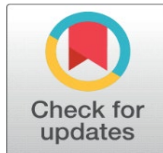


FREEDOM OF EXPRESSION AND CENSORSHIP IN PERFORMING ARTS: A LEGAL AND ETHICAL PERSPECTIVE

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ABSTRACT

With an emphasis on the ethical and legal factors that impact creative freedom, this study investigates the intricate relationship between free speech and censorship in the performing arts. In light of the importance of the performing arts as a platform for social criticism and cultural reflection, this research investigates the legal safeguards that artists have, especially in democracies like India. Censorship systems, which aim to maintain public order, moral principles, and cultural sensitivity, often moderate these liberties. Courts' interpretations of the limits of speech in the performing arts are examined in this article via an examination of seminal judgments from India and other countries. It also takes into account the social effects of censorship on innovation, creativity, and public debate as well as the ethical considerations of limiting art. This paper proposes legislative changes to better balance creative freedom with community norms by comparing censorship regulations across countries. In the end, the piece argues for a balanced approach that safeguards creative expression while upholding ethical limits, with the goal of creating a democratic setting where the performing arts may flourish as catalysts for social transformation.

Keywords: Artistic Freedom, Legal Perspective on Performing Arts, Censorship.

1. INTRODUCTION

Everyone has the inherent right to freely express themselves verbally, without fear of persecution or other forms of restriction (Amnesty International, 2023). Article 19(1)(a) of the Indian Constitution and the Universal Declaration of Human Rights both provide that all people have the right to freely express themselves, and this right is ratified in a number of other international legal documents as well. Because creative expression often comprises social criticism, satire, and investigation of delicate topics, the application of this freedom in the context of performing arts is complicate. Because of its function as a platform for social commentary, the performing arts are often subject to censorship efforts by both state and non-state entities who claim to be concerned about issues of cultural sensitivity, public morality, or national security.

In the arts, free speech is both an individual and collective responsibility; it questions accepted wisdom, encourages other points of view, and reflects the ideals held by a community. Artistic works—in theater, dance, music, and film—stimulate conversation on major social concerns including gender equality, political injustice, and human rights. The arts also provide a key venue for public discourse. Consequently, artistic freedom is about more than just personal freedom; it helps a democratic society thrive by encouraging innovation, cultural growth, and group self-reflection.

Even though it's crucial, there are a lot of restrictions on exercising free speech at theater. In an effort to preserve religious tolerance, cultural integrity, or public order, governments often use administrative and legislative measures to limit creative expression (Shaheed, 2013). Creative expression may be stifled as a result of subjective definitions of damage caused by these limits. As an example, the conflict between governmental agendas and the freedom of speech can be mirrored in the use of censorship boards for unjust acts.

2. LEGAL FOUNDATIONS OF FREEDOM OF EXPRESSION

The right to free speech and expression is a basic right for all people of India, as stated in Article 19(1) (a) of the Indian Constitution, which provides the legal basis for freedom of expression in India. An essential component of any healthy democracy is the freedom of expression, which this article guarantees. The state may place "reasonable restrictions" on this right in the sake of public order, decency, morality, state security, and cordial relations with other countries, as stated in Article 19(2), which means that this freedom is not absolute (Bakshi, 1997).

Because the state has the authority to control creative productions that it deems obscene, morally objectionable, or possibly destructive to social cohesion, these limitations take on added significance in relation to the performing arts (Khatchadourian, 1978). The need for a middle ground between safeguarding creative expression and preserving public order is underscored by the legal limits imposed by these prohibitions. Filmmakers and artists are impacted by regulations that regulate film material, such as the Cinematograph Act, by limiting subjects deemed improper by governmental organizations.

Despite the importance of free speech to personal and social development, India's legal framework places a check on communal peace, reverence for established norms, and general decency. Because of the many intersections between expression, social norms, and governmental interests in domains like the performing arts, striking this balance is of the utmost importance.

3. CENSORSHIP IN PERFORMING ARTS: HISTORICAL AND CONTEMPORARY PERSPECTIVE

Censorship in India's performing arts, particularly in film, dance, and theater, has evolved through time, reflecting complex social, political, and cultural changes. British colonial authorities enforced censorship on Indian theater restricting performances of plays that included social critiques or anti-colonial themes. A primary concern was that such performances would incite people to revolt against colonial authorities. Post-independence, India's censorship approach continued to reflect legal endeavors aimed at safeguarding public morality and order. Article 19(2) of the Indian Constitution established the legal foundation for the Cinematograph Act of 1952, which empowered the government to regulate cinema content and created the Central Board of Film Certification (CBFC). The CBSO categorizes films based on their content and imposes limitations on those containing potentially disruptive or objectionable elements.

The extent of censorship in Indian cinema has been a topic of continuous debate and modification. The 1918 Cinematograph Act established the structure that enabled authorities to regulate films and create first censorship boards. Prohibitions on films stemming from politically sensitive themes or concerns over violence and morality exemplify the state's growing dominance over the media. Legislative modifications, like the 2021 Cinematograph (Amendment) Bill, have augmented these authorities. These revisions include initiatives to combat piracy, amend previously approved films, and implement age-specific film classifications. This illustrates the continuous endeavor to regulate media in alignment with social standards.

Censorship in the performing arts, although less stringent, has not escaped criticism. Modern performances addressing social or political issues may face opposition, unlike traditional Indian dance forms that often include legendary elements

and generally experience more creative liberty. Censorship of live performances, unlike movies, often occurs via specific legislative actions or informal societal pressure, rather than through centralized government oversight.

In India, the performing arts serve as a realm of creative liberty while also being subject to state oversight, shown by the many regulatory frameworks and increasing standards that regulate them.

4. LANDMARK CASES ON FREEDOM OF EXPRESSION AND CENSORSHIP IN PERFORMING ARTS

The significant case regarding cinema censorship standards was *K.A. Abbas v. Union of India* (Hidayatullah, 1970), when the Indian Supreme Court evaluated the legitimacy of film censorship under the Cinematograph Act of 1952. K.A. Abbas, an Indian filmmaker, said that the pre-censorship mandate violated his right to free expression as guaranteed by Article 19(1) (a) of the Indian Constitution. He believed that cinema was unjustly subjected to more rigorous controls than other kinds of communication. Nonetheless, the Court upheld the legitimacy of movie censorship, stating that audiences are more significantly influenced by films than by other forms of art and communication because of its efficacy as a medium of expression.

The Court emphasized that, while the right to free expression is fundamental, Article 19(2) permits "reasonable restrictions" on that freedom. Censorship was deemed necessary in the verdict to uphold public morality, order, and decency, recognizing the distinct societal impact of films, particularly on the youth. The Court established a dual standard, saying that films, due to their extensive influence, may be subjected to more stringent regulation than literature or art. This ruling affirmed the state's ability to control film content, emphasizing that cinema censorship must be equitable and not hinder innovation, so striking a delicate balance between freedom of expression and the public interest. In the 1989 case of *S. Rangarajan v. P. Jagjivan Ram* (Shetty, 1989), the Supreme Court of India examined the relationship between free speech and the preservation of public order, specifically in relation to film. The Tamil film *Ore Oru Gramathile*, which received certification from the Central Board of Film Certification, was the focal point of the controversy. The film scrutinized the government's reserve policies. However, local authorities revoked the film's certification owing to apprehensions that it may incite public disorder.

The Court said that free speech, included cinematic expression, is essential to democracies and cannot be restricted merely because of potential offense to particular individuals. An essential assertion made was that the idea of the "heckler's veto"—which posits that freedom of expression under Article 19(1) (a) should not be subordinated to fears of audience disruption—must not be favored. Public order is a valid basis for restriction under Article 19(2), as noted by the Court; but, a significant threshold must be met: a clear correlation must exist between the speech in question and the anticipated disorder.

This ruling underscored that the government must maintain order without infringing upon fundamental rights and that official interference in speech should not result in excessive censorship. This judgment illustrated the significance of courts maintaining both creative liberty and social stability.

India's highest court investigated the possibility of an obscenity prosecution concerning a film certified by the Central Board of Film Certification (CBFC) in the 1979 case of *Raj Kapoor v. State of Tamil Nadu* (Iyer, 1979), which addressed the boundaries of creative freedom in cinema. Renowned director Raj Kapoor has vowed to fight the obscenity accusation against his picture, asserting that it has already received approval from the CBFC and should thus be exempt from prosecution.

The Court recognized that CBFC certification does not provide complete immunity from legal repercussions; yet, it emphasized the significance of creative liberty, asserting that films and other artistic expressions serve a societal function by confronting critical social concerns, regardless of the sensitivity of the topics involved. Legal precedent in India dictates that creative expression is protected from censorship unless it egregiously contravenes norms of morality and decency (Section 292, Indian Penal Code). The Court embraced a more expansive understanding of free expression, holding that legally sanctioned films should be regarded as such until they overtly violate public morality, at which point state intervention is warranted.

The court's endeavor to reconcile free expression with society standards was evident in this historic verdict, which underscored the significance of measured censorship in safeguarding creative freedom while respecting social values. Building upon the precedents established in historic cases like *Memoirs v. Massachusetts* (1966) and *Roth v. United States* (1957), the United States Supreme Court delineated the standards for determining obscenity in *Miller v. California* (Burger, 1973). Marvin Miller was charged under California law for distributing pornographic advertising materials. Notwithstanding his assertions that his actions were protected by the First Amendment, the Court upheld his conviction and established the "Miller test" to ascertain whether speech may be deemed legally obscene and, hence, unprotected. Initially, according to the Miller test, the work must not elicit a prurient interest as assessed by "the average person, applying contemporary community standards." Secondly, it must not portray or articulate sexual activity, as defined by state law, in an objectionable way. Third, the work must lack substantial literary, artistic, political, or scientific merit when evaluated as a whole. This test eliminated the need for a consistent national standard by permitting states to regulate obscene material based on their own values.

The Miller judgment significantly influenced First Amendment jurisprudence by reconciling free expression, community standards, and ethical considerations across different jurisdictions, therefore refining the definition of obscenity.

A landmark ruling by South Africa's Constitutional Court, *National Coalition for Gay and Lesbian Equality v. Minister of Justice* (Chaskalson, 1998), significantly broadened LGBTQ+ rights, especially concerning sexual expression and morality. The post-apartheid Constitution of South Africa guarantees people's rights to privacy, equality, and dignity; the court determined that laws prohibiting consensual same-sex conduct among adults infringed upon these rights.

The court determined that there was no valid justification for criminalizing same-sex behavior; it arose instead from moral disapproval and societal prejudices rooted in historical and cultural biases. The LGBTQ+ community was unjustly shunned, shamed, and degraded due to governmental demands imposing these moral standards. The court also determined that a democratic society must preserve diversity in sexual expression and other types of individual liberty, provided it does not infringe upon the rights of others.

The court created a precedent asserting that fundamental rights cannot be restricted on moral grounds, even if such restrictions are detrimental. This case positioned South Africa as a prominent proponent of LGBTQ+ rights internationally and is seen as a pivotal event in the endeavor to mainstream and safeguard individuals' sexual orientation. It emphasized the need for legal protections that transcend individual biases to ensure true equality.

5. THE ETHICAL DIMENSIONS OF FREEDOM AND CENSORSHIP IN PERFORMING ARTS

Ethical difficulties about censorship and freedom of expression are especially pronounced in the performing arts, a domain committed to innovation and diverse perspectives. The tension between societal objectives of safeguarding cultural values, preventing harm, and promoting inclusivity, and the artist's liberty of self-expression is central to these challenges. The entitlement to creative expression and the potential societal ramifications of unrestricted material are pertinent ethical considerations in this context.

The autonomy in the performing arts provides artists a medium to denounce injustice, critique authority, and challenge established norms. This flexibility fosters critical thinking on complex issues, hence enhancing society development and dialogue. However, this freedom is often contested when content is seen as harmful, offensive, or inconsistent with prevailing cultural standards. Content that promotes intolerance, incites violence, or undermines foundational values raises ethical dilemmas. Censorship demands emerge under these circumstances, raising the question of who should determine public moral standards.

Ethical factors, including sensitivity to cultural diversity, respect for individual autonomy, and the commitment to minimize harm, must be meticulously evaluated to achieve a balance between liberty and constraint. All stakeholders—politicians, artists, and audiences—must devise a resolution to this ethical issue that fosters an inclusive and respectful public cultural milieu while also upholding the right to free expression.

6. COMPARATIVE ANALYSIS OF CENSORSHIP POLICIES IN PERFORMING ARTS ACROSS JURISDICTIONS

The cultural norms, political environments, and legal frameworks of many cultures are reflected in the significant disparities in censorship legislation pertaining to the performing arts. Comparing these rules reveals several methods for regulating content, balancing community standards, ethical considerations, and freedom of expression.

There exists a steadfast dedication to the principle of free speech in democracies, including the USA and many European nations. Censorship is legally restricted, save in cases of hate speech, incitement to violence, or explicit content affecting minors. Due to the performing arts' capacity to challenge entrenched societal norms and generate significant public discourse, courts in these domains often rule in favor of artists' rights. International human rights instruments, exemplified by Article 19 of the ICCPR, which ensures freedom of expression and delineates a framework for permissible limitations, bolster this safeguard.

Countries characterized by more autocratic regimes, such as China and several Middle Eastern nations, have stricter regulations on live performances. Government institutions responsible for upholding societal peace and order often impose limitations on subjects deemed politically sensitive, religiously objectionable, or morally unacceptable. Governmental entities often participate in the prior permission or licensing processes for performances, perhaps resulting in the outright banning of content that challenges political authority or established cultural conventions.

Emerging democracies in Southeast Asia and some regions of Africa often use a mix of these strategies to reconcile conservative societal forces with increasing demands for free expression. Due to these changes, censorship restrictions may not be consistently applied; for instance, they may vary by region, kind of information, or political context.

This comparative research illustrates the difficulty of reconciling censorship restrictions with ethical standards in the arts. Liberal governments prioritize diversity and individual liberty more than conservative jurisdictions, yet the opposite is true as well. Such disparities illustrate the challenges, both legally and ethically, in delineating the boundaries of freedom and restriction in the performing arts across various regions globally.

7. JUDICIAL INTERPRETATION AND EVOLVING STANDARDS OF FREEDOM OF EXPRESSION

Artistic expressions in the performing arts often challenge established societal norms, making judicial interpretation crucial for defining the boundaries of free speech in this domain. The dynamic body of legal precedent mirrors the evolving worldwide viewpoint on cultural values, artistic expression, and personal rights.

Censorship has historically been rationalized by assertions of public morality, obscenity, or political stability, with legal standards on free speech frequently making similar assertions. For instance, several nations' first judicial decisions often restricted performances deemed vulgar or subversive, irrespective of the artist's intentions or the potential public interest in free expression (Hidayatullah, 1970). Judicial perspectives have evolved, seeing creative expression as essential to a free and democratic society, influenced by the global adoption of democratic norms and human rights principles.

In cases of hate speech, incitement to violence, or harm to minors, contemporary courts, particularly in democratic societies, often adopt a more nuanced approach, weighing the importance of creative expression against any substantial justification for limiting communication. The European Court of Human Rights (ECHR) has emphasized the need of balancing community values, while the Supreme Court of the United States has advocated for robust protections of symbolic and creative expression. The court often intervenes as an intermediary in these circumstances, reconciling the need to restrict free expression with the imperative to guarantee that any imposed limitations are both essential and rational.

Shifts in societal values and the advent of new forms of expression both influence the continuous process of judicial interpretation. Judicial decisions on LGBTQ+ rights, political dissent, racial and gender equality, and contemporary ethical issues illustrate the evolution of the rule of law to protect speech that fosters inclusiveness and challenges

oppressive norms. This transition underscores the court's role in creating and safeguarding cultural liberties, given the growing recognition of the performing arts as a vehicle for social progress.

8. RECOMMENDATIONS FOR BALANCING FREEDOM OF EXPRESSION AND PUBLIC MORALITY

Reconciling public morality with creative expression in the performing arts is intricate and requires a comprehensive approach that considers both personal and communal values and hazards. Here are many recommendations for stakeholders and legislators to address this issue:

1. **Implement a Transparent Legal Framework Grounded on Human Rights:** The European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) both safeguard free speech with certain limitations; these tenets should underpin any legislation regulating creative expression. Restriction policies tend to be more consistent, rational, and safeguarding of fundamental rights when they are matched accordingly.
2. **Authorities should use a proportionality test** to ascertain if a restriction is the least intrusive means to achieve a legitimate objective, imposing limits only in the presence of a real danger of significant harm. This framework safeguards public interest while also fostering the respect for creative freedom.
3. **Foster Inclusive Community Standards:** Community norms must be established via a participatory process that considers the perspectives of many cultural, religious, and socioeconomic groups to recognize the diversity of ethical beliefs within societies. By embracing other viewpoints, we may cultivate an inclusive culture devoid of rigid moral absolutism.
4. **Depend on Advisory Ratings Rather than Prior Censorship:** Advisory grading systems enable audiences to make informed decisions without censoring creative content. In the context of material containing mature themes, potentially contentious topics, or challenging social issues, these approaches provide a viable alternative to total censorship.
5. **Enhance Judicial Review Mechanisms:** Limitations on the performing arts must undergo comprehensive judicial scrutiny to avoid potential overreach in censorship. Enhanced judicial assessments in censorship cases may arise from judges undergoing specific training in cultural and creative rights, enabling courts to more adeptly reconcile the principles of public morality and freedom.
6. **Promote Ethical Standards for Artists:** Alongside essential legal frameworks, the advancement of self-regulation in the arts may be facilitated by the promotion of ethical norms among artists. Artists may create ethically while maintaining their creative identity by emphasizing cultural sensitivity, honoring diverse views, and considering potential consequences.

These recommendations provide a balanced compromise between safeguarding free expression and disregarding societal values. The performing arts may serve as a potent catalyst for good social change if society cultivates an environment that promotes them via ethical considerations, community-oriented standards, and legal safeguards.

9. CONCLUSION

A balanced approach is essential in the complex interplay between censorship and freedom of speech in the performing arts. Artistic expression serves as a vital medium for society to reflect, evaluate, and create by offering a forum for individuals to share and debate their distinct experiences and perspectives. Determining the boundary between upholding public order and safeguarding creative freedom is an unavoidable source of tension as societies reconcile their varied cultural values and ethical standards.

Establishing frameworks that safeguard individual liberties and universal ethical standards is essential in today's linked world. Provided that these frameworks conform to principles of proportionality, foster variety, and prioritize human rights, the performing arts will remain a venue for exploration, education, and transformation. By safeguarding art as a vehicle for free expression, judicial overseers against unwarranted censorship and legislative protections for free speech enhance the democratic health of a society. The performing arts, when approached with diligence, has the ability to challenge, motivate, and unify individuals via ethically-driven expression, therefore fortifying society as a whole.

CONFLICT OF INTERESTS

None.

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