

CENSORSHIP AND FREEDOM OF SPEECH IN INDIA: A CRITICAL ANALYSIS

Author: Pratishtha Malhotra

Student at Amity University, Noida

ABSTRACT

Censorship has long affected the freedom of speech throughout the history of the world, but in today's world, especially in the last decade or so, our right pertaining to 'Freedom of Speech & Expression' has been attacked. This privilege to put out one's viewpoint and thoughts without censorship, restraint or some kind of lawful punishment is known as Freedom of Speech. Article 19(1)(a) of the Constitution of India gives us this freedom. It is one of the six fundamental rights given to the citizens of India under Part III of the constitution. However, it also relates to the suppression of speech, public communication or other informations, on the idea that such material is taken into account objectionable, harmful, sensitive, or inconvenient. Censorship exists in all spheres of life ranging from politics, cinema, media and press to even art and education. Freedom of speech allows people to criticize the government and raise their concerns, which is why it is such a vital part of a functioning and vibrant democracy. It's important to assert that right in a democratic society to ensure its effective functioning, curbing it would lead to an authoritarian form of government and result in the end of true democracy. There exists a contradiction in today's society where we have more platforms and mediums to express ourselves and yet at the same time our censorship laws have become more severe and scrupulous. While this right to freedom of speech is given to us in the Indian democracy, figuring out how to not infringe upon it through censorship laws is proving to be a difficult conundrum. Censorship has no place in modern liberal democracy.

Keywords: Censorship; Freedom of Speech; Article 19; Constitution; Democracy;

I. INTRODUCTION

Every structured society has suffered from some form of censorship of media, art, literature, entertainment etc. The Freedom of Speech is granted to every Indian citizens by the constitution, but in recent times we have found this right to be under attack through the authoritarian governments, corporations, educational institutions etc. Many societies have implemented this restriction of discourse in a variety of ways ranging from threats, violence, incorporating it in legal provisions etc. But the governments in the 21st century are reinventing censorship by controlling and disrupting the informations. They are using more subtle tools, like- redacting critical news, putting out false information and building state media brands to suppress criticism or opposing views. Since the internet has made accessing information easier and provided a global platform to express thoughts and opinions, it is hard to accept that freedom of speech is still being trampled upon. It is a curious paradox how censorship is actually flourishing in the era of information & knowledge. One example of this would be China; the country with the most internet users is also one with the most draconian and effective censorship systems in the world. Our country itself conducts surveillance over the internet as a means of control and has even written the practice into law. Governments are adamant on controlling the citizens, starting with what they read, watch and hear as a means of censoring our voices and opinions and consolidating power for themselves. While India gives the impression of complete freedom and democracy; in reality, the censorship in India extends to all spheres of life ranging from censoring opposing political views, trampling on artistic freedom and using the Censor Board to regulate cinema. Censorship in India is often justified by arguments that it protects our society from morally corrupt ideas and thoughts that would be considered offensive and dangerous. This argument pretends to only spread hate speech. However, in reality, censorship laws are often used to silence those who have carried out opposing views. It is often unfair and counterproductive.

As the exercise of freedom of speech and press has become more arduous, the importance of daring journalists and role of the international platforms, like- social media has become much more important. Freedom of speech and press lays at the very bottom core of all fair and free democracies and all the institutions that operate within the democratic society. It is only freedom of speech, which can bring out changes and hold political and government figures

accountable. Without it there can be no free thought, free ideology or free political discussion. Democracy is not meant to be censored.

II. WHAT IS CENSORSHIP?

Censorship is mentioned in the Constitution under Article 19(2), which imposes reasonable restrictions upon the freedom of speech and expression in the interest of sovereignty of the state and integrity of India.¹

However, censorship also has a deeper and wider meaning as well as extent in society. In its broadest sense, it also refers to the suppression of information, ideas, and expression by anyone whether it is the government, religious authorities or pressure groups and educational institutions. Censorship raises issues of violation of freedom of speech, a right guaranteed by the Constitution of India.

Private institutions and authority figures also practice censorship. It is the suppression or prohibition of the whole or any parts of books, films, news etc. that are considered to be obscene, politically unacceptable, or a threat to security of the people and country.

III. WHAT IS FREE SPEECH?

This right of asserting your opinions, ideas or expressions without any form of restraint or censorship or legal penalty is called Free Speech. In India, this right to free speech is conferred to the citizens' via the constitution under Article 19(1)(a). It is a right that is fundamental and guaranteed to all citizens under Part III of the Constitution. This encompasses liberty to have opinions, to get and give information or concepts with no hindrances and censorship by the authorities. It also extends to freedom of media and press.

Freedom of speech is understood as fundamental to the functioning of a democracy, which is why it is also mentioned in the provisions contained in many conventions that are international including (UDHR), European Convention on Human rights and Fundamental Freedoms etc.

¹ INDIA CONST. art. 19 cl.2

IV. FORMS OF CENSORSHIP

A. Censorship in Educational Institutions

One of the key objectives of education is to promote free thought and critical thinking, including the encouragement for debates and diverse viewpoints. Censorship of books, educational material, leads to the disruption of public order and exchange of ideas. It leads to the conditioning and shaping of young minds. The government uses this as a means to distort facts and propagate their ideology. They see it as a tool for establishing the narrative of their convenience. The recent events at JNU, which saw anti-national slogans and the consequent prosecution under sedition laws of people, like- Kanhaiya Kumar reflects the government's overreaching control in educational institutions.

In IIT Madras, on an occasion of social equity was postponed citing reasons that the speakers were 'controversial'. In Allahabad University, the students were denied permission for hosting a 'Liberty Festival' by the Vice-Chancellor who claimed that there was pressure from the Ministry of Human Resources Development. In a government college in Kerala, students were approached to remove "over-politicized references" like 'Dalit', 'Beef', and 'Fascism' from their magazine.²

B. Internet Censorship

While the Internet in some ways have been developed as a means to ensure freedom of speech and expression, it has led to the government practicing excessive and unnecessary censorship. The administration has argued that it does so in order to diffuse social tensions and mitigate volatile situations. However, in reality, it has used this to target those social media users who are critical of certain political leaders or of the government. Internet users often use their medium to scrutinize every fact and government policy and keep a check on the antics of the powerful and wealthy. The problem is, internet companies are subject to the will of the government. They are often

² Indian National Congress, <https://medium.com/@Congress/censorship-of-universities-by-bjp-government-reflects-a-systemic-state-overreach-c7277a82265e> (last visited Oct. 12, 2021).

asked to remove 'objectionable' content or to take down web pages that are deemed against public interest.

In 2002, two teenagers were arrested under Section 66A of the Information Technology Act over a social media post criticizing the shutdown of Mumbai after the death of a politician. This section which made posting 'offensive' comments on social media a crime punishable by up to three years in jail, was struck down by the Supreme Court after a two year campaign by free speech activists.

C. Censorship of Films

Official records claim that Indian film industry is the biggest in the world producing over a thousand films in a year screened over 13,000 cinema halls in the country.³ While freedom of speech guarantees the freedom to express oneself freely through any medium of communication, including- cinema, films in India are often censored or even banned on grounds that they are too obscene, violent, or sexual. A motion film needs to be certified by Central Board of Film Certification (CBFC), the regulatory authority in India, under Section 5A and 5B of the Cinematograph Act 1952. The central government can also suspend or revoke a granted certificate, if it meets the conditions under Section 5E of the mentioned Act. Some of the grounds given for justifying such censorship is that the movie is or it depicts scenes which are anti-social, violent or likely to incite violence or commission of any offence, vulgar, obscene, deprave, sexual, contemptuous of racial or religious groups etc. Abusive language is also not permitted. These grounds have been often used as excuses to ban movies that are critical of the government or display scenes that might be considered immoral by some people.

For example, in 2006, the movie 'The Da Vinci Code' was perceived as 'blasphemous' and offensive to the Christian community. This Hollywood movie was restricted by seven state governments in their respective region even after obtaining clearance from the censor board. In 2002, Anand Patwardhan created movie 'War and Peace' emphasizing risk of nuclear war in the Indian subcontinent, was ordered to make 21

³ Central Board of Film Certification, <https://www.cbfcindia.gov.in/main/about-us.html> (last visited Oct. 12, 2021).

cuts before the censor board certified it, but it eventually got released without cuts after Mumbai High Court ruled against the censorship.⁴

D. Political Censorship

This sort of censorship exists when an administration tries to hide, forge, misconstrue, misquote information that its citizens receive by concealing or expelling political news that the citizens might receive through news channels. It is the systematic concealment of information or facts or news that might be critical of the government or of views that are contradictory to those who are in power. The government will often use the army or other tools at its disposal to ensure compliance.

The censorship experienced by not only the news outlets but also by the individuals in their everyday life.

E. Self-Censorship

Self-censorship refers to controlling or regulating what one says or does out of fear or in order to escape criticism. Self-censorship is an act performed by oneself of classifying or censoring your own discourse. It is the practice of refraining from doing something or expressing something like an opinion or an idea out of fear that others would criticize it or find it objectionable.

This form of censorship refers to soft censorship, as there is no overt or direct pressure. Shared sense of community and conforming to the same social norms creates a sense of togetherness and belonging but it also leads to suppression of thought and expression and compliance that is voluntary in order to continue feeling that sense of belonging. It is often practiced by those in the media and film business, for example, news anchors, journalists, film producers and directors, etc.

⁴ Shri Anand Patwardhan v. The Central Board of Film, 2003 (5) BomCR 58

V. IMPORTANT CASE LAWS AND RELEVANT ACTS

Bijoe Emmanuel vs. State of Kerala⁵

Freedom of Expression & Speech is amongst many rights that are constitutionally guaranteed to the citizens of India within Part III of the Indian Constitution. It is one of the most imperative feature in the pyramid of personal freedoms given under the Articles 19 to 22 of the Indian Constitution. Article 19(1)(a) relates to every single person will possess liberty to free speech and expression. However, this is also subject to constraints deemed reasonable enforced within Article 19(2) that encourages the State to have 'reasonable' restriction due to reasons, like- the country's security domestic; otherwise, amicable relationship with foreign countries, civic order, civility, incitement of offence, and unity and supremacy of India.

VI. PURPOSE OF FREEDOM OF SPEECH & EXPRESSION

Romesh Thapper vs. State of Madras⁶

Free speech includes the privilege of people to communicate their feelings, ideas, and opinions to other people, but also it attends an expansive purpose as well. These purposes can be categorized into four areas-

- a) This helps to discover the truth;
- b) This aids the entity to achieve self fulfillment;
- c) This helps in enlisting a programme through that an acceptable balance between social change and stability can be established;
- d) This bolsters capacity of the entity to take active part in the process of decision-making.

⁵ Bijoe Emmanuel & Ors v. State of Kerala & Ors, 1986 SCR (3) 615

⁶ Romesh Thapper v. The State of Madras, AIR 1950 SC 124

National Anthem Case

Bijoe Emmanuel vs. State of Kerala⁷

This right to free speech also encompasses the privilege of silence. In this particular case, three children of the Jehovah's witnesses' community were removed from their educational institution for their defiance in singing our national anthem, although they rose respectfully when same had been sung. They contested the validity of their expulsion in front of the Kerala High Court, which held the debarment as valid and on its basis that it had been their fundamental duty to take part in our national anthem. An appeal was filed to the Supreme Court, upheld the pupils had not committed an offence within the Prevention of Insults to National Honour Act of 1971. Furthermore, no law in existence can diminish a right understood to be fundamental. Consequently, it was then decided the pupils debarment from their educational institution was in contravention of their constitutionally guaranteed right given within the 'Article 19(1)(a)', as it also encompasses liberty to be silent.

Freedom of Speech - Sedition⁸

In India, sedition as an offence is defined under Section 124A of IPC as, "whoever by words either spoken or written, or by signs, or by visible representation or otherwise brings into hatred or contempt or excite or attempts to excite disaffection towards the government established by law in India shall be punished".

Kanhaiya Kumar vs. State of NCT of Delhi⁹

In this recent case in 2016 of Kanhaiya Kumar vs. State of NCT of Delhi, students of JNU had organized a programme on the Parliament attack convict Afzal Guru and Maqbool Bhatt, who were hanged to death in 2013. The program that had been organized was a protest in the form of poetry, art, and music against the judicial killing of Afzal Guru and Maqbool Bhatt. Accusations made stated that the students were raising anti-Indian slogans. A charge sheet was filed against many students on charges of offence of sedition and criminal conspiracy¹⁰ under relevant provisions of IPC, 1860. The University's Students Union president Kanhaiya Kumar was arrested after accusations were made of 'anti-national' sloganeering against him. The Delhi

⁷ Bijoe Emmanuel & Ors v. State of Kerala & Ors, 1986 SCR (3) 615

⁸ Kanhaiya Kumar v. State of NCT of Delhi, MANU/DE/0498/2016

⁹ Kanhaiya Kumar v. State of NCT of Delhi, MANU/DE/0498/2016

¹⁰ Indian Penal Code, 1860, S. 120-B and S. 124-A, No. 45, Acts of Parliament, 1860, (India)

High Court granted him bail as the police work was still at the investigation stage, and Kumar's exact role in the protest wasn't clear.

The Case of PUCL ¹¹

PUCL filed a PIL u/a 32 of Indian constitution to protest the incessant cases of tapping of phones. The legitimacy of S. 5(2) of the Telegraph Act, 1885 was challenged. Court held that the "occurrence of public emergency" or "in the interest of public safety" is that he *sine qua non* for the appliance of aspects u/s 5(2). If either of the two circumstances is absent, the authorities have no grounds to exert their capacity within the section mentioned.

Indian Express Newspapers vs. UOI ¹²

In this particular case of 1985, the judge held, 'Article 19 in the Constitution of India' does not contain the terminology "freedom of the press" in the phrasing, but that is encompassed under Article 19(1)(a). In the name of civic interest, "freedom of press" cannot be curtailed. The main function and target of the press is to build up civic interest through publication of facts and also opinions, in the absence of which an electorate who is free and democratic cannot take responsible decisions.

Abbas vs. UOI¹³

The very crucial issue of pre censorship of movies was brought to the knowledge of the Indian Supreme Court through this very case. Through Cinematograph Act 1952, movies have been splitted into two classes-

1. 'U' movies are for unconditional viewing.
2. 'A' movies, which are for exhibition to adults.

The appellants movie was not granted 'U' certificate; therefore, the legality of censorship was challenged by him as this infringed his fundamental right of "Freedom of Speech & Expression". In this case, the petitioner had argued that no other type of art was subject to this extent of prior restraint, thus, he claimed equality of treatment for such different forms. The judge, however, observed that movies are a form of art able to stir sentiment more acutely and intensely than anything else.

¹¹ PUCL v. Union of India, AIR 1997 S.C. 568.

¹² Indian Express Newspaper v. Union of India & Ors.,1986 AIR 515

¹³ K.A. Abbas v. Union of India, 1971 AIR 481

VII. CENSORSHIP UNDER INFORMATION TECHNOLOGY ACT, INDIA

Indian legislation concerning censorship in conventional media is objectively evolved and relatively liberal (in principle). Article 19(1)(a) of the Constitution protects the right to free speech and expression irrespective of the medium of communication.

While the Courts have elucidated this right to free speech and expression in a wide and blanket manner, Article 19(2) allows for reasonable restrictions to be placed on this right in concern and view of public policy concerns¹⁴.

“These public policy concerns include the sovereignty and integrity of state, its security both domestic and international, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”

According to Article 19(2) of Information Technology Act, it provides various provisions under which online content can be censored – notably in Sections 66A, 69A and 79. The majority of these provisions involve executive action with no process of judicial oversight; in fact, under Section 79, the law aggressively emboldens private censorship.

VIII. CRITICISM

Censorship in Indian society exists in different structures. There is, of course, the omnipresent censorship of the state, which censors motion pictures and plays before release, boycotts sites and picks what is in it in the guise of public interest. There is also the censorship of the market, which chooses what Indians should see and have access to, and permits little space for content that is seen as commercially unviable.

Censorship should not be this excessive and far-reaching. There is a solid argument to be made that censorship attacks the right to free speech and the free press. It restricts people's abilities to express their thoughts freely and openly. Censorship finds its roots in fear, fear of legal punishment or fear of being criticized or unaccepted. Censorship hinders our progress and takes

¹⁴ Social media and Information Technology Act, 2002, Legal Fortnight (May ed.), <https://allindialegalforum.files.wordpress.com/2021/09/legal-fortnight-may-issue-2.pdf>

away the knowledge of the person. It is a general belief that if there were no censorship, society would have little command over propaganda of hate speech or pornography for instance. Giving to this argument, a reasonable restriction on censorship helps to ensure certain values are maintained. While hate speech should be regulated to a certain extent, we should remember that censorship doesn't counter hate speech, more speech does.

IX. MORAL POLICING

As per the BBC official and Wikipedia, 'Censorship' is derived from the Latin word 'censor', which means the job of two Romans whose duty was to supervise public action and behaviour and morals, therefore 'censoring' the way people behaved.¹⁵ There is the vigilante brand of censorship, which is ever ready to guard any so-called attack on 'Indian Culture' and 'Indian Values'. The belief of censorship is meticulously linked with the moral dread that informs India's popular debate about media and new technologies. Many are prepared to take on the role of the 'moral police'. They are far and wide; in the parliamentary assemblies, boardrooms, courtrooms, institutions, cinemas, gardens and bars, on the streets and even in police stations. The Hindu right-wing parties and groups which make evident their love for 'Indian Culture' by assaulting girls wearing western clothes and sabotaging valentine's day festivities are unfortunately only the tip of the iceberg.

Equally, censorship and moral policing are premised on the creation of a less dominant 'other' that is easily influenced by the seductive influence of the mass media. There is also the fundamentally flawed assumption about the enormous harm that images can come to the hearts and minds of cinemagoers motivating them to commit immoral and even illegal acts. The Central Board of Film Certification acts as a patriarchal filter on the state's behalf and ensues as a moral police, shielding all those less-powerful and vulnerable 'others' (children, women, liberates, poor people etc.), who lack necessary judgment and perception and are easily influenced by the power of the image. However, the direct impact concept has been seriously discredited in studies; there is a ton of research and writing which establishes the direct relationships between spectators and media texts are complex. Those who make the argument in favour of censorship also holds the assumption that cinematic text is a simple message in a bottle, tied to a singular meaning. But meanings are vague.

¹⁵ Political Censorship, https://en.wikipedia.org/wiki/Political_censorship

X. THREAT TO DEMOCRACY

Censorship clearly undermines the modern democratic institutions. Government and political parties more often uses it as a medium for fulfillment of their own political agendas. Through controlling and censoring media channels and films that undermines its authority, the government is seriously harming the fourth pillar of democracy, that is, the media. By banning or controlling any medium, which offers a different idea or encourages revolutionary thinking, the government is hindering the progress of our nation as a liberal democracy. Anything that challenges the norm or questions the authority, is censored. Through controlling and distorting the information that reaches the general public, the government is taking away their right to information. In that sense, they are not able to make informed decisions about their countries' government and policies. This harms our democracy. Throughout the emergency declared by Indira Gandhi in 1975, the fourth estate was under tight control of censorship. Censorship is unfortunately misused in India. India needs to move beyond banalities of offended sensibilities and national interests. Censorship can find no place in a modern democracy.

XI. CONCLUSION

Censorship is a necessary evil, censorship is a barrier to creativity and innovation. Those in power say it is a "necessity" or even a "necessary evil". That stops the propagation of hate speech, child pornography and much more. Words and the pictures hold tremendous power to influence. The words and the pictures don't align with the view of the current ruling class are deemed "Anti-national", "Not Indian" and "Immoral". This idea of Indian society questions everyone's "indianness". Critics are labeled as "desh dhrodhi"(anti-national). One can certainly make an argument that censorship provides protection to a more vulnerable class of citizens. But the solution to evolve that demographic is to educate and increase awareness among people. Our constitution provides freedom of expression and speech with 'reasonable restrictions', who gets to decide whether it is reasonable or not. India is still governed by indirect laws of moral and religious views. India is a melting pot of cultures, with the full potential as the magnitude of exchange of ideas and innovations that leads to creativity, progression, development and productivity. It is about time to move out of the shadow of censorship.