

WHERE IS THE LINE BETWEEN FREE SPEECH AND SPEECH WORTHY OF CENSORSHIP?

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Introduction

“Freedom of speech lays at the foundation of all democratic organizations, for without free political discussions no public education, so essential for the proper functioning of the process of popular government, is possible.”¹ The roots of freedom of speech can be traced back to the times of Socrates and Plato and so does its constant clash with censorship. It is not a twenty first century fad of investigative journalists and nor has been the exclusive luxury of western societies. The validation of the desire for expressing one’s own opinion and conviction freely is vital for the foundation of a free society.

The concept of free speech has evolved since middle Ages. The idea of free speech as present in the twenty first century has changed with every document that revolutionized and to some extent introduced the very idea into the society. In 1215, King John, forced by his rebellious barons signed Magna Carta, which later came to be regarded as the corner stone of liberty in England. In 1689, after James II was overthrown and William III and Mary II became co-rulers of England, the Bill of Rights was passed which granted freedom of speech in parliament. The Declaration of the Rights of Man signed in 1789 further broadened the scope of freedom of speech wherein it guaranteed freedom of speech beyond the halls of parliament and declared that every man is born free and equal. In 1791, the first amendment of the US Bill of Rights guaranteed four fundamental freedom to its citizens: of religion, speech, press and assembly. These documents have been fundamental in the evolution of freedom and have a history of constant struggle behind their realization.

With the growth of international community and corporation the right to free speech found its place in international documents which later became part of customary international law like Universal Declaration of Human Rights (UDHR), European Convention on Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights, etc.

¹ *Ramesh Thapar v/s State of Madras (AIR 1950 SC 124) Justice Patanjali Shastri*

India as a society has only in recent years introduced freedom of speech as a fundamental right for its citizens in its legal system, borrowing the concept from the US Constitution. The Indian Constitution guarantees certain fundamental rights to its citizens, one such important being right to freedom under Article 19 which includes right to freedom of speech and expression.² Article 19(1) (a) states that all citizens shall have the right to Freedom of Speech and Expression subjected to limitations imposed under Article 19(2) which empowers the state to put reasonable restrictions on the following grounds: security of the state, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement to offence and integrity and sovereignty of India.³ India has made huge progress in its implementation of Freedom of speech from the times of Emergency. Both the administrative and judicial system has worked tirelessly to evolve and safeguard one of the most important Fundamental Right guaranteed by the Constitution. In essence Article 19(1)(a) protects 'fair speech' which essentially guarantees that every individual will have the right to carve their space for the exchange of ideas in art, religion, literature, academia, politics and science.

According to the Supreme Court of USA, the speech that is liable to be prohibited should be "directed at inciting or producing eminent lawless action and is likely to insight or produce such action"⁴. Supreme Court in its decision held that any kind of speech, which is directed towards something illegal or is likely to lead to an illegal action is prohibited and not protected by the first amendment. Freedom of expression cannot be restricted to expression of thoughts and ideas, which are accepted unacceptable but rather those that "offend shock or disturb the state or any section of the population".⁵

The right to free speech has always empowered people to fairly criticize those in power without the fear of facing prosecution. In the world post social media explosion it has become extremely easy to state ones opinion, criticism and grievances to an audience, which spreads throughout the globe. Internet has made the practical implementation of freedom of speech far easier than what it was even a decade ago. Everyone has an opinion and everyone has a platform to voice it. Even with these constantly expanding privileges there is still the ever-present friction of unfair censorship.

² Article 19(1)(a) of the Constitution of India

³ Dr, J.N Pandey, "Constitutional Law Of India", Central Law Agency, Allahabad, 2015, 52nd Edition, p.187.

⁴ *Branenburg v/s Ohio*, 395 U.S. 444 (1969)

⁵ *Handy side v/s UK* (1976) 1 EHRR 737

Censorship in its core is there to ensure the protection from inappropriate materials, which would lead, or insight any illegal action, deformation, violence, spread racial hatred or become a threat to society. Censorship is limitation on free speech to a degree of reasonability which if crossed becomes oppression. In today's world censorship has crossed the bounds of traditional media and entered into a new realm of Internet wherein even though everyone has a right to voice their opinion there is still presence of unfair censorship. In every state freedom of speech comes with certain limitation, not every expression has legal protection but intellectual freedom is principal as it allows people to express their ideas in manners they deem fit. Intellectual freedom is the right to both seek and receive information from all point of views without any form of restrictions for an individual to make informed decisions.

Ethical censorship is important to safeguard from arbitrary restriction on speech, the line where any form of expression is liable to censorship is extremely blurry. The parameters of restrictions have never been comprehensively defined, by any court or legislature, they are constantly expanding as old ideologies die out and replaced by new moral standards.

Comedians and the landmines of political commentary

Satire has long been used as a way to criticize the state, spread awareness about issues and as a method of political commentary. Using comedy as a way of political commentary isn't a 21st century concept but can be traced back to 427 BCE where for the first time Aristophanes, comic playwright of ancient Athens, sowed the seeds of political satire. His take on the state of his country evoked equal amount of admiration and outrage from his audiences. In his work there was a constant attempt to reveal the true state of his society by the tool of satire. Since his time not much has changed, comedy still remains entwined with politics and contemporary comedians still employ humor as a way to provide commentary on current political climate while simultaneously rendering their jobs as entertainers.

It can be argued that comedy as a form of an art comes within the parameters of intellectual freedom. Political comedians strive to provide prospective and observations which might not be of popular opinion but never the less important to present different point of views of a situation to their audience. In a way comedy can be understood as a means for creating thought, they might be provocative or maybe a means to start an important dialogue and in

this way its purpose might be far reaching than to elicit laughter from the audience.

Bassen Youssef was a cardiologist who being inspired by the Egyptian revolution of 2011 started his first satirical show in March of 2011. Youssef frustrated with the state of the media portrayal of protesters during the revolution began his YouTube show as a way to ridicule the state propaganda. He started with satirical commentary on state news, which caught the attention of the nation who saw authenticity in his videos and marked the first time that publically satire was being directed at government authorities. Within seven months he had more than five million views and his show became a the highest subscribed channel in Egypt and later earned him the opportunity to host his own show, Al-Bernameg, where he continued to do satirical commentary on Egyptian celebrities and politicians.

“The red line during the Mubarak era, whether in print or broad cast media, was criticism or satire of the standing head of state. After January 2011, that line evaporated. Suddenly there was this opportunity to poke fun at standing leaders and that’s the real change.”⁶

Youssef took this opportunity and made his own brand of comedy, which was ground breaking experiment on its own. At the peak of his popularity he had thirty million viewers a week, which was roughly third of the Egyptian population and started gaining traction from across the globe.

With his constant criticism of the government, Youssef managed to get on the wrong side of the government that succeeded Mubarak. Under Morsi, Youssef was arrested for insulting the President and Islam, though he stayed in Egypt and decided to fight the charges up until Morsi’s Islamist government was overthrown by a military coup in 2013, which resulted in General Abdul Fattah Al-Sisi becoming the military leader of Egypt. As Egypt shifted from the control of Muslim brotherhood to military controlled government Youssef became a threat to the government control. His comedy was not appreciated by the Morsi’s government, with their constant attempt to stop his show and eliminate him, but the military succeeded in doing that. In 2014, Youssef acting on the advice of his lawyer fled Egypt, with the threat to his and his family’s life, and shifted to US.

Bassem’s story is a testimony of the proportional relation between rise of authoritative governments and fall of free speech. His work is as monumental to the spirit of the Egyptian revolution as those of any journalist; it takes courage to mock people that have such thin skin

⁶ Bassen Youssef: the wild story of ‘Egypt’s Jon Steward’, by Sharif Paget, published: 10th January 2018

and tolerance. The right to tell a joke and not have your life threatened represents the fundamental values of fair speech, which an authoritative government will never permit.

India has faced its own fair share of unfair censorship over the years, Politicians of all times have never favored those who openly ridiculed them but they had protection of the Constitution. The Right to Freedom of free speech and expression, under the Constitution of India, has on various instances suffered setbacks since its inception in 1951. During the time of emergency there was a complete suspension of all the fundamental rights including Freedom of Speech, which hindered the protest of people against the government's abuse of power. Since those times Indian Judiciary within its power has tried to expand the scope of Fundamental Rights and reevaluate any form of unreasonable limitations imposed. In the landmark case of *Shreya Singhal vs Union of India*⁷, the Supreme Court evaluated the Constitutional validity of Section 66A of Information Technology Act, 2000 which provided for the arrest of those who posted alleged offensive content on the internet.

The Supreme Court struck down section 66A while simultaneously upholding the fundamental right of freedom of speech and expression, stating that the section was arbitrary, excessive and disproportionately invaded the right to free speech. It was further observed that the section did not provide for reasonable restrictions and imposed unreasonable limitations on speech that is innocent in nature and made it an offence in such a way so as to have drastic effect on free speech. This case reaffirmed the Supreme Court's stand on freedom of speech and expression and reasonable censorship. Section 66A with its vague parameters for the term 'offensive' had the capacity to restrict the space for public expression and narrow down the scope of the fundamental right to free speech and expression which would have rendered it ineffective.

In recent years Indian comedians have had a hard time finding their way around making non-controversial political commentary. Somewhere down the line the Indian Political parties started mislabeling satire as hate speech and criticism of any kind as antinational. Comedy as source of entertainment has only recently found its footing in India and political commentary has been an even harder pill to swallow for the political activist.

Kunal Kamra, a standup comedian, has had a misfortune as being labeled antinational for his vocal criticism of the government and the current Prime Minister. As a direct consequence of

⁷ AIR 2015 SC 1523

that has had his content labeled as antinational and getting his shows cancelled on a number of occasions. MS University of Vadodara cancelled Kamras' show that was scheduled for August of 2018 after the Vice Chancellor received a letter from eleven ex-students calling his content antinational.⁸

There is a culture of "outrage" activism that seems to pick on anything resembling criticism and create outrage around it. In 2017, criminal defamation and obscenity case was registered by the Mumbai police against the comedy group AIB for posting a supposedly "lascivious" picture of Prime Minister on twitter. The photo had a dog filter on Prime Ministers' face along with the hashtag- "#wanderlust"- making a comedic reference to his frequent foreign visits. A twitter user later drew the attention of Mumbai police towards this post and demanded some kind of action. The police further forwarded the tweet to the cyber police station, which registered an FIR.⁹

AIB is known to make comedic/political satirical sketches on YouTube, where they through the medium of comedy bring out the absurdity of some of our social practices, political scenario or any other contemporary issues. To label a photo with dog-ears and a nose as "lascivious" is a stretch by any standards and even the act of registering the FIR by the Mumbai police is bizarre in itself. In a strange twist of irony PM Modi in January of 2017 tweeted: "I think we need more satire and humor. Humor brings happiness in our lives. Humor is the best healer"

Conclusion

The word "offensive" has been used very liberally these days. It has become hard to voice opinions with a sense of safety in the current political climate. The common misconception is that if someone does not have a view similar to yours, they are being offensive. The ability to have a peaceful discourse seems to be slowly fading from a society where it's second nature of everyone to express their opinion on every aspect of life.

⁸ "Anti-national content": MS University cancels comedian Kunal Kamra's show", The Indian Express, published: 28th of July 2018

⁹ "After Snapchat- Modi Meme, AIB faces Obscenity, Criminal Defamation Case", The Wire, published: 14th July 2017

Free speech comes with its own set of contradictions, what might be considered offensive for a certain group might not be true for another. But within reasonable limitations everyone has a right to ask questions, make criticism and mock each other in a productive manner or for the purpose of entertainment. Within Article 19(1)(a) there are also some liabilities attached to the right, being to accept fair criticism and not label it as hate speech. As a society we need to develop 'thicker skin' and learn to take a joke with stride.

