitioners from publishing his autobiography. The peti-tioners contended that they had a „right to publish‟ under the „freedom of speech and expression‟. Whilst the respondents argued

[21] 408 U.S. 1, 11 (1972), Meese v. Keene, 481 U.S. 465, 480-83 (1987), Clapper v. Amnesty International, 538 U.S. 398, 16-20 (2013).
[22]
[23] 442 F.2d 1207, 1216 (1970).
[24] *Supra* note 22, at 28.
[25] (2001) 2 AC 127 (HL), Loutchansky v Times Newspaper Ltd, (2002) 2 WLR 652 (Q.B.), Jameel & Anr. v. Wall Street Journal Europe and ors.(2007) 1 AC 359 (HL).
[26] *Id.* at 159.
[27] (1994) 6 S.C.C. 632.

that the petitioners had violated the „right to pri-vacy‟ of the convict by publishing his auto-biography without his consent. The Supreme Court of India held that the petitioners had a right to publish the autobiography even without his consent and if any restraint could be allo-wed it could be nothing but a chilling effect on the petitioners‟ right to publish.

III. CHILLING EFFECTS AND THE FREEDOM OF SPEECH AND EXP-RESSION

"*The freedom of speech may be taken away, the dumb and silent we may be led, like sheep, to the slaughter*."[28]

The freedom to speak and express oneself in diverse forms is indeed a *sine qua non* of a democratic society. It is a fundamental human right which reinforces all other rights, allowing the society to develop and progress. The freedom to speak freely also includes the freedom to hear what others have to say. Hence, a free society depends on the free exchange of ideas. Brennan, J. has also emphasized on the free exchange of ideas; he has commented that "it would be a barren marketplace of ideas that had only sellers and no buyers."[29] Chilling effects, on the other hand, is a phenomenon which produces self-censorship or conscious restraint on the exercise of constitutionally protected rights.

Since the chilling effects have been extensively employed in cases dealing with freedom of speech and expression; it is a known antithesis of free speech and expression.

One of such cases which elaborately dealt with the chilling of free speech and expression was ***New York Times Co. v. Sullivan***[30] In this case respondent, a public official in Alabama had brought an action for libel against the petitioner for publishing an editorial advertisement alle-ging the mistreatment of Martin Luther King Jr. by the police. The Supreme Court observed that such criticism should not be suppressed or deterred by the courts at the instance of public officials under the label of libel. While addr-essing the issue of Alabama Libel Laws, it further noted that a rule compelling the critic of official conduct to guarantee the truth of all his factual assertions-and to do so on pain of libel judgments virtually unlimited in amount-leads to a comparable "self-censorship". Under such a rule, would-be critics of official conduct may be deterred from voicing their conduct, even though it is believed to be true and even though it is, in fact, true, because of doubt whether it can be proved in court or fear of the expense of having to do so."[31]

Another case which involved the deterring of free speech was ***Derbyshire County Council v. Times News Paper Ltd***.[32] In this case, the issue before the House of Lords was whether

[28] George Washington, Newburgh Address, GEORGE WASHINGTON‟S MOUNT VERNON (Mar. 15, 1783), https://www.mountvernon.org/education/primary sources-2/article/newburgh-address-george-washington-to-officers-of-the-army-march-15-1783/

[29] *Supra* note 21, at 308.

[30] 374 U.S. 254, 256 (1964).

[31] *Id.* at 279.

[32] (1993) 1 AC 534 (HL), Attorney-General v. Guardian Newspaper, (1990) 1 AC 109 (HL).

the appellant could bring an action for libel against the respondent, in respect of the two newspaper articles questioning the administration of app-ellant‟s superannuation funds. The House of Lords drew on **Sullivan**[33] and held that to allow a public authority to sue individuals for libel would constitute an unnecessary inte-rference by the common law with freedom of speech and expression. While emphasising on the importance of public information and criticism about the functioning of government, it further noted that the tort of government libel, much more "draconian" than its seditious counterpart, would certainly have a „chilling effect‟ upon the freedom of speech and expression of the newspaper and individual to-be critics. This would further deter newspapers and individual critics from criticising the government and would lead to self-censorship and ignorance about the functioning of government.

In ***Shreya Singhal v. Union of India,***[34] the Supreme Court had invalidated Section 66A of Information Technology Act, 2000 on the grounds of "overbreadth" and "vagueness". It held that the said section suffers from the vice of taking within its sweep even protected speeches and speeches which are innocent and is liable therefore to be used in such a way as to have a chilling effect on free speech. Additionally, it was observed that enforcement of the Section 66A would be a subtle way of censorship which will impair a core value contained in freedom of speech and expression.

Further, in ***Navtej Singh Johar,***[35] where the constitutional validity of Section 377 I.P.C. was under challenge, the court held that the said Section casts unreasonable restriction as it criminalises even consensual carnal intercourse, which is not only vague and overbroad but also has a chilling effect on an individual‟s freedom of expression. The court also opined that the continued operation of Section 377 would further amount to deterring free speech and expression of the LGBT Community and the instances of pre-publishing restraints, social opprobrium and the punishment stipulated under the Section has chilled people from exercising their freedom of speech and expression.

Recently, the issue of chilling of free speech was again dealt with by the Supreme Court in ***Anuradha Bhasin v. Union of India***.[36] In this case, the petitioner had challenged the constitutional validity of Orders passed under Section 144 Cr.P.C. in Jammu & Kashmir. She alleged that due to the restriction on movement and public gatherings under such orders, she has not been able to publish her newspaper. It was contended by her that such restrictions have produced a chilling effect on her freedom of speech and expression and the freedom to practise any profession or to carry on any occupation, trade or business enshrined under Article 19(1) (a) & (g). The court, however, rejected this contention and relied upon the decision in ***Laird v. Tatum***,[37] wherein it was

[33] *Supra* note 30.
[34] (2013) 12 S.C.C. 73.
[35] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1.
[36] (2003) 3 S.C.C. 637.
[37] *Supra* note 22.

laid down that an allegation of subjective „chill‟ is not sufficient for a claim of present harm or future harm. It further applied the „comparative harm test‟ of chilling effects which requires the courts to look at whether the restrictions have had restrictive effects on similarly placed individuals or not. The Court also noted that the petitioner had failed to bring any evidence to establish that similar rest-rictions were placed on other newspapers and held that in absence of such evidence it would be impossible to distinguish between a valid claim of chilling effects and a mere emotive argument of a self-serving purpose.

IV. A NEW CHALLENGE TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA

In India, the „chilling effects‟ has a very recent application especially in cases concerning free speech and expression. However, Indian Courts had been frequently employing the phrase in adjudicating rent control matters. In the past few years, courts have been extensively instr-umental in referring to chilling effects in issues concerning freedom of speech and expression. This is because it has become one of the greatest challenges of free speech and expr-ession in India. Some of the reasons why the chilling effects have emerged as a new cha-llenge to the freedom of speech and expression in India are hereinafter discussed.

1. Claims of Defamation:

The tort of defamation is one of the main reasons why the chilling effects have emerged as a new challenge to free speech and expression in India. The fear of being sued for defamation may very well deter people from exercising their freedom to freely express their opinions. The same proposition finds reflection in the decision of ***Ram Jethmalani v. Subramanian Swamy***,[38] wherein the court had observed that a person, who is under the fear of being sued, may not be able to express himself on public issues and this would 'chill' the public debate. A similar view was taken by the court in ***M.K. Sharma v. Sangeeta Gupta,***[39] where the plaintiff had brought a suit of defamation against the defendant for making a defamatory statement about him before an inv-estigating committee constituted under the aegis of **Vishakha**[40] guidelines. The court held that such a suit of defamation would inevitably have a chilling effect and thus, an aggrieved individual will be deterred from availing a rem-edy provided by the Supreme Court against sexual harassment at workplace.

2. Injudicious Application of Sedition:

Sedition has been incorporated under the IPC as Section 124-A. It provides that the offence of sedition would be constituted only when the words complained of, brings or attempts to bring hatred or contempt or excites or attempt to excite disaffection. Although, the decision in ***Kedarnath v. State of Bihar,***[41] has limited the scope of sedition by restricting only those words which have a "pernicious tendency" or

[38] 126 (2006) DLT 535.
[39] 167 (2010) DLT 510.
[40] Vishakha v. State of Rajasthan, (1997) 6 S.C.C 241.
[41] A.I.R. 1962 S.C. 955.

"intention of creating public disorder". In ***Arup Bhuyan,***[42] the Supreme Court has further confined sedition to only those words which create "imminent lawlessness". How-ever, as the present scenario reveals the application of Section 124-A is not being done in consonance with the above decisions. For, instance a play on the Citizenship Amendment Act (CAA) by a Karnataka school in Bidar had led to sedition charges against the school authorities and one of the parents.[43] Another instance of sloppy charging of sedition arose when 135 anti-CAA protesters were booked under sedition in Uttar Pradesh during the anti-CAA protests.[44] Such non-meticulous and baseless slapping of sedition leads to a sub-stantial chilling of free speech and expression. Further, Section 124-A stipulates one of the stringiest punishments in the IPC i.e. life imprisonment which does nothing other than enhancing the deterrence. Thus, the law sho-uld not be used in a manner that has chilling effects on the freedom of speech and exp-ression.[45]

3. Cyber-surveillance:

In the well-celebrated case of ***Navtej Singh Johar v. Union of India***[46] the Supreme Court had ruled that the right to privacy is a fundamental right.[47] Sadly, not a year had elapsed when the Government was seen rolling its wheels in a different direction. An apt example of this came to light when the Ministry of Home Affairs vide Order dated 20-12-2018 authorised ten investigating agen-cies including the Investigation Bureau (IB), the Central Bureau of Investigation (CBI), and the Commissioner of Police, Delhi to intercept, monitor and decrypt any infor-mation generated, transmitted received or sto-red in any computer resource. This is not only a violation of the right to privacy but an extr-eme infringement of freedom of speech and expression as it severely hampers online com-munications. Since nowadays most of the communications are made being made on the internet; such kind of unfettered authority to pry on individual computers would very well deter people from voicing their thoughts and opinion on the internet because there will be a possibility of them coming in the eyes these agencies. The Supreme Court in ***People's Union of Civil Liberties v. Union of India***[48], had set out that surveillance and phone tapping can be executed only in cases of "public emergency".[49] The same principle should apply to cyber-surveillance too.

4. Vague & Overbroad Legislations:

[42] Arup Bhuyan v. State of Assam, (2011) 3 S.C.C. 377.

[43] Sukanya Shantha, *„Sedition" for School Play on CAA: Student"s Dialogue „Insult to PM"; Parent, Official Arrested*, THE WIRE (Jan. 30, 2020), (https://thewire.in/government/bidar-karnataka-anti-caa-play-school-sedition.

[44] PTI, *UP Police File Sedition Case Against 135 CAA Protestors in Azamgarh*, NDTV (Feb. 6, 2020, 9:24 PM IST), https://www.ndtv.com/india-news/anti-caa-protests-up-police-file-case-against-135-arrests-20-on-sedition-charges-in-azamgarh-2176202).

[45] S. Khushboo v. Kanniammal, A.I.R. 2010 S.C. 3196.

[46]

[47] *Supra* note 35.

[48]

[49] A.I.R. 1997 S.C. 568.

Another important reason why chilling effect have been able to become a challenge to free speech and expression in India is vague and overbroad laws. Vagueness reflects an ambiguity where either the meaning of a law is unclear or it gives rise to more than one meaning. A vague law can lead to arbitrariness and discrimination as it concentrates too much power in the hands of the law enforcers. Thus, it is very much susceptible to infringing individual rights. One such instance came to light in ***Shreya Singhal***,[50] where the Supreme Court invalidated Section 66A of IT Act, 2000 on the ground on being 'vague'. Overbroad legislations suffer from the vice of casting too wide a net to include even those acts which otherwise is not covered by it. It creates confusion in the minds of people that whether a particular behaviour is permissible under the law or not. This casts a chilling effect and they are deterred from doing even those acts which are lawful and permissible. A recent example of such over broadness is Section 3(20) of the Personal Data Protection Bill, 2019. The said section defines „*harm*' as a bodily or mental injury, loss, distortion or theft of identity, financial loss or loss of property, loss of rep-utation or humiliation, loss of employment, etc. This undoubtedly is an extremely broad definition of harm.

V. CONCLUSION

Chilling effects on free speech and expression have become one of the great concerns for jurists, especially in an era when governments are exploring *every nook and corner* to suppress individual rights. The evil which chilling effects imbibe is not the direct suppression of rights but a more devious way of doing it. For instance, a law may be very much susceptible to having chilling effects, if it deters the people from exercising their legally protected rights. Therefore, the essence of chilling effects lies in the indirect inhibition of rights. In the past, it is seen that chilling effects have enjoyed a close relationship with free speech and expression. This is evident from the fact that most of the cases in which claims of chilling effects had been made, concerned free speech and expression. The chilling effects had originated in the United States, since then it has developed into a full-fledged constitutional law doctrine. It has been embraced by legal systems of various countries.

In India, chilling effects have been a recent import, especially in matters concerning free speech. However, Indian courts had been employing the concept in deciding rent control cases. Since the inception of the twenty-first century, the claims of chilling effects have been frequently made before the Indian courts. This is because chilling effects have emerged as a new challenge to free speech and expression in India. Some of the reasons why it has emerged as a new challenge to freedom of speech and expression in India have been briefly discussed in the paper.

Suggestions: *First,* the legislature before enacting a law should analyse all the practical consequences and repercussions which may ensue from the enforcement of such law to

[50] *Supra* note 34.

avoid the chilling effects. *Second*, it should refrain from enacting vague or overbroad legislation. *Third*, the courts should not make judicial restraint sole ground for dismissing a claim of chilling effects, as the same will set a bad precedent upon future claims of chilling effect.