



# **RISING INTOLERANCE AND FREEDOM OF SPEECH & EXPRESSION**

*By: Devang Singh<sup>1</sup>*

## **ABSTRACT**

An individual has to express his true feelings and thoughts against the authority or regime and that is a matter of the human being's essence which is also considered as natural right. But with the growing advent of Right wing extremism and the rise of hooligans in the forms of Politicians, our democracy is taking a beating. With the pluralism dwindling fast, in this paper the author analyses the aspects of how Freedom of Speech and Expression was and is being gagged causing the intolerance crack wide open. With the classification of Freedom of Speech and Expression, the author deliberates upon the pragmatic approach rather than limiting itself to theoretical perspective, of the growing intolerance and its causes. The author also explores as to the extent of Freedom of Speech and Expression, considering that no Fundamental Right is absolute. It can be restricted on the grounds of decency, public order or defamation. However, the restriction imposed should not be excessive or arbitrary. The question that author attempts to explore here is whether the latent restrictions imposed in contemporary times arbitrary and excessive resulting in Intolerance? With there being no major difference in fringe and mainstream, the cases have been discussed as to support the argument of growing intolerance. The author also discusses the concepts of constraint on Freedom of Speech and Expression and whether the Constitution of India has failed us in protecting the pillars of Liberal Democracy.

## **INTRODUCTION**

There cannot be genuine democracy without free expression; nor can there be genuinely free expression without democracy. Both democracy and free speech remain rare commodities, undervalued and under constant threat right across the world.<sup>2</sup> It cannot be denied that many aspects of our political life have changed with the passage of time since independence. A liberal democracy accepts the fact that in a free country, one can have different opinions and should have equal rights in voicing them. This is pluralism, and tolerance is its ultimate rationale. Hence the need arises to answer, Is India tolerant?

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<sup>1</sup> Amity Law School, Amity University, Mumbai

<sup>2</sup> Soli J Sorabjee (ed.), Law and Justice, Delhi: Universal Law Publishing Company Pvt. Ltd., 2006



Tolerance as defined by Black's Law Dictionary is "The allowance of opinions and beliefs, especially religious ones, that differ from prevailing norms".<sup>3</sup> The allowance of opinions and beliefs is enshrined in the Freedom of Speech and Expression. Under the Article 19 (1)(a)<sup>4</sup> of Indian Constitution, we have the Freedom of Speech and Expression which allows us to express our opinion freely in any form and also to tolerate other's opinion. But does that mean we have the right to spill anything out of our mouth and disturb the balance of our society? No. Because that is subjected to "reasonable restrictions" articulated in 19(2) of the Constitution<sup>5</sup> in order to maintain peace and public order<sup>6</sup>.

### **THE INTOLERANCE WITHIN**

The Constitution worked reasonably well for the first two decades. Thereafter, with the passage of time we allowed dilution of our democratic values to accommodate political expediency. The purity of our election process took a beating, election after election, until we reduced our democracy to a mere 'electoral democracy' throwing the purity of the electoral process to the winds. Politics slipped out of hands of principled parties and individuals and fell into the hands of unprincipled and unscrupulous who had scant respect for moral and values and who considered self above country.<sup>7</sup> We find ourselves in a state of anguished despair, totally disillusioned and at cross roads. In the six decades, that have gone by we notice that our democratic values have taken a beating, from a liberal democracy we have become an illiberal democracy. 'We the people' of India, the sovereign, under our constitution, has been reduced to a 'once in while', remembered at the time of election and forgotten immediately after the vote is cast. A pluralistic society, where people respect each other, there is the opportunity for a free flow of ideas, a meeting of minds, which alone can generate an atmosphere conducive to national growth and integration, so vital for a vibrant functioning of a democracy. Hatred and intolerance are bound to vitiate the atmosphere and stifle economic growth. In recent times we find a certain segment of society becoming increasingly intolerant, attacking people at will and destroying their property with impunity

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<sup>3</sup> Black's Law Dictionary 1716 (Bryan A. Garner, Thomson Reuters, Tenth Edition 2014)

<sup>4</sup> (1) All citizens shall have the right

(a) to freedom of speech and expression;

<sup>5</sup> (2) Nothing in sub clause (a) of clause ( 1 ) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

<sup>6</sup> Introduced in the judgment of Romesh Thapar v. State of Madras, 1950 AIR 124, 1950 SCR 594

<sup>7</sup> Started degrading especially after Emergency era.



without any fear of state action, creating a sense of insecurity among the minorities. The rule of law has nosedived with these elements vandalizing cinema houses<sup>8</sup> and preventing screening and shooting of films in the name of culture as self-appointed custodians and guardians of culture, secure in the belief that the State will turn a Nelson's eye to their criminal hooliganism.

Marginalised communities are quick to take offence at slights, which are sometimes merely perceived. Communities like the Muslims, who are already influenced by the global trend towards fundamentalism are quick to anger at what they consider as false depictions of their faith and community. There are also professional purveyors of grievance, such as can be found in the majority community who argue that the system panders to the minorities and that their faith and expression is getting short shrift. If this trend is not arrested we will soon cease to be called a civilized society.

### **THE FUNDAMENTALS OF FREEDOM OF SPEECH & EXPRESSION IN INDIA**

Coming to contemporary era, do we really have in true sense Freedom of Speech and Expression? Freedom of speech has been quoted by S.G. Tallentyre, author of the book 'Friends of Voltaire' as follows;

"I disapprove of what you say, but I will defend to death your right to say it."<sup>9</sup>

Of course, we *technically* have free speech, but that doesn't count for much if speaking your mind is likely to result in you being bombarded with epithets, losing your job, being ostracized by your community, and possibly other forms of retribution.

"Freedom of speech" is nothing but a lovely aphorism. But it can't be said that "free speech" (as free speech absolutists envision it) actually exists, or that it is something that we have ever truly possessed. The truth of the matter is that there are two types of speech or expression: those that we (either as individuals, or as a society) are willing to tolerate, and those that we do not. We may cherish a particular word, idea, expression, or identity. But if enough people collectively refuse to tolerate it, then even if we are to shout "free speech!" at the top of our lungs, no one is going to care or protect it.

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<sup>8</sup> Deccan Chronicle, 'Padamavati' row intensifies; Rajput group vandalises theatre screening trailer, Deccan Chronicle (January 30, 2018, 10:22pm), <https://www.deccanchronicle.com/nation/current-affairs/141117/padamavati-row-intensifies-rajput-group-vandalises-theatre-screening-trailer.html>

<sup>9</sup> The Friends of Voltaire Quotes, Goodreads Inc (January 30, 2018, 9:30pm), <https://www.goodreads.com/work/quotes/16570101-the-friends-of-voltaire>



Ramchandra Guha<sup>10</sup> rightly said, we live in a 50-50 democracy, where on one hand we claim to be a tolerant society and on the other hand do acts or tolerate acts just opposite to it. The plight of artist M.F. Husain and of Salman Rushdie's *The Satanic Verses*, the plethora of criticism turned alleged criminal defamation cases of former Tamil Nadu Chief Minister, J. Jayalalithaa, to celebrities like Aamir Khan and Shahrukh Khan suffering the ignominies for expressing their views on Intolerance. They expressed their concerns which were well within the boundaries allowed by law, but yet they had to suffer through the ire of the alleged Nationalists, so much so that a company which Aamir Khan endorsed also had to bear the brunt.

India has witnessed many incidents right from murdering of Graham Staines to Beef lynching to Una incidents to Cow vigilantes to the Gagging of press to Being refugee in your own country to Coverage of an activity surprisingly resulting in threat to national security to criticism of government policy resulting in criminal defamation to going in jail for criticising the Prime Minister<sup>11</sup>. The era of Shankar and Nehru bonhomie is long forgotten. So much so that even reporting the corrupt and illegal practices to government agencies results in lodging of FIR<sup>12</sup> against the journalists. Even cartoons have not been exempted from archaic laws like Sedition<sup>13</sup> which Mahatma Gandhi called as the "tool to suppress the liberty of the citizen."<sup>14</sup> In the year 2014, some of the Kashmiri students were charged with sedition for supporting Pakistan in a cricket match between India and Pakistan.<sup>15</sup> When the first amendment was introduced, which also included detailed limitations on free speech, the then Prime Minister Jawaharlal Nehru was categorical in his belief that the offence of sedition was fundamentally unconstitutional. He had said 'now so far as I am concerned [Section 124-A] is highly objectionable and obnoxious and it should have no place both for practical and historical

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<sup>10</sup> Ramchandra Guha, A fifty-fifty democracy, The Telegraph (January 30, 2018, 9:30pm), [https://www.telegraphindia.com/1150124/jsp/opinion/story\\_9857.jsp](https://www.telegraphindia.com/1150124/jsp/opinion/story_9857.jsp)

<sup>11</sup> Thirumurugan was booked under charges including Section 67 of the IT Act, 2000 and Section 505 (public mischief) of CrPC.

Vinita Govindraj, A TN man was arrested for posting abusive remarks about Modi in Facebook chat. Is this justified? <https://scroll.in/article/856214/a-tn-man-was-arrested-for-posting-abusive-remarks-about-modi-in-facebook-chat-is-this-justified> ((January 30, 2018, 9:30pm)

<sup>12</sup> An FIR had been lodged with the crime branch's cyber cell "under IPC Sections 419 (punishment for cheating by impersonation), 420 (cheating), 468 (forgery) and 471 (using as genuine a forged document), as well Section 66 of the IT Act and Section 36/37 of the Aadhaar Act.

<sup>13</sup> Section 124-A, Indian Penal Code, 'Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India' shall be punished with life imprisonment.

<sup>14</sup> Freedom Of Press: Pillar Of Democracy, Lawctopus (January 30, 2018, 10pm), <https://www.lawctopus.com/academike/freedom-press-pillar-democracy/>

<sup>15</sup> Indian Sedition Law: What is it and what does it say, IndiaToday Inc (January 30, 2018, 10pm) <https://www.indiatoday.in/education-today/gk-current-affairs/story/indian-sedition-law-309015-2016-02-16>



reasons. The sooner we get rid of it the better.<sup>16</sup> But yet it remains, ever so prevalent. Marginalised communities are quick to take offence at slights, which are sometimes merely perceived. Communities like the Muslims, who are already influenced by the global trend towards fundamentalism are quick to anger at what they consider as false depictions of their faith and community. There are also professional purveyors of grievance, such as can be found in the majority community who argue that the system panders to the minorities and that their faith and expression is getting short shrift.

### JUDICIARY ON INTOLERANCE

In the case of *Rangarajan Vs. P. Jagjivan Ram, 1989*<sup>17</sup>, the Supreme Court held that:

"The different views are allowed to be expressed by proponents and opponents not because they are correct, or valid but because there is freedom in this country for expressing even differing views on any issue. Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom, by an intolerant group of people."

Today, anyone who feels offended can complain to restrict the offender's right to express herself under Section 153(A) of IPC, saying that the speaker is "promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc", and doing acts prejudicial to maintain harmony. And the state has made it a criminal offence to "outrage religious feelings" with malicious intent under Section 295(A) of IPC.

Clearly, it seems our right to freedom of expression is under an ongoing siege. The raging controversy about the film *Padmaavat* offers another good example. The Rajput Karni Sena, described as a fringe group, demanded a ban on the film because it 'distorted history'. Consequentially, it openly resorted to violence, issuance of threats, including beheadings of the film crew, and payments of vast amount to those who would kill the director, Sanjay Leela Bhansali, and cut off the nose of Deepika Padukone. But, it was also apparent that the Karni Sena fringe had substantial support from the mainstream. Suraj Pal Amu, who held the responsible post of BJP's chief media coordinator in Haryana, openly doubled the bounty- to Rs. 10 crore- for eliminating actress and Director.<sup>18</sup> Rajasthan Chief Minister weighed in to say that no community's sentiments should be hurt. And, in an unprecedented move, even

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<sup>16</sup> *Supra* n. 12

<sup>17</sup> *S. Rangarajan Etc vs P. Jagjivan Ram, 1989 SCR (2) 204, 1989 SCC (2) 574*

<sup>18</sup> Agencies, Padmavati: Haryana BJP leader offers Rs 10 cr for beheading Padukone, Bhansali, HT Media Ltd. (January 30, 2018, 7pm), <https://www.hindustantimes.com/india-news/padmavati-row-haryana-bjp-leader-announces-rs-10-crore-reward-for-beheading-deepika-padukone-bhansali/story-SNu3xwOyMQmJU3fNzbSVyL.html>



before the designated authority, the Central Board of Film Certification, could pronounce its verdict, five states (all BJP ruled)<sup>19</sup> banned the film.

Padmaavat was banned by the states exercising their power under section 144 of CrPC and Section 6 in the Cinematograph Act, 1952, which empowers the government to issue orders “in urgent cases of nuisance or apprehended danger”. The concerned governments did not consider the judgment in *Sony Pictures vs. State of Tamil Nadu*<sup>20</sup> (2006), which concerned an English feature film by name *Da Vinci Code*, Prabha Sridevan, J pointed out that “persons who object to a film are not compelled by anyone to see the film. “

Thankfully, the Supreme Court in *Manohar Lal Sharma vs Sanjay Leela Bhansali*<sup>21</sup> came to rescue and stayed the ban on screening of Padmaavat, where Chief Justice Dipak Misra said in his ringing words “It is worthy to mention that freedom of speech and expression is sacrosanct and the said right should not be ordinarily interfered with.” The Bench further made the following significant observations: “A film or a drama or a novel or a book is a creation of art. An artist has his own freedom to express himself in a manner which is not prohibited in law and such prohibitions are not to be read by implication to crucify the rights of an expressive mind. A thought-provoking film should never mean that it has to be didactic or in any way puritanical. It can be expressive and provoking the conscious or the subconscious thoughts of the viewer. If there has to be any limitation or restriction then that has to be as per the prescription in law”.<sup>22</sup>

In an recent judgment as well the Court taking cognizance of Intolerance has stated that “A person in a democratic set up like India is free to follow any political ideology, but it does not give him a right to force others to succumb to his mandate.” It went on to state that “The need of the hour is to curb such rising intolerance and to award a suitable and adequate sentence commensurate to the gravity of offence.”<sup>23</sup>

### **THE HECKLER’S VETO**

Some may argue that controversial or offensive speech can legitimately be restricted since “public order” is one of the grounds for which our Constitution permits the restriction of the freedom of expression.

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<sup>19</sup> Madhya Pradesh, Gujarat, Uttar Pradesh, Rajasthan and Bihar.

<sup>20</sup> *Sony Pictures vs. State of Tamil Nadu*, Writ Petition No.18230 of 2006

<sup>21</sup> *Manohar Lal Sharma vs Sanjay Leela Bhansali*, WRIT PETITION (CRIMINAL) NO. 191 OF 2017

<sup>22</sup> *ibid*

<sup>23</sup> *State vs Unknown*, SC No. 1823 of 2016 (in SC No. 40/14)



The Supreme Court of India, in *Babulal Parate vs State Of Maharashtra*<sup>24</sup> (1961) found that public order must be “maintained in advance in order to ensure it”, and ruled that restriction of Article 19 freedoms of expression and assembly in the interests of public order is permissible. However, all such restrictions must continue to satisfy the reasonability test laid down in the Constitution, providing our judiciary with the opportunity to ensure that intolerance does not continue to oppress speech. The use of law to bully people into silence is not unique to India. Harry Kalven termed this ‘the hecklers’ veto’<sup>25</sup>: “if police action silences speakers for fear that the offended listeners might create a law and order problem, this effectively allows the listeners to veto what the speaker can say.” Justice Hugo Black of the U.S Supreme Court, in his *Feiner v. New York* (1951) dissent, argued that the police must make all reasonable efforts to protect the speaker’s constitutional right to speak before interfering with this right. This dissenting opinion was later hailed as visionary. The US Supreme Court subsequently gradually recognised the evils of the heckler’s veto, which privileges and encourages intolerance.<sup>26</sup>

The Indian Supreme Court’s judgment in the *Rangarajan v. P. Jagjivan Ram*<sup>27</sup> (1989) echoes Justice Black’s denouncement of the heckler’s veto. It declares, “freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to...surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem”.

### **OTHER CASE STUDIES**

A case in point is the free articulation of one's sexual identity. The third gender was covered under the threat of prosecution and persecution for centuries. Thanks to the cases in the Delhi high court and the Supreme Court<sup>28</sup>, big cities have somewhat come to terms with people going public with their sexual orientation. Still, the social stigma is so unnerving that only a few rich and famous have dared to articulate their sexual preferences. The "I am right, you

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<sup>24</sup> Babulal Parate vs State Of Maharashtra, 1961 AIR 884, 1961 SCR (3) 423

<sup>25</sup> “If the police can silence the speaker, the law in effect acknowledges a veto power in hecklers who can, by being hostile enough, get the law to silence any speaker of whom they do not approve.”

<sup>26</sup> Dissent by Hugo Black, WikiSource (January 30, 2018, 3pm)  
[https://en.wikisource.org/wiki/Feiner\\_v.\\_New\\_York/Dissent\\_Black](https://en.wikisource.org/wiki/Feiner_v._New_York/Dissent_Black)

<sup>27</sup> Rangarajan v. P. Jagjivan Ram, 1989 SCR (2) 204, 1989 SCC (2) 574

<sup>28</sup> National Legal Ser.Auth vs Union Of India & Ors (2014), WRIT PETITION (CIVIL) NO.604 OF 2013



are wrong" infection has taken a virulent form during this free speech fever. Tolerance for other's right to free speech is dwindling fast.

A 20-year-old named Gurmehar Kaur exercised the right to speak her mind<sup>29</sup> and made a rational comment of which the nationalists took umbrage to and stamped her anti national and even threatened her with dire consequences. Posting a photo whether half clad<sup>30</sup> or doing exercise or for that matter posting a picture of your wife in a gown turns out to be against your religion.<sup>31</sup> If that's not intolerance then what is intolerance.

On 28 September 2015, Mohammad Akhlaq was beaten to death by a mob in Dadri for allegedly consuming cow meat.<sup>32</sup> In April 2017, Pehlu Khan<sup>33</sup> was carrying cattle for his dairy farm in Nuh, for which he had a valid licence. He was lynched in full public view, by a mob of cattle vigilantes. In spite of substantial evidence to nail the culprits, in both the cases culprits were all let off. These incidents followed by many inspections by self-proclaimed guardians of Hindu Heritage on the homes of innocent people, created a very hostile environment between communities.

One more incident happened on July 11, 2016 when a group of cow vigilantes barged into the house of Balu Sarvaiya, a Dalit whose primary occupation was skinning dead cattle. The cow vigilantes assaulted seven members of the Sarvaiya family. Later, the mob tied four of the members to a car, and stripped, flogged and marched them half naked for about 25 kilometres to Una.<sup>34</sup> To top it all, a video recording of the incident was also circulated on social media. If flogging and torturing because of one's caste, creed or colour is not intolerance then what can be termed as intolerance?

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<sup>29</sup> Express Web Desk, Who is Gurmehar Kaur?, The Indian Express [P] Ltd. (January 30, 2018, 6pm), <http://indianexpress.com/article/india/who-is-gulmehar-kaur-whats-the-ongoing-savedu-campaign-all-about-all-your-questions-answered-4547653/>

<sup>30</sup> Fatima became a victim of online trolling and slut-shaming for going on a vacation and posing for pictures in a bikini during the holy month of Ramadan.

<sup>31</sup> Maria Thomas, An Indian Muslim cricketer was trolled for showing off his sun salutation yoga moves online, QZ Ltd. (January 30, 2018, 6pm), <https://qz.com/876340/an-indian-muslim-cricketer-was-trolled-for-showing-off-his-suryanamaskar-moves-on-twitter/>

<sup>32</sup> Poonam Aggrawal, The Dadri Truth, The Quint (January 30, 2018, 6pm), <https://www.thequint.com/news/india/was-the-dadri-lynching-really-a-murder-based-on-a-personal-grudge>

<sup>33</sup> Sachin Saini & Deepak Mukherjee, Alwar lynching: Pehlu Khan, killed by cow vigilantes, was no cattle smuggler, HT Media Limited (January 30, 2018, 6:30pm), <https://www.hindustantimes.com/india-news/alwar-lynching-pehlu-khan-killed-by-cow-vigilantes-was-no-cattle-smuggler/story-oHFwJT3e8R8kJn396KEGOO.html>

<sup>34</sup> Damayantee Dhar, One Year on, 'There Is No Justice' for Una Flogging Victims, The Wire (January 29, 5pm), <https://thewire.in/155125/a-year-after-the-una-dalit-flogging-incident-the-sarvaiya-family-still-waits-for-justice/>



The under trial prisoners are languishing in jail, with no remedy. Right to express the opinion is there, but what is a right without a remedy. If NGOs are to protest or take out rallies against Human Rights Violation then they are charged with Sedition for alleged slogans against country.<sup>35</sup> If that is not a curb on their expression then, what is? We like an argument, provided we get the last word and we are winning. But those who challenge or question us: well, they shouldn't be allowed to.

Narendra Dabholkar of Maharashtra and MM Kalburgi from Karnataka were both rationalists while Govind Pansare, who lived in Kolhapur, was a vocal critic of the Hindutva agenda. They had roiled many with their strong views and were silenced by assassins' bullets. Dabholkar was shot dead near his home in Shaniwar Peth in 2013, Pansare died of wounds after being shot in 2015, and Kalburgi was killed by a hail of bullets in Dharwad in 2015<sup>36</sup>. As if these three activists were not enough that, Gauri Lankesh, a well-known critic of the right wing, was also killed<sup>37</sup> in a hail of gunfire at her residence in Bengaluru in September 2017. The atmosphere is such that other activists are wondering if they should continue their work or not. Ideological differences maybe there but resorting to violence for the same under the garb of Protection of Authorities is what Intolerance is.

For past few years, we have seen some serious rise in Hindu Nationalist fringe elements especially with all the lynching, threat of lynching and death threats on the basis of fake news. Journalists like Rana Ayyub, Ravish Kumar and many others are targeted by an apparently coordinated social media campaign that slut-shames, deploys manipulated images with sexually explicit language, and threatens rape as well to subjects concerned and their family members. The Five United Nations Human Rights Council (UNHRC) experts have urged India to urgently provide protection to journalist Rana Ayyub, but the pleas have fallen on deaf ears. Ravish Kumar on the other hand has been spammed by thousands of calls from alleged Hindu Nationalists and these are not anonymous threats but from Hindu right-wing groups like Bajrang Dal, an organization of Rashtriya Swayamsevak Sangh, who are making videos and unapologetically making threat to the journalists for criticizing the present national regime BJP and branding him as anti-national.

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<sup>35</sup> Amnesty International accused of sedition in India, Al Jazeera (January 30, 2018, 4pm), <http://www.aljazeera.com/news/2016/08/amnesty-international-accused-sedition-india-160818081440628.html>

<sup>36</sup> Anant Phadke, The murder of Dr Narendra Dabholkar: a fascist attack on rationalism, IJME(January 30, 2018, 4pm), <http://ijme.in/articles/the-murder-of-dr-narendra-dabholkar-a-fascist-attack-on-rationalism/?galley=html>

<sup>37</sup> Gauri Lankesh: Indian journalist shot dead in Bangalore, BBC (January 30, 2018, 5pm), <http://www.bbc.com/news/world-asia-india-41169817>



The ongoing campaign in Aligarh Muslim University against the portrait of Jinnah is also aimed at the Muslims because it is being instilled in the minds of common Hindu`s that Muslim loyalty lie with Pakistan and it`s founder M.A. Jinnah. Smear campaigns to defame political ideological opponents like Nehru and Gandhi using photo-shopped pictures and fake information on platforms like social media and internet. With the advent of social media slaughter and government not reprimanding the same, it seems really true that the space for dissent is shrinking.

### **CULTURAL ACTIVITIES & INTOLERANCE**

On the cultural front Deepa Mehta`s film `Fire` came under Shiv Sena fire and the cinema hall was vandalised in the name of culture. It was followed by a demonstration outside the residence of film personality in Mumbai, whose only fault was that he had sought redress through court of law for screening the film. Then came raping of nuns in Madhya Pradesh, the killing of Graham Stains and his two sons in Orissa and the digging of cricket ground in Delhi<sup>38</sup>. Even the Judiciary was not spared and Justice Srikrishna, an upright Judge was attacked by those then in powers in Maharashtra for his reports on the Bombay Riots. The attacks against Christian Missionaries continue unabated and once again in the name of culture Deepa Mehta`a film `Water` was drowned in the Ganges notwithstanding the Censor Board having cleared it more than once, forcing her to abandon the project and return to Canada.<sup>39</sup> One wonders if the films were the victims or Article 19(1)(a) of the Constitution? In any case it was the rule of law that took a beating.

### **CONCLUSION**

India legitimately takes pride in its culture of Tolerance. That is why we are at times astounded by the utterances by the utterances of some people, such as the top brass of Vishwa Hindu Parishad and the Bajrang Dal and even the constitutional functionaries like the former Chief Minister of Gujarat who goes to the length of addressing the Muslims in derogatory terms and stating that he closed the relief camps of riot victims as `he did not want to run them into centres for producing children` and that he wanted to teach them a lesson. Were those venom poured during his `Gaurav Yatra` under the permitted ambit of Freedom of

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<sup>38</sup> Radical Hindus dig up pitch ahead of India-Pakistan match (7 January 1999), ESPN Sports Media Ltd. (January 30, 2018, 4pm), <http://www.espnricinfo.com/ci/content/story/80501.html>

<sup>39</sup> Dr. Lokendra Malik & Dr. Manish Arora, *The Chief Justice Speaks* 172-176 (First Edition 2016)



Speech and Expression and people listened to it gleefully rather than admonishing such claims<sup>40</sup>

The Rangarajan<sup>41</sup> case rightly points out that -

“The fundamental freedom under Article 19(1) (a) can be reasonably restricted only for the purposes mentioned in Articles 19 (2) and the restriction must be justified on the anvil of necessity and not the quickstand and of convenience or expediency. Open criticism of Government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself.”

We live in a world which is now described as a Global Village which demands solidarity. Each nation has to share its general responsibility towards other nations and the Charter of United Nations demands: “to practice tolerance and live together in peace with one another as good neighbours...” Thus we see that if a balance of even one society begins then it affects all. In the recent times with Right Wing extremism at its peak, our ‘electoral democracy’ has gradually weakened particularly in Freedom of Speech and Expression have suffered a serious jolt. Nani Palkhivala was so distressed that he spoke in anguish: “I am ashamed to call myself an Indian”.<sup>42</sup> At such times, the heaven of freedom in which Rabindranath Tagore wanted this country to awake, seems very far. So has the Constitution failed us? In my belief I agree with the former President of India’s opinion that “the Constitution of India has not failed us, we have failed the Constitution.”<sup>43</sup>

The composition of the Indian populace, its pluralism, has been its insulation against it becoming a theocratic state. It is for this reason that though we may sometime feel that we are still in Emergency era, our democracy, even in diluted form, has survived in India. Thus, we see it is the impunity that accused get while doing the shoddy work of Political Leaders and Parties that our society is marred with this fatal disease called “Mobocracy”, followed by Hindutva.

In the end it was Dr. Rajendra Prasad’s words that succinctly explain the reasons for growing intolerance within the society and the constitution.

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<sup>40</sup> *Supra* n. 37

<sup>41</sup> *Supra* n. 16

<sup>42</sup> *Supra* n. 37

<sup>43</sup> Leave the Constitution alone, says President, The Hindu (January 31, 2018, 8pm), <http://www.thehindu.com/2000/01/28/stories/01280001.htm>



“Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves....After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who operate it...”<sup>44</sup>

Our tradition teaches tolerance; Our philosophy preaches tolerance; Our Constitution practices tolerance; Let us not dilute it.<sup>45</sup>

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<sup>44</sup> *Supra* n. 37

<sup>45</sup> P Joseph Raj v The District Collector, W.P(MD)No.8723 of 2015