



## Yugen Summit/BackgroundGuide/Lok Sabha/1

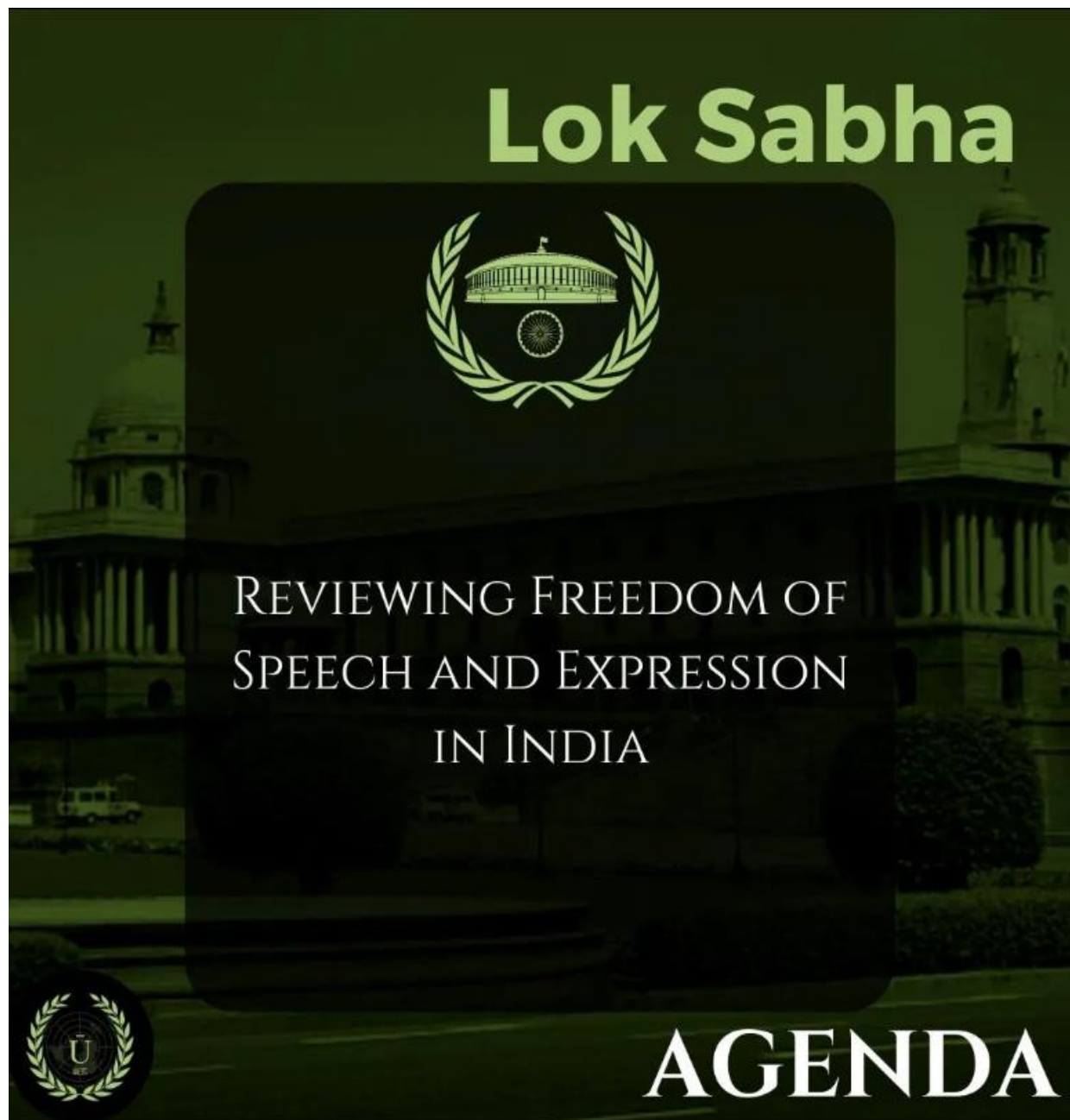
**Lok Sabha**

P. Obul Reddy Public School  
Hyderabad, India

Distr.: General

Date of Submission: 13-10-2022

Original: English



The present document intends to make you aware of the background of the problem. Its content does not express of any opinion whatsoever on the part of the Organizers of The Yugen PORPS Youth Summit (2.0), 2022

## CONTENTS

1. Letter from EB
2. Introduction to Lok Sabha
3. Overview of Agenda
4. Case Studies
5. Legal Analysis
6. Way Forward
7. Questions to Consider

## LETTER FROM THE EB

Honorable Leaders of the Globe,

On behalf of the Bureau, we warmly welcome you to the Lok Sabha. We are absolutely elated to be serving on the Executive Board (EB) of The Yugen PORPS Youth Summit 2022, and look forward to having you be a part of the Lok Sabha as well, rendering to make these a magnificent two days. We will always be there for you at every step, to encourage you, push your boundaries, and re-center focus when needed. We count on you, as much as you might count on us. We look forward to mutual growth, and learning, albeit within the frame of discipline and cooperation. This study guide is a mere framework for your deeper research. This study guide consists of various angles and viewpoints so that you have a good idea about the concepts associated with the agenda. We cannot stress enough that you need to pursue your own sources, especially because the study guides will not cover your individual stances, the compliance of which is very important.

Some of the readings in this guide may be outdated in terms of their information, but the idea is to derive the main arguments and the spirit of certain policies from it. It would really help if you would familiarize yourselves with facets of the set agenda, and the on-goings of the recent Parliamentary sessions and national political discussions at prominent television channels, while understanding the Constitution of India, thoroughly, may we add.

**DISCLAIMER:** The sources used in this study guide is all open-source. And the content that exists also includes few extractions from various sites and journals and not the work of EB alone. And it is to be strongly noted that the work below in no way reflects the personal ideologies, mindset and political affiliations of the EB. Read widely and extensively. Be aware of your party policies. We wish you all the best and please don't hesitate to contact us if you have doubts or even if you just want to have a casual chat about the agenda (post conference of course).

Regards,  
Ansh Bansal  
**Speaker**

Pragnya Amireddy  
**Deputy Speaker**

## INTRODUCTION TO LOK SABHA

*“Sarkare aayengi jaayengi, partiya banengi bigdegi, lekin ye desh rehna chahiye, iska loktantra rehna chahiye.” ~ Atal Bihari Vajpayee*

India has a rich and diverse multi-party electoral system when compared to superpowers like United States following a two-party system or China, in practice following one-party system. We are the world's biggest and most celebrated democracy since decades due to the effective and efficient system put in place by our Constituent Assembly makers.

**The Concept of Parliament** - At the Central level, the Union Government has a “bicameral” legislature collectively known as the Parliament which was formed keeping in mind two factors – a House of the People (based completely on representation and people's choice) known as the Lok Sabha; and a Council of States (based on merit from various states and a plethora of fields like sports, cinema, authors, artists, etc) known as the Rajya Sabha.

**The Structure & Dynamics** – Lok Sabha has nearly 543 seats where the simple majority at present is held by BJP with more than 300 seats and the NDA having 330 as a whole. The Opposition has two factions where UPA has nearly 110 seats lead by the INC, DMK and JD (U) whilst the other groups are a kind of unofficial third front with AITC and YSRCP having major share in seats. With next election only 1.5 years away at May 2024, there is even higher scrutiny of the government's policies and actions throughout the past 8 years in various matters. We all are aware that 131 seats – 84 for SC and 47 for ST are reserved. Fun fact, the new Lok Sabha after the Central Vista has a seating capacity of 888 people. (never know what might be coming our way as general citizen of India in the near future).

**The Power of Lok Sabha** – When the very “Sabha” or gathering is of the representatives of the people, “Lok”, in a democracy that makes Lok Sabha virtually the most strongest body of the nation. The same can be noticed by the following powers available to it:

- Passing of No-Confidence Motions - Council of Ministers are accountable to the people.
- Money Bills can only be introduced here – even the Budget is presented here.
- Even if a deadlock happens with Rajya Sabha in matters of passing non-financial bill, in reality and practice Lok Sabha is more powerful due to its huge numerical strength.
- Can pass Bills for Constitutional Amendment (Majority in total membership and two thirds majority of members present and voting)
- Powers to impeach judges of Supreme Court and High Court by passing resolutions
- Can pass resolutions to declare national emergency, war or constitutional emergency
- Only place where Lok Sabha stands weak is that when it gets dissolved by President, Rajya Sabha becomes sole Parliament which can't be dissolved since it's a Permanent House by the very nature, structure and way of functioning.

**How Does the Government Function** – Read up about “Council of Ministers.”

## OVERVIEW OF AGENDA

The best way to understand any agenda is to break it down from word to word and see all the aspects that fall under the scope of discussion.

“Reviewing the Freedom of Speech and Expression in India”

### **Q. What does this agenda (topic) cover?**

The topic is as wide and inclusive as possible of all happenings and incidents. We recommend you to focus on latest happenings. Although feel free to state historical examples if you feel they would make your argument stronger.

### **Q. What is Freedom of Speech and Expression?**

The fundamental right guaranteed to all of us under the Article 19 of our Constitution. However it is important to note that no right is absolute or unconditional. Even this freedom has certain restrictions or limitations imposed when “national security, public order or morality” and other relevant matters are in question. From an individual point of view too, the Indian Penal Code and Criminal Procedure Code restrict speech and expression which is defamatory, blasphemous, discriminatory, derogatory or in simple words “curtails the rights of others”.

### **Q. What are the rights which get indirectly covered the fundamental right?**

*Freedom of Press* as noticed in the Romesh Thappar v. State of Madras case in 1950.  
*Freedom of Commercial Speech* as noted in Tata Press Ltd v. Mahanagar Telephone Nigam Ltd.  
*Right to Broadcast* as observed in Odyssey Communications (P) Ltd v. Lokvidyan Sanghatana  
*Right to Information* especially in case of UoI v. Assn. for Democratic Reforms (2002)  
*Right to Criticize* as highlighted by S. Rangarajan v. P. Jagjivan Ram  
*Right to Expression Beyond National Boundaries* stated in Maneka Gandhi v. UoI  
*Right to Silence* (take special note) in Bijoe Emmanuel v. State of Kerela when students were expelled from school as they refused to sing national anthem but stood up in its respect

### **Q. What are the things we as EB expect you to “review”?**

As Dr. B.R. Ambedkar has rightfully implied in his various Constituent Assembly speeches in the past that no law becomes a law in reality until people actually inculcate and follow it by truly accepting it. Hence, we as the Parliament have to review and observe whether the fundamental right in question is actually being enjoyed to its envisioned potential by all the citizens within the set limits. We can give special emphasis on media freedoms, protests, the amount of criticism actually tolerated in the nation by reviewing a multitude of case studies at hand.

### **Q. What should be our approach in the discussion?**

To put it in simple words,” Think Global, Act Local”. Many times get lost in the party related blame game and regional issues but we recommend you to feel free to explore international laws and examples to relate the situation with our national conditions and frame suggestions.

## CASE STUDIES

### We give special focus to the “Right to Freedom of Assembly – Article 19(1)(c)”

Individuals have the freedom to peacefully congregate to question and object to government actions through demonstrations, agitations, and public assemblies, as well as to form long-term protest movements.

The right to protest, like other fundamental rights, is **not absolute and is subject to reasonable restrictions** outlined in Articles 19(2) and 19(3) for the following reasons:

- The state’s security
- In the interests of India’s sovereignty and integrity
- Public order violation
- In terms of ethics or morality
- In connection to contempt of court, defamation, or encouragement to commit an offense
- Relations with other countries that are friendly

Restriction grounds based on violation of public order can be justified only if there is proof that protestors will inspire unlawful or disorderly activities and that such conduct is likely to occur.

According to a UN **Special Rapporteur’s report** on the right to freedom of peaceful assembly, while restrictions on the right to peaceful assembly can be **imposed in the interests of national security or public order**, they must be legitimate, necessary, and reasonable to the goal pursued. It also states that these **restrictions are to be the exception**, not the rule and that they “**shall not undermine the essence of the right.**”

## CAA-NRC PROTESTS

The Citizenship Amendment Act (CAA) was passed in December of 2019 which was immediately marked by protests concentrated in Delhi and Assam with subsidiary protests throughout the country. The CAA amends the Indian Citizenship Act to accept the fast-track of citizenships of illegal migrants defined as Hindu, Sikh, Jain, Parsi, Buddhist and Christian from Afghanistan, Bangladesh, and Pakistan, and who entered India before 2014, following the religious persecutions. The National Register of Citizens (NRC) on the other hand aims to make an official record of all the legal citizens in India following a new Population Census for this decade since the data of 2011 has gotten very old. It was aimed for 2021 but delayed to 2023.

### Important protests/incidents with respect to freedom of speech:

- **Jamia Milia Islamia:** Following an anti-CAA rally on 15th December at around 4 pm the barricades were breached and a bus was burnt. This led to tear gas firing and lathi charges. Some of the protestors made their way to the campus which the police later entered under the assumption that the people who were involved in burning the bus were inside the campus. The mosque and the library were damaged, 2 students were admitted with bullet wounds and a student allegedly lost their eye.
- **Shaheen Bagh:** Shaheen Bagh is a place in Okhla, Delhi where sit-in protests predominantly by women were organized following the passing of CAA and the Jamia Milia incident. This was the main point of protests in Delhi along with Jantar Mantar. Protesters were said to be

blocking the road connecting Noida to Kalindi Kunj which caused public inconvenience. On February 1st a man opened fire near the stage. There were no casualties and the man was taken into custody. Statements claiming that the protestors were being offered Rs. 500 and biryani packets along with terming it the spot of “Anti-Indian gangs” were rampant. The protest site was dismantled soon after Covid restrictions came in place in March 2020.

- **Kalaburagi:** Huge crowds attended a pro-CAA rally organized by Kalaburagi Nagarika Samiti wherein people took part in the 6-km march carrying a giant Indian flag of 2,000 meters.

## **DELHI RIOTS**

- **23-24/2 Violence begins at midnight:** Shortly after the speech by a politician, a group of CAA supporters clashed with the protesters. Zones occupied by CAA protesters and those occupied by CAA supporters became demarcated.
- **Monday 24/2:** After a tense but relatively calm night, “violence broke out again on Monday, spilling over into nearby neighborhoods. In Bhajanpura, a petrol pump was set afire. In the evening, a market in Gokulpuri was set on fire. Throughout the day, there was stone-pelting, and shops and homes were vandalized and torched in Maujpur and Jaffrabad. There were also reports of violence from the adjoining Karawal Nagar and Chand Bagh.” Reports of gun fires came in. Police imposed Section 144 law which forbids the assembly of more than 4 people at one spot (curfew). However, large mobs of mostly young men chanting slogans started confronting the gathered protesters, and subsequently, stones were thrown from both sides. The mob also vandalized shops and homes. At the end of the day, 4 people were dead, including one police officer, and many were injured including another police officer and a few journalists.
- **Tuesday 25/2:** Violence continued overnight and the press reported seeing broken and burnt vehicles, burnt shops, and vehicles still on fire. The mosques were also attacked and burnt in Mustafabad. At the end of the day, 13 were reported dead.
- **Saturday 29/2:** Death toll continues to rise. The count as of Saturday stands at 42, bringing the total number of dead in CAA/NRC-related violence and repression to 69 [15,16]. The total number of dead was about 50: the majority, but not all, Muslims.

A public report by Committee Against Assault on Journalists (CAAJ) which was also mentioned in the OCHCR publication said regarding the riots: “...is a dark chapter of horror in the history of Freedom of Press in Delhi that reminded many of the Emergency days. Around 18 cases were reported where journalists were not only stopped from coverage but identified as Hindu/Muslims, ashamed publicly, and beaten up by the rioting mob. Their camera and equipment were broken, and vehicles were burnt up by the mob. Many cases have gone unreported due to horror.”

“Round-the-clock deployment of forces was ensured in all the vulnerable areas to maintain peace and law and order. Sincere, dedicated, and incessant efforts made by Delhi Police brought the riotous situation to normalcy within a short period and prevented the riots from spreading across Delhi/NCR,” Nityanad Rai the union minister of state for home affairs said in response to the Delhi riots in the Lok Sabha.

## **FARMER PROTESTS**

Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; Essential Commodities (Amendment) Act, 2020; and Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 are the key legislations around which the entire dispute revolves. The timeline of the protests:

**November 25, 2020:** After sporadic protests against the new farm laws, including a nationwide road blockade on November 3, farmers' unions in Punjab and Haryana gave the call for a "Delhi Chalo" movement. The Delhi Police, however, rejected their request to march to the capital city citing Covid-19 protocols.

**November 26, 2020:** Farmers marching towards Delhi faced water cannons, and tear gas as the police tried to disperse them in Haryana's Ambala district. Later, police allowed them to enter Delhi for their peaceful protest at **Nirankari grounds** in North-West Delhi.

**December 3, 2020:** The government held the first rounds of talks with farmers but the meeting remained inconclusive.

**December 5, 2020:** The second round of talks between farmers and the Centre also remained inconclusive.

**December 9, 2020:** Farmer leaders rejected the Union government's proposal to amend the three contentious laws and vowed to further intensify their agitation until the laws are repealed.

**January 28, 2021:** Tensions rose at Delhi's Ghazipur border after the administration in neighboring UP's Ghaziabad district issued orders for protesting farmers to vacate the site by night. By evening, as police in anti-riot gear started spreading out at the site, the protesters camped there and their leaders said they would not leave.

**February 4, 2021:** The government slammed "celebrities and others" for their comments in support of farmer protests, calling them "neither accurate nor responsible". This came after pop icon Rihanna, teenage climate activist Greta Thunberg and lawyer-author Meena Harris, niece of US Vice President Kamala Harris, spoke out on the farmer protests.

**February 5, 2021:** The cyber-crime cell of the Delhi Police has registered an FIR on charges of "sedition", "criminal conspiracy" and "promoting hatred" against the creators of a 'toolkit' on farmer protests, which was shared by Thunberg. The 18-year-old deleted the original tweet on Wednesday but tweeted a revised toolkit on Wednesday night.

**February 6, 2021:** Protesting farmers held a nationwide road blockade, for three hours from 12 noon to 3 pm. While several roads across Punjab and Haryana were blocked during that time, elsewhere the 'chakka jam' protest evoked a scattered response.

**February 14, 2021:** The Delhi Police arrested 21-year-old climate activist Disha Ravi for allegedly "editing" the toolkit shared by Thunberg and was granted bail on February 23rd.

**November 19, 2021:** Prime Minister Narendra Modi in an address to the nation, “Today, while apologizing to the countrymen, I want to say with a sincere and pure heart that perhaps there must have been some deficiency in our efforts, due to which we could not explain the truth like the light of the lamp to some farmers”

**November 29, 2021:** Both the Houses of Parliament clear the Farm Laws Repeal Bill, 2021, via voice votes without any discussion.

**December 8, 2021:** The government sends a draft proposal to the farm unions and said that in light of the concessions proposed — including the unconditional withdrawal of all police cases lodged against protesters during the agitation there was no justification for the agitation to continue and requested the unions to call it off.

### **26<sup>th</sup> January Violence**

One of the most important developments was on the **26th of January or the Republic Day riots**. Farmer's unions had devised a plan for a peaceful march into the capital. The Indian government had approved a plan for the farmers — who have been protesting for months — to enter the city at noon. A 36 rules document had been signed with the Delhi Police. But the farmers' plans went awry when some protesters began marching towards the capital a few hours ahead of schedule, resulting in a face-off with police, who used tear gas and batons to try to turn them back.

As the farmers abandoned approved routes, fierce battles broke out across the city. One farmer was crushed when his tractor was overturned in the melee. Although this particular death was manipulated and misrepresented factually in the media in all possible ways one's imagination runs. Reports indicate that at least 19 people in the clashes were sent to two New Delhi hospitals. According to police, at least 86 officers were also injured. The farmers entered New Delhi's historic Red Fort and hoisted the Nishan Sahib. "They damaged a bus, a government gypsy, and other vehicles. The mob robbed the anti-riots gear -- cane sticks, shields, body protectors, helmets, etc from the police personnel," the FIR said.

The Joint Farmers' Front, which represents several Indian farmer's unions, issued a statement condemning and separating themselves from protesters who engaged in violence. During the protests, several news channels which were said to be pro-Modi government were not allowed into the site and were often met with sloganeering. One report also read that the farmers had destroyed more than 1500 telecom towers especially those of Jio by Reliance leader, Mukesh Ambani across multiple regions of Punjab.

### **SITUATION OF COMEDIANS**

According to Article 19(1)(a): All citizens shall have the **right to freedom of speech and expression**. And humour, poetry and various art forms have always been a means of criticism in a artistic way which appeals to the public since thousands of years. Various observers and poets have been allowed to do it during reigns of various kings and rulers of innumerable dynasties.



The comedy scene in India has seen rapid growth, and along with it, rapid growth in the number of complaints against said comedians. Aadar Malik, who is known for his stand-up was forced to apologize after trolls attacked him for his 8-year-old set on an enthusiastic Ganesh Chaturthi festival celebration which was said to have ‘hurt religious sentiments. “I am getting threats to my family. Please don’t do that. It becomes a very scary atmosphere.” He pleaded in the apology video on his Twitter account.

Another such incident took place with comedian Vir Das who was criticized for a 7-minute-long monologue ‘I came from two Indias’ that he posted on YouTube and performed at John F. Kennedy Centre. It went so far that the MP Home minister asked him to apologize or Vir wouldn’t be allowed to perform in the state. Kunal Kamra is a Mumbai-based comedian. In 2018, his show at a university in Gujarat was canceled for being “anti-national” after an administrator received a complaint from former students alleging Kamra intended to “ideologically pollute the minds of the youth” before the 2019 general election.

Then in 2020, he came under legal fire after writing negative tweets about the Supreme Court, which he criticized for granting interim bail to an Indian TV news anchor accused of abetting a suicide. As a result, the Supreme Court initiated criminal contempt proceedings against him, alleging that his tweets “cross[ed] the line between humor and contempt of the court.”

Several other comics including Kapil Sharma, Tanmay Bhat, and Kiku Sharda have received threats in the past questioning their rights to freedom of speech.

### **Background to the Recent Hyderabad Protests**

On January 1, Munawar Faruqui, the comedian from Gujarat, was arrested by police along with four others on the complaint filed by Eklavya Singh Gaud, the son of a BJP MP, for allegedly hurting religious sentiments by making indecent remarks against Hindu deities Ram and Sita at his comic show in Indore, Madhya Pradesh.

The four others include Edwin Anthony, Prakhar Vyas, Priyam Vyas, and Nalin Yadav. All of them were booked under IPC sections 295-A (deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs), section 269 (unlawful or negligent act likely to spread the infection of any disease dangerous to life) and other relevant provisions. They were also accused of organizing the comic show ignoring all Covid-19 protocols.

A stand-up comedy show was organized on January 1, 2021, at Munro Cafe, Indore where the accused had made indecent remarks against Hindu deities and home minister Amit Shah that led to the complainant filing the case against them.

On January 14, Faruqui moved to the Madhya Pradesh high court after being in jail for two weeks. The high court on January 25 had reserved its order on the bail application.

On January 28, the high court bench of Justice Rohit Arya again rejected the bail plea of the accused citing the ongoing investigation, materials seized, and statements of witnesses.

In August this year, Munawar was called for a performance at the Shilpa Kala Vedika, Hyderabad which resulted in massive protests amidst BJP MLA T Raja Singh being placed in preventive detention. He had called for the cancellation of the show which was said to include material offensive toward Hindu gods. A day after he hosted the show, Singh posted a video on his YouTube channel while passing derogatory comments against Prophet Muhammad. Over 50 persons majorly from the BJYM were also detained.

## **SITUATION OF JOURNALISTS**

The Indian media landscape is like India itself – huge and densely populated – and has more than 100,000 newspapers (including 36,000 weeklies) and 380 TV news channels. But the abundance of media outlets conceals tendencies toward the concentration of ownership, with only a handful of sprawling media companies at the national level, including the *Times Group*, *HT Media Ltd*, *The Hindu Group*, and *Network18*. Four dailies share three-quarters of the readership in Hindi, the country's leading language. The concentration is even more marked at the regional level for local language publications such as Kolkata's Bengali-language *Anandabazar Patrika*, the Mumbai-based daily *Lokmat*, published in Marathi, and *Malayala Manorama*, distributed in southern India. This concentration of ownership in the print media can also be observed in the TV sector with major TV networks such as *NDTV*. The state-owned *All India Radio (AIR)* network owns all-news radio stations.

The Indian press is a colossus with feet of clay. Despite often huge stock market valuations, media outlets largely depend on advertising contracts with local and regional governments. In the absence of an airtight border between business and editorial policy, media executives often see the latter as just a variable to be adjusted according to business needs. The Indian media is being increasingly funded by private entities who might manipulate the media to suit their ends thus putting a question mark on the credibility of the news provided. The number of private television channels has increased from none in 1990 to more than 50 this year.

The Human Rights Watch on the situation of journalists in India said “Amid growing restrictions on media's freedom, Indian authorities have arrested journalists on spurious terrorism and sedition charges, and routinely targeted critics including raiding their workplaces. Journalists and online critics also risk prosecution under the Information Technology Act and IT Rules of 2021 for content critical of the authorities. Indian authorities have been implicated in using the Israeli-produced spyware Pegasus to target journalists. In addition, the authorities' frequent internet shutdowns hamper the ability of journalists to do their work, including accessing and disseminating information online.”

## **Murder of Journalists**

According to the UNESCO Observatory for the killing of journalists, 54 deaths since 1991 have occurred in India where no case has been resolved and in fact, 52 seem to remain unreported officially to the UNESCO. There were only 1 or 2 deaths till 2013 but a worrying trend was noticed since 2014 onwards as 5-6 deaths happened annually.

One of the most frequent examples given is the Gauri Lankesh murder case. Gauri Lankesh was a senior journalist and activist based in Bengaluru who was a frank and unapologetic critic of the Hindutva politics and extremism being practiced in India. The editor of 'Gauri Lankesh Patrike', a weekly Kannada tabloid, she was critical of extremist forces, and frequently expressed herself in the cause of Rohingya refugees in the days before her killing. On September 5, 2017, Lankesh was shot dead on her doorstep as she was about to enter her home after returning from work. Assailants on a motorcycle fired several shots at her before fleeing.

Her murder was alleged to have been motivated by the same forces that were involved in the killings of the rationalist Dr. Narendra Dabholkar in 2013, and the leftist thinker Govind Pansare and Kannada scholar M M Kalburgi in 2015.

No verdicts have been passed in any of these murders as yet though the Special Investigation Team (SIT) of the Karnataka police has filed two reports in the case.

### **SITUATION OF POLITICIANS**

Indian politicians are characterized by their spicy speeches, loud voices, and crisp white Kurtis. There are several laws governing hate speech including the Indian Penal Code, 1860, the Representation of The People Act, 1951, the Protection of Civil Rights Act, 1955, the Code of Criminal Procedure, 1973, etc. Restrictions have been put on derogatory speeches, spreading enmity between different groups on the grounds of religion, race, place of birth, residence, language, etc. "Desh ke ghaddaron ko, goli maaron s\*\*\*\*\*n ko" (Shoot down the rascals/the traitors to the country) was one slogan heard in the Delhi elections by minister Anurag Singh Thakur who maintains that the latter part of the slogan was shouted by crowds present and not him. Akbaruddin Owaisi had in one of his speeches insinuated violence in Hyderabad when he said that he would show the true strength which they wield if the police were removed for 15 minutes. He was later acquitted. He has although not backed away from being frank and direct in his discontentment towards the way Hindus practice their religion by worshipping many Gods. Finally this particular segment would be incomplete if we do not mention the hate speech and incite-full statements made by Nupur Sharma and T. Raja Singh about women in Islam. It led to the cutting of a throat of a tailor in Udaipur by two Muslims who were angry when he openly supported Nupur Sharma in social media.

### **BLASPHEMY IN INDIA**

Section 295A punishes "deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs" with imprisonment of up to three years or a fine or both. It's India's blasphemy law essentially. But blasphemy is not explicitly defined in Indian law. It is generally meant to mean 'the action or offense of speaking sacrilegiously about God or sacred things.' MS Dhoni was once shown as lord Vishnu with the words "Divine force of big deals." The courts decided that for an act to be blasphemous it ought to be said/written with the malicious intent of hurting religious feelings. The Nupur Sharma case is of special significance here after she was suspended by the BJP after derogatory statements about the prophet along with Delhi BJP's media head Naveen Kumar Jindal. Nupur issued an apology later on. She cited that insults against 'Mahadev' had caused her to respond in such a manner. She then

withdrew her statement "unconditionally". It was met by massive protests along with incidents like the beheading of a tailor who had supported Nupur Sharma by two Muslim youths.

## **CENSORSHIP**

Censorship in India has been present since before she got her independence. The British officers often routinely used to book freedom fighters for owning "Seditious" books and several newspapers came under their fire (Ex: Kesari by Bal Gangadhar Tilak faced sedition charges). During the emergency period, a book by historian Michael Edwardes on Nehru was banned as it contained grievous factual errors. Kissa Kursi Ka a movie that showcased politics sarcastically was personally stopped from releasing by Sanjay Gandhi. "All the prints of the movie, including the master proof of the film, were sent to the Maruti factory [in Haryana], where they were burnt," writes journalist Coomi Kapoor.

Salman Rushdie was recently in the news after he was stabbed in the neck and the abdomen was also an author whose book "The Satanic Verses" was banned in India to maintain the law-and-order situation. A fatwa/religious edict was issued asking Muslims to kill Rushdie. The book's Japanese translator was killed in July 1991. A few months later, an Italian translator was also stabbed and the book's Norwegian publisher was shot.

Threats to cut off Deepika Padukone's nose similar to how Shurpanaka's nose was cut in Ramayana began to surface after she acted in the movie *Padmaavat*, in which the Rajput clan believed that their queen Padmavati was shown in a bad light. The movie RRR which portrayed tribal leaders and freedom fighters Alluri Sitarama Raju and Komaram Bheem also came under fire, quite literally. Bandi Sanjay declared that theatres would burn if Komaram Bheem was shown in a Muslim outfit. Most recently the movie Adipurush came under fire after its trailer allegedly showed Hanuman in an "atrocious manner", wearing leather straps all over his body and his appearance was against the description in the religious verse of Hanuman Chalisa. The character of Raavan, a staunch Brahman, was "awfully cheap and appalling", while the vaanar sena was shown as a "whoop of chimpanzees", the plea filed against the movie claimed.

Even advertisements haven't been spared from scrutiny as people become more intolerant day by day towards any kind of social messages on matters of religion. We notice this in the cases of advertisements by Tanishq jewelers which was alleged to be promoting "love-jihad".

## **FREEDOM OF SPEECH ON SOCIAL MEDIA**

As everything has 2 sides, social media too has its own share of praises and criticisms. On the brighter side, it provides a voice to all the under-privileged sections of society. It has slowly turned into a powerful tool of protest. Numerous social movements across the globe such as the "Black Lives Matter", "Arab Spring", "Occupy Wall Street", "Shahbag movement" along with various Indian instances such as the "hokkolorob," "CAA-NRC" agitations, farmers' protest, scrapping of Article 370, etc. are a testimony to the important role played by social networking sites in the rise of these movements.

It has been aptly stated that “The use of digital media had radically transformed online individuals from passive receivers into active shapers of content, from observers of activism into activists themselves.” The Apex Court has also held that Freedom of speech and expression on the internet is constitutionally protected and indefinite extension of internet shutdowns shall be unconstitutional as the same is a hurdle in the enjoyment of FSE and hence violates Article 19(1)(a). But the problem occurs when these activists turn into hyper-activists by crossing the realm of law. It has been seen that at times things have turned ugly leading to incidents of riots and mob lynching.

The violence that took place in Bengaluru last year was because of a communal Facebook post, the murder of Nilotpal Das and Abhijit Nath in Assam because of the rumor that they were child-lifters spread through WhatsApp, murder of Kaluram in Karnataka occurred because of a fake video spread through WhatsApp forwards, and other numerous incidents testify the grave dangers posed by social media.

The big question arises, as to whether such social media platforms could be held responsible for the misinformation that is spread through them. Facebook and others have already washed their hands off of the responsibility for the content posted on their platform. The platforms themselves are manipulate-able so much so that entire regimes like the one in Saudi Arabia take the help of trolls, bots, and privacy breaches to make sure that the public opinion towards their governance is positive. North Korea doesn't believe social media is unnecessary and has banned it.

## LEGAL ANALYSIS

Since the above case studies give a holistic and practical view of the status freedom of speech and expression in matters of digital, national, regional and verbal mediums of media, the following legal section in Indian context would restrict to print media to give an idea on how every word is monitored through rules and guidelines.

### STORY OF PRINT MEDIA : EVOLUTION OF JUDGEMENTS

In **Romesh Thapar v/s State of Madras**, Patanjali Shastri, CJ, observed that “Freedom of speech & of the press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.” In this case, entry and circulation of the English journal “Cross Road”, printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as “without liberty of circulation, publication would be of little value”.

The Hon'ble Supreme Court observed in **Union of India v/s Association for Democratic Reforms**, “One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions”.

In **Indian Express Newspapers v/s Union of India**, it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are:

1. Freedom of access to all sources of information,
2. Freedom of publication, and
3. Freedom of circulation.

There are many instances when the freedom of press has been suppressed by the legislature. In **Sakal Papers v/s Union of India**, the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2).

Similarly, in **Bennett Coleman and Co. v/s Union of India**, the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Court holding it to be violative of provision of Article 19 (1) (a) and not to be reasonable restriction under Article 19 (2). The Court also rejected the plea of the Government that it would help small newspapers to grow.

### **SEDITION (IPC SECTION 124A) : THE LAW IN REVISION**

#### *Pre-Independence/Colonial Period*

**I. Reg V Alexander Martin Sullivan (1868)**

This was the Founding Stone/Concept. "Any Word, Deed or Action" which depicted disloyalty against the state was termed as a crime against society.

**II. Queen-Empress V. Jogendra Chunder Bose and Ors. (1891)**

Defined "disaffection" as a feeling contrary to affection. In other words like, dislike or hatred fall under definition of "contrary to affection".

**III. Queen-Empress V. Bal Gangadhar Tilak (1897)**

This expanded the scope of disaffection as absence of affection. "Hatred, enmity, dislike, hostility, contempt and every form of ill-will towards the government" meant disaffection according to the verdict.

**IV. Niharendru Dutt Majumdar V. King-Emperor (1941)**

Reasonable anticipation to create public disorder, incitement to violence or tendency to create/intention to create public disorder amounts to sedition. Not just actions but even intentions were taken into account for sedition.

## *Post-Independence Period*

### **I. Tara Singh Gopichand V. The State (1951)**

High Court struck down Sedition as constitutionally invalid

### **II. Ram Nandan V. The State (1959)**

Allahabad High Court struck sedition down and 124A was announced as "ultra vires of the Constitution of India"

*What has constitutionally upheld it for so long then?*

### **III. Kedar Nath Singh V. State of Bihar (1962)**

- Criticizing the government is fine unless they intend to sub-verse government through incitement of hate speech and disruption of public order which rocks the very stability of society.
- Our fundamental rights cannot be absolute so as to protect others around us from being harmed by their use.
- "Government established by law" means "Visible Symbol of the State" and not "persons for time being engaged in administration".
- Basically people are allowed to criticize the way the ruling party is functioning but they cannot criticize the very existence of the government of India as an institution.

## **DEFAMATION (IPC SECTION 499) : A FEMINIST ANALYSIS**

Covering other legal contexts when freedom of speech is restricted when speech qualifies under crime is especially in matters or comments about women.

The law of defamation is the biggest defense used by any person accused of sexual harassment or rape since their character is being publicly assassinated through the typical media trials which occur once a case gets sensationalized. The number of suicide rates among males due to the tremendous mental health trauma created by this is well known. Hence, such forms of speech and expression which violate the very right to life and privacy of an individual remain a large debate amongst the Indian public especially the youth. How can this situation be analyzed well by the judiciary and a balance be struck between recognizing the fake and real accusations.

Section 509 of Indian Penal Code (IPC) – “Word, gesture or act intended to insult the modesty of a woman.” One of the most important sections in present times as society needs to be careful in its “moral-policing” of women especially on social media and cinema industry. Various influencers and celebrities face derogatory and obscene comments which generalize or tag their very character in the public in an unacceptable manner. Defamation cases are common.

Similarly in matters of expression, Public Display of Affection (PDA) is not legal in India if the act seems to be obscene to the viewers. Basically, even if a married couple shares a kiss in public

it's punishable under Section 294 if anybody complains and finds it uncomfortable. Hence, certain matters of expression cannot be solved by any law but by changing the public mindset.

## **EXPRESSION THROUGH RELIGIOUS BELIEFS**

Right to Religious Freedom has a major inter-connection with the right to freedom of speech and expression since religion and faith plays a major role in shaping the opinions and views of people in crucial matters of daily life like but not limited to marriage (civil), business ethics (corporate) and base administrative principles and rules (legal).

Symbolic representation through logos, flags, colors and dress codes have been a huge part of the Indian culture and heritage since ages. The biggest debate in this particular matter of expression got sparked when recently hijab bans for state educational institutions were legally held valid in the Karnataka High Court.

A beautiful analogy provided by global humanitarian leader, Gurudev Sri Sri Ravi Shankar suggests that for an arrow to go forward, first it has to be pulled back. Hence to understand this crucial matter in depth too, we shall dive deep into analyzing the legal background or timelines:

### **Restrictions in your expression of your faith/religion**

According to Article 25, freedom of conscience and the right to freely *profess, practise and propagate* religion can be restricted only by justifications based on **public order, morality, health and other provisions related to the rights in part III of the Constitution.**

The first explanation to this Article says that the **Sikhs can wear or carry Kirpan** as it forms a part of the profession of their religion. Beyond the boundaries, the **Supreme Court of Canada** in *Multani* case (2006) upheld the right of a Sikh student to wear a Kirpan while attending the class, without harming others. The Indian judicial approach too has been equally liberal. In *Bijoe Emmanuel vs State of Kerala* (1986), students belonging to the **denomination of Jehovah's Witnesses** were allowed to **abstain from singing the national anthem** that they claimed to contradict their religious faith. In *S R Bommai vs Union of India* (1994), the Supreme Court said that the state should **free itself from religious affinity**. Religious freedom is the hallmark of pluralism and inclusiveness.

### **The Hijab Controversy – Is Expression of Islamic Faith in Educational Scenarios a Crime?**

A college in Udupi in Karnataka has been in the news for not allowing a few hijab-clad female students to attend the classes. In the neighbouring state Kerala, the government issued an order saying that girl students in the **Student Police Cadet (SPC) Project** will not be allowed to wear hijabs or full-sleeve dresses, which is *in variation with the standard uniform* prescribed for the cadets. The order was issued based on a direction by the Kerala High Court.



It was a student who moved the court claiming that her right to wear a hijab is protected under Article 25(1) of the Constitution. The court had then asked the government to take a decision on the matter. *While rejecting the student's plea to permit hijab, the government also said that religious symbols are not allowed in the SPC.*

Similar controversies of **hijab-related** have occurred in the recent past. In 2016, a writ petition was filed challenging the **dress code for the All India Pre-Medical Test**. The code was intended to check the massive malpractice allegedly taking place. Justice A Muhamed Mustaque of the Kerala High Court, though refused to interfere with the dress code, ordered that the code **will not be enforced against** the candidates who are unable to wear it due to *“injunctions of their faith”*. In a subsequent case, however, the judge did not show this indulgence.

In *Fathima Thasneem vs State of Kerala* (2018), the court categorically said that the management of a **private aided school has every right to disallow head scarfs** and full sleeve shirts in the classroom since those **were inconsistent** with the prescribed dress code. The court said: “if the management is **not given** free hand to administer and manage the institution, that **would denude their** fundamental right.”

### **Situation in Karnataka**

Before proceeding further, let us understand the latest order issued by the Government of Karnataka on 5th February, in which emphasis has been given on following the dress code in government schools. The state government has invoked **Section 133(2) of the Karnataka Education Act 1983**, stating that all students in government educational institutions shall follow the dress code. Private school administrations can take a decision regarding the dress **based on their choice**. The government order states that the Karnataka Education Act-1983 states that all students should wear uniform dress so that *they look alike and behave in such a way that there is no discrimination*.

Wearing a hijab can be considered a religious freedom **only if the hijab is an integral part of Islam**. This issue also went to courts from time to time but no final decision has come on it yet. Even after the latest controversy in Karnataka, this matter has reached the court. A Muslim student has filed a petition in the Karnataka High Court **seeking to declare wearing of hijab as a fundamental right under Articles 14 and 25**.

One wonders - Why did the students coming to government schools without wearing hijab suddenly come wearing hijab till yesterday? What is the problem with uniform dress code for educational institutions? If purdah is a custom, then why not hijab? Without this, someone will start supporting this evil by blaming religious freedom even on untouchability. **Everyone has the right to wear clothes of their choice but it is not so straightforward**. *If a girl child of 7-8 years of age or less is also seen wearing hijab, is it her choice or is it imposed on her?* According to Child Rights Convention the parents should provide more autonomy to a child in their choices based on “maturity” and “intellectual capabilities”. Is it happening in reality or practice when one wants to make an independent choice on their religious faith?

Our suggestion is - Hijab, if it does not cover the face totally, need not be banned in a classroom. It does not harm others. At the same time, a teacher might want to see the face of the students for effectively conducting the class. A head veil is certainly permissible, whereas a face veil might not be. **We need to strike a balance, whenever possible.**

*A society riddled with communal polarisation needs to cultivate a constitutional mindset while examining the issues of religious freedom.*

**Even in countries where private discrimination laws are stronger, religious rights were given due prominence.** Thus, in *Masterpiece Cakeshop Pvt Ltd* case (2018), a baker's refusal to provide a wedding cake for a same-sex couple was **validated by the US Supreme Court** accepting his religious beliefs and convictions. In *Ashers Baking Company Ltd* (2018), the **UK Supreme Court endorsed** another baker's refusal to supply a cake by inscribing a message supporting gay marriage. Only in India, which is secular, there seems to be a paradox.

### **INTERNATIONAL LAW ANALYSIS**

As noticed in the above sections of the guide, commitments to meet certain guidelines and learning from the positive examples of laws worldwide whether it be the Westo-European laws or Russian and Asian methods of dealing with situations of freedom of speech and expression is important to make the right amendments in our laws while keeping our situation in mind.

#### **International Covenant on Civil and Political Rights (ICCPR, 1966)**

**In context of hate speech and restrictions which are valid on freedom of speech and expression, the ICCPR has Article 20 (2)** which prohibits “advocacy that constitutes incitement.” It is fairly clear that ‘advocacy’ in this context incorporates an intent requirement.

#### **FAURISSON V. FRANCE CASE (Racial Hatred Statements)**

Take for Instance the Communication No. 550/1993 of the **Faurisson V France** case of November 8, 1986 where the **Human Rights Committee** (body governing ICCPR) found that “Any restriction on the right to freedom of expression must cumulatively meet the following conditions:”

**a) it must be provided by law**

(Gayssot Act 1990 violated in this case)

**b) it must address one of the aims set out in paragraph 3 (a) and (b) of Article 19, and**

(Strengthened anti-semitic feelings against Jews which meets one of the aims)

**c) must be necessary to achieve a legitimate purpose**

(Denial of Holocaust is the principal vehicle for anti-semitism)

*This 3-part test of judging domestic laws and verdicts is one of the most fair review mechanisms in international law to uphold human rights.*

### **JERSILD V. DENMARK CASE (Freedom to Journalists on Television)**

Let's consider Case No. 15890/89 of the **European Court of Human Rights** in the famous **Jersild V Denmark** case of September 23, 1994 where the court found that the application of the **Article 226 (b) of Danish Penal Code** on the journalist violated the **Article 10 of the European Convention of Human Rights** because the intent of the journalist while interviewing the Greenjackets wasn't to disseminate any racial information and incite violence but rather it was *very objectively to expose and analyse such controversial ideologies* among the public where the Danish courts also ended up ignoring the **Danish Media Liability Act of 1991** if they wanted to punish him proportionately keeping in mind that he is a journalist.

Excerpt from the judgement:

"The applicant and the Commission emphasized that, taken in the context of the **broadcast as a whole**, the offending remarks had the **effect of ridiculing** their authors rather than promoting their racist views. The overall impression of the programme was that it sought to draw public attention to a matter of great public concern, namely racism and xenophobia. **The applicant had deliberately included the offensive statements in the programme, not with the intention of disseminating racist opinions, but in order to counter them through exposure.**"

Hence, we can understand even in the Indian context that the judiciary and police has to do a **deep analysis of the intention** and the entirety of the action as a whole rather than only taking particular segments of a presentation as offensive such as in cases of comedians, journalists and politicians. A lot of time gets wasted in the legal process **if laws are made non-compoundable**.

### **Understanding the debate of "incitement" through "causation"**

In **UN Doc A/HRC/9/25, 5 September 2008, para 24** you can find that the UN High Commissioner for Human Rights has accepted that the term "incitement" is **very complex and controversial and lacks a clear definition** under international law. This similar word of incitement has been misused in India time-to-time to **weaponize Sedition and UAPA law**.

*Causation is different from incitement but if a causal link is established between statements and a prescribed result then that **demonstrated causation proves incitement**.*

### **ROSS V. CANADA (Role of offensive words in creating violent tendencies amongst people)**

**Case of Ross V Canada**, 18 October 2000, Communication No. 736/1997 para 11.6 showed that the judgement by Supreme Court of Canada in the Ross V New Brunswick School District No. 15 1996, para 101 **was upheld by the Human Rights Committee** since creation of a poisoned environment due to the teacher's **offensive publications was a reasonable anticipation for a causal link**. Basically the words of the publication were enough to be justified as the "root cause" for all the hostility of mind and violent tendencies created in the school since it was very racially discriminative and spread hatred against few groups.

## CASE STUDY FROM RWANDAN GENOCIDE (Role of journalists and politicians)

Similar causal links have been established by **understanding the tone, context and intentions** of a **journalist and interviewee** especially in the case law of The International Criminal Tribunal for Rwanda (ICTR) in the case of **Prosecutor V/s Nahima, Barayagwiz and Ngeze where in the Para 1020 of the Judgement** we can clearly see how the RTLTM broadcast faced two very similar yet distinct situations which stand as an example for understanding and interpreting international law in the right manner.

**Giving a background to get the context** – In Rwanda, a huge genocide had occurred against a specific ethnicity committed by the members of another ethnicity where the international courts upon investigation traced the faults back to certain top leaders who had “incited” people directly or indirectly by spreading hate speech or misinformation against the ethnicity.

**Situation 1** – Barayagwiz (one of the accused) was merely narrating a **personal account of being discriminated** as a Hutu which might impact listeners to take actions but it does not amount to incitement because it’s the *“reality conveyed by the words rather than the words themselves.”* He was respectful to the other ethnicity from his end as he was just telling how their ethnicity was being discriminated through his story which amounts to **“ethnic awareness”**.

**Situation 2** - However **ethnic hatred results from the stereotyping of ethnicity** combined with its denigration. As said in **para 1021** in another RTLTM broadcast **with Nahimana** it was said that *“70% of the taxis in Rwanda were owned by people of Tutsi ethnicity”* (the ones on whom genocide was committed). Now if this fact stands true, **then it’s merely informational** and highlights the inequitable distribution of wealth in Rwanda. But it was **followed by a statement with a resentful tone** that “they are the ones who have all the money” which moves away from ethnic consciousness to ethnic stereotyping. *A normal fact about a particular group was used to generalize a statement which shed very bad light on them generating ethnic hatred amongst the minds of the other group leading to a scary genocidal environment.*

Today, the Hindu-Muslim tensions which were fuelled by British have continued to expand into a very complex and deep rooted ethnic and culturally intolerant hatred hardwired into the subconscious minds of people due to multiple incidents and experiences of riots and deaths amongst both ethnicities across the decades. This particular hatred continues to widen in its gap with even the most academic researchers going in depths of histories to fight about which religion is better which is completely unnecessary. Such statements, words, reports and articles continue to circulate whereas these are the statements which should be actually restricted to avoid more communal riots and fights.

*Hence, all members of Lok Sabha are called upon to find at least one solution for this very grave matter which continues to remain un-resolved since decades.*

## WAY FORWARD

This particular section of the guide focuses on particular areas which haven't been covered by us but we would highly recommend you to research since they would have a great amount of suggestions/changes to be made:

- Amendments to the Unlawful Activities Prevention Act (UAPA)
- Strengthening Centre-State coordination of law enforcement bodies for better implementation of laws
- Greta Thunberg – Rihanna – Disha Ravi “Toolkit” Case
- Arnab Goswami “TRP” scandal (Maharashtra Police FIR)
- Boys Locker Room & Chandigarh University Scandal (Expression in Digital Media)
- Amending of IT Act 2000, IT Rules 2021, Data Protection Bill (Right to Privacy)
- Essential Religious Practices Test of India
- The Brandenburg Test followed by the United States (lack of incitement requirements)

## QUESTIONS TO CONSIDER

- 1) What are the causes for India's slipping down in free speech rankings? How do we develop a national mechanism for ranking states and districts if international ones aren't true picture?
- 2) How can misuse of the right to protest/restrictions on right to protest be curbed? What are the changes one should bring in the Sedition law?
- 3) Can hate speech be regulated and prevented? If yes, what are the methods or solutions you would suggest which do not exist already? If no new, how do we strengthen existing ones?
- 4) Are blasphemy laws needed in India? Shouldn't we just be tolerant in our nature and stop making problems out of every little offense? Or is taking offense important to avoid bigger problems like riots and violence?
- 5) What can be done to improve India's ranking in free speech? What is the exact criteria employed by these international bodies to judge a nation?
- 6) How can politicians be held accountable for their statements? Should the privileges or immunity enjoyed by politicians be applicable outside the confines of the Parliament?
- 7) Can social media platforms be regulated? What were the IT Rules passed in 2021 which created tensions between the government and Twitter?
- 8) What can be done to prevent the misuse of laws such as UAPA and sedition?