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Regulation of Humour as Free Speech: A Comparative Analysis of Indian and European Court of Human Rights Jurisprudence

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Introduction - The Study of Humour as Free Speech

In March 2026 a satirical video and cartoons depicting Prime Minister of India and its online censorship have renewed debates on freedom of expression in India in the digital age.[1] The government of India's crackdown on such content including blocking the content on various social media platform has raised a hue and cry amongst free speech activists in India. In February 2026, the website of Ananda Vikatan, a Tamil magazine was blocked after it published a critical cartoon of Indian Prime Minister.[2] In July 2025, High Court of Madhya Pradesh had refused to provide anticipatory bail to cartoonist Hemant Malviya over 2021 satirical cartoons published during covid pandemic.[3] Further more recently in June 2026, comedian Pranit More got himself embroiled in a controversy wherein he appreciated and encouraged humour on non-consensual sexist conduct in one of his shows.[4]

These cases and more have ignited the debate with respect to legal regulation of humour in India and its limits. The question of whether something offensive in form humour will always be categorised as an 'offence' remains to be answered clearly in India.

[1] Kavita Chowdhury, Indian Government Cracks Down on Video Reels Lampooning PM Modi, THE DIPLOMAT (Mar. 26, 2026), https://thediplomat.com/2026/03/indian-government-cracks-down-on-video-reels-lampooning-pm-modi/.

[2] Aroon Deep, Vikatan Vows Action after PM Cartoon Row, THE HINDU (Feb. 28, 2025), https://www.thehindu.com/news/national/after-modi-cartoon-row-vikatan-magazine-says-exploring-all-legal-avenues-to-restore-site-protect-freedom-of-expression/article69270741.ece.

[3] Objectionable Cartoons on PM Modi, RSS: Freedom of Speech, Expression Abused, Says Supreme Court, THE HINDU (July 14, 2025), https://www.thehindu.com/news/national/objectionable-cartoons-on-pm-modi-rss-freedom-of-speech-expression-abused-says-supreme-court/article69810332.ece.

[4] Press Trust of India, NCW Summons Comedian Pranit More, Himanshu Jangra over "Rs 370 Biryani" Remark Row, DECCAN HERALD (June 11, 2026), https://www.deccanherald.com/india/haryana/ncw-summons-comedian-pranit-more-himanshu-jangra-over-rs-370-biryani-remark-row-4035678.

Humour is considered as a 'non-bona-fide' communications as opposed to straightforward expression and is often characterised by 'incongruity'.[5] Humour is either partly or entirely geared towards amusement. However, what is considered as amusing or funny is subjective depending on context, personal taste, cultural background and other social dimensions, one is exposed to. Therefore, there is no objective way of determining what legally protected humour.

And because the idea of what is funny and what is not differs so variably amongst people and different countries, it becomes a hard task to be able to define the limits of humour through legal regulation.[6] In India humour as an expression is protected under Art 19(1)(a) of the Constitution of India, 1950.

In a country as diverse as India, we have multitude of cultures and religions. Satire is a form of expression wherein usually social and political commentary is made using humour.[7] Parody is when humour is used to cast new perspective on existing work. In any democratic society protection of freedom of speech and expression is a foundational cornerstone.[8] Several jurisdictions have offered protection to humourous expression in different contexts and up to different limits. The fact that humour is a vital form of expression which requires protection, has been upheld in different legal systems.[9]

Satire is an artistic expression and form of social commentary which has inherent features of distortion and exaggeration of reality and is naturally aimed to provoke and agitate. This kind of expression should be examined with 'particular care'.[10] The distinctive reliance of humour on exaggeration and its ability to provoke can be well understood from the Charlie Hebdo and Jyllands Posten cartoon controversy.[11]

Freedom of speech and expression constitutes one of the foundational pillars of a democratic order. It facilitates the true exchange of ideas and perceptions thereby enabling public participation in governance and promotes accountability.[12] The ability to question, criticize, challenge and contribute to social and political commentary is indispensable to individual autonomy.[13] The protection of this ability as a matter of right is undisputably pertinent for democratic societies.[14] However, difference of perspectives lies on the scope and extent of such a right, specifically in a pluralistic society.

Constitutional democracies have constantly recognised that the protection of expression extends beyond speech which is agreeable or widely accepted.[15] Such protection encompasses expression which may be unsettling and even offensive.[16] The preservation of a vibrant public sphere depends not only upon the

[5] Alberto Godioli & Jennifer Young, Humour and Free Speech: A Comparative Analysis of Global Case Law, COLUMBIA GLOB. FREEDOM EXPRESSION (Special Collection of the Case Law on Freedom of Expression, 2023), https://doi.org/10.5281/zenodo.8105760.

[6] Godioli & Young, supra note 5.

[7] Nicholas Holm, The Limits of Satire, or the Reification of Cultural Politics, 174(1) THESIS ELEVEN 81 (2023).

[8] Jeffrey W. Howard, Freedom of Speech, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta & Uri Nodelman eds., Spring 2024 ed.), https://plato.stanford.edu/archives/spr2024/entries/freedom-speech/.

[9] Godioli & Young, supra note 5.

[10] Vereinigung Bildender Künstler v. Austria, App. No. 68354/01, para 33 (Eur. Ct. H.R. Jan. 25, 2007).

[11] JEROEN TEMPERMAN & ANDRÁS KOLTAY EDS., BLASPHEMY AND FREEDOM OF EXPRESSION: COMPARATIVE, THEORETICAL AND HISTORICAL REFLECTIONS AFTER THE CHARLIE HEBDO MASSACRE (Cambridge Univ. Press 2017). See also JYTTE KLAUSEN, THE CARTOONS THAT SHOOK THE WORLD (Yale Univ. Press 2009).

[12] Howard, supra note 8.

[13] ABHINAV CHANDRACHUD, REPUBLIC OF RHETORIC: FREE SPEECH AND THE CONSTITUTION OF INDIA (Penguin Random House India 2017).

[14] GAUTAM BHATIA, OFFEND, SHOCK, OR DISTURB: FREE SPEECH UNDER THE INDIAN CONSTITUTION (Oxford Univ. Press 2016).

[15] Howard, *supra* note 8.

[16] JOHN STUART MILL, ON LIBERTY (Elizabeth Rapaport ed., Hackett Publishing Co. 1978) (1859).

protection of conventional discourse but also upon safeguarding diverse forms of expressions through which dissent and criticism may be communicated.[17]

Humour occupies a distinctive position within this boarder framework of expressive freedom. Throughout history, satire, ridicule, comedy have functioned as powerful instruments for political engagement, challenging power, exposing hypocrisy, and criticising social dogmas.[18] Humour has the discern ability to often succeed where discern criticism fails, enabling individuals to communicate complex or controversial ideas in a manner that as accessible, persuasive and capable of reaching wider audiences. For this reason, democratic societies have attempted to give the same amount to protection to humous expression as is given to other more straightforward expression.[19]

However, it is important to note that legal regulation of humour presents *unique regulatory challenges*. Its reliance on *ridicule, exaggeration, irony and provocation frequently blurs the distinction between legitimate criticism and harmful expression.*[20] Sometimes humour may also be used to reinforce stereotypes, normalize prejudice, marginalize vulnerable groups, and try to provide a socially acceptable way of propagating discriminatory narratives.[21] The legal regulation of humour, therefore raises complex questions concerning the democratic limits of free speech its reconciliation with competing rights and values.[22]

Humour as free speech and its regulation have particularly become significant to study in the Indian context. The rapid expansion of digital platforms, stand-up comedy, online satire, political memes, parody videos, caricatures has added to the traditionally existing modes of humour through newspaper caricatures and jokes.[23] With expanding reach and increasing kinds of humourous expression, the complexities surrounding it have mushroomed.[24] Humour in India has increasingly become the subject of legal controversy and state intervention.

The criminal proceedings initiated against comedian Munawar Faruqui in 2021, despite allegations related to jokes that **had not been performed**[25], generated widespread debate concerning pre-emptive censorship, artistic freedom and chilling effect on humour. Similar controversies have arisen in relation to the comedy collective AIB, stand up comedian Kunal Kamara and other performers who satirical commentary on political legal and social issues attracted regulatory scrutiny and state intervention in India. Therefore, in recent times, there has been a constant debate in India on limits of humour as free speech and balancing of interests.

Significance of the Comparative Study

Although Indian courts have adjudicated numerous cases on restrictions on free expression involving political criticism, obscenity, offensive speech, the *distinctive characteristics of humourous expression* have *rarely been examined as an independent constitutional category* owing to distinctive features of this expression.

Against this backdrop, a comparative examination on Indian law alongside the jurisprudence of European Court of Human Rights (ECtHR) is particularly valuable. Both ECtHR and Indian Courts confront the same fundamental problem of defining and interpreting legitimate restrictions humourous expression. By placing

[17] *Id.*

[18] Alberto Godioli, Sabine Jacques, Jennifer Young & Ariadna Matamoros-Fernández, WHAT'S IN A JOKE? ASSESSING HUMOUR IN FREE SPEECH JURISPRUDENCE (Forum for Humour & the Law & Columbia Glob. Freedom Expression, 1st ed. 2025), https://doi.org/10.5281/zenodo.15383543.

[19] *Id.*

[20] TED COHEN, JOKES: PHILOSOPHICAL THOUGHTS ON JOKING MATTERS (Univ. of Chi. Press 1999).

[21] Natalie Alkiviadou, Ain't That Funny? A Jurisprudential Analysis of Humour in Europe and the U.S., 10(1) EUR. J. HUMOUR RSCH. (2022).

[22] JYTTE KLAUSEN, THE CARTOONS THAT SHOOK THE WORLD (Yale Univ. Press 2009).

[23] LIMOR SHIFMAN, MEMES IN DIGITAL CULTURE (MIT Press 2014).

[24] Paul Sturges, Comedy as Freedom of Expression, 66(2) J. DOCUMENTATION 279 (2010).

[25] Munawar Faruqui: Bail for Jailed India Comic Who Did Not Crack a Joke, BBC NEWS (Feb. 5, 2021), https://www.bbc.com/news/world-asia-india-55942884.

Indian free speech jurisprudence in dialogue with one of the most developed bodies of comparative free speech jurisprudence, this research seeks to critically evaluate the legal regulation of humour, identify emerging challenges in contemporary democratic discourse and contribute to broader debates concerning humourous expression.

European Court of Human Rights (ECtHR) is the judicial body of the Council of Europe, which is an international organization established in 1949 to promote human rights, democracy and the rule of law.[26] The European Court of Human Rights was established in 1959 under the framework of European Convention of Human Rights (ECHR), but it assumed its current form as a permanent court post 1998.[27]

This study undertakes a comparative examination of the legal regulation of humour and satire within the Indian constitutional law framework and the jurisprudence of European Court of Human Rights. It is important to note that the selection of the ECtHR as a comparative reference point is neither incidental nor solely based on its prominence as an international human rights judicial body. Rather, it stems from the Court's extensive and highly developed jurisprudence on freedom of speech and expression, including substantial body of case laws specifically navigating the complexities of humour as free speech and its limitations. Through its interpretation of Article 10 of the ECHR, the Court has developed detailed guidelines for balancing free speech and other competing interests.

While the ECtHR and the Indian constitutional framework operate within distinct legal and institutional contexts, both are confronted with the increasingly complex task of defining the boundaries of permissible expression in democratic settings. The ECtHR, through its interpretation of the ECHR has developed a substantial body of jurisprudence concerning free expression, offensive speech including humour and satire, particularly under Article 10 of the Convention.

The Moral Philosophy of Free Speech

The legal and philosophical scholarship on freedom of speech and expression largely revolves around the significance of this liberty as a value and a right, justifications for restricting free speech, the legal and moral limitations and the scope of reasonable restrictions. There are various theories justifying the significance of free speech.[28] The Listener theory argues that in a democracy people have the right to make up their own minds and opinions after 'listening' to all the other information. The state does not get to unreasonably decide which information reaches citizen which is censored. Similarly, Speaker theory suggests that human being have a significant interest in self-expression, declaring their views and in communicating about different aspects of life freely. Further, Democracy theory strongly argues that the significance of free speech lies in respecting citizens as free and equal autonomous agents in a democracy.[29]

The 'Thinker' theory mostly attributed to Seana Shiffrin views freedom of speech as encompassing both- the freedom of communication and the freedom of 'thought'. Finally, 'Toleration' theory asserts that free speech plays a role in fortifying our ethos of toleration which further strengthens our liberal convictions.[30]

[26] The Council of Europe currently has 46 member States. The European Convention of Human Rights is a regional human rights treaty adopted by the Council of Europe in 1950 and came into force in 1953. The European Court of Human Rights was established in Strasbourg, France in 1959. Till 1998, the ECtHR could hear cases referred to it by the European Commission of Human Rights and was not accessible to individuals from the Council States. Post Protocol No. 11 to the European Convention on Human Rights, the Commission was abolished and the European Court of Human Rights became a permanent full time judicial institution accessible to aggrieved individuals. Therefore, the European Court of Human Rights was established in 1959 under the framework of European Convention of Human Rights, but it assumed its current form as a permanent court post 1998.

[27] Council of Europe Office in Georgia, 'The European Court of Human Rights' https://www.coe.int/en/web/tbilisi/europeancourtofhumanrights accessed 30 May 2026.

[28] Jeffrey W. Howard, *Freedom of Speech*, in *THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (Edward N. Zalta & Uri Nodelman eds., Spring 2024 ed.), https://plato.stanford.edu/archives/spr2024/entries/freedom-speech/.

[29] *Id.*

[30] *Id.*

It is also significant to understand that there is more than one basis to value liberty and to defend it. At the cost of some generalization, the jurisprudence on liberty can be said to consist of two major distinct traditions or justificatory bases that support liberty and have defend its value and significance in a society:

Liberty as a 'Good-in-itself'

Kantianism and various other deontological schools of thought and much of today's human rights outlook movements, treat liberty as a good-in-itself.[31] Thomas Jefferson, John Finnis, other Kantian deontological variants belong to this tradition of supporting liberty. In this tradition, there is much variation, but the different concepts share the core precept that liberty- sometimes recast as autonomy- is a good-in-itself and has intrinsic value. In other words, this tradition promotes the understanding of liberty as being inherently valuable or self-evidently good. This understanding of liberty advocates that upholding and guaranteeing of liberty is necessary, because it has intrinsic value, irrespective of the consequences that normally follow from upholding the value.

The Consequentialist Defense of Liberty

Under this tradition, the value of something is depended upon what consequences that follow after pursuing the value. The paradigm case of consequentialism is utilitarianism, whose classic proponents were Jeremy Bentham and John Stuart Mill.[32] Under this defense of liberty, the only ultimate good-in-it-self is human welfare and human happiness. This consequentialist approach towards liberty supports and defends liberty because it evidentially delivers good consequences, on average, over time. In other words, liberty are short-hands for state of affairs that tend overtime to increase human welfare and happiness. Hence, the utilitarians argued that liberty is instrumentally good, not intrinsically, i.e., liberty is not good-in-it-self.[33]

Either way, freedom of speech and expression is considered a non-negotiable value to be legally protected in any democracy.

Historical Background- Significance of Humour as Free Speech

The fundamental right of freedom of speech and expression and its protection is an undisputable part of a democracy and one of the basic conditions for progress of humankind. Humourous expression, as a mode of communication has been used since ages, not just for recreation, but to convey opinions, question power and to engage the public in political and social commentary.[34] Therefore, humour and satire have long been integral part of Indian culture and communication.

Kabir Das, one of the greatest Indian poet and mystic often used satire in his teachings to staunchly criticize orthodoxy of Islam and Hinduism both.[35] Kabir, in his famous work 'Bijak' uses satire and paradox to critique and mock religious hypocrisy. Goswami Tulsidas in his magnum opus, Ramcharitmanas also uses satire, wit, and mockery in various contexts such as the Laxman-Parshuram dialogue in Bala-Kand, Angad-Ravana Dialogue in Lanka-Kand and even in Sundar-Kand.[36]

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[31] James Allan, Utilitarianism and Liberty, in *JURISPRUDENCE OF LIBERTY* (Suri Ratnapala & Gabriël A. Moens eds., 2d ed. 2011).

[32] Walter Sinnott-Armstrong, Consequentialism, in *THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (Edward N. Zalta ed., Summer 2019 ed.), https://plato.stanford.edu/archives/sum2019/entries/consequentialism/.

[33] Allan, *supra* note 31.

[34] Laura E. Little, Regulating Funny: Humour and the Law, 94 CORNELL L. REV. 1235 (2009).

[35] Ramesh Kumar, The Reformist Movement in India: An Analysis of the Role of Sant Kabir in Bhakti Tradition, 7 SOC. TRENDS: J. DEP'T SOCIOLOGY N. BENGAL UNIV. (2020).

[36] Sukant Tiwari & Vinit Vishal, Cultural Storytelling and Knowledge Sharing: A Study of Humourous Aspects of Tulsidas's *Sunderkand*, THE ASIAN THINKER (Oct.–Dec. 2025), https://theasianthinker.com/wp-content/uploads/2025/12/46.-Cultural-Storytelling-and-Knowledge-Sharing-A-Study-of-Humourous-Aspects-of-Tulsidass-Sunderkand.pdf.

Tenali Rama, the legendary court jester of Raja Krishnadevaraya used his sharp wit to mock the elite and helped in solving difficult matters related to the empire. Birbal, the famous 'Navaratna' of Akbar's court during the Mughal reign, is also well renowned for use of humour and satire. Later, during the colonial era, Premchand and Harishchandra Bhartendu frequently used humour for social commentary and to criticize the British power excesses.

Harishankar Parsai, one of the stalwarts of Hindi literature elevated satire (*vyangya*) into an independent and significant genre used to critique systematic corruption and social and political inequalities. His witty work forced the readers to face uncomfortable truths in post independent India.[37] Parsai won the Sahitya Academy Award in 1982 for his satirical work on blind faith in politics and corruption of values in *Viklaang Shraddha Ka Daur* (The Era of Crippled Devotion).[38]

R. K. Laxman, one of the most prominent Indian cartoonists became a household name for his iconic character, "The Common Man" that appeared in the Times of India for over five decades (BBC, 2015). Laxman's ability to comment on political administration and inconveniences faced by the public reflected the power of humour as a form of expression.[39]

Thorough ages too, humour including satire, has found itself in trouble in various forms of its expression. For example, the prosecution of the satirical magazine Awadh Punch or legal charge against Neel Darpan, a Deenabandhu Mitra play (Liang, 2023).

However, in western works, humour as been scarcely mentioned in its proper sense till the 20th century.[40] Frances Hutcheson and James Beattie were few known thinkers who wrote about the laughter and comedy.[41] Some works of Plato, Hobbes, Kant, John Rawls mention humour tangentially. This reflects that humourous expression was not attributed much importance to by the western philosophers till 20th century as opposed to India. Also, the understanding of humour in the works of most western philosophers in their work from ancient Greece up to 20th century has been dismissive, focussing on 'mocking nature of laughter rather than utility of amusement or wit.[42] Humour was directly connected to ridicule and scorn which was criticised heavily. Plato was one of the notable critics of humour, according to whom, laughter overrides rational self-control.

In this context, it is significant to take note of certain theories which explore the nature and utility of humour. The earliest understanding of humour is related to the 'Superiority Theory'. 'Laughter' was considered a way to ridicule and establish one's superiority over another person (Morreall, 2024). It was majorly after 1750, that the dominance of this theory diminished when Francis Hutcheson stated that 'feelings' of superiority or comparison are not necessary for laughter.[43] Another theory in the 18th century attempted to scientifically understand humour by what it does to the human system. The 'Relief Theory' therefore argues that the utility of laughter is in its power to relieve nervous energy from the body. Lastly, the 'Incongruity Theory' states that something 'incongruous' or bizarre forms the basis of comic expression.[44]

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[37] Harishankar Parsai, Harishankar Parsai: The Master Satirist, 40 DIALOG 284 (Vikram Singh Thakur trans., 2022).

[38] Press Trust of India, Writer of Readers, Not of Rulers: 100 Years on, Master of Satire Harishankar Parsai Lives on Through His Writings, THEPRINT (Aug. 21, 2024), https://theprint.in/india/writer-of-readers-not-of-rulers-100-years-on-master-of-satire-harishankar-parsai-lives-on-through-his-writings/2232195/.

[39] Sreya Sarkar, A Failing Democracy: Depiction of the "Common Man" in R.K. Laxman's Cartoons, 1960–1970, 83 PROC. INDIAN HIST. CONG. 1224 (2024).

[40] John Morreall, Philosophy of Humour, in *THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (Edward N. Zalta & Uri Nodelman eds., Fall 2024 ed.), https://plato.stanford.edu/archives/fall2024/entries/humour/.

[41] *Id*.

[42] *Id.*

[43] JOHN MORREALL, *TAKING LAUGHTER SERIOUSLY* (State Univ. of N.Y. Press 1983).

[44] Morreall, *supra* note 40.

Indian Legal Framework and Judicial Interpretation of Scope of Humour

Article 19(1)(a) of Constitution of India guarantees to all citizens the right to freedom of speech and expression. Although the Constitution does not refer to satire or humour expressly, these forms fall within the broad ambit of protected speech and the reasonable restrictions under 19(2)- sovereignty and integrity of India, security of State, friendly relations with foreign States, public order, morality or decency, contempt of court, defamation, and incitement to an offence.[45] Under Bharatiya Nyaya Sanhita, 2023, Sec 299 (deliberate and malicious acts intended to outrage religious feelings), Sec 196 (promoting enmity between groups), Sec 353 (statements conducing to public mischief).

Further, under the Information Technology Act, 2000, regulates aspects of online expression. Section 67 criminalizes publication or transmission of obscene material, section 67A concerns material containing sexually explicit acts, section 69A empowers Central Government to block public access to online information on specifies grounds of sovereignty & integrity of India, defence, security of state, public order and prevention of incitement to cognisable offences, sec 79 grants intermediaries' immunity from liability for third-party content, subject to due diligence requirements.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 significantly altered India's digital speech landscape. Certain relevant rules include Rule 3(1)(b) which requires intermediaries to inform users not to host or share certain categories of content (such as obscene, inciting violence, threatens public order etc. Rule 3(1)(d) requires that upon receiving a court order or notification from government, an intermediary must remove or disable access to concerned 'unlawful' content within 36 hours. The Contempt of Courts Act, 1971, also provides for two kinds of contempt- Civil Contempt (Sec 2(b)) and Criminal Contempt (Sec 2(c)), which restricts free expression in certain cases.

The limits of humourous expression have been repeatedly tested in India across a wide spectrum of media, including social media posts, cartoons, satirical illustrations, stand-up comedy, parody content, web series on streaming platforms etc. In adjudicating such disputes, Indian courts have sought to strike a balance between the constitutional commitment to free speech and competing interests protected under Article 19(2). However, despite an increasingly rich body of case law, the precise contours of legitimate on humour remain uncertain. Judicial responses to satirical expression have often been case-specific, resulting in a fragmented jurisprudence that lacks coherent doctrinal framework tailored to the unique characteristics of humour.

One of the most significant developments in Indian free speech jurisprudence arose in Shreya Singhal v. Union of India[46] in which the Supreme Court declared sec 66A of the IT Act, 2000 unconstitutional. Challenging Sec 66A, the petitioners argued that its terminology ('grossly offensive', 'causing annoyance' etc.) conferred excessive discretion upon the State and exerted a chilling effect upon free expression. The Supreme Court held that mere opinions, irrespective of how unpopular or offensive, could not be curtailed based on discretionary interpretation of ambiguous terms. The judgment marked a decisive affirmation of the chilling effect doctrine within Indian constitutional jurisprudence and continues to serve as a critical safeguard for digital expression including satire and humour.

Judicial recognition of cartoons and caricatures as protected forms of expression is also evident in Marathe v. State of Maharashtra[47], arising out of proceedings initiated against cartoonist Aseem Trivedi. Trivedi had been charged with sedition under 124A of the Indian Penal Code, 1860 (Now, Bharatiya Nyaya Sanhita, 2023), for allegedly publishing cartoons criticizing the Parliament, the Constitution of India and the Indian government. One of his most notable drawings replaced the three lions of the Ashoka Emblem with wolves, with words, 'Bhrashtameva Jayate'. Another cartoon depicted the Parliament building as a public toilet with flies swarming around it, expressing discontentment with the working of the legislative organ. The Bombay High Court held that the impugned cartoons may have lacked wit, it nevertheless recognised cartoons and caricatures as

[45] ARUN K. THIRUVENGADAM, *THE CONSTITUTION OF INDIA: A CONTEXTUAL ANALYSIS* (Hart Publishing 2017).

[46] AIR 2015 SC 1523

[47] Criminal PIL No. 3 of 2015.

legitimate forms of expression employing humour, sarcasm and exaggeration. Therefore, in absence of any intention to to incite violence, Trivedi did not commit sedition as per the honourable court.

In Indibility Creative Pvt. Ltd. & Ors v. Government of West Bengal[48], Indibility Creative produced a Bengali feature film titled 'Bhobishyoter Bhoot', a sharp political satire on contemporary politics. The film was granted U/A certification by the Central Board of Film Certification, however, prior to its release, the Kolkata Police seeking private screening for senior officials due to the sensitive content of the film, which the producers refused. However, on release, all theatres had to pull the film from screens abruptly owing to directions from higher authorities and local police. The Supreme Court strongly criticised the state government for acting as 'super censor' in this case and observed that free speech cannot be held hostage to state sensitivities and police machinery cannot be used to silence dissent in the form of satire. Speaking for the court, Justice D.Y. Chandrachud drew upon writings of John Stuart Mill, Voltaire, Simone de Beauvoir and others, and emphasised that constitutional protection extends even to forms of expression which may be offensive and that tolerance lies at the heart of democratic culture in India.

Similarly, in Tata Sons Limited v. Greenpeace International & Anr.[49], the Delhi High Court dismissed an injunction and defamation suit by TATA Sons against Greenpeace for creating a satirical online video game titled Turtles v. TATA. Greenpeace developed the game as part of an environmental campaign concerning the protection of olive ridely turtles and to criticise TATA's port development project. The court held that upholding of free speech in cases of public interest is paramount and acknowledged satire as a legitimate form of protected expression.

In Devidas Ramachandra Tuljapurkar v. State of Maharashtra & Ors[50], the tension between satire and obscenity was explored. A Marathi satirical poem titled 'Gandhi Mala Bhetala ('I Met Gandhi') employed explicit language and depicted Mahatma Gandhi offensively. The publisher was charged under sec 292, IPC, 1860 (sale, distribution or public exhibition of obscene books/materials). The Supreme Court applied the contemporary community standards test (principle for obscenity conceived in Roth v. United States[51] and observed that the explicit language may be overlooked in normal context, but not in case of revered figures like Mahatma Gandhi.

The reasoning of the court reflects the notion that limits of obscenity may vary upon the status of the person depicted. It is interesting to note that the contemporary community standards test was replaced by the three-pronged 'Miller Test in 1973 by the landmark judgment in Miller v. California.[52] However, in Tuljapurkar's case the Indian Supreme Court utilised the outdated test of USA free speech jurisprudence.

Questions of professional reputation and collective defamation also arose in Ashutosh Dubey v. Netflix.[53] The case involved the Netflix series 'Hasmukh' a dark satirical comedy. It was alleged that the portrayal of lawyers in the series derogatory and brings disrepute to the entire legal fraternity. The Delhi High Court held that lawyers cannot be defamed as a class of persons. The court observed further that satire is a work of art that uses techniques like exaggeration and the essence of democracy lies in giving such liberty to artists.[54]

In Munawar Iqbal Faruqui v. State of Madhya Pradesh[55], the stand-up comedian Munawar Faruqui was arrested in Indore while performing a show. A complaint was filed under Sec 295-A on grounds that offensive jokes were on Hindu deities (hurting religious sentiments) and the Home Minister Amit Shah during the performance. Faruqui's bail application was rejected by Magistrate and Sessions court as well as the High Court of Madhya Pradesh citing that State must ensure peace and harmony amongst all religious groups. The Supreme Court subsequently granted bail to him and directed the consolidation of all FIRs against Faruqui to

[48] (W.P. (C) No. 306 of 2019).
[49] 178 2011 DLT 705.
[50] AIR 2015 SC 2612.
[51] 354 US 476, 1957.
[52] The Three-Pronged Test checks whether the expression or material in question 1. Appeals to prurient interest of an average person, 2. Is patently offensive, 3. Lacks serious literary, artistic, political or scientific value.
[53] I.A. No. 3754 in CS (OS) No. 120 of 2020.
[54] Id.
[55] Mis. Cr. Case No, 2206/2021 and Mis. Cr. Case No. 2213/2021.

be hard by the apex court. However, later through various eyewitness reports, it was found that Faruqui was never cracked any jokes relating to deities when he was arrested and the police later admitted that they had no evidence that the comedian had done so. The complaint was made on grounds of certain such remarks in the past. This controversy and abuse of due process strike at the core of free speech in India, specifically humour and creates a severe chilling effect on comedians and satirists.

In Kunal Kamra v. Union of India,[56] the constitutional validity of Rule 3(1)(b)(v) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2024 was challenged in the Bombay High Court by comedian Kunal Kamra in a public interest litigation. The said rule gave power to the government established 'fact-check units' to identify, flag and remove content related to government of India from social media which may be fake, false or misleading as per Rule 7 of the Ethics Code. The contention was that such vague powers lack clear standards and criteria and may lead to arbitrary censorship of even legitimate speech which may criticise the government. The court initially issued a split verdict from the Division Bench. Justice G.S. Patel observed that the Rule violated Art 14, 19(1)(a) and 19(1)(g) of the Constitution and exceeded the authority given by the IT Act, 2000. He held that the lack of procedural safeguards, makes the rule open to broad discretions which may even be discriminatory. However, Justice Neela Gokhale upheld the validity of the Rule on the ground that it is in alignment with past free speech jurisprudence on proportionate restriction to curb misinformation to preserve public order. Finally, later, in a tie-breaker decision, Justice Chandurkar sided with Justice Patel and held that the Rule is vague in nature and exceeded the power of government intended by the IT Act 2000 which led to stifling free expression.

In another case, contempt of court proceeding under the Contempt of Court Act, 1971 was also initiated against Kunal Kamara by the Supreme Court of India. In a series of infamous tweets[57], Kamra acutely criticised the Supreme Court of India and the then Chief justice of India on granting bail to TV anchor Arnab Goswami. Kamara refused to retract his tweets or to apologise. He remarked that the apex court of India should not find itself disabled to discharge their duties only on account of being subject to satire. Kamra further said that his intention was not to diminishing the faith of people in judiciary but to show his strong disagreement with the Courts order in Goswami's case.

Similarly in 2020 in Rachita Taneha's contempt case (Aditya Kashyap v. Rachita Taneja[58], the Supreme Court of India was not happy with certain cartoons and satirical illustrations on her platform 'Sanitary Panels' criticising the apex court.

In one of the more recent happenings, in Cure SMA Foundation of India v. Union of India[59], Samay Rana, comedian was accused of making insensitive and derogatory remarks against persons with disabilities in his show in 2025. The Supreme Court ordered that free speech cannot be used to exploit marginalized group of people, even in the form of comedy. Solicitor General Tushar Mehta in the case opined that freedom of speech is paramount but not at the cost of perversity. The court ordered all the comedians involved in the show render apologies on their social media channels and raise money through events for a special fund to help persons with disabilities. The Supreme Court urged that after appropriate consultation with stakeholders, thorough guidelines ought to be established keeping up with modern developments in social media content and free expression. The comedians and creators need to have accountability for their content and ensure to not hurt the sentiments people.

In February 2026, comedian Kunal Kamra and Advocate Haresh Jagtani challenged the contentious 'Sahyog Portal' established under the IT Rules, 2023 and Rule 3(1)(d) of the same in Bombay High Court. The Sahyog Portal authorises state governments, central ministries and the police administration of all sates to issue information to intermediaries (social media platform etc) to disable public access to unlawful information.

[56] W.P. (L) No. 9792 of 2023

[57] Bhumika Indulia, Dark Satirical Comedy, Attempting to Expose Ills of Various Professions; Del. HC Refuses to Restrain Streaming of Web Series *Hasmukh* as It Would Be Against Art. 19(1)(a), SCC ONLINE BLOG (May 5, 2020), https://www.scconline.com/blog/post/2020/05/05/dark-satirical-comedy-attempting-to-expose-ills-of-various-professions-del-hc-refuses-to-restrain-streaming-of-web-series-hasmukh-as-it-would-be-against-art-191a/.

[58] Contempt Petition (Crl.) No. 4 of 2020.

[59] WP (c) No. 460/2025.

The challenged rule requires an intermediary to remove content from their platform within 36 hours of learning or on receiving information that the content endangers the public or State based on restrictions in Art 19(2). The petitioners alleged that the portal and the challenged rule together create a free speech regime against the landmark ruling in Shreya Singhal's case. The case is still developing.

Kunal Kamra embroiled in another controversy when he made jokes directed at Maharashtra's Chief Miniter Eknath Shine in 2025. The members of the concerned party then vandalised where Kamra's show was held.

Now as of June 2026, the Pranit More and Himanshu Jangra controversy (Rs 370 Biriyani) has grabbed the attention of nation on limits of humour as free speech. The National Commission of Women has taken suo moto cognizance of this case where through humour, sexual coercion and non-consensual conduct towards women was glorified.[60]

The European Court of Human Rights Jurisprudence on Humour

Art 10 of the European Convention of Human Rights enshrines the Right to Freedom of Speech and Expression. In the watershed judgment of Handyside v. United Kingdom (1976)[61] European Court of Human Rights extended the protection of Art 10 to speech which may offend, shock and disturb.[62] It was held that the protection of freedom of expression is not limited to information or ideas that is 'favourably received', but also to those that 'offend, shock and disturb'. The Court emphasized that a democratic society demands such protection of expression to uphold the spirit of tolerance and broadmindedness. [63]

Therefore, Article 10 of the Convention protects the right to freedom of expression includes the freedom to hold opinions and impart ideas which may not accepted or favoured, without the interference from public authorities. The paragraph 2 of the same notes that this freedom comes with responsibilities and duties and therefore, maybe subjected to certain restrictions necessary in a democratic society like national security, public safety, territorial integrity, prevention of disorder, protection of health and morals, protection of reputation, contempt of court, and prevention of disclosure of confidential information.

The ECtHR is also known to rely on the International Covenant on Civil and Political Rights, 1976. A major defence as part of International Human Rights Law is the **Three-Part Test** (Art 19 of the ICCPR as discussed).The test provides that any restriction on free speech or expression should be evaluated at the touchstone of 3 aspects, for it to be legitimate: *The restriction must be provided for by law, the restriction must pursue a legitimate aim, and, the restriction must be necessary and proportionate.* [64]

Further, **Rabat Plan of Action** adopted under OHCHR in 2012, a non-binding international instrument designed to clarify the relationship between freedom of expression under Article 19 of ICCPR and the prohibition of incitement under Article 20(2), is also referred by the ECtHR in interpretation of scope of free speech.[65] Its most significant contribution is the **'six-part threshold test'** comprising of context of statement, speaker's status, intent to incite, content and form of statement, extent of dissemination, and likelihood of harm including imminence. The ECtHR in many judgments including Savva Terentyev v. Russia (2018)[66] referred to the Rabat Plan of Action as a relevant international standard alongside other aspects to determine the legitimacy of restriction on free speech. The goal of this plan of action is to have a 'multidimensional contextualization of messages' which is required to understand and identify covert or disguised hate speech.

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[60] Press Trust of India, NCW Summons Comedian Pranit More, Himanshu Jangra over "Rs 370 Biryani" Remark Row, DECCAN HERALD (June 11, 2026), https://www.deccanherald.com/india/haryana/ncw-summons-comedian-pranit-more-himanshu-jangra-over-rs-370-biryani-remark-row-4035678.

[61] [1976] ECHR 5, (1976) 1 EHRR 737.

[62] European Court of Human Rights, *Fact Sheet—Hate Speech* (Press Unit 2023), https://www.echr.coe.int/documents/d/echr/FS_Hate_speech_ENG.

[63] *Handyside*,1976.

[64] Laura E. Little, Regulating Funny: Humour and the Law, 94 CORNELL L. REV. 1235 (2009).

[65] Office of the United Nations High Commissioner for Human Rights, *Freedom of Expression vs. Incitement to Hatred: OHCHR and the Rabat Plan of Action*, https://www.ohchr.org/en/freedom-of-expression.

[66] (Application no. 10692/09).

(Fabienne Baider, 2022). *The test focuses on the triangular relationship between object of the speech, the subject of speech and the audience.*

The ECHR in various cases has observed that humour has a discern ability to discuss contentious issues and gauge the attention of public. Therefore, without the protection of ideas which are offensive, it is difficult to uphold true exchange of ideas and contrasting opinions in any democratic country.[67]

The ECtHR notably highlighted the significance of satire in the case of Vereinigung Bildender Kunstler v. Austria (2007)[68] wherein it was held that satire as a form of expression has attributes of exaggeration and is used to provoke and agitate. The court observed that such expression should be scrutinized with care.

The European Court of Human Rights have attempted to provide a wide playing field for disputed expressions including offensive humour. For example, in the case of Lingens v Austria (1986)[69] wherein offensive paintings of several public and political figures where under question. The court held that political and public figures ought to have a higher degree of tolerance for criticism and before penalizing any expression, the nature of the work (in this case artistic and satirical) should be taken into account.

In Telo de Abreu v Portugal (2021)[70] certain local politicians in Portugal were depicted as animals in a series of satirical obscene cartoons. The local court and Court of Appeal, both ruled in favour of restricting free expression of the creator on account of aggravated defamation. However, on appeal to ECtHR, it was held that the National courts failed to take into account the context of the cartoons. It was observed that uncontrolled criminal prosecutions for defamation of politicians may lead to chilling effect of political speech.

Similarly, humourous expression was protected by ECtHR on appeal in a French case where the accused uttered offensive words against the President of France during his official visit. The court observed that the phrase was previously used by the President himself and therefore the usage of same phrase by the accused is a legitimate form of satirical speech (Eon v. France, 2013).

However, in another Turkish case, wherein the accused had drawn the head of President Erdogan over the body of a dog to criticize his support for the occupation of Iraq, the ECtHR held the accused liable for 'insult' (Dickinson v. Turkey, 2021).

When it comes to humour, ECtHR has constantly noted that *context matters*. It could include the circumstances in which the joke was made, information surrounding the joke, power relations, genre and intertextuality (references to previous works). In Sinkova v Ukrane (ECtHR, 2018)[71], Sinkova, an activist had fried eggs on the eternal flame on the tomb of a soldier. Later clarified this was a protest against the waste of natural gas. Ukraine convicted the protestor and ECtHR upheld the conviction. The Court held that there were many other opportunities and ways of expressing the activist's views without insulting the tomb.

The ECtHR in Nikowitz and Verlagsgruppe News GMBH v. Austria (2007)[72] used the 'Average Reader Test' to uphold humour as free speech. In other words, the court examined how was the disputed speech understood by an 'Average Reader'.

It is significant to note that along with freedom of expression, tolerance and respect are also essential pillars of a pluralistic society. Therefore, in certain cases the court has restricted expressions which incite or promote hatred based on intolerance, (Erbakan v. Turkey, 2006).[73] The strained relationship between humour and law is further aggravated by the role of 'offensive speech'. To navigate this, there are *two approaches* provided

[67] Alberto Godioli, Sabine Jacques, Jennifer Young & Ariadna Matamoros-Fernández, *WHAT'S IN A JOKE? ASSESSING HUMOUR IN FREE SPEECH JURISPRUDENCE* (Forum for Humour & the Law & Columbia Glob. Freedom Expression, 1st ed. 2025), https://doi.org/10.5281/zenodo.15383543.

[68] Application no. 68354/01.

[69] Application No. 9815/82.

[70] Application No. 42713/15.

[71] Application No. 39496/11.

[72] [2007] EMLR 245.

[73] European Court of Human Rights, *Fact Sheet—Hate Speech*, supra note 62.

by the European Convention of Human Rights which is used by the European Court of Human Rights when dealing with cases of *free speech and incitement to hatred.*[74] The first approach provided by Art 17 of the Convention prohibits 'abuse of rights. 'Abuse of rights' restricts hate speech which negates the very fundamental values the Convention is based on. The second approach relies on restricting expression which violates the limitations provided in paragraph 2 of Article 10 ECHR.

The European Court of Human Rights attaches particular importance to upholding pluralism and values of democracy. Genuine recognition and respect for diversity aids in achieving social cohesion (Beizaras and Levickas v. Lithuania (2020)).[75] Therefore statements that promote or justify violence, hatred or intolerance constitute a risk of violation of rights of others. The ECHR has developed the jurisprudence of hate speech related cases by affording protection to victims of hatred under Article 8 (respect for private life), Article 14(prohibition of discrimination and exceptionally Article 13 (right to an effective remedy).[76]

To decide guilt in cases of hate speech against a particular group, the Court takes into account the history of stigmatization or vulnerability of the group, precise content of the negative statements, form and context of the statements, the status of the speaker and above all, the effect of the interplay of the mentioned factors in the context of prevalent social and political climate on the members of the group (Budinova and Chaprazov v. Bulgaria (2021).[77] Feret v. Belgium (2009)[78] is ECtHR's landmark case concerning the limits of free expression. The court penalized a politician for distributing racist and xenophobic leaflets.

Any remark against the underlying value of the Convention would not be protected by the freedom enshrined in Article 10. (Seurot v. France, 2004).[79] The European Court of Human Rights declares such applications for protection of freedom of speech and expression – inadmissible (incompatible *ratione materiae*). For instance any expression of racial hate is not protected (Garaudy v. France, 2003).

In another case, M'Bala M'Bala v. France (2015)[80] a comedian was convicted for public insults against the Jewish community at his performance 'Zenith' in France in 2008.[81] The comic performance included offensive satire on Holocaust. The ECtHR observed that such performance could not be seen as entertainment which under the pretext of comedy promoted hatred. It was noted that in reality, such demonstration was support for antisemitism and Holocaust denial.[82]

Expression of religious hatred is also not protected under the Convention. In Norwood v. the United Kingdom (2004)[83], the accused had displayed a poster showing the Twin Towers in flames accompanied by words 'Islam out of Britain- Protect the British People'. The ECtHR declared that such hostility towards a religious group is incompatible with protection of Art 10 and the Convention's values of tolerance and non-discrimination.[84]

Similarly in Belkacem v. Belgium (2017), the applicant's (a spokesperson of 'Sharia4Belgium' organization) youtube videos on calling for violence to establish and defend Sharia is hate speech based on religious

[74] European Court of Human Rights, *Key Theme—Articles 8, 13 and 14: Protection Against Hate Speech* (ECHR Knowledge Sharing, updated Feb. 28, 2026), https://ks.echr.coe.int/documents/d/echr-ks/protection-against-hate-speech.

[75] *Id.*

[76] European Court of Human Rights, *Key Theme—Articles 8, 13 and 14: Protection Against Hate Speech*, supra note 74.

[77] European Court of Human Rights, *Key Theme—Articles 8, 13 and 14: Protection Against Hate Speech*, supra note 74. *See also* Behar & Gutman v. Bulgaria, App. Nos. 29335/13 & 29336/13 (Eur. Ct. H.R. Feb. 16, 2021).

[78] Application No. 15615/07.

[79] European Court of Human Rights, *Fact Sheet—Hate Speech*, supra note 62.

[80] Application no. 25239/13.

[81] This case concerned the conviction of Dieudonné M'Bala M'Bala, a comedian with political activities, for *pub*lic insults directed at a person or group of persons on account of their origin, specifically in this case persons of Jewish origin or faith.

[82] *See also* Williamson v. Germany, App. No. 64496/17 (Eur. Ct. H.R. Jan. 8, 2019); Pastörs v. Germany, App. No. 55225/14 (Eur. Ct. H.R. Oct. 3, 2019).

[83] Application No. 23131/03.

[84] *See also* Belkacem v. Belgium, App. No. 34367/14 (Eur. Ct. H.R. June 27, 2017).

fundamentalism. Further, support of terrorism and incitement to violence (Roj TV A/S v. Denmark (2018), hate speech related to homophobia (Lenis v. Greece (2023). Accounts of Negationism and Revisionism are also not legally protected expressions as per the Convention.[85]

However, representation and defending the extremist ideas of one's sect in a public discussion (Gunduz v. Turkey (2003), criticism and presenting one's party's views on matters of general interest (Faruk v. Turkey (2011) cannot account for inciting hatred and violence and such expressions are protected under Article 10.

The Court noted that cases involving use of internet poses unique challenges owing to the power of the medium. The risk of harm from content on internet or social media is particularly higher than other mediums of communication (Delfi AS v. Estonia (2015)). Apart from the speaker, the concerned internet intermediary can suffer liability if they fail to take measures to remove unlawful or harmful content from the media.[86] However, is it also significant to note that ECtHR have tended to penalize prejudiced expression which does not contribute to public interest (Canal 8 v. France, 2023).

Free speech scholars argue that application of the test and interference with humour as an expression ought to be done after the *'context-sensitive'* examination of the expression or speech.[87] Therefore, it is significant to develop a nuanced approach to understanding humour, specifically when it comes to India, a land of variety of culture, religions and languages.

Further in another case, the ECtHR held that the positive obligations of the State lie not merely in non-interference with various kinds of expression, but in taking measures to protect it (Appleby and Ors v. the United Kingdom, 2003). Whether a state obligation exists to protect speech in a certain circumstance would depend on the *balance struck between interests of the individual and interests of the general public.*[88]

However, in a recent ECtHR judgment in Yevstifeyev and Others v. Russia (2025)[89], the ECtHR overlooked the 'dark side' of humour and its capacity to normalize, legitimize and amplify hateful narratives against marginalized groups. In this case a parody video depicting a mock 'gay hunt' created in response pro-government homophobic campaign during Russia's constitutional referendum on same sex marriage. The Court applied the 'threshold of severity' test and declared the complaint 'inadmissible' on grounds that the applicant had not been personally targeted and that the satirical nature of the video meant it did not contain sufficiently serious negative stereotyping to interfere with the private life of applicant.

Comparative Analysis- Scope of Humour as Free Speech

Recently humour has been under close scrutiny by government of India. In *Samay Rana's case*, the Supreme Court of India observed the need for guidelines to regulate free speech addressing the modern-day challenges including comedy. Further, the most recent Pranit More case, has fuelled the debate on legal regulation of humour in India. There are different laws that are used to criminalize different forms of humour- defamation law, contempt of court law, the speech religious outrage, obscenity, morality to name some.

However, even in human rights complaint judicial and legal systems, there are serious threats to the expression of humour because of its nature. Humourous expression is characterised as non-bonafide, exaggerated, distorted. Also, humourous intent is not always explicit and therefore highly reliant on context. Such peculiar features of humour cause significant problems while assessing the necessity and proportionality characteristic of legitimate restriction. For examples, in cases of humour, it becomes more difficult to draw the between defamation and satirical hyperbole, or to distinguish between racial discrimination and parody of racism, or even to see the difference between terrorism and dark humour.

[85] A Negationist denies or rejects the truthfulness of widely documented historical accounts. A Revisionist abandons the occurrence of established historical events or accepted ideas and attempts to alter or reinterpret them.

[86] European Court of Human Rights, *Key Theme—Article 10: Hate Speech* (ECHR Knowledge Sharing, updated Feb. 28, 2026), https://ks.echr.coe.int/documents/d/echr-ks/hate-speech.

[87] Godioli & Young, *supra* note 5.

[88] Godioli & Young, *supra* note 5.

[89] Application No. 226/18.

The relationship between humour and law is being further complicated by the mushrooming propensity of public and institutions to take offence. Artistic liberty in the form of humour is being constantly challenged due to legal, social and ethical constraints (Shakeel Ahmed, Abhishek Arya, 2025). Advocates of free speech are challenging vague laws which have the propensity to be misused in India.[90] In many cases, the waiting and public denouncement as punishment which leads to a strong chilling effect.

In regulating humour, care needs to be taken to not distinguish between substance and style. In the words of George W. Foote, religious and political changes of significance can never be made by calm and moderate language.[91] In his book 'Prisoner of Blasphemy', Foote questions the prejudiced legal regulation of humour by arguing that "why is long faced scepticism permissible heresy, but board faced scepticism a felony?".

The Indian judicial interpretation of humour as free speech heavily relies on the legal framework and the reasonable restrictions enshrined in the Constitution. The case law jurisprudence specifically, it is noted that significant significance is given to the 'object' of criticism. For example, the contempt of court cases, where criticism is towards the Judiciary or a judge, the Supreme Court has observed lower threshold than satire that ridicules the social or political scenario in India. Similarly, in Tuljapurkar's case, the apex court noted that offensive speech against eminent figures like Mahatma Gandhi cannot be protected.

ECtHR jurisprudence on the other hand attempts to understand the comprehensive impact of the offensive satire in order to restrict it. ECtHR part from Art 10, depends on various tests and principles (Three-Pronged Test, the Rabat Action Plan) to decide the scope of free speech. One of the major focus of ECtHR is on the **context** of the satirical work or comedy rather than only content. Further, in reputation cases, ECtHR has maintained higher tolerance for ridicule and criticism. In cases of incitement, it is the Rabat Plan of Action which is relied upon by ECtHR (includes content, context, intent, status of speaker, dissemination and likelihood of harm of the expression).

Therefore, restrictions on free speech and their interpretation case to case basis is not enough, certain guidelines or judicial principles highlighting detailed criteria on how to assess humourous content, including online content is required in India. Further, disputed expressions must be analysed in light of their context. This may aid in achieving a more consistent approach to interpreting legal dimensions of humour.

The peculiarity of humour as free speech is increased by the power of online platforms. Social media and other online platforms are run by private entities and are not bound by international human rights obligation to protect the user's rights to free speech and expressions and in fact are obliged act to take down content and posts which infringe the laws of a particular country. Users need to comply with the applicable laws, platform specific policies and community standards often provided in terms of use. Such policies are to curb hate speech or prejudicial speech on the platforms. However, at times, legitimate criticisms may also be taken down in the garb of 'offensiveness'. There is need of an ombudsman, fortified with appropriate guidelines to ensure that legitimate speech is protected whereas harmful speech is censored. Special care needs to be taken while censoring and penalizing free speech such that creators are not struck by the 'chilling effect'.[92]

According to Vir Das, comedian and actor, the Indian audience has become more receptive to humour, even on sensitive subjects in the present.[93] The comedian notes that the audience tends to develop a growing sense of humour with booming economy of the country.

[90] See Kunal Kamra's recent petition challenging the constitutional validity of Rule 3(1)(d) of the IT Intermediary Guidelines and Digital Media Ethics Code Amendment Rules, 2023 and the 'Sahyog portal' in Bombay High Court.

[91] G. W. Foote, *PRISONER FOR BLASPHEMY* (Progressive Publishing Co. 1886).

[92] The chilling effect refers to the adverse impact of actions taken by State that cause individuals or legal entities to refrain from exercising their rights due to fear of state proceedings, legal sanctions or public intimidation, threats and attacks.

[93] What Makes Indians Laugh, BBC NEWS (Nov. 23, 2011), https://www.bbc.com/news/world-asia-15768871.

Conclusion

The nature and cognitive categories of humour and law are quite opposite to each other. Even though it is a powerful form of expression to convey ideas that normal speech cannot. But it is also persuasive as it makes offensive ideas appear more acceptable under the guise of comedy, particularly when disseminated widely online.[94] Such 'humour immunity' to satirical hate speech would fail to account for the broader social harms such expression can cause. Therefore, it is important to consider the creator's intention and value of satire in democratic discourse but also to comprehend the impact of expression on society and specific groups. In principle, liberty of humour as free speech ought to be upheld and protected to the widest extent possible to avoid 'chilling effect' while keeping a close check on prejudicial speech.

[94] ROBERT PHIDDIAN, *SATIRE AND THE PUBLIC EMOTIONS* (Cambridge Univ. Press 2019).