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Internet Humour and Crime: A Struggle Between Freedom and Offence

INTERNET HUMOUR AND CRIME: A STRUGGLE BETWEEN FREEDOM AND OFFENCE

by
Apurv Shaurya*

Abstract

The internet is one of the most used and innovative additions in the lives of people in this modern world. With the arrival of social media, the internet took socialising to a whole new level because initially it became the medium of sharing thoughts and soon grew into a medium of official communication between people and people, government and government and government and people. With all sorts of information on the social media, humour is one of the biggest user-generated and shared content. The internet brought the expression of humour in the form of satire, sarcasm, and wit with social media posts on the fingertips and memes all over the place, bringing out the dark sense of humour hidden in people as well. Getting in trouble for humour isn't new, but with the vast reach of the internet, people posting from one corner of the country and someone getting immediately offended from another corner of the country has become common. This opens room for debate on the questions like 'How can someone be arrested for a joke?', 'How can a joke be criminal?', 'Should law take social media seriously?', 'Is arresting for a social media post a violation of free speech?' and 'Do we really need laws to monitor everything on social media?'

The present elaborated discussion is a study of various cases in India related to humour and social media and observes how humour is used as a tool to commit crimes, and how laws are used against them, reasonably and unreasonably. It also observes the nature of people over the internet and how it affects their real lives. It also studies the laws present in India to analyse what the country requires in order to prevent the misuse of both, the laws and the social media, and in the end, concludes with a suggestion of separate Media Law and why it is necessary.



INTRODUCTION

"Humour is to speech what salt is to food".¹

The internet is "a cooperative message-forwarding system linking computer networks all over the world".² The rise of the internet has given a new platform to the people and has grown enough to become a part of reality. From a common citizen's social media profile to official government notifications being released on websites, with the passage of time, the internet not only remains a source of information and education, but also of global trade & commerce, of personal and professional connection, and of charity & crime.

The swiftness with which the internet has integrated into the lives of people, it would not be wrong to state that it is now an extension of their own personality. Due to the degree of anonymity and vast reach it provides, it brings out the untamed selves of people, which can be closely associated with what Sigmund Freud referred to

as the Id,³ making the internet the "Wild West".⁴ "Researchers assume that analysis of comic texts provides us with important insights about what is lurking in the social mind behind the façade of platitudes, conventions, and political correctness".⁵ One of the basic reasons behind this is that, over the internet, there exists a very low chance of face to face backlash. Even though countries across the world have taken steps to counter it,⁶ a complete success in preventing Cybercrime is nowhere in sight.

Along with all types of content, the internet has now also become a platform for sharing humour in an electronic form, which can be done in the form of texts, images, videos or other formats. "*Rather than light-hearted entertainment, jokes are in fact important arenas in which sensitive and troubling issues are processed and negotiated*".⁷ Sigmund Freud happens to be the most important authority on jokes and he called them "*a combination of [comic] technique and [humorous] thought*".⁸ Another popular term on the internet in terms of humour is 'Memes'. The term meme was coined by Richard Dawkins in his book 'The Selfish Gene'. The Oxford Dictionary



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defines meme as "*An element of a culture that may be considered to be passed on by non-genetic means, especially, imitation*".⁹ The term is basically associated with pictorial or video jokes, perhaps because they (as a form of presentation of humour or idea), grew on the internet the most, where they spread, most of the times as a trend, through immediate sharing or imitation.

Even before the existence of internet, satire and humour have been a part of the media with political satire journals like the French *La Caricature*, which, after 'an avalanche of legal actions', was suppressed in the year 1835,¹⁰ or the weekly satirical Italian magazine *L'Asino*, which was founded in 1892.¹¹ "*Satire plays an important role in journalism, allowing reporters to question the status quo with humour to underline a point and make it more accessible*".¹² With the passage of time, more satirical and humorous works entered into the main stream media, like 'The Onion' which was initially started as a student free publication,¹³ or the TV Show 'Saturday Night Live', which since its premiere in 1975, has served as a trendsetter in American humour and had a remarkable effect on American mores, manners, music, politics and even fashion.¹⁴

Since jokes are ambiguous modes of communication, they often enable people to invoke controversial issues without the sanctions accompanying 'serious' communication on such topics.¹⁵ Many times, such humour stirs a hornet's nest, like as stated earlier, *La Caricature* has to be closed due to legal actions, or the gruesome 'Charlie Hebdo incident'¹⁶ which resulted in death of 12 people and started a trend in the media, the slogan *Je Suis Charlie* being all over the place in support of the victims as well as free speech.¹⁷ Be it by the force of society, or by the force of law, humour has always been seen as a crime by the society or the law in force if made on certain topic or people. The



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introduction of internet and its swiftness has only fanned both the processes, of creating humour and of creating a backlash.

This gives rise to the question, 'should humour be regulated by law, and if yes, then how?'

For the same, the below discussed arguments will take this deliberation towards a conclusion on the points of law, justice and social phenomenon.

CRIMINAL HUMOUR: TYPES

"Analysing humour is like dissecting a frog. Few people are interested and the frog dies of it."

—E.B. White¹⁸

There are various types of crime that are sometimes overlapping, and can be committed through the use of humour and electronic media. They can be understood as below

Defamation

Section 499 of Penal Code, 1860 (hereinafter 'IPC') doesn't mention cyber defamation directly, but it is wide enough to include anything published over the internet. The Indian provision that was actually brought to deal with crimes like cyber defamation was Section 66A of the Information Technology Act, 2000 (hereinafter 'IT Act'), which was declared unconstitutional and draconian in *Shreya Singhal v. Union of India*,¹⁹ thereby making the IPC the appropriate law to deal with cyber defamation.

In India, there have been many instances of people being defamed online through humour. Indian comedy group AIB was accused of allegedly defaming the Prime Minister of the country over the internet under the guise of a joke.²⁰

Hate Speech

Hate speech is difficult to define and hence is even more difficult to govern. Internationally identified possible definitions of hate speech include speeches that have a significant probability of catalysing or amplifying violence by one



group against another or which emphasis statements that can incite the fear in one group that 'another group' plans to use violence.²¹

However, it can be observed that violence is not a part of hate speech but an outcome. What is given very less emphasis is that hate speech perpetuate[s] the discriminatory attitudes prevalent in the society.²² Merely because the audience of such speech was not influenced enough, or that they were mature enough not to resort to violence doesn't mean that such speech had no element of hate, fear or enmity or it had no intention to promote the same.

With the availability of internet, the dissemination of such fear and hate in sugar coated words is very simple. Such hate can pass as a satire, dark humour or any other form of presentation where the idea of fear is propagated.

Further, such hate speech over the internet need not be in the form of speech only, but even mere pictorial representation is enough. For example, the popular internet meme 'Pepe the Frog' has been designated a hate symbol²³ and during the 2016 United States Presidential Race, it was condemned for allegedly being associated with the White Supremacist Movement.²⁴

Though, in India, online hate speech has not gone unnoticed. Recently, the Home Ministry has asked the law commission to draft a separate legislation for online hate speech.²⁵

Blasphemy

The term Blasphemy means 'irreverence toward God, religion, a religious icon, or something else considered sacred'²⁶ and is a crime in many states. However, the punishment for it differs from state to state, for e.g., from a mere fine in Italy²⁷ to

death penalty in Pakistan.²⁸



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However, many states do not believe in the inclusion of Anti-Blasphemy law in their criminal system. The United States ruled out blasphemy as unconstitutional and violative of the First Amendment.²⁹ Till the year 1927, India too had no law on blasphemy; however in the year 1927, Section 295(A) was brought into the IPC³⁰ after the '*Rangeela Rasool* incident' which was a pamphlet depicting blasphemous mockery of Prophet Mohammad.³¹ However, the accused was acquitted due to absence of any proper law for the same. The court noted that the pamphlet was nothing more or less than a scurrilous satire on the founder of the Muslim religion.³² Both, the pamphlet and the acquittal of the accused led to the Lahore Riots. Nonetheless, the accused was convicted later, and was murdered by a man named Ilim Din for the said pamphlet.³³ To prevent any such incident in the future, the section 295-A was introduced in the IPC. With the reach of the internet, spreading such blasphemous activities has become much easier.

Sedition

Section 124A of the IPC criminalises speech that is seditious. One of the most famous cases of sedition for satire is of cartoonist and activist Aseem Trivedi³⁴ for making cartoons and uploading on websites namely 'India against corruption' and 'Cartoons against corruption'. The Court noted that "*cartoons or caricatures are visual representations, words or signs which are supposed to have an element of wit, humour or sarcasm*".

In 2018, a journalist from Bastar, Chhattisgarh was charged with Sedition for posting a cartoon online.³⁵ Also, retired Supreme Court Justice Katju was booked for Sedition for an online post where he humorously, suggested selling Bihar to Pakistan.³⁶



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Over the internet, such content can easily be understood as an intentional attack over the dignity of the country and its related prides like the anthem, the flag, and the Constitution.

Incitement of Discrimination

Sexist or racially charged remarks often keep flying around the internet very casually, as they are perceived by a large portion of the population to be true, like in the case of sexism³⁷. When it comes to sexism, it has been noted that people are actively engaged in diffusion of sexist content over the Web 2.0's 'Participatory Culture'-oriented environment'.³⁸ However, such active engagement is not merely limited to sex only, but they are also evident in caste as well as race.

On the 17th of April, 2018, an authentic looking fake Starbucks Coupon that provided free coffee for black people in the United States of America was posted by a member of the message board 4chan for 'Fun' and ended up inciting hate expressed through memes and tweets³⁹.

In *Karma Dorjee v. Union of India*⁴⁰ the Supreme Court noted the hate and discrimination against the people of North East is common in India and thus issued

guidelines to tackle the same. The Bezbaruah Committee Report noted the widespread use of derogatory remark 'chinki' against the people of the North-East.⁴¹

Moreover, casteism is still practiced in India and to prevent it, the SC/ST (Prevention of Atrocities) Act was passed in 1989. In *Gayatri v. State*⁴², the court held that any offensive message posted on Social Media against a person belonging to SC/ST community will be held punishable, immaterial of the privacy settings; however a generalised comment against the whole community won't be punishable.⁴³



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Interestingly, it is evident from the facts of the case that the offensive messages or posts that were uploaded were indeed disguised as jokes.⁴⁴ However, such posts are not a rarity but are found in abundance⁴⁵ and no direct laws are present to deal with this.

Cyberbullying

Cyberbullying can be defined as "bullying that takes place over digital devices like cell phones, computers, and tablets. Cyberbullying can occur through SMS, Text, and apps, or online in social media, forums, or gaming where people can view, participate in, or share content".⁴⁶ This form of bullying is basically verbal aggression which may be active or passive; however "can also involve property damage resulting from electronic attacks that lead to the modification, dissemination, damage, or destruction' of private information".⁴⁷

Many times, victims are bullied online under the guise of humour or trolling. One such incident is '*Durgesh Memes*'. In 2017, an Instagram handle depicted a story of a paedophilic youth who got cat-fished by a 52-year-old man. The images as well as the story took the internet by storm. However, the account as well as the story turned out to be fake and both the victims turned out to be father and son.⁴⁸

Cyberbullying poses as a threat bigger than other cyber-crimes as it is difficult to notice and under the General Strain Theory of Robert Agnew, bullying exerts stress and strain that leads to deviant behaviour⁴⁹. Clinical studies prove that the failure to cope with bullying leads to anti-social behaviour and a person may develop suicidal thoughts as well as depression. Such change in the thought process leads to deviance and thus channels the thoughts towards acts like violent revenge,⁵⁰ which are also the outcome of physical bullying.



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Other Activities That are Injurious

The list isn't exhaustive and there are various other activities that can cause damage or injury in real life like contempt of court etc. In no way can it be doubted that memes and joke can influence an individual in any manner. Hence, the scope of influence cannot be merely limited to direct criminal activities.

Of many other activities that still do not get a direct eye of the law, publication of fake news and propaganda is a major issue.

In June 2017, seven men in India were lynched over hoax WhatsApp forwards

warning against child traffickers.⁵¹ WhatsApp has become of a hub of fake news and has been a catalyst in inciting the 'Muzaffarnagar Riots' and has sent a panic across the North India with a fake news of shortage of salt.⁵²

However, use of memes for spreading hoaxes isn't unseen. The Russian Troll Factory used the social media platforms for deceiving and influencing people before and after the 2016 United States Elections to push forward Russian agendas⁵³ and trolls were given lists of topics to focus.⁵⁴ Though, Facebook Co-founder Mark Zuckerberg vowed to hire 10,000 moderators and AI to fight fake news and agendas,⁵⁵ fighting fake agendas and misinformation through memes is very difficult as "*Memes are easy to make... it's almost a perfect storm that makes these memes the best way to disseminate propaganda*" and "*it is much harder for a machine learning algorithm to handle memes*".⁵⁶



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Another activity is 'incitement of crimes'. Since jokes and memes spread very quickly and can make a mockery out of anything, sometimes things posted online without any intention to cause a detrimental effect end up in being either a reason or a catalyst for the same. In 2015, a private video of an Italian woman went viral, which was parodied so much that it pushed her to commit suicide.⁵⁷

Also, in 2017 a Facebook post by a Class 11 student sparked 'Basirhat' Riots in West Bengal. The Decade long communal harmony was broken by a meme of Holy Prophet in Kaaba⁵⁸ and since there existed no religious enmity among the people living, the meme was solely responsible for inciting hate and triggering the riot. Going by what the neighbours of the youth said, "*the boy posted the meme without giving it much thought*".⁵⁹

CONSEQUENCES OF INTERNET HUMOUR: ARRESTS

"Most people enjoy amusement and jesting more than they should ... a jest is a kind of mockery, and lawgivers forbid some kinds of mockery—perhaps they ought to have forbidden some kinds of jesting."

—Aristotle⁶⁰

In cases where the said allegations of 'criminal joke' turn out to be bogus, it leaves the accused as a victim of the law as well as the intolerance of the people. In the United Kingdom, five internet trolls are convicted every day.⁶¹

In India, making memes for trolling politicians or public figures has seen a much undesired consequence-arrest. In April 2018, a man from Ranchi was arrested for making a meme video of the State Chief Minister.⁶² In



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2012, a teacher was arrested for forwarding a cartoon on West Bengal Chief Minister.⁶³ In 2013, a man in Agra was arrested for cartoons lampooning Prime Minister Manmohan Singh and two other leaders.⁶⁴ In 2017, a man in Kolkata was arrested for running a Facebook page and making derogatory cartoons about freedom fighters and political leaders.⁶⁵

Also, a number of incidents have come up related to people being arrested for memes or posts on Prime Minister Narendra Modi. The arrest of a young man from

Bhatkal for sending a cartoon,⁶⁶ of a school principal for posting an image showing the PM and another leader in objectionable manner,⁶⁷ of an auto rickshaw driver for being the group admin of a WhatsApp group where some content against the Prime Minister was published⁶⁸ are a few examples. The case of *AIB* has already been mentioned.⁶⁹

As observed in most of the cases, the element of *Mens Rea* is completely absent. However, each time people have to go through the trouble of complaints or arrests. Like in 2017, a 19 year old boy was arrested for sending a WhatsApp message, allegedly defaming the Prime Minister.⁷⁰ Barely going by



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the words of the accused's family and neighbours, the meme was forwarded without any criminal intent as the boy was new to social media.

Sometimes the accused manages to evade such circumstances. Like in the matter of *Nanda Bholanath Singh v. State of Maharashtra*⁷¹ the court granted anticipatory bail to the petitioner who had posted an allegedly defamatory post. However, Madras High Court denied the same to a BJP Leader for sharing a derogatory post.⁷²

Hence, it can be observed that in most of these so-called criminal humour cases, either the laws become a tool to suppress opinions, dissent, question or criticism that are dipped in humour to reach wider audience, or it's just that the post reaches an over sensitive audience. Therefore, except in cases of intended crimes, criminal laws like the IPC are misused.

Thus, we arrive at the question, 'Should individuals really be arrested for posting jokes, memes and cartoons online when in most of the cases, the *Mens Rea* to commit the crime is *prima facie* absent? If yes, then under what circumstances and how?

LAWS GOVERNING ONLINE HUMOUR: WHY AND WHY NOT?

"Humour is like a rubber sword— It allows you to make a point without drawing blood."

—Mary Hirsch⁷³

It is pertinent to note that to regulate humour is to regulate social media as a whole and drafting any regulation related to humour only is not possible. Hence, any further deliberation to regulate humour simply means regulating social media, keeping humour at the centre of it all.

Section 66A of the IT Act criminalised sending message which is offensive, menacing or false information circulated for generating hatred, ill-will, enmity, insult, injury etc.

In wake of an incident in 2012 where a girl was arrested for stating her opinion on Facebook in relation to city shutdown due to death of *Bal Thackrey*, numerous petitions were filed which later became the case of *Shreya Singhal v. Union of India*.⁷⁴ The Apex Court struck down 66A of the IT Act in the view of it being vague and violative of Article 19(1) of the Constitution of India.



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The Court noted that *"there is no demarcating line conveyed by any of these expressions— and that is what renders the Section unconstitutionally vague"*⁷⁵. The Court regarded that if the section wasn't struck down there would be total chilling effect on free speech.⁷⁶

One of the main contentions of the petitioners was that, even innocents were getting roped into it and it was 'open to the authorities to be as arbitrary and whimsical as they like, in booking such persons under the said section'. However, even when section 66A has been struck down, people are still getting arrested for sending or publishing jokes under the IPC.

This leads us to the conclusion that the present laws replace prosecution with persecution when it comes to social media. Hence, it is needed to determine 'whether laws should really interfere in social media and its user generated content or not'.

The answer to this hangs between lots of factors, discussed ahead.

Laws for Social Media — Why It is Needed

New Crimes Coming Up

From the above discussions it can be clearly seen that there are a lot of crimes that are coming up with the social media which are not dealt with in the IPC, like racism.

It is fundamentally true that section 153(A) of the IPC is a section for hate speech and as held in *Babu Rao Patel v. State (Delhi Admn.)*,⁷⁷ the section deals with raising enmity on the grounds of not only religion, but also race, caste, gender and the like. But in *Bilal Ahmed Kaloo v. State of Andhra Pradesh*,⁷⁸ it was held that the section deals with cases only where the hate is being provoked between 'two' or more groups. If there is no promotion of hate between groups, the section won't be applicable. Merely hurting the sentiments of one group without referring to any other group won't attract the section.⁷⁹ Hence, if someone goes on spreading hate and racism against the people from north-east, without bringing in any other group in the context, the said person would be committing no offense under 153(A) of the IPC.

The existing hate against the people of north-east has become a very big concern. In 2014, a student from Arunachal Pradesh was beaten to death after



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a fight ensued due to mockery.⁸⁰ With the 'EyeamIndian' campaign on social media, where people started to post images of themselves with skin around eyes being pulled back, imitating the eyes of a person of north-east to show solidarity and support the India's multi-ethnicity, it became increasingly difficult to understand who is doing it promote racism and who is doing it to counter it.⁸¹

Further, the law covers only 'enmity'. Promotion of the feeling of inferiority for a group is still not covered in the section.

Additionally, with the development of new jurisprudence, scholars are recognizing gender discrimination⁸² as a new form of crime. Humour originated from the patriarchal societies portrays women "through characteristics such as stupidity, illogical thinking, ignorance, or irresponsibility"⁸³. Such sexism is inherent in the society and in future, if a development takes place, such acts can become a matter of criminality.

Hence, we observe that the internet not only hosts presently recognized crimes, it is becoming a home for new growing crimes as well. Thereby, going by the principle of *Nulla Poena Sine Lege* (no person shall be punished except in pursuance of a statute which fixes a penalty for criminal behaviour)⁸⁴ makes statutory regulation of online humour a necessity.

Online Humour Disguises Crimes

This point does not need much deliberation, because, in nearly each and every case it can be observed that one or the other crime is just disguised as a harmless joke. In

*Gayatri*⁸⁵ the alleged offending post was indeed a joke, and was indeed posted with hatred towards the *Dhobi* caste.

In *Chambers v. Director of Public Prosecutions*⁸⁶ a tweet by the accused became a matter of concern and he was convicted for sending by a public electronic communications network a message of a menacing character, even though the accused argued that the tweet was meant to be a joke.

In summary, it is very easy to commit or incite an offence through a post on social media and cover it under a layer of joke, sarcasm or satire, or



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transform it into a meme or cartoon with creativity. This masks the *Mens Rea* and makes it difficult to say whether it was intended to be a criminal act or not.

Would Prevent Unnecessary Unlawful Consequences

The *Basirhat Riots*⁸⁷ can definitely point that, had the laws been strong and their implementation proper, the post would not have caused riots. The meme kept on circulating till the point it flamed the riots.

This isn't the only incident where lack of existence of a proper law for the said matter or the immediate enforcement of such law has caused disturbance. In fact, section 295(A) came 'after' the *Rangela Rasool* incident when a need for a new law was realised to deal with such situations.

Cicero says in *De Legibus*, '*Salus populi suprema lex esto*', i.e. the public safety is the supreme law. The Australian High Court in *Gratwick v. Johnson*⁸⁸ notes that even though the maxim is not a legal criterion of constitutionality, but is a wise political observation and represents a doctrine of political necessity.⁸⁹ Hence, taking a preventive approach to protect the public safety, there needs to be regulation over what kind of material is circulated online, especially on social media.

Hereby, it can be stated that had there been a law to counter the *Rangela Rasool*, and had the law enforcement agencies taken down the Facebook post before it went viral, the *Lahore* and *Basirhat Riots* could have been avoided.

Thus, laws governing internet humour is necessary as it would reduce illegal recourses.

Excessive integration of Social Media in Real life

Scholars are now recognising the virtual space as a part of real life, the way telephonic conversations are seen as a part of offline life⁹⁰. A new concept of 'Dual Reality' has also been discussed. "The dual reality concept (...) incorporates two key ideas— that data streams from real-world sensor networks are the raw materials that will fuel creative representations via interactive media that will be commonly experienced, and that online 3D virtual worlds are an ideal



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venue for the manifestation and interactive browsing of the content generated from such sensor data streams".⁹¹

Not only is the virtual world integrating with the real world in practical sense, it is also being integrated in the eyes of law. While rejecting the Anticipatory bail plea of BJP leader *S Ve Shekher* for allegedly sharing a post abusing women journalists, the court held that sharing a post on social media is equal to endorsing it.⁹²

Not only Facebook, the courts themselves are engaging in the use of social media messaging platform WhatsApp to carry official procedures in cases. In *SBI Cards & Payments Services (P) Ltd v. Rohidas Jadhav*⁹³ the court held that notice delivered in PDF format on WhatsApp is valid. In Karkarduma District Court of Delhi, summon was served through WhatsApp⁹⁴ and it was held that Blue tick on WhatsApp *prima facie* means that summon has been served⁹⁵ and the same happened in Rohini District Court⁹⁶. In *Rohitashwa Kumar Agarwal v. Bar Council of U.P.*⁹⁷ the court summoned the parties through WhatsApp, and during the Shimla Water Crisis, the Himachal Pradesh High Court suggested creation of a WhatsApp group for better coordination while supplying water⁹⁸.

While even the Courts recognise the fact that social media is so integrated in real life that formal and official formalities can take place over it, it is very evident that such space holds a relevance in the eyes of law should not be left out of the purview legal regulation because law cannot trend on something that is unregulated itself.

Real Life, Permanent and Long Term Impact

Anything posted on social media doesn't remain just on the internet, but its use very much affects the real life of an individual as well as the state. In *R.*



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*Mahalakshmi v. Commissioner of Police*⁹⁹ the Court went so far as to state that "Social media has become the danger to our nation". Content that is posted online as a joke not only impacts the online presence of an individual, but also makes real life impacts.

On top of that, anything posted on the internet becomes permanent.¹⁰⁰ Once an information is on the internet, it cannot be determined how far it has reached and how many copies of the information have been made and it can never be claimed that an information has been completely removed from the internet because of its vastness and reach. Also, information is shared cross-platform as well. Like in *Basirhat Riots*, the original post was taken down from Facebook, but it kept circulating on WhatsApp.

Further, anything posted on Social media can leave a very long term impact. The suicide of the Italian woman, whose private video went viral and was parodied, was preceded by her changing her home as well as her name, winning a case against Facebook to take down the abusive posts, and two failed suicide attempts¹⁰¹.

Summarising all the above points, social media needs a regulation because both it and the internet humour are not only a breeding ground for new crimes, but they can also incite a crime and become a catalyst for unlawful consequences as it is integrated now in the real lives of people, both, practically as well by the practice of court, and because of its vast reach, information can become permanent, doing long term, ruthless and detrimental effects that can harm an individual, a group, or a community as a whole, all this while, under the guise of a joke.

Laws for Internet Humour — Why not Needed

Hinders Freedom of Speech and Expression

"If you should let me go on this condition which I have mentioned, I should say to you, Men of Athens, I respect and love you, but I shall obey the god rather than you"¹⁰² were the words of Socrates when he was offered his life in exchange of his right to speak his mind.



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The Part III of the Constitution of India guarantees the Fundamental Rights to the people of India including the Freedom of Speech. They are guaranteed as limits on the power of State.¹⁰³ The ICCPR¹⁰⁴ in its Article 19 grants freedom of speech and states that it "shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Also, blasphemy laws are incompatible with the Covenant,¹⁰⁵ and so are defamation Laws¹⁰⁶ and 'the penalization of a media outlet solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression'.¹⁰⁷

However, Freedom of Speech conferred is not absolute in nature. While discussing the nature of the Freedom of Speech and Expression as given in the Draft Constitution, Dr BR Ambedkar referred¹⁰⁸ to the case of *Gitlow v. People of the State of New York*¹⁰⁹ where the court stated that "It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish".

Under Article 19 of the Constitution of India, the State has the power to impose reasonable restriction on the grounds of 'security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence'.

However, of all the grounds, one of the weakest points is 'Public Order' that is disrupted by any dissenting opinion. The recent movie *Padmavat* was accused of 'Negationism' and led to nation-wide violent protest when court lifted the ban on it.¹¹⁰ Not only the filmmakers, in India even the Apex Court directly has faced protests. With the dilution of SC/ST (Prevention of Atrocities) Act, 1989 the country saw nation-wide disruption of public order¹¹¹



and the government is now planning to undo the dilution.¹¹² Hence in a country where things such as judgments of courts are leading to mass unrest, it is very much evident that it is completely unpredictable as to what can cause a public disorder.

In the *Basirhat Riots*, the meme that sparked off the riot was nothing new. Such memes and cartoons are found in abundance on the internet.

Further, when it comes to humour, we must understand that not all forms of humour are under the so called confine of 'Decency and Morality'. It has been noted that modern genres of comedy like black or dark revolve around topics that are frowned upon and are worthy of censorship.¹¹³ In *Devidas Ramachandra Tuljapurkar*¹¹⁴ the Supreme Court held the poet guilty under section 292 of the IPC merely for a satirical poem that uses strong language to criticise Mahatma Gandhi. Scholars also note that 'comic works characteristically expose pomposity and smug self-deception, and undermine dull and inhuman mores. By toppling those authorities' comedy encourages us to understand what is masked by rigorous, sombre approaches to human behaviour. The problem is the virtual certainty that unrestrained comedy will give specific offence and produce outraged reaction from individuals and groups sooner or later"¹¹⁵.

Thereby, if the laws start to censor humour, it will end up outlawing something that is actually smart criticism, only because it fails to go by the standard of morality and

decency. Such censorship would not only be violative of free speech, but would end up deterring the critic attitude.

Tool for Oppression

As already stated, it cannot be doubted that internet humour carries a very huge reach and is penetrative in nature. Because of the fact that it is not just another monotonous everyday piece of speech, humour catches attention quicker and in impact, seminate ideas quickly. This makes it a very convenient method of mass dispersal of criticism.

In 2016, the Spanish government proposed to ban memes on politicians to prevent people making fun of politicians.¹¹⁶ This move was not at all



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democratic in any manner as people who hold offices can and should be open to criticism in a democratic setup.

Also, Russia cracked down memes on Putin which were actually to support gay rights.¹¹⁷ This was labelled as war against internet extremism. However, the memes were for inseminating the idea of gay rights and a protest against the archaic existing laws and the crack-down took the memes down, thus affecting the movement.

These two are clear instances as to how memes and humour is used to put forth a point, and how the government uses the laws and its force to suppress the criticism and dissenting voices.

Thereby laws governing social media are used by those in power to suppress the voices, thus becoming a tool for oppression.

Demotivates Criticism and Expression of Opinion

Apart from suppressing the Free speech, even the existence of a law governing every post on social media, acts as a deterrent.

The very fact that someone got arrested for sharing cartoons on a politician sends a deterring thought to each and every individual, and the very next minute, they start refraining from expressing even legitimate criticism.

For example, in the matter of Wendy Doniger's book 'The Hindus: An Alternate History', Penguin India had to decide not to release the book in India when the book faced a case of section 295(A) of the IPC, and then decided for out of court settlement. The thing that is to be noted is that the court's order did not come, but Penguin India pulled out from the case stating it has a duty to protect its employees, which Booker-Prize winner author Arundhati Roy called "dismaying shift showing submission to a growing attitude of intolerance".¹¹⁸

The very same goes for a simple user of social media. Being engaged into a case is way too difficult for a common man who availed the facility of social media to share a meme or a joke. Because of the way public reacts, it is totally unpredictable what will land an individual into a legal dispute, facing arrests, economic loss, and mental agony just for a meme.



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Such will then act as a deterrent for a common man, who is unsure of how ugly

things may turn out to be, from sharing any sort of view that has a chance of invoking an outrage.

And it is not that it has to be something offensive, or gross for anyone to take offense of the statement. Poet and writer *Kanwal Bharti* was arrested for a Facebook post questioning a government's decision.¹¹⁹ In 2015, an 11th grade boy was sent to 14 day judicial remand for merely sharing a Facebook post, of which he didn't understand the true meaning. The boy was slapped with not only now held unconstitutional section 66-A of IT Act, but also 153A, 504 and 505 of the IPC.¹²⁰

Such incidents deter people from posting or expressing anything on the electronic media.

Promotes Victimhood and Violence

An interesting observation is that forming laws that take action on disruption of 'public order' passively promote violence and victimhood. The IPC in reference to section 295(A) encourages or generates specifically violent display of wounded feeling.¹²¹ In terms of section 295(A), scholars note that *"the purpose was to curb religious violence by curbing provocative speech. But the strategic field the law put into place worked differently: it extended the strategic value of demonstrating that passions had been aroused that threatened the public peace, in order to induce the government into taking legal action against one's opponents. Section 295A thus gave a fillip to the politics of religious sentiment"*¹²² When it comes to humour, especially dark comedy on the internet, its tendency to incite wound on sentiments is much higher, and when such comedy is on a group, the purposeful display of violence becomes a tool to push their fragile emotion on others.

Difficult to Lay down the Liability

Also, social media is used through electronic devices. Anyone can hack the device, trick a gullible person or exercise personal influence like that of friendship to get access to one's social media account. In poor families or even in



economically sufficient families, every individual does not own an electronic device; hence, sharing of such items is often seen. If the minor child of a person shares something from his social media account that is highly offensive or harasses someone, on whom the liability should lie would be extremely difficult to answer. This can happen with any individual. Setting individuals aside, this can happen with governments too. On 5 Aug, 2018, the official Instagram handle of the Russian Military uploaded a nude image of a woman.¹²³ If this can happen with a government account, it can no doubt happen with a normal user. Thus laying the liability is difficult.

In summary, it can be understood that if laws start governing the social media and internet humour, not only will it start suppressing the quickest and most penetrative method of idea dissemination, but also it becomes a tool for oppression and demotivating criticism. The very fact that the law tells people that, on such and such jokes their emotions 'can' get hurt, it reminds people that it is their right to get offended.

CONCLUSION

"Defining and analysing humour is a pastime of humourless people."

—Robert Benchley¹²⁴

In his ideal world, Plato predicted that Laws censoring humour would exist, because poet or a composer of comedy should not be allowed to ridicule or mock any citizen.¹²⁵ In the Funeral oration of Peloponnesian war for the martyred soldiers, Pericles said

"We are free and tolerant in our private lives; but in public affairs we keep to the law. This is because it commands our deep respect"¹²⁶. As the time passed, the concept of freedom expanded. However, it has been observed that Freedom of Speech has never been absolute, and always was, is, will be and should be restricted with reason. Hereby, it should be clear by now that whether it is real life or social media, law has to play a role in its governance. The real question is, are the prevalent Indian laws appropriate enough for its governance?

The answer is no, the present laws are not suited for handling social media, especially internet humour at all. The present laws are excessive in nature as



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well as broad, especially sections 295(A) and 499. Despite section 66-A of IT Act being held unconstitutional, innocents are still roped in.

Also, the fact is that even though social media now is an integrated part of human existence, it is still not a real world. A person, even in the transparent curtain of anonymity of the internet, changes his personality. Once that changed personality wears the hood of humour, it becomes tricky to dig in the intention to pick up the malice.

Another thing is that the present laws are double edged. As discussed earlier, it becomes a reason for display of violence and victimhood, and the accused has to face the outrage as well as the criminal case, in most cases, only to be acquitted later. Thus not only social media is being misused, the laws are also being misused. In *State of Maharashtra v. Sangharaj Damodar Rupawate*¹²⁷ it was held that "effect of the words used in the offending material must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view". But this comes when the matter reaches the court and having a full faith in judicial system, it can be said that the Court would not let an innocent suffer. But no one protects the accused from the unnecessary outrage every time, abuse of process and unnecessary arrests, economic cost, loss of repute and time, that too for a Facebook post.

Following the Natural Law School's maxim *Lex Inuista Non Est Lex*, i.e., an Unjust law is no law,¹²⁸ and as Hart puts it, "We think and talk of 'justice according to Law' and yet also of the Justice or injustice of Law",¹²⁹ there is nothing wrong in stating that using the IPC as well as the complicated procedure of the Code of Criminal Procedure, 1973 for a Facebook Post or a WhatsApp forward is not only excessive, but also unjust by its nature. And as scholars are noting, "higher sanctions and stricter laws may increase crime".¹³⁰

Also, the negative side of letting offensive humour go unchained is also clear and visible. Many times trolls intentionally attempt to malign a person and his reputation as noted above, or at least the accused knows that the targeted person is likely to suffer loss or is actually suffering it. Such damage once suffered cannot be reversed and if something reaches the deep web, it is nearly impossible to wipe the data off.



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To summarise, humour should also be given a high degree of freedom as they are not mere jokes but speech and expression that has more penetrating reach as compared to any other form because of its brain intriguing and attention grabbing nature. It is for entertainment, as well as for criticism, challenging society's moral standards, progress and countering prevailing norms, which is important for growth and diversity. As noted in the *Shreya Singhal case* itself, it allows a bigger public participation than any other form of media because it requires lesser economic cost and effort and everything is done on clicks. However, its negative and darker side cannot be ignored as it is also used as a tool for pushing fake agendas, to defame and malign, harass and bully. But the present laws aren't compatible with social media as the substantive part either isn't touching a part or is making it too heinous. Procedure is too cumbersome and harassing for a person whose crime is forwarding a joke.

Also one thing that has been observed throughout the discussion is that, not only the people, but the courts are also using social media, like the WhatsApp messages to forward summons. State officials are using Twitter and Facebook for declaring official information. When a medium is used and has been integrated to such a degree that even the courts and officials are using it, and leaving it to old laws is not viable.

RECOMMENDATION

Keeping everything in focus, it can be believed that the below recommendations will help in governing internet humour better if implemented—

- Dedicated Social Media Law-In case where the laws were stringent, the Court or the Government have watered them down in the past. However, those were special legislations like the SC/ST Act¹³¹ or the *Bihar Liquor Ban*¹³². It is not possible to dilute the IPC to suit social media. The country needs a separate Act dealing with social media, with its own procedure that is compatible with the modern Information Technology, and a separate tribunal to deal with the cases of social media and the internet, which makes it easier for the victim to get relief and for the accused to defend himself without excessive loss of reputation as we follow the principle of 'innocent until proved guilty' and it is not at all justified to drag someone in a criminal court for a joke when the laws are already presuming him innocent.
- Balanced Arrest and Complaint Procedure — It has been observed that in cases related to politicians or celebrities being defamed, the politicians or



celebrities aren't the ones who take offence, but it's someone else who files the case, and the most of the time the celebrity or the politicians don't even comment on the scene. When it comes to social media humour and offence such as defamation, procedural laws need to establish as who has the *locus standi* and jurisdiction to complain.

- Author Romila Thapar notes that there is no quick way to measure how many people have suffered hurt on their sentiments, if the sentiment of the entire group or society has been hurt or only of the people agitating. People, who become vocal, get to censor other's freedom in the name of attack on religious sentiments and those who aren't, simply ignore it.¹³³
- Also, arrest should be the last resort and should not be used against each and every individual and for every kind of social media post, like in the matter of *Palghar Girls* being arrested for a Facebook status and for 'liking' the post,¹³⁴ the arrest was totally unjust and an abuse of power. However, the police acted wise

in the controversy of Tanmay Bhat's Snapchat video and said that it is not an offence and was posted in a dark taste of humour¹³⁵ refusing to register an FIR.

- Well defined, narrow definitions of offences — The point that held section 66-A as unconstitutional was that the section was very vague and offences were not defined properly. And when it comes to jokes it becomes even more difficult. The court in the matter of *Shiromani Gurudwara Prabandhak Committee*¹³⁶ the court already noted the difficulty in banning a certain category of jokes, i.e., *Sardar Jokes* in the said case and said that they cannot frame guidelines for it. Hence, any law that governs the social media and humour should be well defined and since formation of a whole new set of laws is being recommended, it will be easier to make a detailed but narrow definition of what will be held criminal, rather than fitting it in one section only.
- What is needed to be understood that the sense of humour defers from person to person like in the case of the cartoonist held for sedition,¹³⁷ the court observed that the cartoons were not humorous, but any other reader may have an entirely different opinion. Also what maybe offensive may not be



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defaming at all.¹³⁸ Hence, a clear demarcation while making definitions and of the offenses should be made between offensive post, and injurious post.

If implemented properly, these recommendations may help in reducing the menace of public imposed restriction on Free Speech and one of the greatest gifts to humanity — Sense of Humour.

Arriving at the end, the entire discussion should be closed with two quotes—

"Everything human is pathetic. The secret source of humour itself is not joy but sorrow. There is no humour in heaven."

—Mark Twain¹³⁹

"I disagree with what you say, but I will defend to the death your right to say it."

—Evelyn Beatrice Hall in reference to the attitude of Voltaire.¹⁴⁰

* Student, BA LLB (Hons), KIIT School of Law Bhubaneswar, Odisha.

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