

Abusive Language and Right to Speech

Mains: GS II - Polity

Why in News?

The registration of multiple First Information Reports (FIRs) against protesters for allegedly using abusive language during a demonstration at Jantar Mantar has once again brought into focus an important constitutional and criminal law question of abusive language.

What is the Constitutional framework of free speech?

- **Fundamental right - Article 19(1) (a) of the Constitution** guarantees every citizen the right to freedom of speech and **expression**.
- **Reasonable restriction** - However, Article 19(2) permits the State to impose reasonable restrictions in the interests of, **Public order, Defamation, Decency and morality, Security of the State, Incitement to an offence and Sovereignty and integrity of India**.
- Thus, while offensive, harsh or unpleasant speech may be protected, speech crossing constitutional limits by threatening public order, reputation or security may attract criminal sanctions.
- **SC's Standpoint** - The Supreme Court has repeatedly held that **mere offensiveness or annoyance cannot justify criminal prosecution unless statutory requirements are fulfilled**.

What is the legal position under the Bharatiya Nyaya Sanhita (BNS)?

- The BNS does not recognise "abusive language" as an independent offence.
- Instead, abusive speech may attract criminal liability only when it satisfies the ingredients of specific offences.
- **Section 352** - It criminalises **intentional insult** only when, the insult is deliberate, the accused intended or knew that it was likely to provoke the victim and such provocation could lead to a breach of public peace or commission of another offence.
- Therefore, **mere abuse, rudeness or vulgarity is insufficient**.
- **Section 351** - If abusive language is accompanied by threats to life, reputation, property, it may amount to **criminal intimidation** under Section 351.
- The offence focuses not on abusive words themselves but on creating fear through threats.
- **Section 353** - It criminalises statements that, spread rumours, incite offences against the State, disturb public tranquillity, promote enmity between communities, and create public disorder.

- Thus, abusive speech becomes punishable only if it contributes to public mischief or communal disharmony.
- **Section 356(1)** - The offence requires, making or publishing an imputation, concerning another person, with the intention or knowledge that it will harm reputation.
- Simple abuse without harming reputation may not amount to defamation.
- **Important Exceptions** - The BNS protects several categories of speech, including:
 - Truth made for public good
 - Fair criticism of public servants
 - Fair comment on public issues
 - Reports of judicial proceedings
 - Criticism of public performances
 - Good-faith accusations before competent authorities
 - Protection of one's own interests
 - Public cautions issued in good faith
- These exceptions preserve democratic criticism and accountability.
- **Section 79** - Where abusive words, gestures or acts are directed against a woman with the intention of insulting her modesty, Section 79 may apply.
- The offence depends on, intention, nature of words or gestures, surrounding circumstances.

What are the Judicial interpretations?

- **State of Telangana v. Nalla Balu @ Durgam Shashidhar Goud (2026)** - The Supreme Court upheld operational guidelines for police regarding criminal cases arising from, public speeches, social media posts, and political expression.
- The court observed that Police cannot mechanically register FIRs merely because speech is offensive.
- There must be **prima facie evidence** of incitement, violence, hatred, and imminent public disorder.
- Political criticism enjoys constitutional protection and Criminal law should not become a tool for suppressing dissent.
- The judgment strengthens safeguards against arbitrary criminal prosecution.
- **Shreya Singhal v. Union of India (2015)** - This landmark judgment struck down Section 66A of the Information Technology Act.
- The Supreme Court distinguished between, discussion, advocacy, and incitement.
- Only **incitement to imminent violence or public disorder** can justify restrictions on speech.
- The Court clarified that annoyance, inconvenience, insult, offensive language are not sufficient grounds for criminal punishment.
- This decision remains the cornerstone of India's free speech jurisprudence.
- **Mani @ Subramaniam v. State (2026)** - The Court clarified the distinction between **obscenity** and **vulgarity**.
- It held that, Mere swear words, profanities or vulgar expressions are not automatically obscene.
- To constitute obscenity under Section 296 BNS the material must be lascivious, appeal to prurient interests, tend to deprave or corrupt impressionable minds, and cause

annoyance.

- Thus, offensive language may be distasteful without becoming criminally obscene.
- **Mohammad Wajid v. State of Uttar Pradesh (2023)** - Interpreting Section 504 IPC (now Section 352 BNS), the Supreme Court held that abuse, discourtesy, rudeness and insolence do not automatically amount to intentional insult.
- The prosecution must establish intention, likelihood of breach of peace and knowledge that such breach was likely.
- The Court emphasised that every case must be examined on its own facts.

What are the concerns about Police Powers and Registration of FIRs?

- **Supreme Court's observation** - The recent controversy also highlights concerns regarding police discretion.
- The Supreme Court has cautioned that, FIRs should not be registered mechanically merely because someone claims to be offended.
- Police must first examine whether the statutory ingredients of the alleged offence are present.
- Free political speech deserves heightened constitutional protection.
- This prevents misuse of criminal law to silence criticism or political dissent.
- **Balancing Free Speech and Public Order** - The legal position reflects an attempt to balance two competing constitutional values.
- **Protection of Free Speech** - Political criticism, satire, strong language, democratic dissent, public debates remain protected unless they cross constitutional limits.
- **Protection of Society** - Criminal liability may arise where abusive speech provokes violence, incites communal hatred, threatens individuals, defames reputation, targets women with criminal intent, and disturbs public order.
- Thus, context rather than vocabulary determines criminality.
- **Contemporary Relevance** - The recent FIRs against protesters demonstrate the continuing tension between free expression, political criticism, public order, and police discretion.
- Reports that Delhi Police chose not to pursue proceedings against a 15-year-old protester after the Prime Minister publicly stated that he had forgiven the "misguided children" also underscore that legal responses to offensive speech often involve considerations beyond the mere use of abusive language.
- The broader constitutional principle, however, remains unchanged: criminal prosecution must rest on satisfaction of statutory requirements rather than public outrage alone.

What lies ahead?

- The Bharatiya Nyaya Sanhita does not criminalise abusive language as a standalone offence.
- Criminal liability depends upon whether the speech satisfies the ingredients of offences such as **intentional insult, criminal intimidation, public mischief, defamation, or offences against women**.
- The Supreme Court has consistently emphasised that offensive, rude or vulgar speech does not automatically lose constitutional protection.

- Only speech that incites violence, threatens public order, harms reputation in the manner contemplated by law, or otherwise fulfils the statutory requirements of a specific offence can attract criminal sanction.
- In a constitutional democracy, the distinction between **offensive speech and criminal speech** is fundamental.
- Courts have therefore insisted that criminal law must be invoked sparingly, ensuring that the constitutional guarantee of free speech under Article 19(1) (a) is not undermined by the mere expression of unpopular, harsh or offensive opinions.
- This approach seeks to preserve both democratic discourse and public order by ensuring that only speech posing a real legal harm attracts criminal liability.

Reference

[The Hindu| Abusive Speech](#)

