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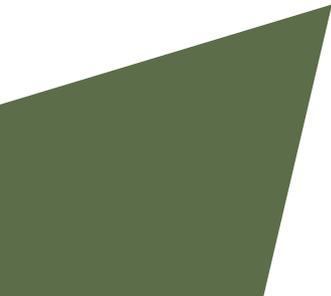
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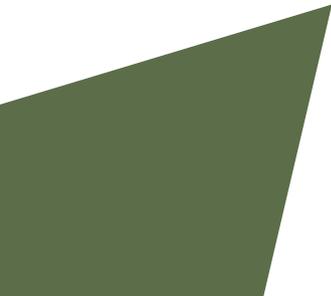
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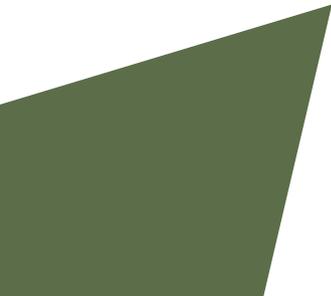
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**Impact of Hate Speech on Freedom of Expression In light of  
Kaushal Kishore v State UP**

**Priya Sharma**

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## ABSTRACT

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*Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties". -John Milton*

*Human beings have been endowed with the special features that distinguish them from other species present in the globe factor. The freedom of expression is one of the most widely exuberant debated of constitutional rights amongst National and International level, especially about whether a restriction needs to be imposed on this or not. It becomes important to understand that every law-abiding citizen to think what he will to say. In country like India where the great university and diversity with the regulation of hate speech this possess the greater challenges. Everyone has their rights to enjoy it, but they do not have the right to infringe other rights (under <sup>1</sup>Article 21). The hate speech law is contested because it clashes with the freedom of Speech and Expression of an individual. In the Light of Kaushal Kishore Vs. State of UP the freedom of speech and expression of a person holding a position of power can curbed the rights of the other or they responsible for that. The right of free speech under article 19(1)(a) is go beyond the under article 19(2) or restricted under the Article 21.*

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Mahendra Pal Singh, Constitute of India 136(13th ed,2017).

K.K. Mathew, Democracy, Equality and Freedom 98 (1st ed. Upendra Baxi,1978).

## ANALYSIS OF FREEDOM OF SPEECH AND EXPRESSION

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*Democracy is the government of the people, by the people, for the people....*      **Abraham Lincoln**

No democracy can flourish without independent system, a system free from fear or favor, restriction and repression. The free expression is based on the idea that without expression, there is no point of social life at all, because communication is the very essence of social life so to enhance prosperity, stability and proper functioning of democratic process liberty of speech, propagate, communicate or circulate one's opinion or views is avail to all citizen. The Constitution of India is the largest written liberal democratic constitution that solemnly resolved in the Preamble "LIBERTY OF THOUGHT AND EXPRESSION" to all the citizens and part III of constitution (Fundamental Rights) under <sup>2</sup>Article 19(1)(a) granted Freedom of speech and Expression as

"the right to express one's views and opinions through any medium, e.g. by words of mouth, writing, printing, picture, film, movie etc. It thus includes the freedom of communication and the right to propagate or publish opinion."

<sup>3</sup>Maneka Gandhi v. Union of India BHAGWATI J., has emphasized on the significance of the freedom of speech & expression in these words:

"Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential."

Freedom of speech and expression was well recognized connotation which means the liberty to Express one's views, opinions, and beliefs. For the one's liberty foremost right is right to speak, Express their thoughts without any fear. The freedom of speech and expression occupies the indispensable position in the hierarchy of liberty, Thus it called as the mother of all the other liberties. It is the bulwark of healthy, progressive democracy and greater scope to define real meaning

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<sup>2</sup> INDIA CONST. art. 19 cl (1) sub.cl.(a)  
. Dr.JN Pandey, Constitutional law of India,32(51th Ed.,2014).  
. Maneka Gandhi v. Union of India ,1978 AIR 597, 1978 SCR (2) 621

to the citizenship of a person which effectively participate in the social and political process of the country.

Justice V.R. Krishna Iyer has observed that:

“Right to express one’s thought is meaningless if it is not accompanied by relaxed right to secure all information on matters of public concern from relevant public authorities. However, to ensure that there is no harm in inserting the freedom of information on a specific corollary to Article 19 of the Constitution”

Free speech & expression is the natural right, which a man acquires on its birth. Therefore, it is a basic right. Hocking has said that if an idea was born to a man, it was not an item of capital stock. He has an impulse to give it away, to spread it everywhere. Nothing could more difficult for a human failure than a man physically prolific whose ideas should not count. A suppression of speech, in its more painful consequence, would be the mental sterilisation of the community.

<sup>4</sup> Ramesh Thaper v. State of Madras,<sup>9</sup>Patanjali Sastri, C. J. observed:

“Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the constitution may well have reflected with Madison, who was leading spirit in the preparation of the First Amendment of the Federal Constitution, what it is better to leave a few of its noxious branches to their luxuriant growth than by pruning them away, to injure the vigour of those yielding the proper fruits.”

Explaining the scope of freedom of speech and expression Supreme Court said that the words “freedom of speech and expression” must be broadly constructed to include the freedom to circulate one’s views by words of mouth or in writing or through audiovisual instrumentalities. Freedom of Speech and expression means the right to express one’s own convictions and opinions freely by words

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Ramesh Thaper v. State of Madras AIR 1950 SC 124,1950 SCR 594.

of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's idea through any communicable medium or visible representation.

Moreover, it is important to note that liberty of one must not offend the liberty of others. Patanjali Shastri, J. in <sup>5</sup>A.K. Gopalan case, observed, "man as a rational being desires to do many things, but in a civil society his desires will have to be controlled with the exercise of similar desires by other individuals".

Article 19(1)(a) secure the Right to speech and expression doesn't mean the Right to say whatever, whenever and wherever ones like.

The right to Freedom of speech and expression was tabled in the Constituent Assembly, there have been demands for putting limitations on this freedom that led to <sup>6</sup>The Constitution (First Amendment) Act, 1951 and the Constitution (Sixteenth Amendment) Act, 1963 that added various ground of imposing restrictions under Article 19(2) of the Constitution.

If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. – J.S. Mill in his work On Liberty

<sup>7</sup>Article 19 clause (2) says that

"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. Reasonable restriction under these heads can be imposed only by duly enacted law and not by executive action. George Bernard Shaw said that the whole theory of freedom of speech and opinion for all citizens rests not on the assumption that everybody was right. But on the certain time that everybody was wrong on some

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1966 AIR 816, 1966 SCR (2) 427.

India Const. art. 19(1)(a), amended by THE Constitution (First Amendment) Act, 1951.

India Const. art. 19(2), amended The Constitution (Sixteenth Amendment) Act, 1963.

<sup>7</sup> INDIA CONST. art. 19, cl. 2.

point on which somebody else was right, so that there was a public danger in allowing anybody to go unheard. The freedom of speech and expression requires to fulfill some objectives that is democratic value, to ensure plurism, and to discover Truth.

Every legislation is set with the aim of achieving an objective, the legislations should not arbitrarily invade upon the right of individual. If the close proximate effect of the law is that it abridges the fundamental rights of the citizens and if the restriction prevents such abridgement, then the restriction is reasonable. Fundamental Rights are not absolute rights of the citizens and law can put an enforceable reasonable restriction on the fundamental rights for interest of the country.

## **HATE SPEECH INDIA**

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In the civil society, the man is the regarded as the doer of rational things when we talked about his expression it becomes necessary for him to controlled, modulated, monitored and balanced it with the expression and thoughts of another man who inculcates the similar desires. The Article 19(1)(a) secure free Speech and Expression but it does not mean that anyone does not speak whatever he wants too. Hate speech is nothing but it is exception of Article 19(1)(a).

<sup>8</sup>Hate speech is defined as "any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence." and the Black's Law Dictionary identifies hate speech as the speech that carries no meaning other than expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence.

The reason for the hate speech across the countries are race, ethnicity, religion or class. India presents with its rich diversity of language, caste, race, religion, culture and beliefs thus by this poses a greater challenge. Hate speech has not been defined in any law in India. However, legal provisions in certain legislations prohibit select forms of speech as an exception to freedom of speech.

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Law Commission of India "267<sup>th</sup> report on Hate Speech", 2017,  
<http://lawcommissionofindia.nic.in/reports/Report267.pdf>.

Anandita Yadav, Countering Hate Speech In India: Looking For Answers Beyond  
The Law, Indian Law Institute Law Review (Vol. II Issue 2018)

## LEGAL PROVISION OF HATE SPEECH IN INDIA

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Thus, the foremost questions rise that Whether restrictions can be placed on freedom of speech and expression under Article 19(1)(a), beyond those provided for in Article 19(2)?

### **1. THE INDIAN PENAL CODE, 1860**<sup>9</sup>

- ✚ Section 124A IPC penalises sedition
- ✚ Section 153A IPC penalises ‘promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony’.
- ✚ Section 153B IPC penalises ‘imputations, assertions prejudicial to national-integration’.
- ✚ Section 295A IPC penalise ‘deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs’.
- ✚ Section 298 IPC penalise ‘uttering, words, etc., with deliberate intent to wound the religious feelings of any person’.
- ✚ Section 505(1) and (2) IPC penalise publication or circulation of any statement, rumour or report causing public mischief and enmity, hatred or ill-will between classes.

### **2. THE REPRESENTATION OF THE PEOPLE ACT, 1951**

- ✚ Section 8 disqualifies a person from contesting election if he is convicted for indulging in acts amounting to illegitimate use of freedom of speech and expression.
- ✚ Section 123(3A) and section 125 prohibits promotion of enmity on grounds of religion, race, caste, community or language in connection with election as a corrupt electoral practice and prohibits it.

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The Indian Penal Code, 1860, Act NO. 45 OF 1860 Indian Code (1860)  
The Representation of The People Act, 1951, Act No. 43 of 1951 Indian Code (1951)

### **3.THE PROTECTION OF CIVIL RIGHTS ACT, 1955<sup>10</sup>**

- ✚ Section 7 penalizes incitement to, and encouragement of untouchability through words, either spoken or written, or by signs or by visible representations or otherwise

### **4.THE RELIGIOUS INSTITUTIONS (PREVENTION OF MISUSE) ACT, 1988**

- ✚ Section 3(g) prohibits religious institution or its manager to allow the use of any premises belonging to, or under the control of, the institution for promoting or attempting to promote disharmony, feelings of enmity, hatred, ill-will between different religious, racial, language or regional groups or castes or communities.

### **5. THE CABLE TELEVISION NETWORK REGULATION ACT, 1995**

- ✚ Sections 5 and 6 of the Act prohibits transmission or retransmission of a programme through cable network in contravention to the prescribed programme code or advertisement code.

### **6.THE CINEMATOGRAPH ACT, 1952**

- ✚ Sections 4, 5B and 7 empower the Board of Film Certification to prohibit and regulate the screening of a film.

### **<sup>11</sup>7.THE CODE OF CRIMINAL PROCEDURE, 1973**

- ✚ Section 95 empowers the State Government, to forfeit publications that are punishable under sections 124A, 153A, 153B, 292, 293 or 295A IPC.
- ✚ Section 107 empowers the Executive Magistrate to prevent a person from committing a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably cause breach of the peace or disturb the public tranquillity.

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The Protection of Civil Rights Act, 1955, Act No. 22 of 1955, Indian Code (1955).

The Religious Institutions (Prevention of Misuse) Act, 1988 Act No.41 of 1988, Indian Code (1988).

The Cable Television Network Regulation Act, 1995, Act NO. 7 OF 1995, Indian Code (1995).

The Cinematograph Act, 1952 Act No.37 of 1952, Indian Code (1952).

<sup>11</sup> The Code of Criminal Procedure, 1973 ACT NO. 2 OF 1974, Indian Code(1973).

- ✚ Section 144 empowers the District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf to issue order in urgent cases of nuisance or apprehended danger. The above offences are cognizable. Thus, have serious repercussions on liberties of citizens and empower a police officer to arrest without orders from a magistrate and without a warrant as in section 155 CrPC.

Hate speech can be curtailed under article 19(2) on the grounds of public order, incitement to offence and security of the State. In *Pravasi Bhalai Sangathan v. Union of India*, where the petitioners prayed that the State should take peremptory action against makers of hate speech. The Court did not go beyond the purview of existing laws to penalise hate speech as that would amount to ‘judicial overreach’. The Court observed that the implementation of existing laws would solve the problem of hate speech to a great extent. The Law Commission has order to examine if it ‘deems proper to define hate speech and make recommendations to the Parliament.

## **INTERNATIONAL APPROACH OF HATE SPEECH**

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Article 10 of Human Rights granted the freedom of Expression i.e. everyone has the right of freedom of expression, to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The analysis of hate speech in different countries suggests that despite not having a general definition, it has been recognised as an exception to free speech by international institutions and municipal court. To maintain the peace, harmony and to prevent from the racial or religious hatred that constitutes incitement to discrimination, hostility or violence the International Covenant on Civil and Political Right,, 1966 (<sup>12</sup> ICCPR) under article 20(2) and similarly, articles 4 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (ICERD) prohibits ‘dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another

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International Covenant on Civil and Political Right, 1966, art 20(2).

International Convention on the Elimination of All Forms of Racial Discrimination, art 4,6.

Writ Petition (Criminal) No.167 Of 2012

colour or ethnic origin' and mandates the signatory states to provide effective remedies and protection against such action.

## **TEST OF HATE SPEECH**

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There is tests which have been adopted by the courts while recognizing whether a speech amounts to hate speech or not. The Supreme Court of India in *Shreya Singhal v. Union of India* had differentiated the speech in three forms i.e. discussion, advocacy and incitement. It was held by the Court that a speech can only be limited on grounds of exceptions mentioned in article 19(2) when it reaches the threshold of incitement and there has been an interference with freedom of expression. The through an analysis of the decisions of the different State jurisdictions, certain parameters may be summarized:

### **I. EXTREMITY OF SPEECH**

In order to qualify as hate speech, the speech must be offensive and project the extreme form of emotion. Every form of speech is not hate speech, so emotion of speech is necessary, yet it speak to the intention to hurt.

### **II. INCITEMENT**

In *Shreya Singhal*, the speech must amount to incitement in order to be restricted. This is an accepted norm to limit speech. The principles of hate speech have always come into conflict with two concepts, liberty and equality. However, the action of provoking unlawful behavior or urging someone to behave unlawfully. It is not only violence but also to discrimination has been recognized as a ground for interfering with freedom of expression.

### **III. STATUS OF THE AUTHOR OF THE SPEECH**

There is necessary to scrutinize the status of the author of the speech, the impact of the speech given by the politician, religious leader is the greater than the common person. European Court of Human Rights (ECtHR) has recognized that position of the author of the speech is important in determining the legality of limitation imposed by the State. The Supreme Court in *Pravasi Bhalai Sangathan* held

that ‘interferences with the freedom of expression by the politician ... calls for the closest scrutiny on the Court’s part and approached to sanction on a similar ground.

#### **IV. STATUS OF VICTIMS OF THE SPEECH**

The status of the targeted victim is also important in determining whether a speech can be hate or not. ECtHR in <sup>13</sup>Lingens v. Austria distinguished between the status of public and private individuals in this regard and remarked that:

“the limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.”

#### **V. POTENTIALITY OF THE SPEECH**

The potential impact of the speech must be viewed to determine the speaker’s state of mind at the time speech was rendered. In Ramesh v. Union of India, Supreme Court examined the validity of the restriction based on the potential of the movie to impact to the audience.

#### **VI. CONTEXT OF THE SPEECH**

Every hateful speech may not be termed as a hate speech. The context in which the speech was made is essential in determining its permissibility. The context of expression has always been investigated while adjudging the restriction.

### **KAUSHAL KISHORE VS. STATE OF UP**

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Democracy is very fragile; it depends on the faith of the public on the system. Every citizen should be led to have faith in the system that he will get freedom, liberty, equality. When we talk about Accused or victims, they also have rights. They faithfully knocked the door of the system alleging for justice because they know they get justice. That why they don’t pick up a gun or goes to the streets is because of the system convince them that they will get justice and the system will give justice. The person holding Public Office taking oath to serves his duty in respect for the country and its citizens.

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<sup>13</sup> (1986) 8 EHRR 407

The free speech right conferred under Article 19(1)(a) is to be controlled singularly by the language employed under Article 19(2) (i.e. reasonable restrictions) or might also be impacted by the fundamental right to life and liberty under Article 21 of the constitution. The Supreme Court today began hearing this issue which was an outcome of the petition filed by a relative of the Bulandhsahar rape accused. The case, *Kaushal Kishor v. State of Uttar Pradesh*, raises the question of whether freedom of speech and expression of a person holding a position of power can be curbed on the grounds that the same impinges upon the rights under Article 21 of another person.

### **FACT OF THE CASE**

The Constitution is not an instrument for the Government to restrain the people, it is an instrument for the people to restrain the Government. It is an instrument of the state through which it carries out its purposes of making laws, rule and regulations maintaining peace and Harmony in the country.

On <sup>14</sup>29<sup>th</sup> July 2016, when the Noida based family were on the way of Shahjahanpur passing through the Bulandhsahar, their vehicle was stopped by the criminals on the national highway road and dragged the 13-yr old young girl and her mother to raped them or beat up the male members to the nearby fields in Dostpur village. When the victim of the gangrape filed an FIR, at the station Kotwali, Dehat, Bulandhsahar for the offence of gang rape, abduction, dacoity.

Samajwadi Party leader and Uttar Pradesh Minister Azam Khan publicly describe the gangrape as a “political conspiracy for defaming the government just because of assembly election are to be held soon. He criticized one of the victims that all the claim made by her for gaining the publicity only for datamining the government.

Is the commentary done by <sup>15</sup>Azam Khan is valid under Article 19(1)(a) or it curtailed the right of life of the victim. Freedom of Speech granted to all citizens of India for liberty to speak, express their views without any hinderence or fear of being punish. Accused also have right or by embarking <sup>16</sup>such commentary does it not curtailed the Right of Accused.

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<sup>14</sup> Atul Yadav, Before the Supreme Court, a case of free speech vs neutrality of state, Thewire.in (Oct. 27. 2019, 8:00PM), <https://www.google.com/amp/s/thewire.in/law/supreme-court-free-speech-azam-khan-neutrality/amp/>.

<sup>15</sup> Krishnadas Rajagopal, Minister had said the Bulandhsahar incident was a "political conspiracy, The Hindu, AUG 30, 2016 01:42.

In an emotional appeal for justice, the traumatised family their quest for fair justice has suffered a rude shock because of the insensitivities of the police and the “outrageous “comment by the State Urban Development Minister and ruling Samajwadi Party leader, Azam Khan. The traumatised family knocked on the door of the supreme Court on August 2016, filed writ petition seeking action against the minister for making such remarks about the incident and for the fair investigation family sought the Apex court to transfer the case from UP to another state i.e. Delhi.

### **ISSUE FRAMED BY THE COURT**

The five-judge Constitution bench are requested to assist court as Amicus Curie to formulated the question of law and find out the core issues and court is constitutionally obliged to enhance the cause of justice by instilling public confidence in the fairness of trial.

The supreme Court framed the issues that is

1. Can a fundamental right under Article 19 or 21 of the Constitution be claimed other than against the ‘State’ or its instrumentalities?
2. Are the grounds specified in Article 19(2) exhaustive? Or, can restrictions on the right to free speech be imposed by invoking other fundamental rights? Article 19(2) allows the State to frame laws that pose reasonable restrictions on rights guaranteed under Article 19(1).
3. Whether a public statement by a Minister in relation to government business, which is violative of the constitutional rights of a citizen, can constitute a ‘constitutional tort’ as being an action which is an ‘improper abuse of public power’ and thereby actionable in damages?
4. Whether the State is under a duty to affirmatively protect the rights of a citizen under Article 21 of the Constitution, even against a threat to the liberty of this citizen by the acts or omissions of another citizen or private agency?
5. Can a statement by a Minister in relation to any affairs of the State or for the protection of Government, be attributed vicariously to the Government itself?

## **JUDGEMENT**

Fali S. Nariman respond by referring from Halsbury's Laws of England Vol. 20 (5th Edition, 2014), the report on Committee of Standards in Public Life (popularly known as Nolan's Principles) .There are seven principles that applied to all whosoever are elected or hold a public office. He cited Lord Denning's Hamlyn Lecture of 1949 titled "Freedom under the Law". He drew the attention that if the factual allegations are proved or established, Mr. Azam Khan might be liable under tort law that includes the public law remedy.

Mr. Khan tendered his unconditional apology and sincere and heartfelt remorse. But the court persuaded the bench to debate further issue to render a decision so that those who hold public office or authority think carefully before making statements on crime victims, especially victims of rape or molestation.

## **ANALYSIS OF THE DECISION**

The State has the duty to regulate its function and secures everyone's right can't be infringed. State has the duty to create an ecosystem. Referring to Maneka Gandhi case, emphasized that each Article 14, 19, 21 carries equal weight and must be viewed as a cohesive whole, bound together. In Dr. Ramesh Yeshwant Prabhoo v. Shri Prabhakar Kashinath Kunte & Ors., the Court analysed the meaning of sub-section (3A) of section 123 of The Representation of People's Act, 1951 that the said provision is similar to section 153A, IPC as "the promotion of, or attempt to promote, feelings of enmity or hatred" as against the expression "Whoever .... promotes or attempts to promote.... disharmony or feelings of enmity, hatred or ill-will ...." in section 153A, IPC. either by reasonableness.

The public officer could be held liable for violating someone's fundamental rights. the Bulandhsahar rape victim could file for damages against Minister Azam Khan for violating her right to dignity under Article 21. I have a right to protect my reputation; the invader of my right to privacy cannot invoke his freedom of expression under Article 19(1)(a).

In <sup>17</sup> Sahara guidelines case (2012), late Chief Justice S.H. Kapadia- states that media reporting could be restricted by issuing temporary postponement orders – by invoking the Article 19(2) ground of contempt of court – to protect unwarranted interference with the administration of

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<sup>17</sup>C.A. No. 9813 of 2011 ,C.A. No. 9833 of 2011

justice. In the Noise Pollution (2005) case, Article 19(1)(a) was considered broad enough to encompass both speech and the converse of speech, that is, the right to silence.

The grounds for reasonable restriction over freedom of expression mentioned in Article 19(2) include upholding the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or it includes defamation or incitement to an offence. while balancing Articles 19(1)(a) and 21 – from which the rights to reputation and fair trial flow – the courts have been careful not to expand the avenues of restriction so carefully defined under Article 19(2).

## CONCLUSION

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Constitution is the complex weave of rights and duties where rights are the heart and soul and duties are arteries and veins of the constitution. Trinity of Articles 14, 19, and 21 is the bedrock and core of the basic structure of the Constitution. Each of us have private life. If anyone come and gathered the information, then, come to wash their hands off and say, 'I have the right to publish it?'. There is positive Facet of the Constitution under Article 21 has right of privacy. When we talked about the public interest, rights can be upheld in public interest and restricted in public interest. In Puttaswamy judgment recognized right to privacy as a Constitutional right.

If public duties like railways and collection of tolls etc. is given to private entities, they should be made responsible for upholding right similarly the government is responsible for upholding the Constitution and rights of the people, then every cabinet minister is responsible. Thus, A minister cannot escape responsibility just because he is not in-charge of a ministry, he cannot be discharged of responsibility every minister is individually liable on account of holding public office. In UK where action was taken against the Speaker's wife for defamation after she retweeted a news item published by a newspaper. Critical and dissenting voices are important for a vibrant society. However, care must be taken to prevent public discourse from becoming a tool to promote speech inimical to public order. The State therefore assumes an important role in ensuring that freedoms are not exercised in an unconstitutional manner.