

How to police a cyber space that has acquired the instincts of Frankenstein's monster? In pursuit of answers, an expert committee submitted an interim report to the Union Home Ministry a couple of weeks ago. The recommended amendments to the Indian Penal Code (IPC) are noteworthy for two reasons. One, they bring within the ambit of IPC (through amendments to Sections 153 and 505) any visual, audio, video, verbal or written communication, transmitted or retransmitted through any telecommunication service, device or computer. They propose that any speech that is disparaging, offensive, indecent, abusive, hate, gravely threatening - and so interpreted - be criminalised.

It is possible to discern in the government's move the continuance of a relatively consistent narrative that seeks conformity and compliance. Section 66A of the IT Act may have been struck down in the Shreya Singhal case but this is its new, more astute avatar with a better operating legal-ware. It seeks to add yet another speech-control legislation to the plethora of existing penal codes: Sections 295A, 124A, 153A, 505 that target acts ranging from malicious, to seditious, to disruptive of public order or morality, to violent, to plain mischievous. None of these provisions preclude speech on social media. One wonders, then, why is there a move by the government to acquire more punitive powers?

The wonderment grows when we are to peruse the social media cases that have been considered "repugnant to public order and morality". Pankaj Mishra, a CRPF jawan, was arrested last week in Jorhat for questioning the home minister and the prime minister over service conditions. A BSF trooper, Tej Bahadur Yadav, was dismissed from service for using social media to complain about food served to jawans. Prabhat Singh, a Bastar-based journalist, was arrested for an offensive Whatsapp message. Film-maker Shirish Kunder had an FIR registered against him over his tweets criticising the BJP's decision to appoint Yogi Adityanath as UP chief minister. A medical practitioner was arrested in March in Jhabua, Madhya Pradesh, on charges of hurting religious sentiments by posting a picture of a sadhu buying meat. A Jadavpur University professor and his neighbour were arrested for allegedly circulating a cartoon that lampooned [Mamata Banerjee](#). This list is quite extensive and spans various governments' dubious records on free speech.

In each of these cases, one or the other pretext of public order, morality, derogatory speech, slander and defamation was used to outlaw advocacy, mirth, caricature and the worst of all crimes, dissent. To add to law-keepers' selective, politically motivated ire is not just what it cherry-picks but also what it ignores. It chooses to turn a deaf ear to posts, threats and tweets that are deeply offensive, obscene, misogynistic and violently communal. It chooses to remain unmoved by any civic or national imperative when the target of vicious trolling are journalists, film-makers, authors, writers, painters, common people who are just doing their jobs as citizens. It even chooses to use an ordinance, as in Rajasthan, to outlaw the investigation into the conduct of judicial or political power.

It is nobody's case that the freedom of speech is an absolute freedom. But our constitutional commitment to free speech demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. And this "danger" cannot be remote, hypothetical, or stemming from a poor appetite for mirth and scorn. It should have, as the Supreme Court said in Shreya Singhal, a proximate and direct nexus with the expression, quite like the equivalent of a "spark in a powder keg".

The trade-off between free speech and public order/morality has never hurt political dispensations. In fact, the more controlled speech is, the greater has been the immunity and impunity of political power. The proposition that more law would lead to more order becomes a recipe for more

moralised political control, more paternalism and more statism. We need to remember that free speech preconditions the realisation of many of our claims and entitlements. Less of it translates into less democracy in general.

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