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In a remarkably unequivocal judgment delivered on May 8, Delhi High Court quashed eight criminal cases against artist M.F. Husain, saying that 'it has become imperative that in this information age, jurisdiction be more circumscribed so that an artist ... is not made to run from pillar to post facing proceedings.' A few days later, on May 15, the Supreme Court stayed criminal proceedings against actor Khushboo in 23 cases. While these orders are commendable, they do not go far enough. Each time an actor, writer, artist, journalist, or anyone else whose speech or expression is transmitted widely through the media expresses a controversial sentiment, multiple law suits will be filed across the country. Higher courts will continue to waste their strained resources to quash these proceedings. The problem needs a permanent solution.

The root of the problem of multiple proceedings lies in Section 177 of the Criminal Procedure Code: 'Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed'. Section 178, which deals with offences committed in more than one jurisdiction, provides that they 'may be inquired into or tried by a court having jurisdiction over any of such local areas.' Crimes such as obscenity that are committed wholly or in part by expression usually include the publication of such expression as well. Therefore, every court within whose local jurisdiction such expression has been published in any medium has potential jurisdiction. This, in the case of TV broadcast or internet publication, includes every single court in the country! It is this loophole that allows disgruntled groups to pursue such proceedings.

The impact on the speaker of multiple criminal proceedings initiated in different corners of the country is easy to imagine. If implicated, you have to spend a lot of time and money organising legal defence and making personal appearances before these various courts, however frivolous the allegation. Usually the court finds that no offence was committed and that the speech was constitutionally protected. Many people give up before reaching that stage. Taslima Nasreen and M.F. Husain chose to leave the country.

A less obvious but more worrying consequence of these multiple proceedings is that certain things may never be said for fear of similar consequences. This nightmarish possibility has a chilling effect on any potentially controversial — though constitutionally legitimate — speech. It encourages self-censorship and undermines our democracy.

Thus, however harmless they might appear to be, Sections 177 and 178 of the Criminal Procedure Code seriously impair free speech by allowing multiple proceedings. They undermine the constitutional protection of freedom of speech and expression guaranteed in

Article 19(1)(a).

That is not to say freedom of speech is absolute. Any law that restricts speech may be justified as a 'reasonable restriction' under Article 19(2) of the Constitution. The procedural laws in question are anything but reasonable. Most of these criminal proceedings result in acquittal. In the rare instance that a person is successfully tried and convicted by two courts for the same crime, the constitutional bar on double jeopardy in Article 20(2) guarantees that 'No person shall be prosecuted and punished for the same offence more than once.' Only one of these punishments can be enforced.

Not only do these multiple proceedings serve no legitimate state purpose, they in fact conflict with a vital state interest. Our overstrained courts waste much precious time entertaining these complaints, most of which will be unfruitful even when not frivolous. Several cases go all the way to the Supreme Court, seeking intervention on a case-by-case basis. The cases always end up quashed, stayed or consolidated, but not before much detriment to the speaker and to judicial resources.

What, above all, makes these cases so unreasonable is that they severely harm the speaker's interests even before they establish that a crime has been committed at all. Legal proceedings are rarely much fun. But being obliged to appear in several courts for exercising what usually turns out to be one's constitutional right to free speech will strain anyone's time, money and sanity.

Sections 177 and 178, as they stand now, have an unconstitutional impact on freedom of speech. To pass constitutional muster, an exception to these provisions must be carved out which provides that any crime constituted by speech or expression can only be tried in the defendant's place of ordinary residence, or in Delhi, if the defendant lives outside India.

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