INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 4

2024

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An Analysis of Censorship in India: Balancing Freedom of Speech and Public Sensitivity in Media

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ABSTRACT

Censorship, the suppression or regulation of speech, media, or other public communication, has been a contentious issue worldwide, including in India. This article provides an in-depth analysis of censorship in India, examining its multifaceted impact on movies, general media, and books. By exploring the historical roots of censorship and its evolution, the article sheds light on how the practice has been used to maintain societal norms, political stability and public morals. Special attention is given to the role of the Central Board of Film Certification (CBFC) in regulating the film industry and the legal framework governing censorship as per the Cinematographic Act of 1952.

The article discusses landmark cases such as K.A. Abbas v. Union of India, Bobby International v. Hoon, and Shreya Singhal v. Union of India, which have shaped the landscape of censorship in India. These cases illustrate the ongoing tension between the right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution and the state's authority to impose restrictions for various reasons, including national security, public order and morality.

Through detailed analysis of specific instances of censorship in movies, media and literature, the article highlights both the protective and repressive aspects of censorship. It examines high-profile controversies like the banning of films such as "Padmaavat" and "India's Daughter," censorship of books like Salman Rushdie's "The Satanic Verses" and the impact of media regulations on press freedom. By reviewing these diverse cases and their broader implications, the article aims to question whether current censorship practices in India strike a fair balance between safeguarding societal interests and upholding the fundamental right to free expression.

***Keywords**: Censorship, media, books, movies, freedom of speech.*

I. INTRODUCTION

Censorship is the process or the idea of suppressing or covering up parts of different data including books, movies, art, news etc. which are considered sensitive, objectionable or

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harmful to the society or its norms. In contemporary philosophy, censorship is an effort by the government, a private organization, a group or a person to keep people from reading, seeing or hearing things that are potentially damaging to the government or destructive to public morals. Censorship can be used for political, religious or moral reasons, resulting in treason, heresy or obscenity. In a broader sense, the word refers to the creation and execution of laws that limit one's ability to publish unless the laws are intended to defend others' rights, such as in situations of defamation, libel or copyright infringement.[2]

The existence of censorship can be dated back to 400 B C when the Greek philosopher Socrates defied the attempts of the Government to "censor" his thoughts which were said to be corrupting the youth. Although censorship has a long history of repression and persecution, it has also had a long history of tolerance and freedom.

In contrast, Article 19(1)(a)[3] of the Constitution of India guarantees every citizen the fundamental right to freedom of speech and expression, allowing them to freely express their opinions. This raises questions about the constitutionality of censoring individuals' ideas and expressions. Moreover, there is growing concern over the misuse of censorship for political purposes. This prompts reflection on whether censorship is truly necessary in our country or if it sometimes unjustly suppresses the constitutionally guaranteed right to freedom of speech and expression.

II. CENSORSHIP WITH RESPECT TO MOVIES

In India, censorship is a word that is very closely linked to movies. The term censorship itself is very closely linked to the Central Board of Film Certification which deals with all the censorship issues of films in our country. In India there are a lot of cases related to censorship because of our country's diverse interests and cultures itself. All things are not acceptable in such a diverse State. Therefore, a lot of things are found to be indeed sensitive either politically, morally or even legally for that matter.

With regard to movies, in our country a motion film is always certified by the Central Board of Film Certification (CBFC) with respect to Section 5A and Section 5B of the Cinematographic Act, 1952[4]. However, even if a movie is given a certificate, the Central Government can suspend a granted certificate or revoke it later based on how it thinks fit keeping in mind the state of things at stake with regard to the movie. The certification process

[2] Jennifer Downey, *Learning on the job: Censorship and intellectual freedom in the real world*, 3 Journal of New Librarianship 120, 121 (2018)
[3] INDIA CONST. Art. 19 (1) (a)
[4] The Cinematographic Act, 1952, Act of 1952

of the CBFC is laid down with the help of 20 guidelines that include anti-social activities, words or actions of religious context, politically sensitive content etc.

The idea of censorship is indeed a good one for our country in order to protect ourselves from racial or cultural conflict or even small political issues. In the Supreme Court Judgment of K. A. Abbas v. Union of India and Anr[5]., the movie was ruled to be causing a bad influence on adolescent children than an effect on adult men and women. Thus, the case recognized motion films as a little different from other art like books or paintings saying that movies cause a prolonged influence on us more than other forms of art. Thus, censorship was proved to be essential in a lot of cases.

However, there are a lot of cases in which censorship or issues relating to censorship have been completely unwanted and sometimes even saddening. India sadly still proves to be showing a very "middle-aged" attitude towards cinema. Mainly in our country there are three kinds of censorship namely, censorship by the CBFC, censorship by mobs and censorship by governments. One of the recent movies that caught people's attention regarding censorship is "Padmavati" which was later renamed to "Padmaavat." This movie has faced all three kinds of censorship. The Board has even changed the name and made numerous edits to the movie. A lot of mob attacks and even attacks on the Director and actors also happened. After this the State Governments of different states supported the notion and started banning the movie in their respective states. The Supreme Court later corrected them all by saying that it was not politically or religiously immoral and went against the right to freedom of speech and expression. Similar cases where in the artists were supported by the court are Raj Kapoor v. Laxman[6] and Life Insurance Corporation of India v. Prof. Manubhai D. Shah[7].

One of the first cases that created a significant impact on the idea of censorship in movies was the case Bobby International v. Hoon[8]. In this case, the Supreme Court of India overturned a Delhi High Court judgement prohibiting the exhibition of the film "Bandit Queen," ruling that a film's screening cannot be barred only because it shows vulgar or explicit incidents. The creators of the film, which depicted the actual tale of a woman who was raped and brutalised before pursuing vengeance on her assailants, had petitioned the Court to reinstate the film's "Adult only" classification. The Court determined that the sequences containing nudity and expletives were necessary for presenting the essential tale and that the producers' right to

[5] K. A. Abbas v. Union of India and Anr., 1971 AIR 481.
[6] Raj Kapoor v. Laxman, AIR 1980 SC 605.
[7] Life Insurance Corporation of India v. Prof. Manubhai D. Shah, 1993 AIR 171
[8] Bobby International v. Hoon, (1996) 4 SCC 1.

freedom of expression could not be limited only because of the co-production.

Still, banning movies with respect to religious or political sensitivity can be at least thought about. However, often certain movies with the tag of being politically, socially or religiously sensitive are banned in order to hide or even cover up many unacceptable or silent topics in our country. Is that acceptable? Censorship is violating one's right to express their ideas and thoughts through films too.

"Lipstick Under My Burkha" by Alankrita Shrivastava, the movies "Elements Trilogy" including "Earth", "Fire" and "Water" by Deepa Mehta, BBC's documentary: "India's Daughter" are the main examples of movies that were banned/censored in India with this respect. Therefore in movies, India is very strict and censorship is very strong. This has been often considered as going against the right to freedom of speech and expression in our Constitution.

III. CENSORSHIP IN MEDIA

In our country ever since the time of the British, censorship has existed in the industry of the Press. During India's struggle for Independence, we can see how Gandhiji's articles were not allowed and his newspaper was ultimately banned. Even nowadays a lot of instances regarding censorship and newspapers of the press can be seen. In the case Indian Express Newspapers v. Union of India[9], there were issues regarding the freedom of press. Later on it was held that even though the phrase "freedom of press" was not contained in Article 19 of the Constitution, it is still seen as a part of Article 19(1)(a), the right to freedom of speech and expression. Moreover it was said that one could not interfere with the freedom of press in the name of public interest and the whole point of the press is to provide clear cut facts and information to the public and not just follow public interests.

This case is indeed a very important judgment because it shows the importance and value of the freedom of speech and expression. Therefore it should be understood that the Press indeed have the right to express in our country but sometimes they are being violated.

Another very close area is the field of media and television. Media and Television are both very strong and sadly very fragile areas in our country. They have faced a lot of issues and problems with regard to censorship. When it comes to the internet, one of the most important cases is Shreya Singhal v. Union of India[10]. In this case two students were accused of posting content which was sensitive in the field of religion. Later the provision Section 66A of the IT

[9] Indian Express Newspapers v. Union of India, 1986 AIR 515.
[10] Shreya Singhal v. Union of India, (2013) 12 SCC 73.

Act[11] was struck down as it was found to be violative of the right to freedom of speech and expression.

A few years ago, the Narendra Modi-led government added a new ground of censorship to the Programme Code which drastically curtails how news channels can report terror incidents. Channels can report only a "periodic live briefing by an officer designated by the government." The Government claimed that NDTV showed very sensitive information on the TV regarding the Pathankot Attacks and the channel was banned for a while. This was later found unnecessary and was highly criticized since the main idea of NDTV itself is to provide people with news only.[12] Therefore the field of Television and Media also faces a lot of issues with regard to censorship.

IV. CENSORSHIP IN BOOKS

One of the early incidents can be traced back to Salman Rushdie being subjected to harassment and intimidation over his book "Satanic Verses." Before the Rushdie case, India had a long history of literary censorship, with books, periodicals, and maps being banned for reasons ranging from "hurt" sensibilities and "obscenity" to "threat" to national security. In many respects, India's performance in this area is disgraceful for such a dynamic, free and open nation.

The Lady Chatterley Case[13], a very important judgment in India where a man was accused of selling obscene books and was charged. Arguments were passed saying that this was against Article 19(1)(a) which stands for right to freedom of speech and expression. Later the charges were not removed and the book was banned in our country. There are so many stories and examples of censorship with regard to books. It is sad to see how art is not treated well in our country. Wendy Doniger's book, the Hindus: an Alternative story was criticized by the right winged people and they were really against it. After it caused a lot of issues in our society, Penguin India decided to not publish the book. It is indeed sad to see that books have to face this issue in our country.

V. GLOBAL PERSPECTIVE ON CENSORSHIP

Censorship is a complex and multifaceted issue that varies significantly across different democratic nations. To understand the nuances of censorship in India, it is essential to compare

[11] The Information Technology Act, 2000, Act no 21 of 2000, S. 66A.
[12] Monika Mehta, "*Censorship." BioScope: South Asian Screen Studies* 12(1-2), 49-52 (2021), https://doi.org/10.1177/09749276211026105
[13] Ranjit D. Udeshi v. The State, AIR 1962 Bom 268.

it with the practices in other democratic countries like the United States, the United Kingdom and Canada. Each of these nations balances the right to freedom of speech with the need to maintain public order and protect societal values, albeit in different ways.

United States: Emphasis on Freedom of Speech

In the United States, the First Amendment to the Constitution guarantees robust protection for freedom of speech[14]. The U.S. Supreme Court has consistently held that government-imposed censorship is generally impermissible unless it falls within specific exceptions, such as obscenity, defamation and speech that incites imminent lawless action. This high threshold for censorship ensures that a wide range of speech is protected, even if it is offensive or controversial.[15] For instance, in Brandenburg v. Ohio (1969), the Supreme Court ruled that inflammatory speech is protected under the First Amendment unless it is likely to incite imminent lawless action.[16]

However, this strong emphasis on free speech can lead to tensions when dealing with hate speech and misinformation. The debate around regulating social media platforms to prevent the spread of false information while preserving free speech rights is ongoing. The case of Twitter, Inc. v. Taamneh (2023) highlighted the challenges of holding social media platforms accountable for user-generated content without infringing on free speech rights.[17]

United Kingdom: Balancing Expression with Public Order

The United Kingdom adopts a more nuanced approach, balancing freedom of expression with public order and morality. The UK's legal framework includes laws against hate speech, defamation and incitement to violence. The Public Order Act 1986 and the Communications Act 2003 are notable examples. These laws aim to prevent speech that can cause harm or public disorder. For instance, the R v. Choudary case in 2016 saw the conviction of Anjem Choudary for inviting support for a proscribed terrorist organization, highlighting the UK's stance against speech that can incite terrorism.[18]

The UK also employs regulatory bodies such as Ofcom (Office of Communications), which oversees broadcasting and telecommunications, ensuring that content adheres to established standards of decency and fairness. This regulatory approach helps maintain a balance between

[14] U.S. Const. amend. I.
[15] Jerzy Menkes, *Freedom of Speech in the Age of Digitalisation, in Freedom of Expression in the Digital Age,* 3 (2022), https://doi.org/10.4324/9781003262534-3.
[16] **Brandenburg v. Ohio,** 395 U.S. 444 (1969)
[17] **Twitter, Inc. v. Taamneh,** No. 23-123 (U.S. 2023)
[18] **R v. Choudary,** [2016] EWCA Crim 145, [2016] 1 WLR 3333

free expression and societal norms.[19]

Canada: A Middle Ground

Canada's approach to censorship and free speech falls somewhere between the US and the UK. The Canadian Charter of Rights and Freedoms guarantees freedom of thought, belief, opinion and expression, but these rights are subject to reasonable limits prescribed by law. The Supreme Court of Canada has upheld restrictions on hate speech, as seen in the case of R v. Keegstra (1990), where the court ruled that the Criminal Code's prohibition on promoting hatred against identifiable groups was a justified limitation on free speech.[20]

Canada also addresses censorship through various regulatory bodies, such as the Canadian Radio-television and Telecommunications Commission (CRTC), which oversees broadcasting standards. This regulatory framework aims to balance free expression with the protection of vulnerable groups and the maintenance of public order.

India can learn from these diverse approaches to censorship. While the Indian Constitution guarantees freedom of speech under Article 19(1)(a), this right is subject to reasonable restrictions for reasons including public order, decency and morality. India's legal framework, particularly the Information Technology Act, 2000 and the Cinematograph Act, 1952, provides mechanisms for regulating content in digital media and films. However, these laws are often criticized for being overly broad and prone to misuse.

VI. CONCLUSION

Censorship in India is a multifaceted and complex issue, deeply intertwined with the nation's cultural, political and legal landscape. While the intention behind censorship is often to maintain societal norms, political stability and public morals, its application has frequently sparked debates about the suppression of free speech and artistic expression. Through the examination of landmark cases and high-profile controversies, it is evident that the current censorship practices in India often fail to strike a fair balance between safeguarding societal interests and upholding the fundamental right to free expression.

The global perspective on censorship reveals that other democratic nations like the United States, the United Kingdom and Canada have adopted varied approaches to balance freedom of speech with public order and morality. The United States emphasizes robust protection for free speech, even at the cost of tolerating offensive or controversial content. The United

[19] *Supra* note 14

[20] **R v. Keegstra**, [1990] 3 SCR 697

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Kingdom adopts a more nuanced approach, balancing expression with public order and morality through regulatory bodies like Ofcom. Canada strikes a middle ground, allowing for reasonable limits on free speech to protect vulnerable groups and maintain public order.

India can learn from these diverse approaches to develop a more nuanced and effective censorship policy. By adopting clearer definitions of prohibited content, establishing independent regulatory bodies and ensuring transparency and accountability in the censorship process, India can better balance the need for public order and societal values with the right to free expression.

Moreover, the rise of digital media and the internet has added complexity to the issue of censorship, presenting both challenges and opportunities for regulation. Collaborative efforts between governments and digital platforms, technological innovations such as AI-driven content moderation, legal reforms to address digital media challenges and public education on digital literacy are essential to navigate the complex landscape of digital censorship.

Ultimately, a re-evaluation of India's censorship policies is necessary to ensure they are not misused as tools for political or ideological suppression. By fostering an environment that respects free speech while protecting public order and morality, India can uphold the principles of democracy and promote a more open and tolerant society.

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