

RIGHT TO LIE: EXTENDING THE GUARANTEE OF FREE SPEECH TO PROTECT FALSITY

Chanan Parwani and Akash Nagar***

Abstract

The extent of the guarantee of freedom of speech and expression in any constitution is symbolic of the liberty enjoyed by its citizens. The Supreme Court of India has taken a strong stand in upholding the fundamental rights of the citizens of India. Article 19(1) guarantees certain fundamental rights, subject to the power of the state to impose restrictions on the exercise of those rights.¹ These restrictions have been laid down in Article 19, Clause (2) to (6) but for the purpose of this analysis, we are focusing only on Article 19(1)(a), which enunciates that “All citizens shall have the right to freedom of speech and expression”, subject to the specific restrictions in Article 19(2). And on the other hand, the First Amendment of the United States Constitution states that the US Congress shall make no law abridging the freedom of speech and by subsequent

*Chanan Parwani is a second-year student at Campus Law Centre, Faculty of Law, University of Delhi. The author may be reached at chananparwani@gmail.com.

**Akash Nagar is a second-year student at Campus Law Centre, Faculty of Law, University of Delhi. The author may be reached at akashnagar@gmail.com.

¹Samdasani P.D. v. Central Bank of India, A.I.R. 1952 SC 59.

interpretations the ambit of First Amendment it has been held to restrict the power of the state legislature as well.

The purpose of this comparative study is analyze the Freedom of Speech and Expression in the Indian Constitution and the Freedom of Speech in the Bill of Rights incorporated in the United States Constitution by the First Amendment in light of the United States v. Alvarez² case, which held that an Act which criminalizes false statements is unconstitutional since the Act infringes upon freedom of speech protected by the First Amendment of the US Constitution.

I. RELATIONSHIP BETWEEN LAW AND MORALS

The evolution of a society at any stage is attributed to the existence of a social order or the lack of it. This order stems from the understanding and inculcation of certain principles which govern the lives of individual units. Historically, law and morals have been intertwined in their existence whether as a recognized framework of rules or as a conduct of living a life based on good conscience. Various jurists and theorists have propounded theories and detailed studies on the relationship between law and morals and have attempted to characterize this relationship in terms of their differences, extent of their impact in maintaining social order as well as their dependence on each other in being the basis of, or the force

²132 S. Ct. 2537.

behind their mutual existence. One such theory that highlights the distinction between law and morals is based on the view that laws regulate the external relations of men while morality governs their inner life and motivations.³ This implies that while law is the set of rules or codes that regulates the relationship of men in their interaction with other men or institutions in society, morals are those values or ideas that govern the mind or the conscience of man.

Another characterization of this relationship in a normative sense is that what is required by or permissible under law may be prohibited by morality and conversely, what the law prohibits, morality may require or permit. Therefore what is legal may be immoral.⁴ This view is referred to as the ‘separation thesis.’⁵ This separation thesis stands distinguished from the separation doctrine according to which ‘the concept of law has no moral connotations whatsoever’⁶ except in the making of law. The process of making of a law, according to Justice Homes, involves infusion of the basic tenets of morality into the body of law almost inevitably and hence the making of law is recognized as an exception to the separation doctrine.

Despite this larger blurring of boundaries between the manner in which laws and morals percolate society and exist simultaneously, it is noteworthy that certain moral principles remain outside the operation of law. This does not reduce the validity of the moral obligation; it simply remains outside the sphere of being a legal obligation. For example, the law does not recognize any legal obligation of a person to help another who may be in grave danger;

³Immanuel Kant, *THE METAPHYSICAL ELEMENTS OF JUSTICE* (Hackett Publishing, 1999).

⁴*S. Khushboo v. Kanniammal & Anr.*, A.I.R. 2010 SC 3196.

⁵HLA HART, *THE CONCEPT OF LAW* (Oxford University Press 2012).

⁶HANS Kelsen, *GENERAL THEORY OF LAW AND STATE* (The Lawbook Exchange Ltd. 1945).

however this does not cease to be a moral obligation which contributes towards a good conscience and facilitates healthy way of living in society. This promotes social order (based on good conscience) which is in fact the desired goal of a legal establishment. While law and morality have their own spheres of operation in a manner that these spheres may overlap on occasion, both strive towards the common goal of maintaining social order that is conducive to the development of society.

While conceptually morality in itself is not unambiguous territory, the act of making a statement which one knows to be false with the intent to deceive or the act of lying swings between morality and immorality based on various aspects which include the outcome of such a lie. The commonly understood notion that the act of lying is immoral stems from the Divine Command Theory of right and wrong which bases its claim on God's command through Testaments and largely religious texts thus holding the act absolutely immoral. Similarly the Natural Law theory assumes 'everything has a function/purpose and "the good" for a thing is whatever helps realize that function, while "the bad" is what hinders or thwarts the fulfilment of that function'. It holds lying as morally wrong in the sense that it is contrary to human speech, the purpose of which is to communicate ideas of the mind. Both these theories hold lying as morally wrong (regardless of the consequence of the act) mainly because of the intrinsic nature of the act. This absolute approach in qualifying lying as morally wrong falls on the premise of the consequences being positive. When the outcome of a lie is to protect a greater evil from occurring or for the benefit of another person such an approach is limiting. Contrary to these theories the Act Utilitarianism theory makes room for the evaluation of the consequence of a lie. The theory states that an act is morally right if it produces more total happiness (not just for oneself, but all of society) than any other act that one could have performed in the circumstances. This effectively implies that if a lie maximizes 'utility' or provides happiness in the long run it is morally correct.

Supposedly, if a murderer came knocking at the door of a person and the servant of the house lied about the whereabouts of his master with the intention to deceive the murderer, the Divine command theory and the Natural law theory would hold it immoral on the part of the servant to have lied. However from the point of view of the Utilitarian approach since the lie contributed to the 'well-being' of the master or to his 'happiness' (since his death would in no way be a happy outcome) the servant's act would pass the test of being morally correct.

This act of lying, as a means of deceiving another may not always result in harm, it may on occasion prevent a greater evil, result in benefit to the listener or protect him from harm or simply provide happiness or benefit to the person who utters the lie. Legally, when a person lies with the intent to cause harm to another such an action is punishable on charges of fraud, cheating, breach of trust as the case maybe. But there exists a domain of lies which benefits the liar where there is no intent to harm another and neither is harm caused as a consequence. This domain while not punishable legally, cannot be categorized as absolutely immoral.

While a lie of the nature that results in benefit to the liar without causing harm is not prima facie within the ambit of immorality, whether such a lie stands protected by law is a question to be determined on further analysis of legal statutes independent of its characterization as being morally correct or incorrect.

II. THE FIRST AMENDMENT

A solid foundation for the guarantee of free speech has been laid down in the Constitution of the United States of America by the enactment of the First Amendment which prohibits the 'Congress' from enacting any law that restricts the freedoms mentioned therein.

While the text of the First Amendment reads that the ‘Congress shall make no law.....abridging the freedom of speech, or of the press’ it prohibits any prior restraint but has also been subsequently interpreted as not absolute in its application. While the ‘congress’ was interpreted as the federal government the passage of the Fourteenth Amendment made the First Amendment binding upon governments below the federal government. Therefore, the states could no longer impose their own censorship and hindrance of speech standards on the protections guaranteed by the First Amendment.

Prior restraint⁷ implies government action that prohibits speech or any other expression before it can take place. This restraint can be exercised by means of a statute or regulation that requires a speaker to acquire a permit or license before speaking, or in the form of a judicial injunction that prohibits certain speech. In the context of the First Amendment both these forms of restraint are (subject to some exceptions) unconstitutional.⁸

While the First amendment restricts the power of the Congress to make any law that curbs the freedom of speech this guarantee as interpreted by the Supreme Court is not absolute. Laying down the test of “clear and present danger” in *Schenck v. United States*⁹(1919), Justice Oliver Wendell Holmes stated that when words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has the right to prevent do not stand protected by the First Amendment. The famous aphorism of falsely shouting “Fire!” in a theatre and causing panic thereof was used to enunciate that the guarantee would not extend to such speech. Later in *Brandenburg v.*

⁷Near v. Minnesota, 283 U.S. 697 (1931).

⁸New York Times Company v. United States, 403 U.S. 713 (1971).

⁹249 U.S. 47 (1919).

*Ohio*¹⁰ the Supreme Court established the modern version of the “clear and present danger” doctrine, holding that states only could restrict speech that “is directed to inciting or producing imminent lawless action, and is likely to incite or produce such action.” This came to be known as the Brandenburg test.

Further, the narrow domain of unprotected speech extends to that of obscene and indecent speech. The Supreme Court mapped out a cohesive three-part definition of obscenity in *Miller v. California*¹¹; first, the average person applying contemporary community standards, must find that the work taken as a whole appealing to prurient interests; second, that it depicts or describes in a patently offensive way sexual conduct as defined by state law; and third, that the work, taken as a whole lacks serious literary, artistic, political, or scientific value. Similarly other categories of speech excluded from protection include child pornography, defamation, incitement, and “fighting words”.¹²

The philosophy behind framing the First Amendment was largely to promote dialogue and expression of ideas in society in a manner that allows values of truth to triumph over oppressive policies and structures. James Madison, as a champion of the Bill of Rights, was of the view that only when truth and falsehood are allowed to grapple freely can the voice of truth be expected to win over.¹³ It was with the view to uphold this ideal of freedom that the Blackstonian¹⁴ concept of no prior restraint was incorporated. Further Justice Louis D.

¹⁰395 U.S. 444 (1969).

¹¹413 U.S. 15 (1973).

¹²*New York v. Ferber*, 458 U.S. 747 (1982).

¹³RALPH LOUIS KETCHAM, *JAMES MADISON: A BIOGRAPHY* (University of Virginia Press, 1971).

¹⁴WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* (University of Chicago Press 1979).

Brandeis' invaluable opinion expressed in *Whitney v. California*¹⁵ further reiterated these views:

“Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means....They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people.”

From the discussion above it is evident that the framers of the First Amendment as well as the commentaries that have developed subsequently were of the view that in order that truth finds its way in the expression of people it is essential to provide that space within which such discourse can take place notwithstanding the fact that falsity may be a part of such expression.

¹⁵274 U. S. 357 (1927).

III. UNITED STATES V. ALVAREZ: UPHOLDING THE RIGHT TO FALSITY

The *Alvarez*¹⁶ case struck down the Stolen Valor Act of 2005 since the act makes it a crime to falsely claim receipt of military decorations or medals and provides an enhanced penalty if the Congressional Medal of Honor is involved. The statute intends to criminalize false factual statements made with knowledge of their falsity and with the intent that they be taken as true. The United States Supreme Court held this act to be violating the Freedom of Speech under the First Amendment and it is, thus, unconstitutional.

The accused in the case, Xavier Alvarez, lied when he said that he played hockey for the Detroit Red Wings and that he once married a starlet from Mexico. In 2007, respondent attended his first public meeting as a board member of the Three Valley Water District Board. The board is a governmental entity with headquarters in Claremont, California. He introduced himself as follows: "I'm a retired marine of 25 years. I retired in the year 2001. Back in 1987, I was awarded the Congressional Medal of Honor. I got wounded many times by the same guy." None of this was true. For all the record shows, respondent's statements were but a pathetic attempt to gain respect that eluded him. The statements do not seem to have been made to secure employment or financial benefits or admission to privileges reserved for those who had earned the Medal.

So the issue before the Supreme Court was that whether a person has a right to lie under the Freedom of Speech incorporated by the First Amendment, when the liar does not intend to deceive neither cause any wrongful gain or any wrongful loss to anybody.

¹⁶132 S. Ct. 2537.

The plurality opinion by Justice Kennedy explained that although this act of 2005 was intended to safeguard the honor of the brave soldiers but it still has to be consistent with the Constitution.

In the case of *Ashcroft v. American Civil Liberties Union*,¹⁷ the US Supreme Court has held that the First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. As a result, the Constitution demands that content-based restrictions on speech be presumed invalid and that the Government bear the burden of showing their constitutionality. Further, the content-based restrictions on speech have been permitted, only when confined to the few ‘historic and traditional categories of expression long familiar to the bar’¹⁸, which include inciting imminent lawless action,¹⁹ obscenity,²⁰ defamation,²¹ fraud,²² child pornography²³ as well as speech presenting some grave and imminent threat the government has the power to prevent.²⁴

The Supreme Court also felt that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, the kind of expression the First Amendment seeks to guarantee. This was earlier talked about in the *New York Times Co. v. Sullivan*²⁵ case the sweeping, quite unprecedented reach of the statute puts it in conflict with the First Amendment. Here the

¹⁷535 U.S. 564 (2002).

¹⁸United States v. Stevens, 130 S.Ct. 1577 (2010).

¹⁹Brandenburg v. Ohio, 395 U. S. 444 (1969).

²⁰Miller v. California, 413 U. S. 15 (1973).

²¹New York Times Co. v. Sullivan, 376 U. S. 254 (1964).

²²Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U. S. 748, 771 (1976)

²³FERBER, *supra* note 12.

²⁴Near v. Minnesota ex rel. Olson, 283 U. S. 697 (1931).

²⁵376 U. S. 254 (1964).

lie was made in a public meeting, but the statute would apply with equal force to personal, whispered conversations within a home. The statute seeks to control and suppress all false statements on this one subject in almost limitless times and settings. And it does so entirely without regard to whether the lie was made for the purpose of material gain.

Permitting the government to decree this speech to be a criminal offense, whether shouted from the rooftops or made in a barely audible whisper, would endorse government authority to compile a list of subjects about which false statements are punishable. That governmental power has no clear limiting principle. If this law is to be sustained, there could be an endless list of subjects the National Government or the States could single out. Where false claims are made to affect a fraud or secure moneys or other valuable considerations, say offers of employment, it is well established that the Government may restrict speech without affronting the First Amendment. But the Stolen Valor Act is not so limited in its reach. The Court went on to hold that the interest in truthful discourse alone is sufficient to sustain a ban on speech, absent any evidence that the speech was used to gain a material advantage, it would give the government a broad censorial power unprecedented in this Court's cases or in our constitutional tradition. The mere potential for the exercise of that power casts a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom.

Freedom of speech and thought flows not from the kindness of the state but from the inalienable rights of the person. And suppression of speech by the government can make exposure of falsity more difficult, not less so. Society has the right and civic duty to engage in open, dynamic, rational discourse. These ends are not well served when the government seeks to orchestrate public discussion through content-based mandates.

The concurring opinion delivered by Justice Breyer held that the fear of prosecution due to false statements can inhibit the speaker from making true statements where one can accidentally incur such liability of a false statement, in cases of absence of mens rea.

More so, false factual statements can serve useful human objectives, for example: in social contexts, where they may prevent embarrassment, protect privacy, shield a person from prejudice, provide the sick with comfort, or preserve a child's innocence; in public contexts, where they may stop a panic or otherwise preserve calm in the face of danger; and even in technical, philosophical, and scientific contexts, where examination of a false statement (even if made deliberately to mislead) can promote a form of thought that ultimately helps realize the truth.

It was also held that many statutes and common law doctrines make the utterance of certain kinds of false statements unlawful. Those prohibitions, however, tend to be narrower than the Stolen Valor Act, in that they limit the scope of their application, sometimes by requiring proof of specific harm to identifiable victims; sometimes by specifying that the lies be made in contexts in which a tangible harm to others is especially likely to occur; and sometimes by limiting the prohibited lies to those that are particularly likely to produce harm but the same cannot be said for the Stolen Valor Act.

Fraud statutes, for example, typically require proof of a misrepresentation that is the material, upon which the victim relied, and which caused actual injury. Defamation statutes focus upon statements of a kind that harm the reputation of another or deter third parties from association or dealing with the victim due to such statements.

Perjury statutes prohibit a particular set of false statements, those made under oath, while requiring a showing of materiality. Statutes forbidding lying to a government official (not under oath) are

typically limited to circumstances where a lie is likely to work particular and specific harm by interfering with the functioning of a government department.

Statutes prohibiting false claims of terrorist attacks, or other lies about the commission of crimes or catastrophes, require proof that substantial public harm be directly foreseeable, or, if not, involve false statements that are very likely to bring about that harm.

Statutes forbidding impersonation typically focus on acts of impersonation, not mere speech, and may require a showing that, for example, someone was deceived into following a course of action he would not have pursued but for the deceitful conduct.

Statutes prohibiting trademark infringement present, perhaps, the closest analogy to the present statute, Stolen Valor Act. Trademarks identify the source of a good and infringement causes harm by causing confusion among potential customers (about the source) and thereby diluting the value of the mark to its owner, to consumers, and to the economy. Similarly, a false claim of possession of a medal or other honor creates confusion about who is entitled to wear it, thus diluting its value to those who have earned it, to their families, and to their country. But trademark statutes are focused upon commercial and promotional activities that are likely to dilute the value of a mark. Indeed, they typically require a showing of likely confusion, a showing that tends to assure that the feared harm will in fact take place due to the trademark violation.

While this list is not exhaustive, what can be seen is that in virtually all these instances; limitations of context, requirements of proof of injury and the like, narrow the statute to a subset of lies where specific harm is more likely to occur. The limitations help to make certain that the statute does not allow its threat of liability or criminal punishment to roam at large, discouraging or forbidding the telling of the lie in contexts where harm is unlikely or the need for the

prohibition is small. As written, it applies in family, social, or other private contexts, where lies will often cause little or no harm. These considerations lead the Court to believe that the statute as written risks significant harm to the First Amendment.

IV. EVALUATING FREEDOM OF SPEECH IN THE INDIAN CONSTITUTION

Article 19(1)(a) of the Indian Constitution states that all citizens of India shall have the right to freedom of speech and expression except for the restrictions laid down in Article 19(2). The freedom enunciated in Art. 19(1)(a) means the right to express one's convictions and opinions freely, by word of mouth, writing, printing, picture, or electronic media²⁶ or in any other manner (addressed to the eyes or the ears). It would also include expression of one's ideas by any visible representation, such as by gestures and the like. Freedom of speech also includes the freedom of propagation of ideas.²⁷

Clause (1)(a) of Art. 19 refers to the common law right of freedom of expression and does not apply to any right created by a statute,²⁸ if the right is created by a statute then the right would seek approval from the statute and in case of any ambiguity the help Cl. (1)(a) could be sought.

²⁶LIC v. Manubhai D. Shah, A.I.R. 1993 SC 171.

²⁷Ramesh Thapar v. State of Madras, A.I.R. 1950 SC 124.

²⁸Jamuna Prasad Mukharia v. Lachmi Ram, A.I.R. 1954 SC 686.

Any restriction imposed upon the above freedom is prima facie unconstitutional, unless it can be justified under the limitation clause, i.e., Cl. (2) of Article 19.²⁹

In order to be justified as a valid restriction upon any of the rights guaranteed by Cl. (1), not only should such restriction be related to any of the permissible grounds enumerated in the relevant limitation clause³⁰ but it must further be reasonable.³¹

Clause (2) enables the legislature to impose restrictions upon the freedom of speech and expression; (i) to maintain the sovereignty and integrity of India, (ii) in the interest of the security of the State, (iii) to maintain friendly relations with foreign states, (iv) to maintain public order, (v) to ensure decency or morality, (vi) to punish for contempt of court, (vii) to prohibit defamation and (viii) to prohibit incitement to an offence

But the restrictions imposed by the above-mentioned grounds have to be reasonable within the ambit of Article 19(2).

V. CHARACTERIZING THE ‘RIGHT TO LIE’ & ITS STATUS UNDER ARTICLE 19(1)(A)

The premise of this study is to ascertain whether intentionally stating a false statement, without the intention to cause harm and thereby causing no harm would be protected by the guarantee of free speech and expression.

²⁹Rangarajan S. v. Jagjivan Ram P., (1989) 2 S.C.C. 574.

³⁰Kedar Nath Singh v. State of Bihar, A.I.R. 1962 SC 955.

³¹Virendra v. State of Punjab, A.I.R. 1957 SC 896.

When the intention to lie exists and a person lies to another he may do so either with the intent to cause harm to the other person or without the intent to cause harm. In the event that such harm is caused he may be prosecuted under relevant statutes of cheating, fraud, perjury, forgery, criminal breach of trust, dishonest misappropriation of property and so on. However the question arises when a person knowing that what he states is false does so without intending any harm and thereby causes none, has in fact overstepped his limit of free speech or has instead enjoyed the protection of it. An instance of such a situation is as follows:

- (i) 'A' is a student who is not academically bright and has in fact passed his exams by a narrow margin. However when asked by his peers about his performance 'A' states that he has done extremely well.
- (ii) At a social gathering of businessmen where Mr. X states that his son is an extremely successful entrepreneur when he knows that his son is actually a struggling entrepreneur who suffered losses in his last enterprise.
- (iii) A lawyer who in conversation with his friends mentions that he has won several high profile cases in his career and names some of these when actually he has won none of the stated.
- (iv) A guest speaker at a conference on religion states that he has seen and interacted with ghosts and spirits when actually he has had no such rendezvous.
- (v) A retired colonel who shows off his scars to his friends or family as battle scars when actually the scars were caused by a road accident.

In all the above cases a lie has been told with the intent to make the listener(s) believe in what is not true. Further the liar is aware that

what he states is false. And finally, while stating the lie he has no intention to cause any harm to the listener(s). While the outcome of such a lie causes no harm it may bring a benefit to the liar in the form of increased self esteem, prestige or shield him from shame. It may enhance the social status for the liar and create positive or improved perceptions of him in the minds of the listener. Despite the fact these statements are far from the truth, do they stand protected by the guarantee of free speech in the Indian constitution? Or would such false statements fall within the ambit of clause 2 of Article 19? The following analysis attempts to provide an answer to these questions.

Article 19(1) contains specific rights which are protected by the Constitution but these rights are not at all exhaustive. A view recently gaining ground is that even though a right is not specifically mentioned in Art. 19(1), it may still be regarded as a fundamental right if it can be regarded as ‘an integral part’ of any of the fundamental rights specifically mentioned in Art 19(1), as distinguished from the ordinary incidents of a specifically enumerated right.

The test of evaluating whether an action is permitted under Art 19(1)(a) is to see whether any restriction has been put on it by virtue of Art. 19(2) and further, that restriction must be reasonable.

Clause (2) enables the legislature to impose restrictions upon the freedom of speech and expression, 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 of an offence

‘Sovereignty and integrity of India’ was added as a ground of restriction on the freedom of expression by the 16th Amendment to the Constitution to enable the State to combat the crises which might not possibly be brought within the fold of the expression ‘security of state’. The next ground for restriction is ‘security of state’; which

means the absence of serious and aggravated forms of public disorder, as distinguished from ordinary breaches of public safety or public order which may not involve any danger to the state itself. Thus, security of the state is endangered by crimes of violence intended to overthrow the government,³² levying of war and rebellion against the government, external aggression or war, but not by minor breaches of public order or tranquility, such as unlawful assembly, riot, rash driving, promoting enmity between classes and the like.³³ So the interpretation laid in the restrictive grounds of 'sovereignty and integrity of India' and 'security of state' excludes false statements from their ambit.

The object of putting 'friendly relations with foreign states' as an exception the freedom under Article 19(1)(a) is to prevent the citizens from speaking out against the foreign state which may adversely affect the relations between the two states. Thereby, the aforesaid premise does not infringe on the friendly relations of India with the foreign states.

While interpreting 'public order', the Supreme Court has held that the scope of the several grounds in Cl. (2) may sometimes overlap, they must ordinarily be intended to exclude each other. So 'public order' was interpreted to be synonymous with public peace, safety and tranquility³⁴ but, nevertheless, this does not infringe upon the extent of harmless false statements.

The question whether an utterance is likely to undermine 'decency or morality' is to be determined with reference to the probable effects it may have upon the audience to which it is addressed.³⁵ But it has

³²Santokh Singh v. Delhi Administration, A.I.R. 1973 SC 1091.

³³Romesh Thappar v. State of Madras, A.I.R. 1950 SC 124.

³⁴Madhu Limaye vs Sub-Divisional Magistrate, Monghyr, A.I.R. 1971 SC 2486.

³⁵Ranjit D Udeshi v. State of Maharashtra, A.I.R. 1965 SC 881.

been established in the earlier sections of this study that lying is not necessarily immoral and even when certain theories criticizing lying as immoral have been propounded with their own fundamental flaws, it is impossible to hold that what is morally wrong is liable to be held legally wrong.³⁶ Further the question of immorality maybe determined by the court based on the circumstances of a case. However, based on theories of morality discussed earlier in this study in context of the act of lying, the consequences of which are not harmful, is not immoral.

The fundamental idea behind the restriction of ‘contempt of court’ is that one has to keep in mind that in the exercise of one’s right to freedom and speech and expression, nobody can be allowed to interfere with the due course of justice or to lower the prestige or authority of the court.³⁷ This type of false statements is most certainly punishable but they exclude from their cover the cases of a false statement which doesn’t intend to cause any harm and in the process, no harm is caused.

Just as every person possesses the freedom of speech and expression, every person also possess a right to his reputation which is regarded a property. Hence, nobody can so use his freedom of speech or expression so as to injure another’s reputation. Laws penalizing defamation do not; therefore constitute infringement of the freedom of speech.³⁸

The next restrictive ground of ‘incitement to an offence’ will permit legislation not only to punish or prevent incitement to commit serious offences like murder which lead to breach in the interest of public order, but also any other offence. Hence, it is not permissible to

³⁶*Supra* note 4.

³⁷D.C. Saxena (Dr.) v. Hon’ble Chief Justice of India, A.I.R. 1996 SC 2481.

³⁸Baradakanta Mishra v. The Registrar of Orissa High Court, A.I.R. 1974 SC 710.

instigate another to do any act which is prohibited and penalized in law.³⁹ The objective of imposing such restrictions is to not curb the freedom of speech and expression and yet legislate in the interest of public peace and tranquility.

VI. CONCLUSION

From the detailed discussion above, the premise, whether intentionally stating a false statement, without the intention to cause harm and thereby causing no harm, would be protected by the ambit of free speech and expression within the Indian Constitution. It has been explicitly held by the Supreme Court that it must strike down any law which imposes a restriction upon the freedom of speech and expression unless it falls within the ground specified in Cl. (2) of Article 19.⁴⁰ This aforementioned premise does not fall within any of the eight restrictive grounds of Clause (2). Erroneous ideas are necessary to encourage free and open debate in society; the flow of ideas should not be curbed by restricted statements, which might be although false yet harmless. Also, such a restriction on false statements would be a great deterrent to individuals from making true statements because any law-abiding citizen would run the risk of prosecution from incurring liability by mistakenly stating a false statement and the fear of stating the truth in the minds of the people would be hazardous for the society. Further, it is not imperative for a right to be enumerated unequivocally in Article 19, if it can still be interpreted within the boundaries of the Constitution by the courts it will be upheld.

³⁹Kedar Nath Singh v. State of Bihar, A.I.R. 1962 SC 955.

⁴⁰Kameshwar Prasad v. State of Bihar, A.I.R. 1962 SC 1166.

The Constitution of India has borrowed numerous features from other countries and the concept of Fundamental Rights has been borrowed in parts from Bill of Rights in the Constitution of United Kingdom, the France's Declaration of the Rights of Man and the Citizen which bears constitutional value and the United States Bill of Rights in the their Constitution. Article 19(1)(a) has been derived from First Amendment of the Bill of Rights by the framers of the Constitution of India. Thus, the First Amendment is a valuable source of understanding the extent of free speech in the Indian Constitution. Moreover, the difference between the First Amendment and Article 19(1)(a) is that the former was incorporated absolutely and the restrictions have been read into the First Amendment by the Courts while the latter has certain explicit restrictions mentioned in the Constitution itself but these restrictions have been excluded by the their interpretation in the course of this study. Hence, an executive or legislative action which prohibits an individual from making false statements, which neither intends to cause harm nor do they cause any harm, shall be unconstitutional to that extent, within the law of the land.