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**AN INTERDISCIPLINARY PEER-REVIEWED HALF YEARLY JOURNAL
OF
DISPUR LAW COLLEGE**

Editor-in- Chief: Dr. Jintu Borah



DISPUR LAW COLLEGE

**AFFILIATED TO GAUHATI UNIVERSITY & RECOGNIZED BY BCI
DHARMANANDA DAS AVENUE,
DISPUR, LAST GATE, 781006, ASSAM, INDIA.**

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At the time of publishing the journal, **DLC Image-Pratibimba**, we have to thank the Principal of the college Dr Gargi Dutta Paul madam and Vice-Principal Dr Swapna Manindranath Dea madam for their great help and encouragement to us. We have also to thank our co-editors, Dr. Indrani Medhi, Dr. Pallabi Baruah and Mr. Kamal Medhi and all the members for their help. I have also to mention Mrs. Pallavi Neog, Librarian of the College library and technical editor of the journal for her great help. We have also to thank our student members for their support. At last, we have to thank our contributors, without their writings it will be not possible to publish the journal.

Thank you all.

Dr. Jintu Borah

ABOUT THE JOURNAL

‘DLCIMAGE: প্রতিবিশ্ব’–is an interdisciplinary bilingual (English & Assamese) journal where the researchers can submit their articles of any discipline. This is the second issue of the journal. The research articles will be peer reviewed. We have received the ISSN and soon we will apply for UGC Care list. The researcher can choose the topic of their own related fields like English, Political Science, Sociology, History, Law, Economics, Public Policy and any other Social Science.

EDITORIAL MESSAGE

Editorial DLC Image-Pratibimbo, 2025 (January to June Issue)

We are happy to greet you for the new issue of the research journal, DLC Image-Pratibimbo. This time, we publish a bit late due to some unavoidable reason like getting the papers late or getting the plagiarism late from the author and some other technical reasons. We can publish it on time only when we get the papers on time. The research journal has been publishing by the blessing of God and for the continuous support of the principal and advisor, Dr Gargi Dutta Paul madam, respected Vice-Principal and advisor Dr Swapna Manindranath Deka madam, Dr. Pallabi Baruah, Dr. Indrani Medhi, Mr. Kamal Medhi, and faculties and members of the journal, Dr. Suranjana Kalita, Dr. Chandamita Sarma, Dr. Plabita Saikia and Technical-editor Mrs Pallavi Neog. In this issue our new faculties of the college, Dr. Punyag Pratap Bordoloi, Mr. Tanoy Paul and Ms. Kaberi Sonowal are also included in the editorial board. And Dr. Jyotshna Saloi, a senior faculty of law is selected as editor of law section. I have also to thank all the guest faculties of the college for their support for the publication of the journal. In future there is a scope to enlarge our editorial board.

I would like to thank Dr Gargi Dutta Paul, Principal DLC and Prof. (Dr) Arup Hazarika, President, GB of this college for help and encourage us to release the fund for journal's website and they also encourage us to publish the hardcopy in future.

I have to thank our contributors of this issue, Dr. Swapna Manindranath Deka, Vice-Principal the college and advisor of the journal; Mr. Jordan Thapa, a research scholar of RGU; Mustafa Iqbal Alomgir, a student of DLC and Mr. Banjeet Baruah a former faculty of this college who have done profound research on different topics and make this issue of the research journal an informative and interesting one. Like the previous issue, this issue is also free from plagiarism. Every article is checked by Turnitin. We accept research articles which are submitted with a plagiarism report which is below 10 percent i.e. the approved norm of UGC. All articles are peer-reviewed, and I thank our faculty members who have taken pain in reviewing the articles and handed over us on time. After having peer-reviewed, corrections are made by the authors as advised by the peer-review team. I also thank our web-designer for his prompt and excellent work.

Our research journal, DLC Image-Pratibimbo is now going to complete its third year. So, we want everyone's co-operation. It is like a tender sapling till date. Your contribution in the form of suggestions, providing research papers will take care of the journal to grow.

We will apply for the UGC Care soon. Response to the journal is now quite encouraging. We hope it will be enlarged and be developed in the coming issues. We will constantly strive for the improvement of the research-journal. Your support and suggestions will make our endeavor successful.

Thank You.



Dr Jintu Borah

Editor-in-Chief, DLC Image-Pratibimbo and
Assistant Professor of Dispur Law College. Date: 16/05/2025.

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Doctrine of Foregone Conclusion versus Doctrine Against Self-incrimination: A Case Note on *Sanket Bhadresh Modi v Central Bureau of Investigation*

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Abstract

*In the modern world technology has reached its zenith. Though technology has showered many blessings it has also created problems for us. The use of technology has also come in the enjoyment of certain fundamental rights of the citizens. One such fundamental right is the right not to be compelled to give testimony against oneself. In a recent judgment given by the High Court at Delhi in *Sanket Bhadresh Modi v Central Bureau of Investigation* in 2023 the Court has looked into this perspective. The Delhi High court ruled that access to passwords or passcodes or biometrics of the suspect accused by the investigating authorities would amount to self-incrimination. In consequence it would result in the swallowing of the fundamental right against self-testimony. It needs to be mentioned that this ruling was different from the earlier precedents of Karnataka High Court and Kerala High Court on the same issue.*

Objective:

- 1) To analyse the ruling on *Sanket Bhadresh's* case on the latest view of the higher judiciary on the right against compulsion to give testimony against oneself guaranteed under Clause 3 of Article 20 of the Constitution.
- 2) To find out if the doctrine relating to Foregone Conclusion have find its way in the Indian jurisdiction and
- 3) To find the relationship between the Production doctrine and the doctrine of Foregone Conclusion.

Research Methodology – The research methodology for this paper is doctrinal in nature. Primary sources like judgments of the higher judiciary are adopted. Secondary sources like journal articles are used for the study.

I. Introduction

The facts of the case are that *Sanket Bhadresh Modi*, a suspect accused sought a regular bail under Sec 439 of the Criminal Procedure Code, 1973. The accused, a director along with other directors of the Company named *E-Sampark Softech Pvt. Ltd.* were alleged to make millions of phone scams. Calls were made from different call centers in India to the US citizens

impersonating as US Officials coercing them with detention, filing criminal complaints, imposition of reparations, compensation or seizure of possessions. The prey was pressured for sharing with their money through various online means like like wire transfers, bank or cash transfers, payment through I-tune cards, various other gift cards and vouchers etc. The prey in the US had been fooled and dodged by the accused and 12 other partners of his company to the tune of about twenty million American Dollars. The suspect accused got bail for two hundred and three days as he satisfied the triple test for bail. The accused appeared for interrogation when called for except for one occasion. But he refused to co-operate with the CBI, the investigating agency for providing them with password(s), email accounts and digital wallet accounts. Hence the CBI prayed for rejection of the bail of the accused and for a direction to access the accounts of *Sanket Bhadresh Modi*. The accused made a plea for protection against compulsion to testimony against oneself guaranteed by Clause (3) of Article 20 of the Constitution. The Court remarked that involuntary access to the passwords(s) and biometrics of the suspect accused amounts to testimony against oneself protected under Clause 3 of Article 20 of the Constitution. The High Court at Delhi further observed that the “As an investigating authority the *CBI must not anticipate a suspect accused, to chant a mantra which is holy to their earhole*” as the suspect accused was protected under Clause (3) of Article 20 of the Constitution.

II. Applicability of the Doctrine of Foregone Conclusion

The principle of Foregone/Bygone Conclusion is applied in the United States legal system as an exception to the Fifth Amendment of the American Constitution which protects from double jeopardy and against self-incrimination. It is an exception to the principle against self-incrimination which compels the accused to submit password(s), biometrics to the investigating authorities when the government already knows what is there on the electronic devices. The doctrine of Foregone Conclusion firstly applied by the American Apex Court in *Fisher v. United States* in the year 1976.¹ The issue was whether the documents handed over to the lawyer by the client are protected from incrimination by the Fifth Amendment of the American Constitution. The Bench answered in positive. According to the Court once the documents are handed by the client to the lawyer it is not compelling and hence does not amount to self-incrimination and hence not protected by Article 20 (3) of the Constitution. In *Fisher V. United States* and in *United States v. Kashmir*; the Court judged that a summons ordering a lawyer for production of documents delivered to the lawyer by his client can be implemented and that observance with the summons would not create a violation of both the client's fifth amendment privilege against compulsion to be a testimony against oneself and his right of communication in confidence with his lawyer.²

But the doctrine of Bygone Conclusion is not implemented in India. Jurisprudence revolving this doctrine is yet to be developed in India. The development has faced challenges in view of the technological advancements made in the modern era. In the recent rulings in *Virendra Khanna' case*,³ the Karnataka High Court and in *P Gopalakrishna alias Dileep's case*⁴, the Kerala High Court ruled that compelling to produce password(s), biometrics does not amount to self-incrimination and hence does not violate Clause (3) of Article 20 of the Constitution. But recent High Court of Delhi verdict was a different opinion and held that compelling to

¹ 425 US 391 (1976)

² Anon, Compelled Production of Documents--Fourth and Fifth Amendments: *Fisher v. Unites States*, 425 U.S. 391 (1976), *United States v. Kasmir*, 425 U.S. 391 (1976), *United States v. Miller*, 425 U.S. 435 (1976), *Journal of Criminal Law and Criminology*, Volume 67, Issue 4 (December 1977), pp. 373-388 at p.373

³ *Virendra Khanna v. State of Karnataka*, 2021 SC Online Kar 5032.

⁴ *P. Gopalakrishna v. State of Kerala* 2022 SC Online Dis Crt. (Delhi) 48.

produce password(s), biometrics results in compulsion against oneself and hence contradicts Clause (3) of Article 20 of the Constitution.

The Doctrine of Foregone Conclusion seems to be applied by the Karnataka High Court and the Kerala High Court in their respective judgments. But this doctrine was not applied in the recent Delhi High Court judgment delivered in 2024. Thus, the judicial approach in applying the Doctrine of Foregone Conclusion seems to be inconsistent and diversified.

In the earlier cases in *Selvi* and *Nandini Satpathy*, the Apex Court gave a broad interpretation to Clause (3) of Article 20 to protect the suspect accused's right from self-incrimination. In *Selvi*, the Court interpreted the protection of mental privacy as included in the basic right against compulsion to testify against oneself under Clause (3) of Article 20 of the Constitution.⁵ In *Nandini Satpathy*, the Court included even the compelling of production of documentary evidence amounts to self-incrimination. Thus the doctrine of Foregone conclusion was not applied in the above two cases⁶.

III. Findings

Looking at the background of the above discussion it can be concluded that the Principle of Bygone Conclusion as an exception against compulsion to be a testimony against oneself is facing challenges in the era of modern technology. Initially it was applied in certain cases for compelled production of documents where the government was already aware of the facts mentioned in the documents. But whether the same doctrine can be applied in the modern technology era where documents are mostly digital in form and are available at the swipe of a finger. "Technology has outdated the American Supreme Court's jurisprudence on the Fifth Amendment which has created twin different but related disagreements – firstly with regard to the review of application of this doctrine to digital documents and secondly, what are the ingredients of a testimonial act for applying the modern devices as evidence."⁷ Thus time has come where there is an urgent need to revisit the doctrine of Foregone Conclusion in its application to production of digital documents and to finalize as to what are the ingredients to constitute a "testimonial act". The higher judiciary must come out with specific guidelines or principles in these matters. Otherwise the cauldron over these issues will continue to engulf the legal circle. It will give unbridled powers to the investigative authorities to decrypt the suspect accused's personal encrypted technological devices. It will also disillusion the citizens regarding their assurance against self-incrimination guaranteed through constitutional provisions in many democratic countries.

IV. Conclusion

Thus it can be concluded that the latest view of the Indian judiciary has rejected the doctrine of Foregone Conclusion in its application to Article 20 (3) in *Sanket Bhadresh Modi's* case. From the judgments given by Karnataka High Court and Kerala High Court it appears that the Doctrine of Foregone Conclusion has find its way in the Indian jurisdiction. But the same doctrine has been rejected in the recent judgment in *Sanket Bhadresh Modi*. The Doctrine of Foregone Conclusion is an exception to Production Conclusion which compels the suspect accused to produce documents under the statutory provisions.

⁵ AIR 2012 SC 1974.

⁶ AIR 1978 SC 1025.

⁷ Vivek Mohan & John Villasenor, DECRYPTING THE FIFTH AMENDMENT: THE LIMITS OF SELF-INCRIMINATION IN THE DIGITAL ERA, *Journal of Constitutional Law Heightened Scrutiny*, Vol. 15, pp. 11-29 at p. 11

The Power, Corruption and Insurgency reflected in the novel of Dhruba Hazarika's Sons of Brahma.

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Abstract

In the novel, the Sons of Brahma of Dhruba Hazarika, we find the reflection of power, corruption and insurgency in the backdrop of the critical period Assam. Here we find about some insurgents and their activities and their link with a university research scholar named Jongam Hanse and a PG student named Anjan Phukan. The IPS officer, Nilim Kumar comes and takes them with them and finally a police officer encounters the young person named Anjan Phukan. The prominent insurgent group here is named as The Revolutionary Army. The violence done by the rebels are also not acceptable. There are many ways to protest without violence. The act of the police officer is harsh, ruthless as he fulfils his grudge, and here we find many things about the insurgent problem, corruption issue and also, we see how power corrupt people.

Abbreviation- SOB- Sons of Brahma

Key Notes- Insurgency, power, corruption, violence

Main Article:

When we read the novel, we become aware that this novel is about the insurgency problem which is prevailed in Assam. Here we find some characters like Anjan Phukan, the secretary of the Revolutionary Army, Jongam Hanse, the research scholar, who is given to write articles for the insurgent group. Arms and ammunitions are trafficked through rivers and the insurgent groups collect them. The boatman works for the rebel group. During this period there are ample evidence of violence by the insurgent groups while struggling against the government. And the police force of the government also does the terror like activities in order to kill or catch them. We find instances of many people who are killed mercilessly during this period by the rebel groups. There are many ambushes from the rebel side. The police officer, Nilim Kumar saves his life somehow from such ambushes. Thereafter, he becomes more furious and kills many rebels. His own sister is also shot dead by unknown person. So, he becomes revengeful. Many people are kidnapped by the Revolutionary Army and they thereafter demand huge amount of money to release that person from their clutches. They kill many persons violently and throughout Assam there is gloomy environment. Killing of person for any cause is not justifiable. Many youths of the state loss their lives and this becomes a tragedy to their relatives.

There are many secret killings, people only know that people are killed but those who have killed them, it is never identified.

“...Members of rebels killed by persons whom no one has been able to identified”. (*SOB*, P-115)

As if the author tries to identify the secret killer through the dialogues of various characters. In the society many people tell many things but nobody is sure about it. It is duty of the govt. to identify the secret killer. But the govt. is not able to do it. Many people want to say the administration is involved with it. Such type of conversation which people usually hear without sufficient prove is reflected in the novel. The police officer is blamed for it. In a dialogue between a person named Robin Saika who is Area Commander of the Revolutionary Army and Nilim kumar, the police officer, it is revealed that the police officer is the secret killer. When Robin blames him to be the secret killer, he only laughs.

The dialogue between Robin Saikia and Nilim Kumar is briefly given below:

“...Sala, we know you are behind the secret killings.

Nilim Kumar laughed.” (*SOB*, P-253)

Why they are not identified, that is really a great question. This may happen that some powerful persons are behind it or the killers are super expert so that they can leave the place too quickly before other persons catch or identify them. However, many of them are surrendered. Perhaps they want to take the advantages offered by the government. Or maybe they are disillusioned by the ideology by which they were attracted. They may find the goal of the underground organisation unrealistic to be realised.

In the novel, *SOB* we also find a character, named Nilim Kumar, who is an IPS officer whose parents are also well-educated person. The officer does such actions which are sometimes legally justified and sometimes are not according to other characters of the novel. When we see his revenge motif and the style of killing rebels then we can say that he is an honest person who tries to save the govt. But when we see from the humanitarian ground then we can say that he should be less ruthless and can at least arrest them or at least can shot at the legs so that that the rebel youth can survive or he can be reformed. There is also another way of dominating the rebels by talking with their chief. The novel is written in such a time of Assam when people live in tension. The tension not only from one side, but from both sides- from the rebel side and from the administrative side. Every killing or kidnaping makes the people terrify live a timid life. However, he is presented as an honest and ruthless office and better than his seniors like Numal Deka and the Commissioner, Mr. Chaliha. It is clearly written that he has killed four rebels. He is also pointed by the other characters as the master-mind of secret-killing.

But as Nilim Kumar or any other police officer is a powerful officer, he can easily hide his activities or covers it as an encounter although he kills such person. There is another controversial senior police officer in the novel whose name is Numal Deka, who has link with the rebels and has his link in killing Nilim Kumar's sister. It is revealed that he kills Anjan Phukan from back while he lets him run to escape although everyone thinks that Nilim Kumar has killed him. So, for him we can say that power corrupts him. There are some lines spoken by the narrator about Nilim Kumar like this:

“Thinks he owns the universe because he commands through fear, through terror.” (*SOB*, P-117)

~~When he has the power with him, he should use it in some other way, not directly by killing~~

rebels. They may be arrested by the police, or giving them long term imprisonment or the govt. should negotiate with them by solving the issues they raise. Still, we cannot blame him completely as he follows the order of his senior officer or minister. So, his senior, Numal Deka, Inspector General of Police is also equally responsible for the such act of cruelty. Whether mercy for rebels is permissible it is also a matter of discussion. But with some section the govt. is trying to negotiate and they are given the opportunity to come to the main stream. This is a way to peace without violence. So, this way should be emphasised. It is reflected in the dialogue between the characters when they blame Nilim Kumar, the police officer, for his ruthlessness.

Here, we find many instances which show corruption in many ways in the novel. The guards get low salary which is unable to run their families. But they work really hard. So, they take bribe whenever they get chance. This is manifested in the line of the novel:

“Only a few of us Guards are loyal.” (*SOB*, P-80).

But taking bribe is not justified. The govt. should give sufficient salary to the employees. Only the high officer should not get high salary. The lower category employees also should get such salary which may be enough for their requirements to run their family.

In other place, Pranab, one of the university students tells like this:

“When members of the educated class, like us, resort to large-scale corruption, what else can you expect?” (*SOB*, P-12)

Yes, corruption is a menace. It has deep root in the society. Therefore, some educated employees even uneducated employees also cannot free themselves from the greed of bribe. But there should be a start against it. The presentation of the evil of society in the novel is itself a way to make the people aware. But here we do not get any solution or a way to it. But the voices of the characters show that they want to solve such problems.

Conclusion: To conclude the article, it can be said that the novel expresses some harsh social realities that prevail in the society of Assam, though now it lessens its earlier force but it was in vogue in some decades ago and the novel, *SOB* very truly paints a picture of that time. People fear to talk openly about the activities of the insurgents but they witness it or hear it or find it through medias many through print medias. The cause of such underground organisation is a matter of discussion rather than only the activity of the insurgent groups or the counter dominant activities by the administration. The state of Assam, is a backward state in comparison to the other states of the country. There are many issues, unemployment problems, poverty, illegal migrants’ issue, flood, poverty etc. So, some youths think differently and formed the under-ground organisation and some think that by making Assam an independent country itself will solve all the problems. Although initially they get support from the society but their activities and the suppression by the administration which follows a series of violent acts, shrink them as they find it safe by keeping quiet. Common people do not want violence from any side. But whether any one wants it or not it happens in Assam and so there is a true reflection of that period. On such an issue the novel is written and through the dialogues of the characters many things are expressed. Such novels will open a path of discussion in future. In conclusion, we can say that peace should prevail in Assam and no-violence should be guidance for all.

End Note:

- a) Hazarika Dhruba, *Sons of Brahma*, p-253.
- b) Ibid, p-117
- c) Ibid, p-80
- d) Ibid, p-12

Bibliography: Hazarika Dhruba, *Sons of Brahma*. Penguin Books, New Delhi, 2014

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United Nations and Global Peace

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Abstract

The global community has been facing mistrust and confrontation with the inception of knowledge based innovative ideas in fields attributed to social, economic and technical aspect. The clash has been most of one's purpose to secure the identity without heed to the rights prevalent among humans subjecting them to dejection, cruelty, oppression with a superior imposition of powers over the weaker. The trend has been global. To meet the shortcomings, organizations like The League of Nations and subsequently The United Nations came into force. The recent global trends on countries in clash on various issues raises the inquisitiveness on how far organization like The United Nations has been helpful in mitigating the discord and maintaining global peace. It can be seen that The UN which was established as an intergovernmental organization after the World War II to uphold world tranquility and security have been effectual in harmonizing the purpose with limited shortcomings to its credit.

Keywords – *Global community, Mistrust, Confrontation, United Nations, Global peace*

Abbreviation:

EU-European Union

FAO- Food & Agricultural Organization

ILO-International Labour Organization

IMF-International Monetary Fund

ICJ-International Court of Justice

J & K-Jammu and Kashmir

NATO- North Atlantic Treaty Organization

UN-The United Nations

UNRWA- The United Nations Relief and Works Agency

UNCIP-The United Nations Commission for India and Pakistan

UNMOGIP- The United Nations Military Observer Group in India and
Pakistan

UNIPOM-The United Nations India-Pakistan Observation Mission

UNAMIR- United Nations Assistance Mission for Rwanda

UDHR-The Universal Declaration of Human Rights

WHO-World Health Organization

1. INTRODUCTION:

To achieve a well heeled and affluent life, we as human beings yearn for many things; for now we can act, react as well protect ourselves with sturdy gesticulation. It has been rightly felt in due course of time that man has been incarcerating with all sins committed in consonance for earthly pleasure, be it in the form of war crimes, terrorism, racial, economic, political and geographical conflict. In a way the gradual stocking of all sorts of self-destructive and technically motivated weaponry has itself destroyed the concept of humanity. For a long time, the concept of world tranquility and security has been a cause of concern due to growing discord among nations for commanding political and geographical superiority.

The jeopardy caused to international harmony and security has never been new and history shows how the World faced different aspect of disharmony, with some historians believing that it took place in Mesopotamia in 2,700 B.C.¹ The two World Wars have shown how conflicts can cause large scale devastation and destruction with deaths amounting to more than 100 million people. It was during the 2nd Italo-Abyssinian War that was fought from 03rd October 1935 to 19th February 1937; Benito Mussolini was of the view that the League is very well when sparrows shout, but no good at all when eagles fallout.² The UN which was established on 24th of October, 1945 after the Second World War i.e. 1939-1945 succeeding the League of Nations is novel to world's unruly order.

2. AMBIT OF THE UNITED NATIONS:

UN was formed to culminate every form of manmade devastation. The two World Wars have opened the eye of the international community finally calling for its establishment in the year 1945. The UN Charter which was drafted on 14th August 1941 was signed on 26th June 1945 and came into force on 24th October 1945. In the year 1945, it had only 51 members, now it comprises of 193 members. The UN as a peace keeping organization has far reaching responsibilities, right from maintaining peace and security among nations to protection of the disadvantageous members for providing humanitarian aid, to its involvement in human right activities. The UN consists of six primary organs for its functioning:

1. UN Security Council,
2. UN General Assembly, ,
3. International Court of Justice,
4. UN Economic and Social Council,
5. UN Secretariat, and

¹ Mesopotamian Warfare, available at https://www.worldhistory.org/Mesopotamian_Warfare/ (last visited on May 21, 2025).

² League of Nations, available at https://en.m.wikipedia.org/wiki/League_of_Nations(last visited on May 21, 2025).

6. UN Trusteeship Council, the Trusteeship Council has not been in operation since 1994. Some of the specialized agencies of the UN like FAO, ILO, IMF, WHO etc. are maintaining a world order in itself.

The UN Charter provided for certain essential provisions namely:

- To take collective measures and apply diplomatic means to resolve international issues. (Article 1)
- To inculcate friendly associations among nations. (Article 1)
- To resolve disputes by means of nonviolent approach to the situation and refraining itself from intimidation or employ of force on any state. (Article 2)
- It talks about Pacific Settlement of Disputes which dictates that the parties shall resort to mediation, arbitration, conciliation, enquiry, negotiation, judicial settlement. To have resort to different arrangements, regional agencies, and added peaceful means to solve their issues. (Article 33)
- It provides that Members shall make themselves available to the UN Security Council when call upon and support by providing forces and other facilities including Rights of passage. (Article 43). This includes services like providing national air-force contingents. (Article 45)
- It provides for a right of self-preservation if there is any unwarranted attack against a Member. (Article 51)

3. GLOBAL EVENTS:

The 1947-48 civil wars in Palestine which broke out as a result of the UN's Resolution passed by the General Assembly to adopt the UN Partition Plan for Palestine leads to the 1st Israel-Arab War of 1948.³ After the War of 1948 though the UN Conciliation Commission for Palestine and the establishment of the UN Relief and Work Agency for Palestine Refugee was seen it turned out to be futile. The most striking fact that comes to the fore in the clash between a country like Israel and Hamas, a Palestine militant group which started on 07th October, 2023, was the United Nations inability to contain the war with the estimation that at least 50,144 Palestinians have died in the Gaza strip while 113,704 have been reportedly injured as per the UNRWA Situation Report. An interesting data that was most shocking was the resolution passed by The UN General Assembly on immediate humanitarian truce in Gaza and aid access, which was voted on 12th December 2023 showing that 153 voted in favor, 23 abstained with 10 countries voted against it, namely the Czech Republic, Israel, Guatemala, the United States, Austria, Liberia, Nauru, Papua New Guinea, Micronesia and Paraguay, thereby showing dissonance among the states on such vital humanitarian issue.⁴ It was stated by ICJ that country like Israel must prevent and punish for incitement of genocidal acts and allow civilian access to humanitarian aid, raising questions as to the practical implications of the United Nations measures- Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v. Israel*).

The 20th NATO Summit which was organized in the Palace of the Parliament, Bucharest, Romania from 02nd to 04th April 2008 had made Ukraine and Georgia to think for a better international alliance which would provide security from a probable unaccounted Russian invasion. On 22nd February 2013 The Verkhovna Rada of Ukraine which approved the

³ 1948 Arab-Israeli War available at https://en.m.wikipedia.org/wiki/1948_Arab%E%80%93Israeli_War (last visited on May 21, 2025).

⁴ United Nations General Assembly Resolution ES-10/22 available at https://en.m.wikipedia.org/wiki/United_Nations_General_Assembly_Resolution_ES-10/22 (last visited on May 21, 2025).

EU-Ukraine Association Agreement signing it on 27th June 2014 had caught the attention of Russia. The Russian-Ukraine War which began on 20th February 2014 in the backdrop of the above factor saw Russia's full scale invasion on 24th February 2022 resulting in devastation of all forms, killing numerous innocent lives. The impact of the War was such that entire international community had to undergo politico-economic changes including India with crude oil being purchased at reduced rate from Russia. An evacuation mission was carried out by the Government of India in the name of operation Ganga evacuating nearly 25,000 Indian nationals from Ukraine.

The discord between India and Pakistan leading to the Wars of 1947 and 1965 on the Kashmir issue and the most recent 2025 diplomatic crisis on the aftermath of the Pahalgam terrorist attack on innocent civilians had a far reaching international effect which initially began with the establishment of the UNCIP in 1948 to mediate the contention, the UNMOGIP and the UNIPOM to supervise the ceasefire in Kashmir. The fact J&K had been a vital part of India cannot be denied with the evidence of signatories to the Instrument of Accession i.e. Maharaja Hari Singh of J&K State and Governor-General of India, Mountbatten of Burma which was signed on 26th and 27th day of October, 1947, still the international community had failed to acknowledge the issue and bring an amicable solution. Islamic Republic of Pakistan's state sponsored terrorism in the name of Kashmir and the constant cease fire violation is creating unwarranted tensions and disharmony with the loose attitude of the international community halting peace and stability in the region.

4. FINDINGS:

UN as an organization has been performing creditable vocation when it comes to maintain peace and security with a miniscule of consequential failure. Through its specialized agencies it could maintain a world order by providing necessary assistance in times of need. Certain areas relating to maintenance of peace and order has been highly criticized in 1990s. The UN operation in Somalia II which took place from 1993 to 1995 subsequent to the occurrence of the Somalia Civil War in 1991 was considered a void effort after United States withdraws from the intervention following the Battle of Mogadishu in the year 1993. In order to assist in the realization of the Arusha Accords which was signed on 4th August 1993, the UNAMIR was established on 5th October 1993 could not contain the Rwanda Genocide of 1994. These instances have been raising question on the effectiveness of the Organization which can be attributed to the following factors:

- Lack of coordination among the powerful nations forming the Security Council
- Showing slack attitude in the execution of the measures undertaken by the UN General Assembly
- Biasness in providing assistance; influenced by factors like regionalism, religious and ethnic identity etc.

The UN with its drawbacks has been performing well to subdue regional tensions with its effective policy. Its working mainly depends on coordination and reciprocal arrangements. In a nutshell it is still a child to be nurtured.

5. CONCLUSION:

The constant disorder of the geo-political situation has turned the whole World into a global dumping ground of carcasses; due to its own acts i.e. the act of terrorism, the act of detestation, the act of ascendancy and the act of loathe. The forum of United Nations General Assembly which has been constantly used to bring forth the various global issues

at a general discussion level with some critical issues like the present Russia-Ukraine War, the Middle East unrest since 2023 and the India-Pakistan conflict taking years to get it resolved. But the matter of concern is that the United Nations has failed to take necessary steps when it comes to containment of violation of international peace and security when powerful developed nations are involved in a dispute. This loose attitude shows the inefficiency of the UN General Assembly to take action as provided under Article 2 of the UN Charter. The formation of the NATO Alliance has further deteriorated the relationship between Russia and the member countries of the Alliance backed by the USA. The UDHR which was on 10th of December 1948 accepted by the UN General Assembly enshrining rights and fundamental freedom for human existence have turned out to be only on papers. The recent carnage of lives in the war torn areas of Ukraine and Palestine has shown how much united is the United Nations Organizations and its failure to resolve issues with serious violations of Article 1, 3 and 28 of the UDHR.

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History of Magar Community in Assam during 19th century

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Abstract

Northeast India has been an example of Cultural pluralism and diversity with different customs, traditions, cultures, languages, and castes belonging to numerous ethnic groups and tribes. The Nepalese or Nepalis have settled in and around the Northeast since the Colonial period in India, basically for military service. Nepal was united under King Prithvi Narayan Shah during the 18th century who built a strong kingdom known as the Gorkha Kingdom. The Nepalese were regarded as Gorkhas who were skillful warriors—during the late 18th century adopted the policy of territorial expansion which created a territorial dispute between British India and Nepal. The Gorkhas faced the mighty British army during 1814 which is known as the First Anglo-Nepalese War, which ended in 1816 with the treaty of Sugauli and ended their territorial disputes. During the war, the British admired the courage and skills of Gorkhas and decided to recruit them into the British military especially ethnic tribes like Magars and Gurungs. The Nepalese by the 19th century was divided into Martial and non-martial races the Martial race was regarded as Gorkha which largely consisted of ethnic tribes where whereas the non-Martial race was called Nepalis who were useful for working as laborers in British economic fields. Both Nepalis and Gorkhas were forced to settle in Northeast India for military service and to work in tea gardens, petroleum, coal mines, etc. The magar community is one of the oldest ethnic tribes of Nepal they were regarded as a Warrior tribe who were recruited into the Gorkha army of the Gorkha Kingdom and soon they impressed British Officials during the Anglo-Nepalese war which led them to become a part of the British Gorkha Regiment. Magars were not only recruited in British Military but they also served them by working in economic sectors in Northeast India during the 19th century. The Magars were not only categorized as a Martial race by the British but also as a Non-martial race which made them settle or migrate to serve in the British forces as well as work in different economic sectors, especially in Assam for Tea gardens, Coal mines and Agriculture etc.

Introduction

During the 18th century, Gorkha was one of the 50 states of central Nepal and all the states were struggling against one another for control of land. The King Prithvi Narayan Shah of the

Gorkha state unified Nepal with the help of ethnic tribes like Magars¹. Magars are one of the oldest ethnic tribes of Nepal, divided into different sub-clans like Ranas, Thapas, Aleys, etc. who lived in hilly areas of Nepal before the unification. The Magars were regarded as a warrior tribe who served not only in the military but also in Political administration during the reign of the Shah Dynasty in Nepal². The Gorkhas were defeated by the mighty British force in the Anglo-Nepalese War of 1814 but the British were so impressed by the Gorkhas that they decided to recruit them into the British military which later came to be known as the Gurkha or Gorkha Regiment. The Gorkhas were regarded as one of the Martial races by the British Empire in India, due to which they were recruited into the British military more than any other community. During mid mid-19th century, The British government settled Gorkhas in the Northeast region of India for military purposes and for working in different economic sectors. Gradually, the Gorkhas which largely consisted of ethnic tribes like Magars; became the backbone of the British Government. The demand for Gorkhas increased in the Northeast, especially in Assam for the military but after the British took control over the administration of Assam, there was a vacuum for labor and the Gorkhas were perfect for the British Empire as they were cheap, skillful, brave, and loyal³. The population of Gorkhas in Assam increased not only for military purposes but also for working in a coal mine, tea gardening petroleum, etc. during the late 19th and early 20th century.

Methodology

The Secondary sources for the study of Magars in Nepal, Gorkhas, and the British military are taken from various journals and books found on the Internet and the State libraries of Assam. The Magars settlement in the Northeast Region of India during the colonial period is studied with the help of primary documents listed in State Secretariat records found in State archives Guwahati, Assam, State archive of Shillong, Meghalaya and the Bengal Judicial Proceeding found in the state Archives, Kolkata, West Bengal.

History of Magars in British Regiments

Magar clans like Thapa and Rana played a significant role in the national building process under the Shah dynasty. In 1750, King Prithvi Narayan Shah was consolidating many petty kingdoms that were scattered across Nepal with the help of his army called Gorkhas which are known as war machines⁴. When Gorkhas fought with the British Army in the Anglo-Nepalese war, the numbers of ethnic tribes largely consisted of Magars who were recruited in the Gorkha army. Lieutenant Rose of the British army was impressed by Magars in 1815 due to which he proposed to form them into a battalion in the name of Nasiri Regiment which later became the first King George's Gurkha Rifles. British forced Nepal to sign the Treaty of Saguali in 1816, in which the British agreed not to colonize Nepal, and an imaginary line was drawn to separate territories between Nepal and India⁵. According to the Treaty, Nepal also agreed to supply Gorkha soldiers to the British for military and soon the British Government started to recruit Gorkhas especially ethnic tribes in British regiments which are known as Gurkha or Gorkha regiments. The Gurkhas are recruited every year at the British Gurkha camp at Pokhara in Nepal where a number of Magars largely took part. The camp enlists fresh recruits not only for the British Army but also for the counter-terror arm of the Singapore Police Force. British Army scouts roam the Nepalese countryside to identify potential recruits, who then undergo a

¹ Byron Farwell *The Gorkhas*, Norton,1990

² Sir Francis Toker, *Gurkha: The story of the Gurkhas of Nepal*, Pilgrim publication. 2009

³ Chris Bellany, *Gurkhas: Special force*, Hackette,2011

⁴ Tony Gould, *Imperial warriors, Britain and the Gurkhas*, Oxford,2000

⁵ Perceval Landon, *Nepal*, Asian publishing service,1982

rigorous training process before joining. About 5,000 men were recruited in British service during 1815 in which ethnic tribes, mostly Magars and Gurungs were recruited but the majority were of Himalayan tribes like Kumaonis and Garhwalis⁶. Another Battalions consisting of Gorkhas was created in the name of 2nd King Edward VII's Gurkha Rifle and 3rd Queen Alexandra's Gurkha Rifle in which the population of both Magars and Gurungs was higher than other communities. From 1885 to 1901 is termed as the period of friendly co-operation where the king of Nepal permitted to opening of Gorkha recruiting depots in India and in the year 1886, two more Gurkha regiments were added to the British army. The number of Gorkhas increased in the British Military and were formed into different military organizations due to the British theory about the warrior race called The Martial Race Theory⁷. According to *Martial Race theory*, "only certain clans have courage to bear arms and physical character as a warrior" This idea helped the British to understand the difference between the clans regarding their ability as soldiers whom they divided into Martial Race and Non-Martial Race". The Martial Race theory was first applied in India after 1857 after the mutiny revolt and the British found that the Martial Race could provide crucial support to the Colonial Government, not only as soldiers for the army but also as personnel in the police⁸. The British focused on understanding the different ethnic clans of Nepal and other British Colonial states, observing their ability as warriors. According to another theory related to Martial Race, the ethnic groups have more chances of being Martial race since they are experienced in wars and trained to survive harsh situations which makes them strong and brave. The British officers researched the ethnic tribes of the Gorkhas of Nepal who became one of the initial parts of the British military in India. The British Empire started to distinguish races between martial and non-martial races. The clans like Magars, Gurungs, and other ethnic tribes of Nepal were considered a Martial race with other major ethnic tribes⁹. By 1830, the Gorkhas were recruited more than 40% of the British Military because the British Empire needed soldiers not only for Europe and Asia¹⁰.

Magars settlement in Assam by British

After the discovery of tea in Assam, the problems increased for the British East Company as tribes from the hills started to attack tea gardening areas and workers. In 1835, the Para Military force was called Cachar Levy by the British and was deployed in the areas of Assam where the British had control over tea gardens¹¹. The initial strength was about 750 to protect the areas from tribal raids; gradually British needed more soldiers across Assam borders which led to reorganizing the militia into Frontier Force. The force grew stronger and became the right arm of the civil and the left arm of the military. The military force composed of different ethnic communities was converted into the Assam military, Police Battalions known as Lushai Hills, Lakimpur, and Naga Hills Battalions¹². The Magars served loyally for the British during these years and soon they became one of the most efficient soldiers for the British Regime. During 1846, The Magar community in Nepal especially of western Hills was taken as Bondage instead of Interest due on loans supplied to their ancestors. The British Government found another valuable reason to recruit Magars not only in the Military but also in other fields, as now Magars were in debt on their land and required jobs. The British Government who was already impressed by the fighting skills of Magars didn't miss this opportunity and recruited large numbers of Magars in British Regiments. The Magars played very important roles in the 1st

⁶ Bipan Chandra, *Essays in Colonialism*, New Delhi (1999), pp 34-59

⁷ G.W Mac, *Ways and works in India* (London: Archibald Constable 1894)

⁸ Bipan Chandra, *The stages of Colonialism, Essay on Colonialism*, Orient Longman, 2005, New Delhi, p 22-23

⁹ Subhasish Ray, *The Nonmartial origin of the Martial Races: Ethnicity and Military service in the Ex British colonies*, in *Armed force and society*, 2012, p 510

¹⁰ Reports from the Commitees: East India Company's Affair, season 5, December

¹¹ J.B.R Nicholson, *The Gurkha Rifles*, Bloomsbury, 1974

¹² L.W Shakespeare, *History of the Assam rifles*, Asian Publishing House. 1909

and 2nd Sikh wars and other revolts in India for the British Empire¹³. There was a need for additional soldiers before World War I and the fourth Battalion named Darang Battalion was raised from Assam Police Battalion. According to the report, more than 3000 soldiers from the Assam Police Battalion were sent to Europe and the Middle East in which 45% of soldiers were from the Magar community¹⁴. The Battalions fought bravely with Rifle Regiments of the Regular British Army and due to this the Assam force was renamed as Assam Rifles. During World War I, the Magars fought bravely and earned coveted Victoria Cross medals which are the most prestigious award of the British armed forces. The Magars soon replaced other ethnic tribes in the Assam Rifles and the demand for Gorkhas in the Assam Rifles slowly increased year after year. Magars were regarded as one of the most efficient Gorkha by the British and whenever there was a demand for Gorkhas the number of Magars will be more. By 1900, large numbers of Gorkhas were transferred to Assam for the military in which Magars were included the most¹⁵. The number of Magars was very high not only in the Gorkha Regiment but also in the Assam Rifle by 1912.

Number of Gorkhas in the Assam Rifles in 1912¹⁶

Assam Rifle	Gorkhas	Jharuas	Hill Tribes	Other
1 st battalion	762	48	39	3
2 nd battalion	647	137	1	9
3 rd battalion	592	166	35	38
4 th battalion	614	108	79	2
5 th battalion	552	200	38	3

The large number of Gorkhas in Assam Rifles in 1912 shows the importance of Gorkhas for the British not only regarding the Gorkha regiment but also for different military units organized for different purposes in India. The number of Gorkhas in Assam Rifle was higher than other communities in all the five battalions in which Magars were largely included.¹⁷ The population of Gorkhas in Assam increased and those Gorkhas who were not eligible for the British army were transferred to different areas of Assam, especially in Tinsukia District due to Tea gardens, Coal mines, and Petroleum factories. The number of Magars was largely involved in the military rather than in British economic sectors as they were good in war but gradually, Magars migrated to Assam to work in tea gardens with other Nepali communities. The reasons behind Magars working in tea gardens was because, unlike other parts of India, there was no readily available labour market in Assam and many labourers of the northeast were not attracted to low-wage work. The British wanted ethnic tribes like Magars to settle in Assam as they wanted the population of ethnic tribes for the future military as well as for cheap labour which encouraged migration from the state of Gorkha into Assam. Like other Nepali communities, Magars worked in coal mines and tea gardening for the British during the late 19th century but the British, Assam State Government, and military later believed that the Gorkhas were better used in the armed force for which they were in need during European Crises. The Gorkhas were divided into labourers and soldiers according to an idea that emanated from the idea of biological determinism and martial race theory. The Magars, Khas, and Gurungs were largely recruited for the military instead of hiring them for the economic sectors of the British Empire. The occupational structure of the settled Magars and the Nepalis

¹³ Edward Bishop, *Better to die than to be Coward: The story of the Gurkhas*, New English Library, 1976

¹⁴ Nicholas Dirks, *Castes of Mind*, Cambridge university Press, 2007, pp 20-21

¹⁵ Assam Secretariat Financial, A proceeding, July 1901, No 115, Assam State Archive

¹⁶ Assam Secretariat Financial, A proceeding, July 1915, No 21, Assam State Archive

¹⁷ A.C Sinha, *Studying the various factors of Nepali Migration to India*, Nepalis in the Northeast, Indus Publishing house (2007) pp 22-25

in the Assam plains expanded to grazing and agriculture which led to the major settlement during the 20th century.

Conclusion

As observed, the British Government was impressed by the Gorkha warriors of Nepal which largely consisted of ethnic tribes. The Magars were the largest ethnic tribes in the Gorkha army of Nepal who fought with the British in the Anglo-Nepalese War of 1814. No doubt, Magars proved to be cheap labourers but very brave, skilful, and loyal which made efficient soldiers among other Gorkhas for the British. Magars were settled in the Northeast Region of India for the Gorkha Regiment but after the British took control over the economic administration of Assam, the Magars were transferred to Assam along with other ethnic tribes for other purposes. The British placed Gorkha especially ethnic clans like Magars in both the Gorkha Regiment as well as in Assam Rifles. Most probably the population of Magars increased in Assam due to the demand for soldiers¹⁸. The Gorkhas were settled in Assam not only for the military but also for working in British economic sectors like tea, coal, and Petroleum. Thus, the settlement of Magars in Assam was mainly because of the British Military agenda during the 19th century and those Magars who were not eligible for British Military service were also engaged in different works provided by the British in Assam. The British wanted Gorkhas to settle in Assam basically for two reasons; the first reason is that the British believed in Martial race and wanted to preserve them for future military proposes. The other reasons for settling Gorkhas in Assam were very valid; the Magars in Nepal needed money and could work for the British in very low wages. No doubt Magars were working in both military and economic sectors like tea gardens, coal mines etc. in Assam but during early 20th century, they were more engaged in military. The Magars were settled in Assam for basically military proposes during Colonial Period, and some who failed as soldiers were settled down in Assam after 19th century for working in different British economic sectors.

Importance of the present work

The purpose of the study is to highlight the history of Magars in Assam during the Colonial Period. The paper also focuses on Gorkhas, Assam Rifle and the importance of ethnic tribes for the British Empire for the Military proposes. The paper also aims to understand the different reasons behind the settlement of Magars in Assam during the Colonial Period.

Research gap

The Magar clans like Thapas and Ranas are one the well-known Gorkhas or Nepalis with no proper historical sources to reconstruct their origin in Assam. The Secondary sources of the Gorkha regiment and Assam Rifle give reference to the Magars but there is a lack of analysis about the history of Magars in Assam during the Colonial Period.

Propose of the paper

This paper will help understand the motivations behind the settlement of Magars and other ethnic groups in Assam by the British Government during the Colonial Period and the ideology behind the recruitment of Gorkhas in the British military. The paper also seeks to highlight the historical background of Magars in the Gorkha Regiment and Assam Rifles. It will be useful for other interested persons and researchers for further studies relating to the Assam Rifle, the Gorkhas, and the migration of ethnic tribes of Nepal to India.

¹⁸ Bengal Secret Letter covering G.H Fagan to Colonel Orchterlony, comd 3 div FD army, 18 November 1901 in Chris Bellamy, op-cit, p 12

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Freedom of Speech V. Hate Speech in India

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Abstract

This article analyses the often complex and sensitive issue of freedom of expression and hate speech in India. The Constitution of India considers free expression as one of the fundamental rights that a democracy must provide, but ‘reasonable restrictions’ are necessary to safeguard public order and social peace. The paper attempts to outline the development of laws relating to speech, considers some important judicial rulings, and analyses recent changes in law such as the Bharatiya Nyaya Sanhita, 2023. Using case studies and global examples, it draws attention to the challenges arising from digital technologies and politics. The article goes further to examine the ethics and philosophy of speech and calls for a blend of freedom and accountability. Finally, it suggests ways to advance speech that strengthens democracy while encouraging moderation in inflammatory language, illustrating how speech can be used effectively to bring people together instead of tearing them apart.

Keywords- *Freedom of Speech, Hate Speech, Indian Constitution, Interpretation, Digital Age Challenges*

I. Introduction

“The pen is mightier than the sword, yet words can wound as deeply.” This paradox encapsulates the duality of speech in India—a nation celebrated for its democratic values yet fraught with challenges of diversity. Freedom of speech empowers individuals to voice thoughts, challenge authority, and inspire change, forming the cornerstone of democracy. However, this freedom also bears the weight of responsibility. When words foster hatred, incite violence, or fracture social harmony, they threaten the very foundation of democracy.

India’s legal framework strives to navigate this delicate balance, ensuring that speech remains a force for progress rather than discord. Through an exploration of constitutional principles, legal provisions, societal challenges, and ethical dimensions, this article delves into the intricate terrain where the right to speak meets the duty to protect harmony.

II. Freedom of Speech in India

The liberty of speech and expression is considered as one of the most treasured fundamental rights enshrined in the Constitution of India, embodying the very essence of a thriving democracy. Article 19(1) (a) of the Constitution of India grants every citizen the liberty to articulate their thoughts, share their perspectives, and express their convictions. It lays a vital

groundwork for the free exchange of ideas, the relentless quest for truth, and the cultivation of accountability within governance.

III. Hate Speech

Hate speech erodes the core ideals of democracy and freedom of expression by inciting disparity, acrimony, and violence against individuals or groups based on their race, religion, or ethnicity. Although Article 19(1)(a) guarantees the right to free speech, this right is not unlimited. Article 19(2) of the Constitution of India permits imposing reasonable restrictions to address hate speech that endangers public order, morality, or societal decency. These provisions also extend to preventing defamation, contempt of court, and incitement to criminal acts, emphasizing the need to balance personal liberties with the collective interests of society. Indian courts have consistently upheld this balance, as demonstrated in *Shreya Singhal v. U.O.I.*,¹ which stressed the importance of curbing speech that causes harm without stifling lawful expression. Similarly, in *Ramji Lal Modi v. The State of U.P.*,² the Court validated restrictions on speech to safeguard public peace and order.

IV. Historical Evolution of Free Speech in India

The roots of free speech in India trace back to the colonial era, where laws like the Sedition Act of 1870 were used to suppress dissent against British rule. Leaders like Mahatma Gandhi and Bal Gangadhar Tilak faced prosecution for exercising their right to free speech in the fight for independence.³ In post-independent India, the Constitution of India guaranteed this right but tempered it with safeguards to prevent its misuse.⁴

The evolution of free speech laws reflects India's journey as a democracy. The replacement of the Indian Penal Code (IPC) with the Bharatiya Nyaya Sanhita (BNS) in 2023 exemplifies this progression. Provision like Section 196 of the BNS penalize acts promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc. by words, either spoken or written, or by signs or by visible representations or through electronic communication, aiming to strike a balance between freedom and order. Also, Section 302 of the Sanhita states that anyone who deliberately tries to hurt someone's religious feelings by speaking, making sounds, gestures, or showing objects to them shall be punished. These provisions reflect the evolving legal landscape in India, aimed at curbing hate speech and maintaining societal harmony.⁵

V. Contemporary Challenges

In recent years, India has witnessed a surge in incidents testing the boundaries of free speech and hate speech. The Haridwar hate speeches of 2021, where calls for violence against a specific community were made during a religious gathering, sparked

¹AIR2015SUPREMECOURT1523

²AIR1957SUPREMECOURT620

³ Explained Desk, "Explained: When were Tilak and Gandhi tried under these diction law?" *The Indian Express*, Jul.17, 2021.

⁴M.P. Jain, *Indian Constitutional Law* 1052(LexisNexis, Gurgaon, Haryana,8thedn.2018).

⁵TheBharatiya Nyaya Sanhita, 2023 (No.45of2023), ss. 196, 302.

nationwide outrage.⁶ Similarly, remarks about the Prophet Muhammad by a political spokesperson in 2022 led to widespread protests and international criticism.⁷

These incidents underscore the challenges of regulating hate speech in a digital age. Social media platforms amplify divisive rhetoric, making it harder to enforce accountability. While the Information Technology (IT) Rules, 2021, aim to regulate online content, critics argue they risk curbing legitimate dissent.

VI. Judicial Interpretations and Challenges

The judiciary has been instrumental in defining the equilibrium between the right to free speech and the boundaries of hate speech. In the landmark case of *Ramji Lal Modi v. The State of U.P.*,⁸ the Highest Court upheld the constitutional validity of Section 295A of the IPC. This section imposes penalties on individuals who, with intentional and malicious intent, engage in acts designed to offend the religious beliefs or practices of any community, whether through spoken or written words, signs, or visible representations, thereby provoking outrage and deep resentment.⁹ The Court highlighted that such restrictions are justified when they aim to protect public order and avert potential disruptions to societal peace. Section 295A of the IPC (now Section 299 of the BNS) serves as a safeguard against actions that may provoke hostility or undermine the coexistence of diverse communities.

At the same time, the judiciary has acknowledged the critical importance of preserving free speech. It has repeatedly cautioned against the misuse of hate speech laws to suppress lawful expression or silence constructive dissent. By fostering a careful balance, the courts emphasize that while society must guard against harmful rhetoric, it must also nurture an environment where diverse voices can thrive without fear, ensuring harmony between liberty and responsibility.

The debate over free speech versus hate speech extends beyond legal frameworks into ethical and social realms. John Stuart Mill's "Harm Principle" offers a useful lens: freedom should extend until it harms others.

Ethical and Social Dimensions

Similarly, Karl Popper's "Paradox of Tolerance" warns that unlimited tolerance of intolerant speech can lead to the erosion of tolerance itself.¹⁰ In a diverse society like India, speech must be exercised with sensitivity to cultural and religious sentiments. Ethical responsibility demands that individuals use their freedom to build bridges rather than barriers.

⁶HTCorrespondent, "Haridwarhatespeech: Uttarakhand cops file case" *Hindustan Times*, Dec. 24, 2021.

⁷TIMESOFINDIA.COM, "Remarks against Prophet: Saudi joins Arab backlash; India hits out at OIC, Pakistan" *The Times of India*, Jun. 6, 2022.

⁸AIR1957SUPREMECOURT620

⁹The Indian Penal Code, 1860 (No.45OF1860), s.295A

VII. A Comparative Perspective

Globally, democracies grapple with similar challenges. The United States protects free speech under the First Amendment, with limited restrictions, while European countries impose stricter hate speech laws to preserve social harmony. India's approach lies in between, allowing free expression but regulating speech that threatens public order or communal harmony.

Learning from these models, India can refine its legal and institutional mechanisms to address hate speech while safeguarding freedoms.

VIII. Solutions and the Way Forward

- i. Clearer Definitions: Laws must clearly define hate speech to prevent misuse and overreach.
- ii. Platform Accountability: Social media companies should adopt robust content moderation policies while ensuring transparency.
- iii. Civic Education: Public awareness campaigns can promote responsible speech and tolerance.
- iv. Judicial Oversight: In *S.Rangarajan v. Jagjivan Ram*,¹¹ the Apex Court of India emphasized that the application of hate speech laws must be guided by

¹⁰Karl Popper, II *The Open Society and Its Enemies* (Routledge, Milton Park, New York, 1945)

¹¹AIR 1989 SC2192 judicial prudence, ensuring a delicate balance between safeguarding free expression and upholding societal welfare.

IX. Conclusion

In the vibrant tapestry of Indian democracy, freedom of speech is not merely a right but a holy trust. It allows us to challenge norms, inspire progress, and celebrate the diversity that defines us. Yet, this freedom, if misused, can unravel the very harmony it seeks to uphold. Hate speech, like a slow poison, corrodes the foundations of trust, respect, and unity that bind a society together.

As citizens of a diverse and evolving nation, we bear the collective responsibility to wield our words with wisdom. Freedom of speech is not absolute-it is tempered by the duty to ensure our expressions uplift rather than divide, heal rather than harm. Justice P. Shah aptly observed, "The pursuit of freedom is always tempered by ethical responsibility," reminding us that true liberty lies in restraint guided by respect for others.

Looking forward, India stands at a crossroads. With advancements in technology and the increasing complexity of public discourse, our challenge is to harness speech as a tool of empowerment rather than division. This calls for stronger laws, responsible platforms, and a citizenry educated in the ethics of expression. As John Milton envisioned centuries ago:

“Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.”

In embracing this vision, let us strive to make speech a force for unity, a bridge between divides, and a beacon of hope for future generations. Words, after all, hold the power to shape nations and redefine destinies. Let us use them not as weapons of discord but as instruments of progress, justice, and peace.