

Censorship: Free Dump of Expression

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“All censorships exist to prevent anyone from challenging current conceptions and existing institutions. All progress is initiated by challenging current conceptions, and executed by supplanting existing institutions. Consequently the first condition of progress is the removal of censorship.”

George Bernard Shaw

For a country to be a democracy, certain things are expected to be in place, such as freedom of expression and little or no censorship. While one person would find it perfectly acceptable to publicise pornographic material and sexually explicit lyrics to a curious world for anybody to see, another views such an act as a negative influence on a society being destroyed by such material. As John Marshall Harlan aptly puts it “One man’s vulgarity is another’s lyric.”

Society desires to eradicate the "black" while replacing it with the "white" in order to create a just environment to live in. The problem lies in the perception of what is "black" and "white" and has our society completely forgotten that there are enough shades of grey? What is good to a radical may not necessarily be good for a conformist and vice versa.

During the course of this paper we shall analyse the censorship scenario in India, focusing mainly on the procedure of censorship in Delhi. Many aspects of these issues need to be explored such as: at what point is freedom taken away? How far should our governing bodies protect people’s rights through the limitation of our freedom of speech? Do people have a right to privacy from the law enforcing agencies of India? If so, to what extent? Is censorship a violation of the basic freedoms found in the Indian Constitution?

Our Constitution provides us the right to free speech and expression in Article 19 as given below:

Article 19—Protection of Certain Rights Regarding Freedom of Speech, etc.

All citizens shall have the right

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations and unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) to practice any profession, or to carry on any occupation, trade or business.

The freedom of expression is guaranteed by Article 19(1)(a) of the constitution and it has been held by the Supreme Court that the freedom of the press is included in that wider guarantee and it is like any other citizen subject to constitutional limitations under the clause (2) and (6) of the constitution.

The grounds of restrictions under clause (2) as amended are:

- Sovereignty and integrity of India
- Security of the state
- Friendly relations with foreign states
- Public order

- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence

The grounds of restrictions in clause (6) on the other hand, are:

- Interests of the general public
- Laying down qualifications for carrying on any occupying, trade and business
- Carrying on trade, business, industry or service, by a state or a corporation owned and controlled by the state.

But like all rights, the right to freedom of speech and expression is not absolute. Our legislature restricts these rights under the following laws:

124-A: Sedition

Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1: The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2: Comments expressing disapprobation of the measures of the government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3: Comments expressing disapprobation of the administrative or other action of the government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

153-A: Promoting Enmity Between Different Groups on Grounds of Religion, Race, Place of Birth, Residence, Language, Etc., And Doing Acts Prejudicial to Maintenance of Harmony

(1) Whoever

- (a) By words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or
- (b) Commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or
- (c) Organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity, for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious,

racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship—whenever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

295-A: Deliberate and Malicious Acts Intended to Outrage Religious Feelings of Any Class By Insulting Its Religion or Religious Beliefs

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Criminal Procedure Section 95: Power to declare certain publications forfeited and to issue search warrants for the same:

(1) Where

(a) any newspaper, or book, or

(b) any document, wherever printed, appears to the state government to contain any matter the publication of which is punishable under Section 124A or Section 153A or Section 153B or Section 292 or Section 293 or Section 295A of the Indian Penal Code, the state government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to government, and thereupon any police officer may seize the same wherever found in India and any magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In this section and in Section 96,

(a) "newspaper" and "book" have the same meaning as in the Press and Registration of Books Act, 1867(25 of 1867);

(b) "document" includes any painting, drawing or photograph, or other visible representation.

(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of Section 96.

Criminal Procedure Section 96: Application to High Court to set aside declaration of forfeiture

Any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made under Section 95, may within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration on the ground that the issue of the newspaper, or the book or other document, in respect of which the declaration was made, did not contain any such matter as is referred to in sub-section (1) of Section 95.

1. Every such application shall, where the High Court consists of three or more judges, be heard and determined by a Special Bench of the High Court composed of three judges and where the High

Court consists of less than three judges, such Special Bench shall be composed of all the judges of that High Court.

2. On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the declaration of forfeiture was made.
3. The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in sub-section (1) of Section 95, set aside the declaration of forfeiture.
4. Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

In order to get a better perspective of the censorship scenario in our country let us examine how publications are censored in Delhi.

Procedure of Censorship in Delhi

After a book is printed and ready to be marketed, it is sent to the press department of the Ministry of Home Affairs; which is headed by a press officer. The press officer scrutinises the book and decides whether any particular section of the book is anti-national, non-secular, inflammatory or holds potential for social unrest. If in his opinion the book falters in any of the above grounds, it is sent to the screening committee.

This committee comprises eminent intellectuals of various fields such as lawyers, IPS officers, CBI officials headed by the Secretary of Home Affairs, Delhi. At this stage the book is examined further and if it is found unfit for publication, it is sent to the Lieutenant Governor for censoring certain portions or even in some cases banning it altogether!

Finally it is to the discretion of the Lieutenant Governor to ban the book or allow its publishing. Also for apparently obscene material, the book is sent to the press department of the Delhi police crime branch for scrutiny and then its forwarded to the press officer and then the process continues there on.

Obscurity of Law

Although the mass media in India enjoys a degree of freedom that would be the envy of several countries both in the subcontinent and outside, there can be no denying that this freedom is occasionally circumscribed by questionable state action. Among the commonest forms of interference are those based either on laws, which fall short of the constitutional guarantees on freedom of speech and expression, or on administrative decisions, which though ostensibly based on valid laws, are nevertheless arbitrary and/or inconsistent with the spirit of the law. One need not go very far to trace examples of the obscurities of these laws and procedures.

Take for instance the controversy surrounding the telecast of "Beyond Genocide" on Doordarshan. A documentary based on the Bhopal gas tragedy, it won a national award in 1987 as the best non-feature film. While presenting the awards, the Minister of Information and Broadcasting declared that all the award winning short films would be telecast on Doordarshan.

Doordarshan however later refused to telecast the film on the ground that the film lacked moderation and constraint and it did not fulfill the criteria of being socially relevant, fair and balanced. When it was taken to court, DD attempted to contend that the film was not found fit for telecast "as it was

likely to add commotion to the already charged atmosphere, that there was criticism of the state government and that it was impermissible under the guidelines within which it operates." The unequal struggle against MNC power, the unmitigated sufferings of the victims of this disaster, the apathy of the government, the burdens that the legal system continues to cast on the victims need public airing and support and consequent change and yet, the interests of the state dictated that they should not be talked about.¹

Communal tensions, which are rampant in Indian society, occasionally impinge on freedom of the media. There have been cases where government action, notably involving bans on the import or sale of books on the grounds that they may excite communal passions. These actions have been strongly criticised. The much-publicised order banning the import, sale or distribution of the novel *The Satanic Verses* by Salman Rushdie, which caused ripples all over the world, is a case in point.

The state is now also trying to muscle its way into other areas. Culture, for instance. The sudden ban on Pradeep Dalvi's play on Nathuram Godse is a typical example. The Congress made a nuisance in Parliament, claiming that the play denigrated the Mahatma. None of their MPs had seen it. Yet they insisted it be banned. Why? Only to embarrass the government. It was the greatest disservice to the memory of Gandhi. To silence the voice of his assassin. For Godse was no ordinary criminal. His motive for killing Gandhi was avowedly political and, in his pursuit of his convictions, he gave up his life.

To now silence him is to make him a martyr. Politicians do not understand this. That, in their idiocy, they are desecrating the memory of the very man whom they are trying to protect. But the epitome of obscurity is depicted in our case study.

The Safdar Hashmi Memorial Trust (SAHMAT) Controversy

In March 1993, SAHMAT started a criss-cross journey all over the country to meet artists, architects and intellectuals with one idea in mind—initiating a broad based campaign to counter the images of vandalism and shattered consciences that the name of Ayodhya had conjured, since December 6, 1992.

On August 9, a weeklong cultural programme *Muktanaad* was flagged off in 17 cities with an exhibition, *Hum Sab Ayodhya*, depicting the geographical, historical, architectural and cultural evolution of Ayodhya. The UP Government was not in favour of allowing such a convention to be held at Ayodhya. Thus, they tried to frame SAHMAT into the following controversy.

The controversy was regarding a particular poster, a pictorial representation of Ram and Sita as siblings. On August 14, 1993 (the day of the convention at Ayodhya), a 25-strong Bajrang Dal squad raided the exhibition. On August 18, J P Mathur, a BJP MP, stated that the attack that had taken place on the SAHMAT exhibition was provoked by a poster that depicted Ram and Sita as siblings rather than as husband and wife. There were even rumours that the poster showed Sita tying a rakhi on Ram and thus suggested that they had an incestuous relationship².

What raises important questions about freedom of expression, democratic space and discursive power is that the poster simply did not exist.

What the group of Bajrang Dal had actually stumbled upon was a four-page printed note, ensconced among 82 other exhibits, the *Dasratha Jataka* dating back to somewhere between the fourth and second

¹ Ramanathan, Usha, *The Hindustan Times*, May 24, 1999.

² *Muktanaad Humsab Ayodhya*—A selection of reports, editorials, discussion, comments from the press.

century BC. In this version of *Ramayana*, Sita is not the wife but the sister of Ram. At the end of the exile when Ram returns to Ayodhya, Sita is made the queen consort of Ram and they rule jointly for sixteen thousand years. This text was researched, designed and assembled by a team of distinguished historians including K N Panikar, Irfan Habib, Sushil Shrivastava, Ravinder Kumar, V N Jha, Athar Ali, Suvira Jaiswal and P K Shukla. But when this whole issue came up, the distinguished historian, Irfan Habib, attacking an editorial of *The Times of India* wrote:

“Is there to be one history (the true one) for the ‘academic circles’ and another (mythology, posing as history) for the masses? Will one next hear that Darwin’s theory of evolution is only good for academic circles since any public exposition of it must offend the scriptural mythology of both Hindus and Muslims?”

The most startling aspect of the controversy surrounding the SAHMAT exhibition and its presence in Ayodhya is the creation of a non-existent poster into a national concern in the same way as a non-existing temple had become the focus of national attention. What was more startling was that in the Parliament, our eminent politician L K Advani called for the removal of the poster from the exhibition. Also, the leader of our country, Atal Bihari Vajpayee stated that it was evident from the poster that SAHMAT’s intention was to hurt the sentiments of the majority community. The debate took place without any of the critics having seen the exhibition or the poster. This entire episode compels one to raise a finger at the current censorship scenario in India, where political lobbying comes before any other rationale.

It is evident that the existing censorship norms have reinstated the fallacy of freedom of expression in India. Placing arbitrary and ambiguous laws whose ambit even the lawmakers are unable to define has stifled the essence of freedom. On grounds of decency, morality and obscenity the government is empowered to prohibit any form of expression that does not cater to its needs.

Since time immemorial freedom has always been an expensive virtue. Just because its implementation can lead to social unrest temporarily, is no justification of its curtailment. In fact the people, who indulge in acts of violence to impose their beliefs, would invariably resort to any matter, even if the censorship laws were extremely stringent. To develop a civil society it is necessary to inculcate tolerance among its citizens. The fact that one does not appreciate what the other has said does not give justification for it to be banned. If the state is authorised to censor anything and everything, the society would be reduced to an oppressive, dictatorial regime where any right to freedom of expression is virtually redundant.